This (policy/certificate) is (primary/secondary) to OSAIC. (However, if the OSAIC contains provisions which make it secondary or excess to the policyholder's Plan, then the policyholder's Plan will be primary.) Omit if the policyholder's Plan is elected as primary coverage.

(If the policyholder's Plan is one of several insurance plans which provide benefits to the insured and are primary to automobile insurance coverage, then the rules as provided in the Coordination of Benefits section of this (policy/certificate) shall apply.) Omit if policyholder's Plan does not contain a COB provision.

If there is a dispute as to whether the policyholder's Plan is primary or secondary, this (policy/certificate) will pay benefits as if it were primary.

4. Benefits we will pay if the Plan is primary to PIP or OSAIC.

If the policyholder's Plan is primary to PIP or OSAIC, this (policy/certificate) will pay benefits payable on eligible expenses in accordance with the terms provided in this (policy/certificate).

5. Benefits we will pay if the Plan is secondary to PIP.

If the policyholder's Plan is secondary to PIP, the actual benefits payable will be the lesser of: (i) the remaining uncovered allowable expenses after PIP has provided coverage after application of deductibles and copayments, or (ii) the actual benefits that would have been payable had the policyholder's Plan been providing coverage primary to PIP.

6. Medicare.

To the extent that the (policy/certificate) provides coverage that supplements coverage under Medicare, then the policyholder's Plan can be primary to automobile insurance only insofar as Medicare is primary to automobile insurance.

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## SUBCHAPTER 43. INDIVIDUAL ANNUITY CONTRACT FORM STANDARDS

### 11:4-43.1 Purpose and scope

(a) The subchapter implements P.L. 1995, c.73, by setting forth standards and requirements that individual annuity contract forms delivered or issued for delivery in this State are required to satisfy in order to obtain approval from the Commissioner.

(b) This subchapter shall apply to all individual annuities issued pursuant to N.J.S.A. 17B:25-18 and P.L. 1995, c.73, sections 16 and 17.

### 11:4-43.2 Definitions

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

"Annuity" means a contract not included within the definition of life insurance as set forth in N.J.S.A. 17B:17-3, or health insurance as set forth in N.J.S.A. 17B:17-4, under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for life, or for a period of time determined by any combination thereof.

"Bail-out feature" means a feature whereby the owner may elect to surrender the contract for the cash value without incurring a surrender charge under specified conditions, such as the interest rate(s) credited to the contract falling below a predetermined rate.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Deferred annuity" means an annuity where the first annuity payment is due no earlier than one year from the issue date of the contract, and the annuity is not an immediate annuity.

"Department" means the New Jersey Department of Banking and Insurance.

"Field issue" means a contract that the agent, following acceptance of a premium, issues for delivery in the field rather than from the home office.

"Flexible premium" means a contract where the policyholder is permitted to vary the amount and timing of premium payments, subject to any specified limits.

"Immediate annuity" means an annuity where the first annuity payment is due not more than 13 months from the issue date of the contract.

"Insurer" means any person or persons, corporation, partnership, or company authorized or admitted to transact the business of life insurance or annuities in this State pursuant to Title 17B of the New Jersey statutes.

Amended by R.2000 d.130, effective March 20, 2000.
See: 31 N.J.R. 3910(a), 32 N.J.R. 1024(a).

### 11:4-43.3 General requirements and prohibitions

(a) All individual annuities shall be filed with the Commissioner pursuant to N.J.S.A. 17B:25-18; P.L. 1995, c.73, sections 16 and 17; and N.J.A.C. 11:4-40 prior to being delivered or issued for delivery in this State.

(b) Individual annuity contract forms shall not contain any provisions which are unjust, unfair, inequitable, ambiguous, misleading, likely to result in misinterpretation or are contrary to law.

(c) All individual annuities shall satisfy the following conditions:

1. If a form guarantees an interest rate of less than three percent during the accumulation phase, the insurer shall include with the submission a demonstration that policy values and benefits are not less than the minimum nonforfeiture amounts specified in N.J.S.A. 17B:25-20g.

2. If a form offers varying interest rate guarantee periods, specimen specification pages shall be submitted for each of the various guarantee periods.

3. The same contract form shall not be issued as both an immediate and a deferred annuity.

4. The form shall contain a provision describing any method for adjusting benefits and values on the basis of misstatement of age or sex. Interest may be applied in determining overpayments and underpayments at a rate specified in the form. The same specified rate shall apply to overpayments and underpayments.

(d) An insurer shall use the same form for field issue and home office issue contracts when the contract terms are written so as to make the difference in the administrative aspect of the issuance and delivery process negligible.

1. The application and policy for field issue individual annuities shall be submitted as separate forms with separate identifying form numbers. The application shall not be substituted for or obscure the policy face page.

2. Coverage under a field issue contract shall be effective no later than the date the policy is delivered to the owner. Field issue contracts shall not provide for delayed, deferred or conditional effective dates. Suicide and contestability periods shall commence no later than the effective date of coverage.

