

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF ACTUARIAL SERVICES

Long-Term Care Insurance

Adopted Repeal and New Rules: N.J.A.C. 11:4-34

Proposed: December 6, 2004 at 36 N.J.R. 5195(a)

Adopted: November 1, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Filed: November 2, 2005 as R. 2005 d 422, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:48-8.1 and 17B:27E-9 and P.L. 2003, c. 207.

Effective Date: December 19, 2005

Expiration Date: May 29, 2006

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received one written comment from the American Council of Life Insurers.

COMMENT: The commenter expressed general support for the Department's proposal.

RESPONSE: The Department thanks the commenter for its support.

COMMENT: The commenter expressed concern with the definition of "exceptional increase" found in N.J.A.C. 11:4-34.2. The commenter stated that the Department's proposed rule includes language that states that the Commissioner may request, at the carrier's expense, an independent actuarial opinion. The commenter stated that this language is not found in the NAIC Model Act (Model).

RESPONSE: The Department believes that it is implicit in the NAIC Model Act (Model) that the actuarial opinion will be provided at the company's expense. The Department's language clarifies this point and is not a substantive deviation from the Model.

COMMENT: The commenter stated that paragraph 4 in the definition of "exceptional increase" in N.J.A.C. 11:4-34.2 adds an additional provision not found in the Model that allows the Commissioner to review the findings of insurance supervisory officials in other states. The commenter stated that the Commissioner should instead focus on those facts and circumstances in New Jersey to determine whether a rate increase is exceptional, particularly since the Commissioner has the right to request an independent actuarial review. The commenter stated that it is concerned about the confidentiality of information shared, since confidentiality protections vary from state to state.

RESPONSE: The Department disagrees with the commenter. The Department believes that the Commissioner's ability to review findings of insurance supervisory officials in other states is relevant. The Department notes that confidential financial information is routinely shared among state regulators and the data remains confidential. This information is not being released to a member of the public, which would endanger its confidentiality.

COMMENT: The commenter stated that the Department's definition of "incidental" also includes language not found in the Model. The commenter stated that the Department's rules add a provision that requires the expected values to be calculated as of the date of issue of the policy for each pricing characteristic (age, gender, policy size, optional benefits) and that a qualified actuary shall certify that the benefits are incidental. The commenter stated that this

provision is unnecessarily burdensome because N.J.A.C. 11:4-34.18(k) exempts policies for which long-term care benefits are incidental from the rate increase requirements of that section, and includes numerous requirements that should be met, including an actuarial memorandum. The commenter argued that the requirements contained in N.J.A.C. 11:4-34.18(k) are Model Act requirements and sufficiently address this concern. The commenter stated that the Department's language implies that the requirement must be met separately for each pricing characteristic; and stated that this requirement is burdensome and unnecessary.

RESPONSE: The Department disagrees with the commenter. The Department believes that the definition of "incidental" is necessary, and that the definition is not unduly burdensome. The requirements imposed by N.J.A.C. 11:4-34.18(k) do not define "incidental." Therefore, the Department's definition of incidental is necessary in order to clarify whether the exemption set forth in N.J.A.C. 11:4-34.18(k) applies.

Additionally, the commenter is incorrect in implying that the requirement needs to be met separately for each pricing characteristic. These requirements must be met for each combination of pricing characteristics.

COMMENT: The commenter stated that the Department's definition of "similar policy forms" found in N.J.A.C. 11:4-34.2 omits the second sentence from the Model Act which indicates that certificates of groups that meet the definition in the Model are not considered similar to certificates or policies otherwise issued as long-term care benefit classifications. The commenter stated that this omission is important because N.J.A.C. 11:4-34.7(b)5 requires disclosure of rate increase history on similar forms, including both individual policies and group certificates. The commenter contends that the rating basis for group policies is often very different from that for

individual policies and can differ by the characteristics of the group. The commenter argued that by omitting the cited sentence, the Department requires disclosure of group history to individual applicants and individual history to group applicants. The commenter contends that, because they are separate and distinct products, the disclosure provides no correlation for rate increases and would only be confusing to consumers.

RESPONSE: The Department's proposed rules do not include the second sentence in the definition of "similar policy forms" because it refers to a section of the NAIC Model Long Term Care Act that is not found in the New Jersey Long Term Care Act. The Department does not believe that the omission of this sentence from the definition has the commenter's suggested effect. Group insurance rates will not be regulated. The rules do not require the disclosure of group history to individual applicants and vice versa.

COMMENT: The commenter expressed concern with the policy definitions found in N.J.A.C. 11:4-34.3(a)17. The commenter stated that this provision adds definitions for "usual," "customary" and "reasonable" that are not found in the Model Act. The commenter stated that these definitions do not fit long-term care products but are more appropriate in the health insurance context.

