

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Producer Licensing

Proposed Readoption with Amendments: N.J.A.C. 11:17

Authorized By: Richard J. Badolato, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15.e; and 17:22A-26 et seq.

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

Proposal Number: PRN 2016-061.

Submit comments by July 1, 2016, to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:17, which was scheduled to expire on April 8, 2016, in accordance with N.J.S.A. 52:14B-5.1.

Pursuant to N.J.S.A. 52:14B-5.1.c(2), the submission of this notice to the Office of Administrative Law extended the expiration date 180 days to October 5, 2016.

The Department has reviewed the rules in this chapter and determined that they continue to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. On August 15, 2001, the New Jersey Legislature enacted the New Jersey Insurance Producer Licensing Act of 2001 (Producer Act), N.J.S.A. 17:22A-26 et seq. The Producer Act's stated purpose is to govern the qualifications and procedures for the licensing of insurance producers, simplify and organize the statutory law to improve efficiency, permit the use of new technology, and reduce costs associated with the issuance and renewal of producer licenses. Rules pursuant to the Producer Act were readopted with amendments on October 10, 2003. See 35 N.J.R. 2159(a) and 5115(a). The Department has reviewed the chapter and has determined that the chapter will continue to serve the Producer Act's stated purpose and is, therefore, proposing to readopt the chapter with amendments as discussed below.

Subchapter 1 sets forth the purpose and scope of the chapter and definitions of certain words and terms that appear in the chapter.

Subchapter 2 contains licensing rules regarding terms of licenses; license authorities; application filing requirements for initial licenses; requirements for licensing of certain limited lines insurance producers; temporary work authority and change in residence status; license renewal; additional authorities; legal and business names; addresses; branch offices; business relationships; continuation of a business of a producer who becomes disabled, dies, or enters the Armed Forces; licensing information requirements; fees; denial of a license; surrender and cancellation of a license; reinstatement after surrender of a license; licensee records; and requests

by the Department for disclosure of Social Security numbers from licensed producers and license applicants.

The Department is proposing to amend N.J.A.C. 11:17-2.10(a)7 to require an insurance company to mail an additional copy of a notice of termination of an agency contract to the Department's Office of Consumer Protection Services (rather than the Department's Enforcement Unit) when the reason for termination involves misconduct by the producer/agency. This change reflects the Department's current handling practices of such notices.

Additionally, the Department is proposing to amend N.J.A.C. 11:17-2.11(a) to replace "designated officer or owner responsible for the licensed activity of the business" with the term "designated responsible licensed producer" to ensure that said term is consistently used throughout the chapter.

The Department is also proposing to amend N.J.A.C. 11:17-2.12(d) to add designated responsible licensed producers to the group of individuals listed in the rule whose departure, termination, or deletion from a business entity insurance producer makes the business entity producer license inactive.

The Department further proposes to amend N.J.A.C. 11:17-2.15(d) to reflect that in the event a license is lost or destroyed, a replacement may be printed by the licensee using the National Association of Insurance Commissioners-State Based Systems (NAIC-SBS) license system accessed from the Department's website at www.dobi.nj.gov.

Subchapter 3 sets forth the rules concerning the Department's approval of insurance education programs; the duties and requirements of insurance education providers; penalties for insurance education providers, insurance education directors, and authorized personnel; pre-licensing education; the State licensing examination; and continuing education.

The Department proposes to amend N.J.A.C. 11:17-3.1, 3.2, and 3.5 to add language to implement the statutory amendments to N.J.S.A. 17:22A-31 enacted in P.L. 2015, c. 150, to provide that: a) insurance education providers of prelicensing education shall submit an acknowledgement that the education provider agrees to provide the course curriculum in Spanish that will be made available by the Department; and b) requiring vendors of prelicensure examinations to provide examination and examination registration materials in English and Spanish.

The Department proposes to amend N.J.A.C. 11:17-3.6(a) and (l) by deleting language that refers to when the Department transitioned from issuing four-year licenses to two-year licenses. Accordingly, the amendments will reduce the number of continuing education hours required of licensees from 48 hours in a four-year licensing term to 24 hours in a two-year licensing term and delete “grandfathering” language that is no longer applicable.

