

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Medicare Supplemental Insurance

Proposed Amendments: N.J.A.C. 11:4-23.3 and 23.11

**Authorized By: Holly C. Bakke, Commissioner, Department of
Banking and Insurance**

Authority: N.J.S.A. 17:1-8.1 and 17B:26A-5.

Calendar Reference: See Summary below for explanation of exception to
calendar requirements.

Proposal Number: PRN 2003-

Submit comments by August 15, 2003 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance is proposing to amend N.J.A.C. 11:4-23.3 and 11:4-23.11, rules applicable to the rates to be charged for supplemental insurance for Medicare recipients.

Medicare Supplement coverage pays for some of the expenses that are not covered by Medicare, such as deductibles, co-insurance and, in some cases, prescription drugs. Under the current rule, initial and renewal rates must be filed for approval prior to use. Rate filings must demonstrate that rates meet a loss ratio standard (ratio of paid benefits to premiums) over both the future and entire life of the policy.

The existing rules specify, at N.J.A.C. 11:4-23.11(b)5, the information to be submitted by a company in its initial rate filing, that is, the rate filing prior to issuing any business. However, the existing rules do not specify the information to be submitted when a company makes a renewal rate filing as required by N.J.A.C. 11:4-23.11(c) or (d), whether or not a revision in rates is requested. This lack of specificity has contributed to uncertainty and delays in the review of renewal rate filings. The proposed amendments correct this situation by specifying information to be submitted with renewal rate filings.

In addition, the proposed amendments place explicit limits on the assumptions to be used for future lapses and new business in estimating future premiums and benefits. The Department finds that indicated rate increases may be sensitive to these assumptions, and that uniform standards for these assumptions should be stated.

The proposed amendments also clarify the weighting to be given to national experience in a renewal rate filing when the New Jersey experience is limited. Existing NJAC 11:4-23.11(g) is not clear that projected future experience should be used in determining the weight to be given to New Jersey experience.

When national experience must be used for a renewal rate filing, the proposed amendments explicitly state that the premiums and claims are not to be adjusted to New Jersey levels when providing the required information and demonstrating that the revised rates meet the minimum loss ratio requirements.

The proposal also removes certain requirements for initial rate filings. These requirements spell out information or demonstrations to show that differences in premium based on factors such as age are not unfairly discriminatory. The information and demonstrations being removed have been found to not be necessary to meet the purpose of guarding against unfair discrimination among policyholders.

The proposed amendment to N.J.A.C. 11:4-23.3 would add a definition of "months exposed" to mean, for a given calendar period, the sum of the number of months an insured was covered for all insureds during that period.

The proposed amendments to N.J.A.C. 11:4-23.11(a) clarify the loss ratio standards applicable to renewal rate filings in addition to initial rate filings by changing the period referenced from the entire period for

which rates are computed, to the entire past and future periods for which revised or existing rates are computed to provide coverage. Without this change it was not clear that the loss ratio standards applied to the future period for which rates are effective.

The proposed amendments to N.J.A.C. 11:4-23.11(b) would delete current paragraphs (b) 6 and 7 which required submissions of cell and cell weights, when a model office was used in the calculation of anticipated loss ratio and demonstrations evidencing that unfair price discrimination was not utilized within the policy form's premium table or structure because that information and such demonstrations have been found to be unnecessary to meet the purposes of guarding against unfair discrimination against policyholders. N.J.A.C. 11:4-23.11(b)8 has been renumbered as paragraph (b) 6 and amended to change the actuarial society membership (and hence the professional qualifications) of the actuary qualified to sign the certification from a member of the Society of Actuaries or Casualty Actuarial Society to a member of the American Academy of Actuaries.

The proposed amendments to N.J.A.C. 11:4-23.11(c) clarify that a filing for a revision of rates pursuant to N.J.A.C. 11:4-23.11(d) will satisfy the requirement for a filing of rates. The proposed amendments provide explicit requirements for the form, content, and assumptions in its annual rate filings. The amendments require that the filing have an effective date, and the relationship of that effective date to the date of the

filing. The proposal also states that if national experience is used in connection with New Jersey experience, this experience is to be used without adjustment to New Jersey rate levels. The proposal changes the existing rule by explicitly listing the items of information required in the rate filing. The items of information that would be required are:

(1) Historical information on claims, premiums, and exposures that allow measurement of past experience and trends. Actual data, rather than estimated data, shall be used except that estimated values may be used for periods within three months of the date of filing when unless actual data is unavailable. Detail by year of issue shall be reported if differences in year of issue are used in estimating paid claim trend;

(2) Projected future values of the same historical information required in 1 above;

(3) Calculation of year-by-year loss ratios;