RESPONSE: The Department disagrees with the commenter. If the terms "usual," "customary," and "reasonable" are used in a long-term care policy where benefits are payable on an expense incurred basis, said terms may be defined no more restrictively than set forth at N.J.A.C. 11:4-34.3(a)17. The Department notes that the Model Act uses the terms "usual," "customary" and "reasonable" but does not define them. The Department believes that

definitions of these terms provide important consumer protections and, therefore, has included the definitions currently found at N.J.A.C. 11:4-16.8(a)6.

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.4(b)1, regarding limitations and exclusions in policy practices and provisions. The commenter stated that the preexisting conditions or diseases listed in paragraph (b)1 provide specifications not found in the Model. The commenter argued that a preexisting condition exclusion shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition for which medical advice, diagnosis care or treatment was recommended or received from a physician within six months before the effective date of coverage. The commenter requested that the Department revise this exclusion to be consistent with the Model Act, so that paragraph (b)1 simply states “preexisting conditions and diseases.” Additionally, the commenter urged the Department to add Model Act provision 6C in its entirety, which addresses the definition of the acceptable parameters for preexisting conditions.

RESPONSE: The Department believes that the limitation on preexisting condition exclusions set forth at N.J.A.C. 11:4-34.4(b)1 should be consistent with the preexisting condition exclusion and definition described in the New Jersey Long-Term Care Insurance Act at N.J.S.A. 17B:27E-6b. The Department notes, however, that the language as proposed at N.J.A.C. 11:34-4(b)1 differs from the exclusion and definition allowed by N.J.S.A. 17B:27E-6b. Therefore, upon adoption, the Department is amending this provision to conform the wording of Sections 6b(1) and (2) of the New Jersey Long-Term Care Act and to clarify the Department’s intent. Additionally, the Department is adding a definition of “preexisting condition” to N.J.A.C. 11:4-34.3(a). This definition is consistent with N.J.S.A. 17B:27E-66(1).

COMMENT: The commenter stated that N.J.A.C. 11:4-34.4(b)5 omits Section (6)(B)(6) of the Model Act, which provides expenses for services or items available or paid under another long-term care insurance or health insurance policy, which the commenter suggested should follow paragraph (b)5.

RESPONSE: The Department intentionally omitted the exclusion of expenses for services or items available or paid under another long-term care insurance or health insurance policy. The Department believes that benefits provided by other group insurance for the same long-term care insurance expenses are more appropriately addressed by existing rules for coordination of benefits among group insurance plans found at N.J.A.C. 11:4-28. Duplicative benefits provided by individual long-term care policies may be addressed by using the optional policy provisions set forth at N.J.S.A 17B:26-19 through 17B:26-21, and N.J.A.C. 11:4-34.4(i).

COMMENT: The commenter stated that in N.J.A.C. 11:4-34.4(c), the Department substitutes language for continuous loss that is not in the Model. The commenter noted that the Model language uses the term “institutionalization” rather than “loss.”

RESPONSE: The Department changed the term “institutionalization” to “loss” because the Model Act suggests that an extension is available only for benefits related to institutionalization, whereas the Department believes that all benefits should continue. This requirement is consistent with the Department’s policy as set forth in the prior long-term care insurance rules.

COMMENT: The commenter stated that N.J.A.C. 11:4-34.4(h) and 34.7(f) require separation of premiums under various conditions, both in the policy (subsection (h)) and in the disclosure to the customer (subsection (f)). The commenter contends that when a company charges a single

indivisible premium for a set of benefits, it should not be necessary to make an analytical distinction in the policy or in disclosure. The commenter argued that this is not useful information for an applicant or policyholder, but may be appropriate in an actuarial memorandum.

RESPONSE: The Department believes that the premium for long term care coverage should be separately identified in policies which provide a combination of benefits. A unified premium for dissimilar benefits makes price comparison more difficult for the consumer.

COMMENT: The commenter objected to N.J.A.C. 11:4-34.4(j)2, which requires that for a restoration of benefits provisions, the period of confinements should be more than six months. The commenter stated that, while these deviations may reflect current State requirements, the Department should follow the language used in the Model Act.

RESPONSE: There is no provision in the Model addressing restoration of benefits provisions and the Department therefore incorporated its current standard, which is in the current long-term care rules at N.J.A.C. 11:4-34.6(a)5, into this provision. In addition, the commenter has misquoted proposed N.J.A.C. 11:4-4(j)2; that provision refers to the period between confinements, not period of confinement, as quoted in the comment.

COMMENT: The commenter stated that N.J.A.C. 11:4-34.4(j)3, the prohibition upon the inclusion of a mandatory case management provision in a policy or certificate, is not contained in the Model Act. The commenter argued that case management is still a fairly new concept to long-term care, and that it is premature and may not be appropriate to address minimum standards at this time. For example, the commenter contends, case management, while not the

norm today, may become an important feature in products in coming years. The commenter believes that case management or care coordination can help insureds and their families navigate through unfamiliar provider systems when they need assistance most, at the time of claim. In addition, the commenter stated that case management may have a positive impact on premiums, thereby making long-term care products available to a wider population. The commenter contends that, as long-term care products must be filed in New Jersey, the Department would be able to review these programs. Additionally, the commenter stated that, under HIPAA, long-term care providers must provide coverage for qualified long-term care services offered pursuant to a plan of care, which in a sense is case management. The commenter contends that, since neither HIPAA nor the Model Act provide specifications, it seems unnecessary and possibly detrimental to the development of new products to include this prohibition.

