

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Retained Asset Accounts and Other Life Insurance Settlement Options

Adopted New Rules: N.J.A.C. 11:4-61

Proposed: March 21, 2011 at 43 N.J.R. 723(a).

Adopted: July 29, 2011 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: August 1, 2011 as R. 2011 d. 228, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:23-20 et seq., 17B:18-1 et seq. and 17B:23-1 et seq.

Effective Date: September 6, 2011.

Expiration Date: September 10, 2013.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received written comments from the Independent Insurance Agents and Brokers of New Jersey and State Farm Life Insurance Company.

COMMENT: One commenter supported the proposal and the requirements for disclosure of retained asset accounts (RAAs) as well as the details specific to those accounts as an option to the beneficiary.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter believed that life insurance policies should always provide the beneficiary, when filing the claim, an option to select that he or she would prefer a lump-sum check for the payment of a claim. The commenter urged the Department to review company policy in this area and suggested that it should urge companies to always make a full check payment option available to the beneficiary.

RESPONSE: Upon review, the Department has determined that no change is required. This comment is outside the scope of the proposal. However, to the extent insurers utilize retained asset accounts (RAAs), the Department has determined that certain information should be disclosed relating to the operation of the RAA. The National Association of Insurance Commissioners (NAIC) has also considered this issue and has formulated model disclosure requirements. The requirements in these rules are comparable to those adopted by the NAIC. The Department also notes that N.J.A.C. 11:4-61.3(a)2 provides that the required notice include a statement that one draft or check may be written to access the entire amount of the RAA, including interest, at any time.

COMMENT: One commenter expressed concern with N.J.A.C. 11:4-61.3, which requires that a disclosure be made to the prospective owner of a group policy of the information about RAAs prior to the issuance of the group policy. The commenter believed that this is problematic in that any disclosure made to the prospective group policy owner at the time of issuance could be obsolete by the time a claim is filed months or years later. Because this is a settlement option for the claimant, disclosure at the time of a claim to the claimant is when and to whom such disclosure should be made. The commenter noted that prospective owners of group policies

could ask the producer or insurer for the then current RAA information from the insurer as part of the sales process if the prospective owner is so interested. The commenter suggested that the rule be revised to read as follows to address this issue (suggested additions indicated in boldface; suggested deletions indicated in brackets):

- (a) All insurers offering RAAs in this State shall, [prior to the issuance of a group policy which provides for the payment of claims through an RAA or on which the opening of an RAA is an option, and] prior to the transfer of a death benefit on an individual or group policy to an RAA, provide [to the prospective owner of the group policy or] to the beneficiary of the death benefit a written notice disclosing in easy-to-understand language, pertinent information related to the use of an RAA. **Such notice shall also be provided to the prospective owner of a group policy which provides for payment of claims through an RAA or on which the opening of an RAA is an option upon request of the prospective owner. The written notice** [which] shall include, at a minimum, the following:

RESPONSE: Upon review, the Department has determined not to change this provision. The intent of N.J.A.C. 11:4-61.3 is to require that the RAA be explained to both the group policy owner when a group policy is purchased, and to the individual claimants at the time a claim is submitted. As the purchaser of the policy, the group policyholder is entitled to know how the

insurer intends to discharge its obligations without having to ask. If the insurer changes its method after the policy is issued making the original notice obsolete, it should notify the policyholder of such a revision. The Department views the notification to the group policy owner as part of the explanation of the operation of the contract. This notice should not impose any burden on insurers in that the insurer is merely providing information that it has developed related to its settlement options.

COMMENT: One commenter expressed concern with N.J.A.C. 11:4-61.3(a)8, which requires that the insurer disclose how the interest rate on the RAA will be computed. The commenter believed that this is unnecessary and provides the claimant with no useful information. The commenter further stated that banks do not disclose how they compute interest rates that they pay on checking or savings accounts, but rather merely tell the consumer the interest rate and the consumer either accepts it or puts his or her money elsewhere. The commenter did not believe that RAAs should be treated differently. If the claimant does not like the interest rate, the claimant can take a different settlement option. The commenter thus suggested that N.J.A.C. 11:4-61.3(a)8 should be amended to read: “[How] **What** the interest rate to be credited to the account [will be determined] **is;**” (suggested additions in boldface; suggested deletions in brackets).

RESPONSE: Upon review, the Department has determined not to change this provision. The requirement that the written disclosure notice include a description of how the interest rate will be determined (not “computed,” as noted in the Comment) is consistent with the national standard for notification regarding the use of RAAs adopted by the NAIC on December 16,

2010. The Department also believes that the requirement can be satisfied by stating the fixed interest rate or the index or basis to which the interest rate is pegged (for example, to money market rates, or Treasury rates, etc.).

In addition, subsection (b) of N.J.A.C. 11:4-61.3 provides that insurers may provide any additional information deemed appropriate, so long as it is not inconsistent with the information required to be provided by subsection (a). For example, if an insurer wished to reserve to itself the discretion to alter the rate of interest paid on RAAs or how that rate will be determined, it could do so. However, the insurer would be required by subsection (b) to include additional information in the disclosure notice to that effect and to note what factors would be considered in determining the revised interest rate.

Finally, as was noted in the proposal, the proposed rules were intended to assure adequate transparency and disclosure of pertinent information regarding RAAs, in order to assist consumers confronted with key financial decisions while experiencing bereavement. Information on how the interest paid on a RAA is determined, particularly where the interest rate is tied to an index or other variable basis, is essential to enable consumers to make informed decisions with respect to the use of a RAA as a settlement option for the proceeds of a life insurance policy. Therefore, the Department believes that it is reasonable and appropriate to provide this information to consumers.

COMMENT: One commenter expressed concern with N.J.A.C. 11:4.61.3(c), which requires that the RAA forms and explanatory information that will be provided under N.J.A.C. 11:4-61.3(a) be filed with the Department for review. Under the rule, the Department will notify the insurer within 30 days if there is a problem with the forms or information. The commenter

questioned whether the Department has the resources to review all of these filings and believed that a better approach would be to simply give the Department the authority to request that an insurer file such information at the Department's discretion. The commenter suggested that the rule be revised to provide that the information be provided "upon request of the Department."

RESPONSE: Upon review, the Department has determined that no change is required. The Department has the resources to review the information. The Department also believes that, for the reasons underlying the proposal and the action by the NAIC, it is reasonable for the Department to review such notices to ensure compliance with the rules and that group policy owners and beneficiaries are properly advised of settlement options. The Department does not believe this will impose any undue burden on insurers, in that it merely requires insurers to file copies of materials already developed.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are not subject to any Federal requirements or standards.

Full text of the adoption follows:

TEXT