(4) Calculation of aggregate (past and future) and anticipated (future) paid loss ratios, with and without the effect of interest, in order to determine compliance with loss ratio standards;

(5) Statement of the assumptions that support the projections and loss ratio calculations. Specifically, N.J.A.C. 11:4-23.11(c)5iv requires a termination rate for the year for which rates are filed; N.J.A.C. 11:4-23.11(c)5v requires new business assumptions for the year for which rates are filed; N.J.A.C. 11:4-23.11(c)5vi limits the trend in paid claims, permitting only some types of trends after the year for which rates are

filed; and N.J.A.C. 11:4-23.11(c)5vii specifies a persistency assumption of 100 percent for years after the year for which rates are filed;

(6) The originally anticipated loss ratio, which may exceed the minimum loss ratio stated in this rule for this type of business, but constitutes a minimum loss ratio standard for rates; and

(7) A certification regarding the assumptions, and a certification that the anticipated and aggregate loss ratios exceed the originally anticipated loss ratio.

The proposed amendments to N.J.A.C. 11:4-23.11(d) would provide that the informational requirements for a rate revision are the same as the requirements for the annual filing of rates found at N.J.A.C. 11:4-23.11(c) as amended, except that required information on future experience must be provided both with, and without, the requested rate revision. The amendment repeats the requirement at N.J.A.C. 11:4-23.11(c) that if national experience is used in connection with New Jersey experience, this experience is to be used without adjustment to New Jersey rate levels

The proposed amendments to N.J.A.C. 11:4-23.11(g) would provide that, to comply with subsections (c) and (d) as amended on forms where the total past and future exposed months for the form is less than 12,000, the anticipated and aggregate loss ratios shall be calculated on both a national and State experience level and a weighted average for comparison to the originally anticipated loss ratio shall be used. The

proposal clarifies the existing rule by stating that future exposures as well as past exposures are to be used in determining whether national experience needs to be used.

A 60-day comment period is provided for in this proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

In New Jersey, Medicare Supplement Insurance covers approximately 300,000 Medicare beneficiaries, and is provided by approximately 10 carriers. The availability of affordable Medicare Supplement Insurance is important to the health and financial security of these Medicare beneficiaries who do not have other resources (such as health plans of an employer or former employer, Medicare + Choice and similar programs, or social programs such as Medicaid) for paying for medical expenses not covered by Medicare.

The statutory standards for rates that are implemented at N.J.A.C. 11:23-11 require the commissioner to make a determination as to the adequacy and non-excessiveness of rates in relation to a loss ratio standard. When the basis for that determination is ambiguous, delay, litigation, or withdrawal from the market can result. By proposing these amendments, the Department is establishing an environment where both

carriers and purchasers of insurance can feel that rates satisfy a standard that is objective and fair. This should enhance the availability and the affordability of Medicare Supplement Insurance.

The Department anticipates that the proposed amendments will have a beneficial social impact on carriers who offer supplemental insurance. The use of minimum submission requirements will allow the regulated entities to be better informed about the submissions the Department requires in connection with filings for rate revisions for Medicare Supplemental insurance coverage, and to more easily prepare rate filings that fulfill the criteria established in the revised rules. Minimum submission requirements will eliminate incomplete filings and the duplicative work generated by the need for resubmission.

The general public, particularly purchasers of Medicare Supplement insurance, will be favorably impacted, as these amendments should result in an improved likelihood of timely rate actions. The Department anticipates that this will result in greater predictability of, and in the increased availability of Medicare Supplement insurance products.

Economic Impact

The proposed amendments are expected to have a positive economic impact on carriers, consumers, and the Department. Carriers are in this market voluntarily for economic reasons and may consider

withdrawing if they feel that the rate process does not lead to rate revisions that are timely, adequate, and based upon an objective standard. Consumers are economically impacted by the availability of coverage and the cost of that coverage. The amendments should enhance availability and predictability.

The Department receives approximately 10 Medicare Supplement rate revision requests per year and expects that these rules will increase the efficiency of the Department's processing of those rate filing applications. The Department anticipates that through the use of minimum submission requirements there will be a 25 percent reduction in processing time for those applications, producing a corresponding favorable economic impact on the Department and the providers who are assessed for the costs of the Department's operations. Also, because the filing requirements are explicitly stated, litigation in connection with submissions should be reduced

Federal Standards Statement

The proposed amendments comply with and do not exceed the standards or requirements imposed by Federal law concerning Medicare Supplement coverage (42 USC 1395ss). Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not believe that the proposed amendment will cause any jobs to be generated or lost. The Department invites interested parties to submit any data or studies concerning the jobs impact of the proposed amendment.