RESPONSE: The Department disagrees with the commenter. This provision is necessary because carriers have submitted policies that mandate that covered persons submit to case management and provide no benefit to persons who do not agree to case management. The Department notes that these are indemnity contracts that pay benefits, not managed care contracts that provide services through a network of providers subject to preauthorization, referral and other managed care techniques. Accordingly, the Department believes that the ban on mandatory case management is appropriate.

COMMENT: The commenter suggested that N.J.A.C. 11:4-34.5(a)1i should track the Model language. The commenter contends that the Department's additional language on required contribution does not seem to add anything to this subsection. The commenter believes that the language regarding differing notice requirements predicated on the insured having reached the

age of 62½ years is unnecessary and increases costs to the consumer. The commenter stated that it would prefer to have just one notice requirement without having to continually track ages.

RESPONSE: The commenter ignores the fact that N.J.S.A. 17:29C-1.1 and 1.2 require life and health insurers to annually notify insureds age 62 and over of their right to designate a third party to receive lapse notices (see N.J.A.C. 11:2-19). These statutory provisions cannot be ignored simply because they differ from the notification requirements in the Model Act.

COMMENT: The commenter stated that, for consistency, N.J.A.C. 11:4-34.5(b) does not need the additional word “group,” since “certificate” is already defined to mean a group form.

RESPONSE: The Department disagrees with the commenter and believes that the additional clarification is necessary. Throughout the rule, the reference to individual long-term care insurance alone is used to indicate that the rule or requirement does not apply to a group long-term care insurance policy, while the use of the term “group certificate” in addition to individual long-term care insurance clarifies that the rule or requirement that contains that term applies to both an individual long-term care policy and a group certificate.

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.7(b)1, which addresses required disclosure of rating practices to consumers. The commenter stated that the rule includes requirements regarding rate increase disclosure which must include circumstances that might lead to a rate increase, with a description, including factors that pose a significant risk of rate increases to policyholders or certificate holders. The commenter argued that these requirements are problematic, since no one can accurately predict all the circumstances that might lead to a rate increase. The commenter stated that incomplete disclosure is just as detrimental to

consumers as no disclosure. The commenter believes that incomplete disclosure will lead to significant market conduct issues for carriers. The commenter stated that carriers can include examples, but it should not be an all-inclusive list.

RESPONSE: The Department believes that purchasers should be advised of the risks which could cause their rates to rise. Additionally, the Department disagrees with the statement that “no one can accurately predict all of the circumstances that might lead to a rate increase.” The calculation of long term care rates depends on a limited number of assumptions, such as morbidity and administrative expenses. Disclosure of such a list to the customer places them on notice of the potential for changes in rates. The insurer is not, of course, required to advise the purchaser of every sort of event that could adversely affect morbidity.

COMMENT: The commenter stated that in N.J.A.C. 11:4-34.7(f), the Department includes an additional disclosure requirement that is not contained in the Model for “combination products” or life/long-term care products which is confusing and unnecessary.

RESPONSE: Subsection (f) refers to a description of the allocation of premiums. The Department believes that the premium for long term care coverage should be separately identified in policies which provide a combination of benefits. A unified premium for dissimilar benefits makes price comparison more difficult for the purchaser.

COMMENT: The commenter stated that the Department’s initial filing requirements of N.J.A.C. 11:4-34.8(b) require 60 days notice prior to making long-term care forms available, instead of the 30 days as required by the Model Act. The commenter requested that the Department remain consistent with the Model Act in recognizing the 30-day final notice.

RESPONSE: The Model Act has a drafting note that specifies “An alternate time period would be the time period required for policy form approval in the applicable state regulation or law.” Since New Jersey’s filing requirements, set forth in section 10 of P.L. 2003, c. 207 (N.J.S.A. 17:B-27E-10) permit a 60-day period for the initial review, this rule remains consistent with that requirement.

COMMENT: The commenter objected to N.J.A.C. 11:4-34.8(b)1 because the Department’s requirements for “combination products” are not contained in the Model.

RESPONSE: The Department expects that combination products will be offered as a result of this regulation and its enabling statute. Because life, annuity, health, and long-term care products are subject to different forms of rate regulation, identification of rates for separate coverage is necessary in order to ensure that the rates are appropriate.

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.8(c), which applies to new initial rate filings. The commenter stated that the Department’s proposed rules authorize the Commissioner to request the complete actuarial memorandum required by the old loss ratio section, N.J.A.C. 11:4-34.17(c). The commenter believes that this would seriously undermine the entire thrust of the new rate stabilization concept. Additionally, the commenter stated that N.J.A.C. 11:4-34.17(c) requires a certification that the assumptions reasonably represent expected experience rather than moderately adverse experience. The commenter stated that this section sets forth the “new” requirements as found in the Model Act yet it still references the “old” standard, which results in combining different standards that may not be compatible.

