

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

**Actuarial Services
Life/Health/Annuity Forms
Approval Standards; File and Use Eligibility**

Proposed Amendments: N.J.A.C. 11:4-40.3 and 40.9

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17B:25-18g.

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

Proposal Number: PRN 2003-395

Submit comments by December 5, 2003 to:

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The agency proposal follows:

Summary

The Life and Health Insurance and Health Maintenance Organization Form Approval Reform Act ("the Act") (P.L. 1995, c. 73; codified as N.J.S.A. 17B:25-18.1 et seq.), signed into law on April 10, 1995, requires all life and health insurance policies and contracts, all annuities and all variable contracts subject to Title 17B of the New Jersey statutes, to be filed with and approved by the Commissioner of the Department of Banking and Insurance (Commissioner).

The form filing process of the Act also applies to those forms drafted to administer provisions of a life insurance policy or annuity contract for favorable tax treatment under the Internal Revenue Code of 1986, as amended (Code). The pertinent provisions of the Code include Sections 401, 403(b) and 408A and any similar section of the Code applicable to Federal tax treatment of life insurance policies and annuity contracts.

The terms and conditions in these forms are generally written exclusively to mirror Federal requirements for favorable tax treatment. Insurers are frequently required to update these forms to reflect the current requirements of the Code, and are at times disadvantaged by the delay in the form approval process. The Department has no additional requirements with respect to tax treatment in statute or regulation that are enforced during the review process. In addition, the Department is unaware of any consumer protection issues relating to these forms.

Accordingly, the Department is now proposing to amend N.J.A.C. 11:4-40 to exempt these forms from the form filing process. It should be noted, however, that the exemption does not apply to forms that contain any provisions or requirements not mandated or required by Federal law. If the insurer has modified the forms in a manner not required by Federal law, or has added additional requirements, then the forms must still be submitted for review and approval. Review and approval are necessary in these situations because the Department has determined that insurer-initiated requirements at times result in provisions that do not satisfy the statutes and regulations applicable to life insurance and annuity forms (such as the premature termination of the contract).

The Department's proposed amendments include the following:

N.J.A.C. 11:4-40.3(d) is being added to specifically exempt those forms drafted to administer provisions of a life insurance policy or annuity contract for favorable tax treatment under the Internal Revenue Code of 1986, as amended (Code), from compliance with the requirements of Subchapter 40.

N.J.A.C. 11:4-40.9(b)8 and (c)4, which state that these forms are eligible for the "file and use" process, are being deleted.

This notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

Social Impact

These proposed amendments should have a favorable impact on insurers, policyholders and the Department. Insurers would be relieved of the administrative burden of filing these forms with the Department. Policyholders will be favorably impacted in that they may enter such contracts without the delay of a form filing process. The Department will not be required to use its limited resources conducting unnecessary reviews of these types of forms.

Economic Impact

These proposed amendments should have a favorable economic impact on insurers, policyholders and the Department. Insurer costs of filing the forms with the Department will be eliminated, as will the Department's costs to review such forms. Speedier entry of such forms into the marketplace may be economically advantageous to policyholders as well as insurers.

Federal Standards Statement

The proposed amendment does not contain standards or requirements that exceed those standards or requirements imposed by Internal Revenue Service Code, Sections 401, 403(b) and 408A..

Jobs Impact

The Department does not anticipate that these proposed amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the insurers to whom these proposed amendments apply do not employ fewer than 100 full-time employees, and therefore are not "small businesses" as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

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 **thus**; deletions indicated in brackets [thus]):

11:4-40.3 Life/health/annuity form approval standards

(a) - (c) (No change.)

(d) Forms drafted exclusively to meet the requirements for favorable tax treatment of a life insurance policy or annuity contract under the Internal Revenue Code of 1986, as amended (Code), are exempt from compliance with this Subchapter. Such requirements include those found in Sections 401, 403 (b) and 408A, and in any similar section of the Code applicable to Federal tax treatment of life insurance policies or annuity contracts. This exemption shall not apply to any form which contains additional or optional provisions, requirements or modifications included by the insurer.

11:4-40.9 File and use eligibility

(a) (No change.)

(b) The following types of non-variable individual life insurance forms shall be eligible for file and use pursuant to this section:

1 - 6 (No change.)

7. Spouse and /or child rider; **and**

[8. Individual retirement account (IRA) endorsement; and]

[9] **8.** (No change in text)

(c) The following types of non-variable individual annuity forms shall be eligible for file and use pursuant to this section:

(d) 1 - 3 (No change.)

[4. Individual retirement account (IRA) endorsement;]

Recodify existing 5. and 6. as 4. and 5. (No change in text.)

(d) – (g) (No change.)

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