Agriculture Industry Impact

The Department does not expect any agriculture impact from the proposed amendments (cf., The Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-4(a)(2)).

Regulatory Flexibility Analysis

The Department does not believe that any of the carriers providing Medicare supplemental insurance affected by the proposed amendments employ fewer than 100 full-time employees and are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required. The Department notes that if a small business were affected in the future, the application of the proposed standards to that small business would be appropriate because they are necessary for the Department to efficiently perform its regulatory function in this area. This function must be performed irrespective of the size of the regulated entity.

Smart Growth Impact Statement

The proposed amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface and underlined **thus**; deletions indicated in brackets [thus]):

11:4-23.3 Definitions

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

...

"Months exposed" means, for a given calendar period, the sum of the number of months an insured was covered for all insureds during that period.

...

11:4-23.11 Loss ratio standards, annual filing of premium rates and refund or credit calculation

(a) **For both the entire past and future periods for which revised or existing rates are computed to provide coverage,** Medicare supplement policy forms or certificate forms shall be expected to return to policyholders and certificateholders, in the form of aggregate benefits

under the policy or certificate [(exclusive of any anticipated refund or credit), for the entire period for which rates are computed to provide coverage] calculated on the basis of paid claims experience (or paid health care expenses for coverage provided by a health maintenance organization on a service rather than reimbursement basis) and written premiums for such period, and with adjustment for interest to reflect the timing of [the] payments:

1. -2. (No change.)

(b) Each carrier shall include with the initial submission of rates for a new Medicare supplement policy an actuarial memorandum [which] **that** includes the following:

1. -5. (No change.)

[6. The cell and cell weights, when a model office is used in the calculation of the anticipated loss ratio;

7. A demonstration evidencing that unfair pricing discrimination is not utilized by or incorporated within the policy form's premium table or structure.

i. The demonstration shall show that the recognition or nonrecognition or the homogenization of the elements of any insurance construct will not result in an anticipated loss ratio which would differ by more than 10 percent from the anticipated loss ratio of any element of the

construct if the elements of the construct were not recognized or separately recognized, as the case may be;

ii. For the purpose of this paragraph, construct shall mean the risk variables which significantly affect the cost of the coverage. For example, age could be a construct wherein its elements would be age 65, age 66, age 67 and so forth. (Of particular concern are anticipated loss ratios by issue or issue age groups); and]

[8.] **6.** A certification signed by an actuary, who must be a member of the [Society of Actuaries or Casualty Actuarial Society] **American Academy of Actuaries**, stating that the assumptions are appropriate to the policy form, reasonably represent the expected experience for the policy form and fully disclose the basis of the calculation of the anticipated loss ratio.

(c) Every carrier shall submit **its rates** annually for filing by the Commissioner [its rates. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration shall be submitted annually with the rates. Any revision of rates is subject to the requirements of (d) below]. **A filing for the revision of rates pursuant to (d) below shall satisfy this filing requirement. An annual rate filing shall specify an effective date for use of the rates, which date shall be after the date the filing is made but no later than six months following such date. The filing shall constitute compliance**

with the annual rate filing requirement for one year from the effective date for the use of the rates specified in the filing. Each subsequent annual rate filing shall specify an effective date for the use of the rates that is on or before one year from the effective date specified in the previous filing. Supporting documentation, as described below, shall be submitted with the annual rate filing. The supporting documentation shall **use reasonable assumptions and shall demonstrate [, using reasonable assumptions,] that the anticipated and aggregate loss ratios are at least as great as the originally anticipated loss ratio. [Such demonstration shall exclude active life reserves.] The demonstration shall provide the following information and assumptions for each policy form used, and shall do so on a New Jersey basis and, if required by (g) below, on a national basis as well. Information on a national basis shall not be adjusted to reflect the difference, if any, between New Jersey rate levels and national rate levels.**

1. For each prior calendar year, or portion of a prior calendar year, in which the policy form has been sold, the carrier shall provide actual or estimated values of paid claims; paid or written premiums (specify which); incurred claims; earned premiums; and months exposed, and shall indicate whether the values provided are actual or estimated values.

Estimated values may only be used for periods within three months of the date of the filing. If the carrier uses duration-specific trend in projecting future claims or premiums, the data shall be subdivided by year of issue or duration. If the carrier does not use duration-specific trend in projecting future claims or premiums, the data may be subdivided by year of issue or duration at the option of the carrier.

2. For each future calendar year, or portion of a future calendar year, in which existing or newly issued policies of the policy form are expected to be in force in this State, provide the projected values of paid claims; paid or written premiums (specify); incurred claims; earned premiums; and months exposed, using the assumptions specified at (c)5 below.

i. The numbers of years may be truncated if truncation will not impact compliance with loss ratio standards.