RESPONSE: The fact that the Department's proposed regulations at N.J.A.C. 11:4-34.8(c) authorizes the Commissioner to request a complete actuarial memorandum in the form set forth at N.J.A.C. 11:4-34.17(c) does not "undermine the entire thrust of the rate stabilization concept." The rate stabilization concept eliminates loss ratio requirements for initial filings with rates that are sufficient to cover anticipated costs under moderately adverse experience and that are reasonably expected to be sustained over the life of the form with no future premium increases anticipated. An actuarial memorandum does not threaten that concept.

The commenter also stated that the requirement, applicable to the actuarial certification required by N.J.A.C. 11:4-34.17(c)7, that assumptions represent expected experience rather than moderately adverse experience imposes an old standard on new rate stabilization standard. The Department is amending N.J.A.C. 11:4-34.8(c) on adoption to clarify that the reference therein to the submission upon request of an actuarial memorandum, which by its nature is informational, does not include a requirement for the submission of an actuarial certification pursuant to N.J.A.C. 11:4-34.17(c)7.

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.8(d) in which the Department includes a spousal discount that is not found in the Model Act. The commenter stated that the actuarial memorandum required by N.J.A.C. 11:4-18.4(a)1iv as referenced in N.J.A.C. 11:4-34.8(d)1 is required at the time of a rate increase and is not part of the initial filing requirements. Additionally, the commenter contends that some discounts are offered as "partner discounts," not necessarily as a spousal discount. The commenter argued that some companies may not offer the discounts in the same manner. The commenter believes that this additional provision is unnecessary and confusing.

RESPONSE: The Department believes that it is appropriate to have written standards for spousal discounts, primarily to clarify how such discounts can be provided without violating the prohibitions on unfair discrimination. These discounts are, in most cases, not true discounts, but merely a reallocation of rates between those eligible and those not eligible for the discount. The Department recognizes that the possibility of unfair discrimination exists. For the reason mentioned in the comment, the Department agrees that the reference to an actuarial memorandum “as required by N.J.A.C. 11:4-18.4(a)1iv” in N.J.A.C. 11:4-34.8(d)1 is inappropriate and the Department is deleting it on adoption. The requirements for actuarial memoranda for long-term care policies are contained in their entirety in N.J.A.C. 11:4-34.8.

The Department does not believe that its language regarding a spousal discount is unnecessary and confusing. The alternatives would be not to permit spousal discounts; permit spousal discounts with no regulation; or permit spousal discounts according to an unpublished set of standards. Those alternatives are not preferable. The Department notes that a similar provision is found in the current long-term care rules.

The Department disagrees with the commenter’s assertion that the requirements for spousal discount that appear at N.J.A.C. 11:4-34.8, Initial filing requirements, are not part of the initial filing requirements. In addition, the requirements for spousal discounts appear in the Long-Term Care Insurance rules which were effective April 1, 1996. The Department agrees that the reference to spousal discounts should be broadened to include “partner discounts” since such discounts have been permitted under the current rules and a clarification is warranted. Therefore, the Department has amended N.J.A.C. 11:4-34.8(d) on adoption accordingly.

COMMENT: The commenter objected to N.J.A.C. 11:4-34.17(c) regarding loss ratio. The commenter stated that the Model Act excludes life insurance policies that provide long-term care benefits, but the Department's proposed rules do not.

RESPONSE: The Department's proposal differs from the Model Act because N.J.A.C. 11:4-34.17(c) will only be applicable during a transition period until the new rate stabilization rules are applicable. Under the recently passed long-term care statute, N.J.S.A. 17B:27E-1 et seq., long term care benefits are permitted to be included in life insurance and annuity policies. When applicable, the rates for the long term care coverage should satisfy current requirements. The Department notes that prior to the effective date of this proposal, the loss ratio standards could be found at N.J.A.C. 11:4-34.17(c).

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.18 because the commenter believes that premium rate schedule increases are critical to life insurance companies and that the Department's rules should track the Model Act. The commenter stated that, unlike the Model Act, this section appears to apply only to individual policies. The commenter believes that in order to attain uniformity, the entire section should track the Model in applying to group policies as well.

RESPONSE: The Department's proposal differs from the Model because group rates will not be regulated under N.J.A.C. 11:4-34. Since group rates are not regulated, the omission of group specific provisions is therefore appropriate.

COMMENT: The commenter noted that N.J.A.C. 11:4-34.18(a) applies to any individual policy issued on or after 30 days after the effective date of the rules, instead of the six months as stated

in the Model Act. The commenter argued that companies should have the six months contemplated by the Model Act in order to effectively implement these provisions.

