

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Insurance Producer Standards of Conduct

Proposed Readoptions with Amendments: N.J.A.C. 11:17A and 11:17B

Proposed Readoptions: N.J.A.C. 11:17C and 11:17D

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2010-146

Submit comments by September 17, 2010 to:

Robert J. Melillo, Chief
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D, which are each scheduled to expire on June 21, 2010, in accordance with N.J.S.A. 52:14B-5.1b. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice to the Office of Administrative Law extends the expiration date 180 days, to December 18, 2010.

These rules were originally adopted in December 1989, and amended thereafter, to reflect the current standards and practices required by the Department for insurance producers licensed in this State. These rules continue to provide insurance producers with a clear set of performance guidelines and standards of conduct concerning their daily operations and interaction with the Department and the public.

N.J.A.C. 11:17A defines activities for which one must be licensed as an insurance producer; specifies certain prohibited unfair trade practices; and sets forth miscellaneous marketing and related requirements.

N.J.A.C. 11:17B sets forth the rules concerning commissions and fees that may be paid to or charged by insurance producers.

N.J.A.C. 11:17C sets forth standards for licensed insurance producers concerning the management of funds and general recordkeeping for insurance related transactions.

N.J.A.C. 11:17D contains procedures for reinstating suspended or revoked licenses and for imposing administrative penalties, and includes a schedule of fines for violations of certain provisions of Titles 17 and 17B of the New Jersey Statutes and rules adopted or orders issued by the Commissioner.

The Department has reviewed these rules, and has determined that Chapters 17A, 17B, 17C and 17D continue to be necessary, reasonable and proper for the purposes for which they were promulgated. The Department is proposing several amendments discussed below to reflect existing statutes and rules or current terminology and technologies.

The Department is proposing to amend N.J.A.C. 11:17A-1.2 to revise paragraph 19 of the definition of “clerical duties,” to change the phrase “applicant for ticket insurance” to read “applicant for travel insurance or car rental insurance,” and to add references to “travel insurance” and “travel agency” in the example to paragraph 19 to reflect current terminology. “Ticket insurance” no longer exists, but is now considered two separate lines: travel insurance and car rental insurance, as referenced in the Uniform Licensing Standards adopted by the National Association of Insurance Commissioners and as set forth in N.J.A.C. 11:17.

The Department is also proposing to amend the definition of “transmission” to refer to electronic transmissions and e-mail or data transfers to reflect the prevalent technology of e-mail and other electronic transmissions of data.

The Department is also proposing to amend the definition of “inducement” to increase the threshold at which the consideration will be considered an inducement from \$25.00 to \$100.00. The amount has not been changed in a substantial period of time and the change reflects a more reasonable threshold at which consideration would be considered an inducement.

The Department is proposing to amend N.J.A.C. 11:17A-1.6(b) to eliminate the requirement that at least one separate insurance producer be assigned to each location where the business of insurance is transacted in cases where a producer has established more than one place of business. This ensures consistency with N.J.A.C. 11:17-2.8(e), which provides that a producer must be present any time a branch office is engaged in insurance-related conduct, but

that the branch office may remain open to service accounts while the assigned producer is temporarily absent. The amendment reflects the Department's intent that while a producer must be assigned to a branch office, this does not mean that a separate and distinct producer must be assigned to each branch office. Also, N.J.A.C. 11:17A-1.6(b) is proposed to be amended to clarify that where an insurance producer has established one or more places of business for purposes of transacting the business of insurance, the producer shall register each location as a branch office in accordance with N.J.A.C. 11:17-2.8.

In addition, N.J.A.C. 11:17A-1.6(c) is proposed to be amended to change the ownership threshold from five percent to 10 percent to conform it to the definition of "controlling interest" for purposes of producer license applications set forth in N.J.A.C. 11:17-1.2.

N.J.A.C. 11:17A-2.6 is proposed to be amended to revise the manner by which a producer shall show evidence of his or her license. The current rule requires that a producer maintain and display his or her paper license as proof of licensure upon an insured's or prospective insured's request. The proposed amendment requires that the producer show evidence of possessing an active license upon such request, which includes verification available through the National Insurance Producer Registry (NIPR) or the Department's licensee search system on the Department's web site. This proposed amendment recognizes that a paper license only shows that the individual was licensed at the time the paper license was generated. The proposed alternative methods provide accurate "real-time" verification of licensure.