3. For each of the years or periods in (c)1 and 2 above, the carrier shall provide the paid/paid loss or paid/written loss ratio, and the incurred/earned loss ratio. Neither the future benefits nor the future premiums may include, or may be adjusted for, any statutorily required additional actuarial active life reserves.

4. The carrier shall provide the aggregate paid loss ratio calculated over the life of the policy form, and the anticipated loss ratio calculated over the future life of the policy form. The carrier shall indicate the following components of the calculation: accumulated value of past paid claims (with interest); sum of past paid claims (without interest); accumulated value of past paid or written premiums (with interest); sum of past paid or written premiums (without interest); present value of future paid claims (with interest); sum of future paid claims (without interest); present value of future paid or written premiums (with interest); and sum of future paid or written premiums (without interest).

5. The carrier shall use reasonable assumptions in calculating the anticipated loss ratio, and shall specify the components used, including:

i. Months exposed by year and, at the option of the carrier, duration of year of issue;

ii. Paid claims per month exposed, including the impact, if any, of selection, duration, age or gender;

iii. Paid or written premium per month exposed, including the impact, if any, of selection, duration, age or gender;

iv. Total termination rates by policy

duration and age or sex, including the impact of mode of premium payment, for the year for which the filing is effective;

v. New business to be issued, by age and

sex, for the year for which the filing is effective;

vi. Trend factors in paid claims, by policy

duration, age and sex, which trend factors shall only reflect the impact of aging and wear-off of selection after the year for which the filing is effective;

vii. A persistency assumption of 100

percent for years after the year for which the filing is effective, unless the carrier has withdrawn from the market pursuant to N.J.A.C. 11:4-23.13; and

viii. The interest rates to be used in

accumulating or discounting paid premiums and claims, which rates shall equal the carrier's recent, current and future expected new investment return rates after investment expenses but before Federal income taxes.

6. The carrier shall submit the originally anticipated loss ratio for the form, the date of the initial rate filing, pursuant to (b) above, in which the originally anticipated loss

ratio is given, the date of Department approval of the initial rate filing, and the effective date of the initial rate filing.

7. The carrier shall submit a certification signed by an actuary who is a member of the American Academy of Actuaries, stating that:

i. The assumptions used in the rate filing comply with this rule, are appropriate to the policy form, reasonably represent expected experience to the extent specified by this rule, and substantiate the calculation of the anticipated and aggregate loss ratios; and

ii. The anticipated and aggregate loss ratios, calculated according to the requirements of N.J.A.C. 11:4-23.11(c), exceed the originally anticipated loss ratio.

(d) Carriers shall submit **revised rates** for filing by the Commissioner [in accordance with N.J.A.C. 11:4-23.12 all rate revisions]. No carrier shall implement any rate revision until such rate revision has been filed. **The same supporting documentation required by (c) above shall be submitted with the revised rates. Paid or written premiums and earned premiums as described by (c) 2 above, and present value of future paid or written premiums and the sum of future paid or written premiums as described in N.J.A.C. 11:4-**

23.11(c)4 shall be submitted both with, and without, the requested rate revision. The supporting documentation shall use reasonable assumptions. The supporting documentation shall demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage and the aggregate loss ratio are at least as great as the originally anticipated loss ratio. The demonstration shall provide the required information and assumptions for each policy form, and shall provide them on a New Jersey basis and, if required by (g) below, shall also provide them on a national basis. Premiums on a national basis shall not be adjusted to reflect the difference, if any, between New Jersey rate levels and national rate levels. [Submission of rate revisions for filing shall demonstrate that both the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage and the aggregate loss ratio are at least as great as the originally anticipated loss ratio.]

1.-6. (No change.)

(e) - (f) (No change.)

(g) For purposes of complying with (c) and (d) above, premiums [and] claims, **and months exposed** shall refer to premiums and claims for insured residents of this State under a specific policy form. However, if the [experience is based on fewer than 1,000 life years of exposure for residents of this State, then the premiums and claims shall be a

weighted average of the premiums and claims for this State and national experience, where the weighting factor applied to the State experience is the square root of the ratio of "a" to 1,000 ("a" being the number of life years of exposure).] **total past and future exposed months for the form is less than 12,000, the anticipated and aggregate loss ratios shall be calculated on both a national experience and State experience basis. A weighted average of loss ratios shall then be calculated for purposes of comparison to the originally anticipated loss ratio. The weighting factor "w" to be applied to the loss ratio based on State experience shall be the square root of the ratio of "a" (the total past and future exposed months) to 12,000, and the weighting factor applied to the national experience shall be 1-w.**

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