RESPONSE: The Department believes that the commenter misunderstood this provision by confusing the six-month effective date set forth in N.J.A.C. 11:4-34.8(a) with the 30-day effective date set forth in N.J.A.C. 11:4-34.18(e). N.J.A.C. 11:4-34.18 refers to rate increases on policies for which the initial rates were set in accordance with N.J.A.C. 11:4-34.8 (the new rate stabilization rules). The first time this section will be applicable to any company will be on an initial request for a rate increase for rates filed pursuant to N.J.A.C. 11:4-34.8, that is submitted after the effective date of the adoption. Because that 30-day effective date will not begin to run until after the six-month effective date of the rate stabilization provision, the Department does not anticipate that a 30-day effective date for the provision governing rate-increase filings will hamper companies.

COMMENT: The commenter stated that in N.J.A.C. 11:4-34.18(a) the Department includes language “for which initial rates were filed pursuant to N.J.A.C. 11:4-34.8.” The commenter argued that, by excluding from N.J.A.C. 11:4-34.18 individual policies that were not filed under N.J.A.C. 11:4-34.8, a company could remain under the old rate rules for an indefinite period. The commenter stated that a company is not required to file new rates or forms because N.J.A.C. 11:4-34.8 applies only to new forms filed under it. The commenter argued that by continuing to use old rates and forms, a company is never covered by the new rate stabilization provisions. Finally, the commenter stated that the Model Act applies premium rate schedule increases to all policies issued after the effective date regardless of the section under which the initial rates were filed.

RESPONSE: The provisions of N.J.A.C. 11:4-34.18 will not apply to rates for policies whose initial rates were not set using the rate stabilization rules unless the policy or certificate continues to be issued and the initial filing requirements at N.J.A.C. 11:4-34.8 have been met. The Department did not intend for the rate stabilization renewal rules to apply to policies whose initial rates were set on the “old” basis and which are no longer issued. Companies with closed blocks of business issued prior to this rule will not be subject to rate stabilization. However, new business will be subject to rate stabilization because all policies issued after a certain date will need to have their rates filed in accordance with N.J.A.C. 11:4-34.8.

COMMENT: The commenter noted that N.J.A.C. 11:4-34.18(b) proposes a 60-day notice for a revised premium rate schedule instead of the 30-day notice as contained in the Model Act.

RESPONSE: The Department recognizes that the 60-day requirement differs from the Model Act. The Department believes that the 60-day requirement is appropriate because the Department needs 60 days to review rate filings.

COMMENT: The commenter contends that N.J.A.C. 11:4-34.18(b)3i omits language found in the Model (Section 20B.(3)(i)-(iv)) which is necessary to complete this requirement.

RESPONSE: The Department believes that the additional language in the Model Act is not necessary in order to clarify this provision. The additional language seemed to overly restrict the information that could be required by the Department. The additional language is publicly available, and can be relied on as guidance as to an appropriate level of information. The Department believes that it is bad policy to absolutely restrict what can be requested.

COMMENT: The commenter stated that in N.J.A.C. 11:4-34.18(c)4, the Department omits language that requires the actuary to disclose, as part of the actuarial memorandum, the use of any appropriate averages. The commenter stated that the missing sentence is important in that it permits an actuary to use appropriate averages subject to disclosure.

RESPONSE: The Department believes that the additional language is unnecessary. The Department expects that an actuary will include such averages when appropriate, and does not believe that additional language is necessary to permit the actuary to do so.

COMMENT: The commenter noted that in N.J.A.C. 11:4-34.18(e), the Department references premium rate in the revised premium schedule greater than 150 percent, instead of the Model Act language of 200 percent. The commenter contends that the result is that the extended reporting requirement is unnecessarily triggered more quickly than under the Model Act.

RESPONSE: The Department agrees that the extended reporting rule is triggered more quickly under the proposed rules than under the Model Act, and that is the Department's intent. The 150 percent represents a significant increase.

COMMENT: The commenter stated that N.J.A.C. 11:4-34.18(f) omits the Model Act language (Section 20F(2)) "in determining whether the actuarial experience adequately matches the projected experience, consideration should be given to subsection B(3)(e) of the Model, if applicable." The commenter believes that the language is necessary to properly understand this requirement. Subsection B(3)(e) of the Model states: In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates.

RESPONSE: Section 20F(2) of the Model Act refers to group certificates. Since proposed N.J.A.C. 11:4-34.18(a) clarifies that N.J.A.C. 11:4-34.18 does not apply to group coverage, this section was omitted because it was not necessary.

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.18(g), because it believes it triggers the reporting requirement more quickly with the reference to "25 percent or more," as opposed to the Model Act language of a "majority."

RESPONSE: The Department agrees that this reporting requirement is more stringent than the Model. The Department believes that, for the consumer's protection, a lower threshold than that established by the Model Act is necessary.

COMMENT: The commenter objected to N.J.A.C. 11:4-34.18(h). The commenter stated that this provision omits the Model Act language (Section 20 H.(1) (a) – (c)) that triggers a review of lapse rates and instead uses a trigger of 25 percent. The commenter argued that by omitting conditions (a) and (b) in the Model Act, the Department's rule could apply to the first increase and to exceptional increases, while the Model excludes these situations. Additionally, the commenter stated that use of the 25 percent language, instead of the majority language, again more quickly triggers the reporting requirements.