3. Submissions of field issue forms shall include a certification from an officer of the insurer that the insurer will be bound by all information recorded by the agent on the application, including, but not limited to, the initial interest rate and the initial interest rate guarantee period, even in the case of errors.

(e) Payment of premiums for individual annuities may be made by credit card. Submissions of forms which permit payment by credit card shall include a separate certification from an officer of the insurer that the premium will be considered paid when the credit card facility is billed.

(f) The form may contain language that permits the insurer unilaterally to amend or modify the form to satisfy any applicable law. However, the owner shall be permitted to refuse any such change unless noncompliance would cause the contract to be null and void or fail to comply with New Jersey or Federal law.

(g) The form shall be amended or endorsed to reflect any changes or modifications made to the form subsequent to issue.

(h) Death benefits in individual annuities will be considered subsidiary or incidental if they satisfy one of the following conditions:

1. A death benefit equal to or less than the contract value (annuity account value or surrender value);

2. A death benefit equal to or less than a "highest periodic value" calculated for any prior period for which the contract was in force (for instance, highest contract anniversary value, highest monthly value, highest five-year value) adjusted for subsequent premiums and withdrawals. Such a death benefit provision would only be applicable to an equity-indexed, market value adjusted, or other indexed contract with the potential for increase or decrease in the annuity value;

3. A death benefit equal to or less than the greater of the contract value or the accumulation of premiums at a specified interest rate (adjusted for withdrawals), not to exceed 200 percent of premiums, such premiums to be reduced by any withdrawals;

4. A death benefit equal to or less than a percentage of the "earnings" or "gain" on the contract (defined as the contract value less premiums paid plus withdrawals), provided that the amount of the death benefit in addition to the contract value is no greater than 50 percent of the gain on the contract;

5. A death benefit based on a combination of an "accumulation" death benefit ((h)3 above) and a death benefit based upon the "gain" of the contract ((h)4 above), provided that the combined amount does not exceed the greater of the two death benefits described in (h)3 and 4 above; or

6. Any other death benefit which a qualified actuary, as defined in N.J.A.C. 11:4-47.2, certifies and demonstrates to the Department has an expected and/or maximum value that is within 25 percent of the value of a death benefit permitted by (h)1 through 5 above.

Amended by R.2000 d.130, effective March 20, 2000.
See: 31 N.J.R. 3910(a), 32 N.J.R. 1024(a).
In (c), deleted a former 1, recodified former 2 through 4 as 1 through 3, and deleted a former second sentence in the new 2.
Amended by R.2001 d.410, effective November 5, 2001.
See: 33 N.J.R. 2265(a), 33 N.J.R. 3748(a).
In (c), added 4; added (f) and (g).
Amended by R.2006 d.374, effective October 16, 2006.
See: 37 N.J.R. 3543(a), 38 N.J.R. 4488(b).
Added (h).
Amended by R.2007 d.131, effective May 7, 2007.
See: 38 N.J.R. 4392(a), 39 N.J.R. 1733(a).
In (d), deleted "not" following "shall" and inserted "when the contract terms are written so as to make the difference in the administrative aspect of the issuance and delivery process negligible".

### 11:4-43.4 Individual immediate annuities

(a) Individual immediate annuity contracts which include surrender benefits, partial withdrawals or indeterminate annuity payments other than commutation rights shall meet or exceed the requirements of the Standard Nonforfeiture Law for Individual Deferred Annuities at N.J.S.A. 17B:25-20. Submissions of such forms shall include a demonstration of compliance with this requirement.

(b) The premium for an immediate annuity shall be paid in a lump sum, and shall not be funded on an installment basis.

(c) If an immediate annuity provides a commutation privilege for the owner, the commutation interest rate shall be within one percent of the rate used in calculating the single premium.

### 11:4-43.5 Individual deferred annuities

(a) Insurers shall include a provision in all individual flexible premium annuity forms specifying any upper and/or lower dollar limits on premium payments, which the insurer may waive in a uniform and nondiscriminatory manner upon written notice of any new limits to the owner. Forms shall describe the initial limits and the required written notice of any new limits. Insurers shall not arbitrarily refuse premium payments.

(b) An annuity form shall only be identified as a flexible premium annuity and use the corresponding formula for the derivation of the minimum nonforfeiture amount for a contract providing flexible considerations set forth at N.J.S.A. 17B:25-20g(1) if the owner is permitted to pay premiums for a period of no less than five years. Notwithstanding this requirement, insurers may issue individual flexible premium deferred annuities that require annuitization at a fixed age to persons who are less than five years from such fixed age. Any annuity contract providing flexible premiums for less than five years shall use the formula for derivation of the minimum nonforfeiture amount for a contract providing a single consideration set forth at N.J.S.A. 17B:25-20g(3).

(c) An annuity form shall not be identified as a single premium contract if it contains a provision for additional premiums.

(d) An annuity form shall not permit a single premium annuity to be paid in installments.