Subchapter 4 and 5 continue to be reserved.

Subchapter 6 sets forth the procedures for the regulation of certain persons, firms, associations, or corporations who act as managing general agents on behalf of insurers. Specifically, the subchapter addresses the following: the purpose and scope of the subchapter and definitions of certain terms and words used within the subchapter; requirements for managing general agents and insurers who appoint managing general agents; filing requirements; claim processing requirements; record maintenance requirements; and penalties that the Commissioner may impose upon violators of N.J.S.A. 17:22C-1 et seq., or this subchapter. Subchapter 6 also contains an Appendix with two forms for use in the regulation of managing general agents.

Subchapter 7 sets forth the procedures for the regulation of certain persons, firms, associations, or corporations who act as reinsurance intermediaries, and for insurers that transact

business through a reinsurance intermediary. Specifically, the subchapter includes the purpose and scope of the subchapter and definitions of certain terms and words used within the subchapter; requirements for reinsurance intermediaries and insurers who transact business through a reinsurance intermediary; filing requirements; record maintenance; and penalties that the Commissioner may impose upon violators of N.J.S.A. 17:22E-1 et seq., or this subchapter. Subchapter 7 also contains an Appendix of three forms for use in the regulation of reinsurance intermediaries.

This notice of rules proposed for readoption with amendments provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments affect all persons selling, soliciting, or negotiating insurance in New Jersey, insurance education providers and instructors, and the general public. The rules proposed for readoption with amendments maintain the substantive requirements in the existing rules regarding licensing and pre-licensure education. Readoption of these rules is necessary to maintain the quality of service provided by and the professionalism of insurance producers by continuing high standards that protect consumers. In addition, readoption of these rules is necessary to retain reciprocity with other states for producer licensing.

For these reasons, the proposed amendments will not alter the beneficial social impact of the rules.

Economic Impact

The rules proposed for readoption with amendments will continue to economically affect insurance producers, insurance education providers, and managing general agents or reinsurance intermediaries. No change in the level of fees is proposed at this time. Furthermore, no additional educational requirements have been added.

Insurance producers, insurance education providers, managing general agents, or reinsurance intermediaries will continue to pay application fees and renewal fees. All regulated persons and entities currently required to keep records will continue to bear the cost of such recordkeeping. Those who require insurance education will continue to incur the costs of acquiring such education while insurance education providers will continue to incur costs associated with providing such education, such as instructor's salaries and the costs associated with recording, retaining, and reporting on completed educational requirements. Managing general agents and reinsurance intermediaries will continue to incur the costs of recordkeeping. It is not anticipated that any outside professional services will be needed for any of the functions required by the rules, but that these functions will continue to be performed by in-house staff.

The proposed amendments are proposed to improve the chapter's clarity and organization, or they are implementing changes required by statutory amendments. The Department's decision to no longer print and mail licenses promotes efficiency, enables immediate real-time access to licenses by affected licensees, and saves the Department printing costs. Licensees will, therefore, incur those printing costs, but such costs are minimal. Accordingly, the proposed amendments should not result in any added substantial costs incurred by licensees.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption with amendments will result in the generation or loss of any jobs. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

Most persons selling, soliciting, or negotiating insurance in New Jersey and some engaged in the business of providing insurance education in New Jersey are “small businesses” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The same is true for managing general agents and reinsurance intermediaries doing business in New Jersey. These persons and entities will be subject to all of the requirements and must bear the costs of compliance imposed by the amended and readopted rules as discussed above. It is not anticipated that any outside professional services will be needed for any of the functions required by the rules, but that these functions will continue to be performed by in-house staff. The rules proposed for readoption with amendments provide no different reporting, recordkeeping, or other compliance requirements specifically based on business size. The rules proposed for readoption with amendments enforce a regulatory framework for the licensure of producers to ensure that

they possess the minimum qualifications and knowledge necessary to sell, solicit, or negotiate insurance in New Jersey in a competent and lawful manner in order to protect insurance consumers and the market generally. Providing different compliance requirements based on business size would be inconsistent with the intent of the Legislature as expressed in the Producer Act and would jeopardize reciprocity for New Jersey producers with other states.