RESPONSE: The Department agrees that this requirement is more stringent than the Model. The Department believes that, for the consumer's protection, a review of lapse rates in situations excluded by the Model Act is necessary. Many recent long-term care rate increase requests for in-force policies were the result, in part, of lapse experience different than anticipated.

COMMENT: The commenter stated that in N.J.A.C. 11:4-34.18(k)5viii, the Department includes two additional requirements not found in the Model Act. The commenter contends that the Department's proposed rule omits the Model's subsection K that pertains to groups.

RESPONSE: The Department believes that the additional requirements are reasonable because they simply expand on the requirement in the Model Act that the actuarial memorandum describe the effect of the long term care provision on the underlying policy.

With regard to the omission of subsection K of the Model Act, which the commenter correctly states applies to groups, the Department's proposal differs from the Model Act because N.J.A.C. 11:4-34.18 applies only to individual long term care policies. Hence, there is no need to exclude certain group policies from certain provisions, because they are by definition included in the scope of the rule.

COMMENT: The commenter objected to the filing requirements for advertising found in N.J.A.C. 11:4-34.20. The commenter stated that this provision contains language that provides that the Commissioner may disapprove an advertisement at any time if the advertisement is not in compliance with this rule or is in violation of the Trade Practices Act. The commenter argued that this language goes beyond the Model Act language and now appears to require that advertising has to be filed and approved. This is a departure from past practice. The commenter stated that this could substantially slow down the ability to get new products to market. The commenter contends that the Department has the ability to review advertisements during a market conduct exam.

RESPONSE: The Department notes that the Model Act permits the Commissioner to require prior approval of advertisements. The Department considers prior approval of advertising to be

onerous and, instead, allows filing while reserving to the Commissioner the right to disapprove the advertising in the future. Such an approach is less restrictive than that in the Model Act and permits companies to use advertising upon submission or until such time as it is disapproved. Although the Department recognizes its ability to review advertisements during market conduct exams, by then the harm may have occurred. The Department believes that a prospective review eliminates the possibility of harm of false or inappropriate advertisements.

COMMENT: The commenter expressed concern with N.J.A.C. 11:4-34.23, which addresses the prohibition against preexisting conditions and probationary periods in replacement policies or certificates. The commenter argued that the Department's requirement that the waiver must be in the form of an endorsement is unnecessary since carriers are already subject to this requirement.

RESPONSE: The requirement that waivers be in the form of an endorsement is necessary to disclose to the insured the fact that preexisting conditions and prohibition periods will not be applied in replacement policies and certificates and to ensure compliance with the entire contract provision of the policy or certificate.

COMMENT: The commenter stated that the nonforfeiture benefit requirement of N.J.A.C. 11:4-34.24(c) differs in scope from the Model Act. The commenter argued that when the offer of nonforfeiture is rejected, the Department's proposal requires that the policies must contain a contingent benefit upon lapse. The commenter contends that the Model merely requires that the insurer shall provide the contingent benefit upon lapse. The commenter stated that the Department's proposal requires that the contingent nonforfeiture benefit, when applicable, be

included in the policy. The commenter stated that it read the Model Act literally to mean that the insurer must provide the benefit, but it need not be in the policy. The commenter stated that the Model Act addresses this situation through disclosure requirements.

RESPONSE: The Department believes that a benefit which is required to be provided by law should be included in the policy. The Department recognizes that for a short period of time, while forms are being revised, policies may be issued without the provision.

COMMENT: The commenter objected to N.J.A.C. 11:4-34.24(g). The commenter stated that the Department's rule applies to the policies issued in this State on or after 30 days after the effective date of these rules, while the Model Act provides that the requirements become effective 12 months after adoption. The commenter believes that if the contingent benefit on lapse or other material nonforfeiture provisions are being added for the first time to the New Jersey Administrative Code, then a 12-month operative date is needed.

RESPONSE: The Department believes that the time period for the contingent benefit on lapse should be compatible with the time period for rates determined by the rate stabilization method. According to the Model Act, carriers could begin using rate stabilization rates six months after the effective date, but, would not have to provide a contingent benefit on lapse until one year after the effective date. The Department considers the contingent benefit on lapse to be an important protection for policyholders whose rates are subject to the new rules. Therefore, the Department has made the provision effective for policies issued on or after 30 days after the effective date of these rules.

COMMENT: The commenter objected to N.J.A.C. 11:4-34.24(h), which requires premiums to be subject to old and new loss ratio requirements. The commenter believes that only new loss ratio requirements should apply. The commenter stated that the Department's rules follow an oversight in the Model Act. It was stated that section 26 I of the Model Act should refer to Sections 10 and 20, not Section 19 of the Act. The commenter contends that correcting this reference was overlooked when the Model Act was updated for rate stability. The commenter suggested that the Department amend N.J.A.C. 11:4-34.24(h) to refer to N.J.A.C. 11:4-34.8 and 34.18, not N.J.A.C. 11:4-34.17 and 34.18.