N.J.A.C. 11:17A-2.7 is proposed to be amended to refer to an insurer's "acceptance criteria" in relation to a contractual arrangement with an insurer to perform underwriting, to reflect terminology used in N.J.A.C. 11:3-8.

In N.J.A.C. 11:17B-1.3, the definition of “insurance agent” is proposed to be amended to delete the phrase “and who may be authorized to countersign insurance policies on its behalf” to reflect the fact there are no longer any countersignature requirements.

A 60-day comment period is provided for this notice of 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

The rules proposed for readoption will continue to affect all persons selling, soliciting or negotiating insurance in New Jersey, as well as the general public. The Department believes that readoption of these rules is necessary to maintain the quality and professionalism of insurance producers by continuing the high standards of conduct required of licensees that protect consumers and ensure quality insurance services. Also, failure to readopt these rules would result in chaos among licensees and the public who have come to rely on these rules over their 20 years of effect. The proposed amendments help ensure consistency with other rules or otherwise reflect current technology and practice. This should avoid confusion regarding the rules’ application and provide more meaningful information to the public.

Economic Impact

The Department believes that the initial economic impact of the licensure requirements set forth in the New Jersey Insurance Producer Act of 2001, N.J.S.A. 17:22A-26 et seq., and N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D have already been fully absorbed by producer organizations and insurers.

The proposed increase in the threshold for determining whether consideration constitutes an impermissible “inducement” under N.J.A.C. 11:17A-1.2 reflects a more reasonable threshold and will provide additional flexibility in transactions and business relationships between producers and insureds.

N.J.A.C. 11:17B, concerning services fees (for services rendered in the sale or service of personal lines property/casualty or personal lines surplus lines insurance) and commissions, maintains the maximum permitted service fee of \$20.00. This same \$20.00 limit is also maintained for service fees for a new automobile insurance application. The maximum inspection fee on a surplus line policy remains \$10.00.

The recordkeeping requirements contained in N.J.A.C. 11:17C continue to be beneficial to both the public and producers in that all producers are required to continue to maintain the books and records on their accounts concerning funds and general record-keeping for all insurance related transactions. Any costs attendant to these recordkeeping requirements have already been absorbed by the regulated community. An important benefit of the recordkeeping requirements to the Department continues to be a reduction in investigatory and other related costs since elements of insurance fraud and breach of a producer’s fiduciary duty remain easier to detect.

N.J.A.C. 11:17D, which lists fines for certain violations, has provided producers with advance notice of what their exposure is for particular violations. It also provides guidance to the Commissioner and for Administrative Law Judges in assessing penalties. The Department has continued to save time and money relative to the handling of administrative matters attendant to the assessment and imposition of penalties for the enumerated violations.

The proposed amendments should not impose any additional costs on licensees. Virtually all of the proposed amendments conform the rules to existing rules or current practice. The proposed amendments regarding producers showing evidence of licensure should not impose any additional costs, as this information is readily available through both the NIPR and the Department's web site.

Professional services that will continue to be required include information technology and accounting. The Department believes that the tasks required by the rules proposed for readoption may continue to be accomplished with existing producer staff and that no new professional services should be required.

In addition, as noted above, licensees have come to rely on the standards of these rules during the past 20 years. Failure to readopt this regulatory scheme would cause confusion and uncertainty among licensees as to the applicable standards of conduct, which, in turn, could increase costs to those licensees and ultimately the public.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost by the rules proposed for readoption with amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The rules proposed for re adoption with amendments will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

Most licensed insurance producers in New Jersey are “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These persons and entities will continue to be subject to all requirements, and will continue to be required to bear the costs of compliance imposed by these rules proposed for re adoption with amendments as discussed above.

