

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF SOLVENCY REGULATION**

**Determination of Insurers in a Hazardous Financial Condition**

**Adopted Amendments: N.J.A.C. 11:2-27.1 through 27.4**

Proposed: August 5, 2013, at 45 N.J.R. 1883(a).

Adopted: February 11, 2014, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: February 12, 2014, as R. 2014 d.041, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:51A-1 et seq.

Effective Date: March 17, 2014.

Expiration Date: January 6, 2018.

**Summary of Public Comments and Agency Responses:**

The Department of Banking and Insurance (Department) timely received written comments from State Farm Insurance Companies and the Medical Society of New Jersey.

COMMENT: The commenter stated that the proposed amendments change “may” to “shall” in many provisions. The commenter believed that the term “may” provided needed flexibility for the Commissioner of Banking and Insurance (Commissioner) to assess each scenario on its own merits and apply appropriate discretion. The commenter believed that the model language of the National Association of Insurance commissioners (NAIC) should be retained. The commenter cited as an example N.J.A.C. 11:2-27.3(a), which provides that “[t]he Commissioner *shall*

consider the following factors...in determining whether an insurer is in a hazardous financial condition.” (emphasis supplied by commenter)

RESPONSE: Upon review, the Department has determined that no change is required. The example cited by the commenter reflects long-standing existing language and is outside the scope of the proposal. The commenter does not cite, and the Department could not determine, where the use of the word “shall” is utilized in the proposed amendments in the manner suggested by the commenter. Further, the use of the term “shall” in N.J.A.C. 11:2-27.3(a) is appropriate and provides certainty to insurers. The term “may” could be interpreted to permit the Commissioner to find a hazardous financial condition on any ground, even those not articulated by the rules. Moreover, the rules require a “finding” that one of the stated factors exist for a determination of hazardous financial condition, and such a determination *permits* the Commissioner to order an insurer to take remedial action. An insurer may object to such findings and orders. See N.J.A.C. 11:2-27.4.

COMMENT: One commenter supported the proposed amendments to the standards to determine hazardous financial condition, stating that the additional factors should help the Department identify insurers that are in a hazardous financial condition and take steps to protect the public.

RESPONSE: The Department appreciates the support of its proposal.

### **Federal Standards Statement**

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

**Full text** of the adoption follows:

TEXT