

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Legal Insurance

Proposed Readoption with Amendments: N.J.A.C 11:12

Authorized By: Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:46C-1 et seq.

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

Proposal Number: PRN 2014-043.

Submit comments by June 6, 2014, to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is proposing to readopt with amendments N.J.A.C. 11:12, which is scheduled to expire on September 2, 2014, pursuant to N.J.S.A. 52:14B-5.1. N.J.A.C. 11:12 implements N.J.S.A. 17:46C-1 et seq. (the Act) and

regulates the insurers and other entities authorized to transact the business of legal insurance in this State. Pursuant to N.J.S.A. 17:46C-4, persons entitled to transact the business of insurance under Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the Revised Statutes may transact the business of legal insurance in this State without having to obtain a certificate of authority under the Act. All other persons may only do so after having obtained such a certificate of authority. A summary of the provisions proposed for readoption follows.

N.J.A.C. 11:12-1.1 sets forth definitions of terms used in the chapter.

N.J.A.C. 11:12-1.2 requires entities to meet certain conditions before writing legal insurance and to provide certain documentation to the Commissioner of Banking and Insurance (Commissioner). These conditions include providing evidence of authority to transact the business of insurance in New Jersey, the submission of a copy of the policy and certificate forms to be used by the entity, and the submission of the rating system upon which legal insurance rates will be based. Pursuant to N.J.S.A. 17:46C-4.a(3), the \$250.00 fee referenced in this rule is required to be submitted with a request for a certificate of authority to write legal insurance. The Department is proposing to amend this rule to clarify that the \$250.00 fee does not apply to persons notifying the Commissioner of their intent to write legal insurance who are authorized to transact the business of insurance under Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the Revised Statutes.

N.J.A.C. 11:12-1.3 requires an insurer transacting legal insurance to submit experience reports to the Commissioner to be filed annually not later than March 1.

N.J.A.C. 11:12-1.4 requires an insurer who obtains a certificate of authority under N.J.S.A. 17:46C-4 to submit an annual report to the Commissioner by March 1 accompanied by

a \$20.00 fee. The Department has determined that the \$20.00 annual report filing fee is no longer necessary and is proposing an amendment to delete this requirement.

The Department has reviewed these rules and determined that they continue to be necessary, reasonable and proper for the purpose of fulfilling the Commissioner's duty to regulate the entities authorized to transact the business of legal insurance in this State pursuant to N.J.S.A. 17:46C-1 et seq.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments apply to all entities that transact or seek to transact legal insurance in New Jersey. They will continue to implement N.J.S.A. 17:46C-1 et seq. by requiring entities offering legal insurance to be authorized to do so and to file the necessary documents and reports with the Commissioner. The rules provide the general public and those who purchase legal insurance a basic level of protection when obtaining legal insurance and help ensure that those providing legal insurance will be in a position to provide the benefits promised. Thus, the rules proposed for readoption with amendments will continue to have a beneficial social impact on the general public and consumers of legal insurance.

Economic Impact

The rules proposed for readoption with amendments will not have a significant negative economic impact on those who transact or seek to transact legal insurance in New Jersey. The requirements established in N.J.A.C. 11:12-1.2 regarding applications for a certificate of

authority to transact legal insurance and their attendant costs, including the submission of a \$250.00 fee with such applications from persons not authorized to transact the business of insurance, are mandated by N.J.S.A. 17:46C-1 et seq., are not burdensome, and are reasonable and common requirements and costs related to the acquisition of authority to commence operations as an insurer. The filing of reports and documents with the Commissioner as required by N.J.A.C. 11:12-1.3 and 1.4 will continue to provide protections to consumers and enable the Department to fulfill its regulatory functions and monitor the ability of entities authorized to provide legal insurance to provide the contracted benefits. No additional staff or professional services should be required to achieve compliance with the rules. Although the annual report filing requirement remains unchanged, the proposed amendment to delete the \$20.00 annual report filing fee will be of economic benefit to insurers writing legal insurance in the State. There will be no economic impact from the proposed amendment to N.J.A.C. 11:12-1.2(a)1, since the amendment merely clarifies that the fee for a certificate of authority does not apply to insurers already entitled to transact the business of insurance.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for re adoption 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 as a result of the rules proposed for re adoption with amendments. The Department invites commenters to

submit any data or studies concerning the jobs impact of the rules proposed for re adoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

It is not expected that any “small businesses,” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., would offer legal insurance. However, if a small business did offer legal insurance, they would be subject to the requirements set forth in the rules proposed for re adoption, as set forth in the Summary above. These requirements remain unchanged, except for the deletion of the \$20.00 annual report filing fee, and the amendment to N.J.A.C. 11:12-1.2(a)1 clarifying that the fee for a certificate of authority does not apply to insurers already entitled to transact the business of insurance, and should not impose any undue burden on small businesses. Professional services that would be required to comply with the rules proposed for re adoption would include the services of attorneys and accountants. The cost of these services will vary based on the services and the professional.

The rules proposed for re adoption with amendments will continue to require entities to meet certain conditions before writing legal insurance and to annually file reports and maintain records concerning their legal insurance business. These costs are discussed in the Economic Impact above.

These requirements set forth in the rules proposed for readoption with amendment are mandated pursuant to N.J.S.A. 17:46C-1 et seq. The purpose of N.J.S.A. 17:46C-1 et seq. and the requirements set forth therein, as implemented by these rules, is to protect consumers who seek to purchase legal insurance. This purpose does not vary based upon business size. Accordingly, no differentiation in compliance requirements is provided based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not have an impact on housing affordability because the rules regulate the insurers and other entities authorized to transact the business of legal insurance in this State.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the rules regulate the insurers and other entities authorized to transact the business of legal insurance in this State.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:12.

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

11:12-1.2 Authorization of insurers

(a) An insurer defined in N.J.S.A. 17:46C-3.b may transact the business of **legal** insurance in New Jersey after satisfying the following conditions:

1. Notify the Commissioner of the intent to write legal insurance, submit satisfactory evidence of authorization to transact the business of **legal** insurance, and, **for insurers not already entitled to transact the business of insurance under Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the Revised Statutes**, pay the required fee of \$250.00. Such evidence shall include proof of the necessary corporate power to transact the business of legal insurance.

2. – 3. (No change.)

11:12-1.4 Annual reports

An insurer who obtains a certificate of authority under N.J.S.A. 17:46C-4 shall submit an annual report on or before the first day of March on a form to be prescribed by the Commissioner [and pay the required fee of \$20.00].