RESPONSE: The Department notes that the commenter incorrectly cited this provision. The Department believes that its citation is correct. N.J.A.C. 11:4-34.17 and 34.18 are the only sections which refer to loss ratios. The citation to N.J.A.C. 11:4-34.17 is only invoked in cases where that section was applicable to the rates. The Department does not believe that there needs to be a reference to N.J.A.C. 11:4-34.8 because there are no loss ratio requirements in that section.

COMMENT: The commenter noted that in N.J.A.C. 11:4-34.24(k), the Department requires a mandatory nonforfeiture benefit for limited pay policies. The commenter contends that the Model Act currently has no special provision for limited pay policies. While the NAIC is moving toward adding a new contingent nonforfeiture benefit (not a mandatory benefit) for limited pay policies, the commenter suggested that the Department wait for the NAIC to resolve this issue.

RESPONSE: The Department believes that limited pay policies with very short payment periods (such as 10 years) require an equitable non-forfeiture benefit on lapse, and the comment

does not take exception to this principle. In the current market, since such benefits are not provided voluntarily, a rule is necessary. The Department will revisit this provision in light of any NAIC Model Act language.

Summary of Agency-Initiated Changes

The Department is amending N.J.A.C. 11:4-34.3 by adding a definition of “immediate family.” The Department believes that this is necessary to clarify the standard that is applicable to the part of the exclusion, set forth in N.J.A.C. 11:4-34.4(b)5, which refers to: “service provided by a member of the covered person’s immediate family.” The Department is adding the definitions at N.J.A.C. 11:4-34.3(a)11. The definition being added is consistent with that used in Black’s Law Dictionary-Eighth Edition and provides the commonly understood meaning of the Act. This definition includes “domestic partner” which is consistent with N.J.S.A. 26:8A-1 et seq. (P.L. 2003, c. 246).

The Department is recodifying N.J.A.C. 11:4-34.4(h) through (k) as (g) through (j), to correct an error that appeared in the proposal wherein the subsection (g) codification was omitted. The Department is adding the phrase “Any long-term care benefit that is provided other than through acceleration of an annuity or life insurance benefit,” and deleting the phrase “Individual long-term care insurance” from, N.J.A.C. 11:4-34.4(h) as adopted. The Department’s amendment is intended to clarify the application of these rules consistent with the statutory provision of N.J.S.A. 17B:26-3. N.J.S.A. 17B:26-3 applies to stand-alone long term care policies and individual life insurance policies that contain long-term care benefits other than through acceleration of annuity or life insurance benefit.

The Department is amending N.J.A.C. 11:4-34.8(a) to clarify that this section will apply to any long-term care policy or certificate issued on or after June 19, 2006, that date being six months after the effective date of these rules.

The Department is amending the reference to N.J.S.A. 17B:27-2 through 8 found in the definition of “group long-term insurance” at N.J.A.C. 11:4-34.2. The Department is deleting the reference to N.J.S.A. 17B:27-2, 4, and 5 found in N.J.A.C. 11:4-34.12. P.L. 2005, c. 190 approved August 18, 2005 effective January 1, 2005 repealed N.J.S.A. 17B:27-1 through 25. The Department is amending the provisions to reflect the recently enacted statutory provisions at N.J.S.A. 17B:27-68.

Federal Standards Statement

A Federal standards analysis is not required because these rules regulate the business of insurance and are not subject to any Federal requirements or standards.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

11:4-34.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Group long-term care insurance” means a long-term insurance policy which is delivered or issued for delivery in this State and issued to:

1. A group conforming to one of the descriptions set forth at N.J.S.A. *[17B:27-2 through 17B:27-8 inclusive]* ***17B:27-68***, eligible for group life insurance, or at N.J.S.A. 17B:27-27 as eligible for group health insurance, or

2. (No change from proposal.)

...

11:4-34.3 Policy definitions

(a) No long-term care insurance policy delivered or issued for delivery in this State shall use the terms set forth below, unless the terms are defined in the policy and the definitions are consistent with the following:

1.- 10. (No change from proposal.)

11. “Immediate family” means parents, spouse or domestic partner, children and siblings.

Recodify proposed 11.- 13. as ***12.-14*** (No change in text from proposal.)

15. “Preexisting condition” shall not be more restrictive than a condition for which medical advice or treatment was recommended by, or received from, a provider of health care services, within six months preceding the effective date of coverage of an insured person.

Recodify proposed 14. – 18. as ***16 – 20*** (No change in text from proposal.)

11:4-34.4 Policy practices and provisions

(a) (No change from proposal.)

(b) Limitations and Exclusions: A policy may not be delivered or issued for delivery in this State as long-term care insurance if the policy limits or excludes coverage for long-term care services by type of illness, treatment, medical condition or accident, except as follows:

1. Preexisting conditions or diseases: *[A preexisting condition exclusion shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition for which medical advice, diagnosis, care or treatment was recommended from a physician provider of before confinement begins within six months following the effective date of coverage of an insured person.]* ***The policy or certificate shall not exclude coverage for a loss or confinement which is the result of a preexisting condition if that loss or confinement begins later than six months following the effective date of coverage of an insured person.***

2. - 7. (No change from proposal.)