The rules also provide a framework to ensure the minimum qualifications for insurance education providers, to delineate the minimum educational curriculums, and to allow for the enforcement of those minimums to protect the interests of producers and the general public. These purposes do not provide for different compliance requirements based on business size.

For the foregoing reasons, the rules proposed for readoption with amendments provide no differentiation in compliance requirements based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern the qualifications and procedures for the licensing of producer licensees and the regulation of managing general agents.

Smart Growth Development Impact Analysis

The Department believes that the rules proposed for readoption with amendments will not evoke a change in housing production in Planning Areas 1 or 2, or within the designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments address licensing and education requirements for insurance producers, a profession regulated by the Department pursuant to the Producer Act.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:17.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. LICENSING RULES

11:17-2.10 Business relationships

(a) The agency relationship between company and producer is subject to the following requirements:

1. – 6. (No change.)

7. If the reason for termination involves misconduct by the producer, an additional copy of the notice of cancellation [which specifies] **specifying** the reason for termination shall be mailed by the insurance company to the [Department's Enforcement Unit] **Department, c/o Office of Consumer Protection Services**, PO Box 329, Trenton, NJ 08625-0329, together with an outline of available information and documentation.

8. – 9. (No change.)

(b) (No change.)

11:17-2.11 Continuation of business of a producer who becomes disabled, dies, or enters the Armed Forces

(a) Pursuant to the provisions of the Act, a surviving spouse, or court-appointed personal representative of a deceased or disabled producer, or a member or employee of a business entity in which the **designated responsible** licensed producer[, who was the designated officer or

owner responsible for the licensed activity of the business,] dies or becomes disabled, or a designee of a producer entering active service in the Armed Forces of the United States of America, may submit a request for a temporary license by hard copy or electronic means, containing the names, addresses, and license numbers of the producers involved and the reason for the request. No temporary license shall last for a period longer than 180 days.

(b) – (c) (No change.)

11:17-2.12 Licensing information requirements

(a) – (c) (No change.)

(d) Departure, termination, or deletion of licensee officers, directors, [or] partners, **or designated responsible producers**, which leaves a business entity insurance producer with no licensed officers, directors, [or] partners, **or designated responsible producers**, or with officers, directors, [or] partners, **or designated responsible producers** who do not have like authorities as the business entity producer, shall make the business entity producer license inactive. Under these circumstances, the business entity license shall be returned immediately to the Commissioner.

11:17-2.15 Surrender and cancellation of license; reinstatement after surrender

(a) – (c) (No change.)

(d) In the event a license is lost or destroyed, [the licensee may request a duplicate by submitting a signed statement attesting to the loss] **a replacement may be printed using the NAIC-SBS license system accessed from the Department’s website at www.dobi.nj.gov.**

(e) (No change.)

SUBCHAPTER 3. PROFESSIONAL QUALIFICATIONS

11:17-3.1 Approval of insurance education program

(a) - (b) (No change.)

(c) Insurance education providers seeking approval to teach courses of prelicensing education shall also provide:

1. - 2. (No change.)

3. A copy of the enrollment application for the insurance education provider, the student contract, and any other agreement between the insurance education provider and student; [and]

4. Copies of the course curriculum and a detailed description of the methods that the provider will use to document that the student has satisfactorily completed the course content for each line of authority for which prelicensing education shall be offered[.]; **and**

5. An acknowledgement that the education provider agrees to provide the following upon the request of any student enrolled in prelicensing education courses: the course curriculum in Spanish that the Department has made available to the prelicensure education provider pursuant to N.J.S.A. 17:22A-31.f.

(d) - (e) (No change.)