The rules proposed for re adoption with amendments provide no different reporting, recordkeeping or other compliance requirements specifically based on business size. As noted above, the rules proposed for re adoption establish a regulatory framework for regulating the conduct of insurance producers to ensure that they comply with the minimum standards required to sell, solicit or negotiate insurance in New Jersey in a manner that will protect insureds and the insurance market generally, consistent with applicable New Jersey law. This re adoption will continue the regulatory framework that has existed for 20 years. Moreover, these goals do not vary based on business size. The proposed amendments do not impose new recordkeeping or reporting requirements. For the foregoing reasons, the rules proposed for re adoption with amendments provide no differentiation in compliance requirements based on business size. The rules proposed for re adoption do not alter the reporting and recordkeeping requirements or affect the costs of compliance that these rules impose on insurance producers and, to a limited extent,

insurers. The rules continue to require all producers to maintain books and records on their accounts. Any costs attendant to recordkeeping and maintenance requirements have already been absorbed by the regulated community. Further, as noted above, licensees and the public have come to rely on the regulatory framework established by the rules proposed for re adoption. The costs of compliance are set forth in the Economic Impact above.

Smart Growth Impact

The rules proposed for re adoption with amendments will not have an impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

Housing Affordability Analysis

The rules proposed for re adoption with amendments will not have an impact on housing affordability in this State because the rules proposed for re adoption with amendments relate to insurance producer standards of conduct.

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that the rules proposed for re adoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules proposed for re adoption with amendments relate to insurance producer standards of conduct.

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

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

CHAPTER 17A

INSURANCE PRODUCER STANDARDS OF CONDUCT; MARKETING

11:17A-1.2 Definitions

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

...

“Clerical duties” means the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer’s or producer’s normal procedures and systems, including, but not limited to, the following:

1. – 18. (No change.)

19. Providing information to and receiving and recording information from an applicant for [ticket] **travel insurance or car rental** insurance for processing by a licensee where the unlicensed person is an employee of the licensee.

Example: An unlicensed counter person in a car rental **or travel** agency may receive and record an applicant’s request for personal effects coverage **or travel insurance**. The car rental company **or travel agency** must be a licensee and the counter person must provide the customer with written information about the coverage.

...

“Inducement” means money or any favor, advantage, object, valuable consideration or anything other than money which has a cost of or a redeemable value greater than [\$25.00] **\$100.00**.

...

“Transmission” means any form of mailing including, but not limited to, third class mail, certified mail, any overnight delivery or express delivery, hand delivery and any wire **or electronic** transmission including, but not limited to, facsimile transmission or computer [modem] **e-mail or data transfer**.

11:17A-1.6 Duty to have insurance producer at each place of business

(a) (No change.)

(b) Any insurance producer who has established one or more places of business for the purpose of transacting the business of insurance shall assign at least one [separate] insurance producer to each location and shall register **each location** as a branch office in accordance with N.J.A.C. 11:17-2.8. Any insurance business conducted at a branch office shall be the responsibility of both the licensed producer assigned to that office and the insurance producer that registered the branch office in accordance with 11:17-2.8.

(c) Licensed partners, officers and directors, and all owners with an ownership interest of [five] **10** percent or more in the organization shall be held responsible for all insurance related conduct of the organization licensee, any of its branch offices, its other licensed officers or partners, and its employees.

11:17A-2.6 Identification of insurance producer

(a) (No change.)

(b) In addition to (a)1 through 3 above, an insurance producer shall maintain [his or her] **evidence that he or she holds an active producer license in this State** at the business address on file with the Department and shall [display the license] **provide proof of licensure** to an insured or prospective insured upon [their] **the person's** request. **Evidence of licensure includes verification available through the National Insurance Producer Registry (NIPR) or the Department's online licensee search on the Department's web site www.njdobi.org.**

11:17A-2.7 Unfair discrimination

No insurance producer shall refuse to take an application from a policyholder or prospective policyholder for any reason based in whole or in part upon the race, color, creed, religion, sex, marital status or physical impairments of an applicant or policyholder, or for any arbitrary, capricious, or unfairly discriminatory reason, or for any reason which is contrary to Federal or State law. Nothing in this section shall prohibit an insurance producer from refusing to submit an application to an insurer where there exists a contractual arrangement with an insurer to perform underwriting pursuant to established and legally permissible written underwriting guidelines **or acceptance criteria** and the refusal is based on these guidelines **or criteria**.

CHAPTER 17B

INSURANCE PRODUCER STANDARDS OF CONDUCT: COMMISSIONS AND FEES

11:17B-1.3 Definitions

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

...

“Insurance agent” means an insurance producer acting as an insurance agent authorized, in writing, by any insurance company to act as its agent to solicit, negotiate or sell insurance contracts on its behalf or to collect insurance premiums [and who may be authorized to countersign insurance policies on its behalf].

...