(c) (No change from proposal.)

(d) Continuation or Conversion: Group long-term care insurance issued on this State on or after *[the effective date of this section]* **December 19, 2005*** shall provide covered individuals with a basis for continuation or conversion of coverage.

1. – 8. (No change from proposal.)

(e) – (f) (No change from proposal.)

[(h)] **(g)*** (No change in text from proposal.)

[(i)]**(h)* ***[Individual long-term care insurance policies]*** ***Any long-term care benefit that is provided other than through acceleration of an annuity or life insurance benefit*** shall contain the required provisions described at N.J.S.A. 17B:26-3. N.J.S.A. 17B:26-16 will also apply to provisions respecting the matters set forth therein that are contained in individual long-term care policies. Group long-term care insurance policies shall contain the standard provisions required by N.J.S.A. 17B:27-33. Group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance shall apply the above cited provision only to the long-term care benefit.

Recodify proposed (j) - (k) as ***(i) and (j)*** (No change in text from proposal.)

11:4-34.7 Required disclosure of rating practices to consumers

(a) This section applies to any long-term care policy or certificate issued on or after ***[the effective date of this rule]* *December 19, 2005***.

(b) Other than policies for which no applicable premium rate or rate schedule increases can be made, carriers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, a carrier shall provide all of the information listed below to the applicant no later than at the time of delivery of the policy or certificate.

1. – 4. (No change from proposal.)

5. Information regarding each premium rate increase on this policy or certificate form or similar policy or certificate forms over the past 10 years for this State any other state.

1. - 111. (No change from proposal.)

iv. If any acquiring carrier files for a rate increase on a long-term care policy form from nonaffiliated carriers or a block of policy forms acquire from nonaffiliated carriers on or before the later of *[the effective date of this section]* **December 19, 2005*** or the end of a 24-month period following the acquisition of the block or policies, the acquiring carrier may exclude that rate increase from the disclosure information. However, the nonaffiliated selling carrier shall include that rate increase in its disclosure information in accordance with (b)5i above.

v. (No change in proposal.)

(c) – (f) (No change from proposal.)

11:4-34.8 Initial filing requirement

(a) This section applies to any long-term care insurance policy or certificate issued in this State on *[or after July 1, 2005]****or after June 19, 2006. Carriers may opt to comply with this section prior to June 19, 2006.***

(b) (No change from proposal.)

(c) The Commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for premium or benefit differences, relevant and credible data from other studies, or both. The Commissioner may also request an actuarial memorandum as specified at N.J.A.C. 11:4-34.17(c)₂, except for the restrictions on interest rates in N.J.A.C. 11:4-34.17(c)5v ***and the certification required by N.J.A.C. 11:4-34.17(c)7*.**

1. (No change from proposal.)

(d) A spousal ***and/or domestic partner discount is permitted in individual long-term*** care insurance provided:

1. The objective basis of the rate differential is included in ***[the]*** ***an*** actuarial memorandum ***[as required by N.J.A.C. 11:4-18.4(a)1iv]***;

2. - 3. (No change from proposal.)

11:4-34.12 Requirement for application, enrollment forms and replacement coverage.

(a) – (d) (No change from proposal.)

(e) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to an employer, labor union or trustee group as defined by N.J.S.A. ***[17B:27-2, 4, 5]*** ***17B:27-68*** and 27, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificate holder has been notified of replacement:

1-4. (No change from proposal.)

(f) – (j) (No change from proposal.)

11:4-34.18 Premium rate schedule increases

(a) This section applies to any individual long-term care policy issued in this State on or after *[(30 days after the effective date of these rules)]* ***January 18, 2006*** and for which initial rates were filed pursuant to N.J.A.C. 11:4-34.8.

(b) A carrier shall request approval of a revised premium rate schedule, including an exceptional increase, from the Commissioner at least 60 days prior to sending the notice to be provided to the policyholders, and the *[carriers]* ***carrier's*** request shall include:

1. - 5. (No change from proposal.)

(c) - (l) (No change from proposal.)

11:4-34.24 Nonforfeiture benefit requirement

(a) – (f) (No change from proposal.)

(g) The provisions of this section apply to any long-term care policy issued in this State on or after *[(30 days after the effective date of these rules)]* ***January 18, 2006*** . However, this section does not apply to certificates issued under a group long-term care insurance policy that was in force at the time this provision became effective.

(h) – (k) (No change from proposal.)

11:4-34.25 Standards for benefit triggers

(a) – (f) (No change from proposal.)

(g) The provisions of this section shall not apply to certificates issues under group long-term care insurance policies that were in force on *[the effective date of this]* ***December 19, 2005 rule***.

Date

Donald Bryan
Acting Commissioner

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