11:17-3.2 Insurance education provider duties and requirements

(a) Each approved insurance education provider (except as modified hereafter) shall:

1. - 8. (No change.)

9. If approved to teach prelicensing courses, provide remedies for students who have failed the State licensing examination, which may include review courses or additional full

courses at reduced rates. Each provider offering prelicensing education courses shall provide each prospective student a written outline of available remedies during the registration process or earlier upon request; [and]

10. If approved to teach prelicensing courses and if it charges tuition therefor, without specific request and in a manner approved by the Department, provide to all persons at the time of requests for enrollment application or information, all passing rates by line of authority for the State licensing examination for all prelicensing education courses offered by the provider during the preceding [six month] **six-month** period; or, if the program has not been in operation for this period of time, the passing rate for all examinations given during the period which the program has been in operation[.]; **and**

11. If approved to teach prelicensing courses, provide the course curriculum in Spanish that the Department has made available to the prelicensure education provider upon the request of any prelicensing education student pursuant to N.J.S.A. 17:22A-31.f.

(b) – (d) (No change.)

11:17-3.5 State licensing examination; use of independent examination vendor; exemptions; retaking of examination

(a) (No change.)

(b) Any contract for development and administration of the New Jersey State insurance producer licensing examination shall include the following terms and conditions.

1. The contract vendor shall develop and administer the examination in accordance with specifications approved by the Commissioner, **including, but not limited to, the provision of**

the examination and the registration materials for the examination in English and Spanish pursuant to N.J.S.A. 17:22A-31.e.

2. - 17. (No change.)

(c) - (d) (No change.)

11:17-3.6 Continuing education

(a) [For licenses issued for a four-year term, no] **No** resident individual insurance producer licensed with life, accident, and health or sickness, property, casualty, surplus lines, title, variable life and variable annuity, or personal lines authority shall be renewed unless the renewal applicant demonstrates that he or she has completed [48] **24** credit hours of approved continuing education courses during the previous [four years, six] **licensing term, three** of which shall be in approved courses related to insurance fraud, professional ethics, or any other subject matter required by the Commissioner for the protection of consumers. [Producers licensed as of November 4, 2002 shall have until the second renewal following November 4, 2002 to comply with the requirement to obtain six credits in approved courses related to insurance fraud, professional ethics, or any other subject matter required by the Commissioner for the protection of consumers.

1. For licenses initially issued on or after January 1, 2007 and, subject to (a)2 below, for renewals on or after January 1, 2007, no resident individual insurance producer licensed with life, accident and health or sickness, property, casualty, surplus lines, title, variable life and variable annuity or personal lines authority shall be renewed unless the renewal applicant demonstrates that he or she has completed 24 credit hours of approved continuing education

courses during the previous license term, three of which shall have been in approved courses related to professional ethics.

2. During the transition period from four-year license terms to two-year license terms based upon the individual producer's date of birth as set forth in N.J.A.C. 11:17-2.1(b), if the term of their expiring license was four years, in order to qualify for renewal, a resident individual producer licensee shall demonstrate that he or she has completed 48 hours of continuing education credits during the prior license term, six of which shall have been in approved courses related to professional ethics or fraud. If the term of their expiring license was two years or is a transitional term as described in N.J.A.C. 11:17-2.1(b), in order to qualify for renewal, such a licensee shall demonstrate that he or she has completed 24 credit hours of continuing education courses during the previous license term, three of which shall have been in approved courses related to professional ethics.]

Recodify existing 3. – 5. as **1.-3.** (No change in text.)

(b) – (k) (No change.)

(l) Attorneys who are licensed for title insurance only [on November 4, 2002] shall submit to the Department, at least three months but not more than one year prior to renewal, a certificate of good standing issued by the Clerk of the Supreme Court of New Jersey accompanied by a completed form prescribed by the Department, which provides the attorney's name, producer reference number, date of birth, [social security] **Social Security** number, and license expiration date. [Attorneys who as of November 4, 2002, are licensed for title insurance only, shall have until the second renewal following November 4, 2002 to comply with the continuing education requirements of this section.]