(e) Insurers shall provide written notice to all prospective purchasers of individual flexible premium annuities at or before application. The notification form shall be submitted to the Department upon filing any individual flexible premium annuity form. The written notice shall include the following:

1. A statement that cash values under a flexible premium annuity where only one premium is paid can be lower than those under a single premium annuity, and that purchase of a flexible premium annuity may be inappropriate in such a case; and

2. A signature by the purchaser.

(f) The requirements at (e) above shall be waived if the insurer includes in its submission a separate actuarial memorandum which demonstrates that the values provided under the form on the guaranteed basis equal or exceed minimum values as described at N.J.S.A. 17B:25-20g for both a single premium or flexible premium contract.

(g) An individual deferred annuity form which describes credited interest in terms of a published index shall state how interest shall be credited upon the discontinuance of the index, and that any substitute index is subject to Department approval.

Amended by R.2001 d.410, effective November 5, 2001.
See: 33 N.J.R. 2265(a), 33 N.J.R. 3748(a).
Rewrote (a); added new (b) and recodified former (b) through (f) as (c) through (g); in (f), substituted "(e)" for "(d)" following "requirements at".

### 11:4-43.6 Waiver of surrender charges

(a) An individual annuity form which includes a waiver of surrender charges upon confinement to a nursing home or similar institution shall comply with the following requirements:

1. The benefit shall be limited to the confinement of the owner or annuitant. Confinement of any other family member who is not an owner or annuitant identified in the contract shall not qualify for the benefit.

(b) An individual annuity form which provides a waiver of surrender charges for an occurrence of terminal illness shall comply with the following requirements:

1. The form shall not require that the cause of the terminal condition first manifest itself or be diagnosed after issuance of the policy or rider in order to provide entitlement to the benefit;

2. The form shall not limit the benefit to specified diseases;

3. The form shall state that any requirements for a second or third medical opinion to confirm the terminal illness shall be at the insurer's expense; and

4. The form shall limit the benefit to the terminal illness of the owner or annuitant. Terminal illness of any other family member not an owner or annuitant identified in the contract shall not qualify for the benefit.

(c) Any individual annuity form which permits penalty-free partial withdrawals or surrenders shall clearly describe the amount available for such penalty-free withdrawal or surrender. The form shall specifically state when the contract value used in the calculation of the penalty free amount is determined.

(d) The individual annuity form shall not provide for retroactive assessment of a surrender charge to recover any prior surrender charge which was waived by the insurer as a result of confinement or terminal illness or a penalty-free withdrawal or surrender.

Amended by R.2000 d.130, effective March 20, 2000.
See: 31 N.J.R. 3910(a), 32 N.J.R. 1024(a).
In (a), deleted former 1 and 2 and recodified former 3 as 1; and in (b), deleted former 1 and 2 and recodified former 3 through 6 as 1 through 4.

### 11:4-43.7 Surrender charges for individual deferred annuities

Submissions of all individual deferred annuity contracts having a separate surrender charge associated with each premium payment shall include an actuarial certification that surrender charges in later years comply with N.J.S.A. 17B:25-20.

Amended by R.2000 d.130, effective March 20, 2000.
See: 31 N.J.R. 3910(a), 32 N.J.R. 1024(a).
Rewrote the section.

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## SUBCHAPTER 44. STANDARDS FOR CONTRACTS ON A VARIABLE BASIS

### 11:4-44.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Life and Health Insurance and Health Maintenance Organization Form Approval Reform Act, P.L. 1995, c.73, by setting forth the Department's standards for approval of life insurance and annuity contracts issued on a variable basis.

(b) This subchapter shall apply to all life insurance and annuities contracts on a variable basis and any certificate evidencing variable benefits pursuant to such contracts, which are issued pursuant to N.J.S.A. 17B:28-1 et seq. and delivered or issued for delivery in this State.

### 11:4-44.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Contract on a variable basis" or "variable contract" means any separate account contract providing for the dollar amount of life insurance or annuity benefits or other contractual payments or values thereunder to vary so as to reflect investment results of one or more separate accounts in which amounts with respect to any such contracts have been placed. Market value adjusted annuities are included within this definition, and are not fixed annuities.

"Department" means the New Jersey Department of Banking and Insurance.

"Separate account" means any segregated portfolio of investments or designated account of an insurer established pursuant to N.J.S.A. 17B:28-1 et seq.

Amended by R.2000 d.130, effective March 20, 2000.
See: 31 N.J.R. 3910(a), 32 N.J.R. 1024(a).
Amended by R.2003 d.54, effective February 3, 2003.
See: 34 N.J.R. 3194(a), 35 N.J.R. 618(a).
Deleted "Market value adjusted annuity".

### 11:4-44.3 Standards for variable contracts

(a) All individual life insurance and annuities contracts on a variable basis shall include the following:

1. A provision describing the periodic reports;

2. A provision specifying any rights for deferral. Any deferral of a minimum guaranteed death benefit for an individual variable life insurance contract shall comply with N.J.S.A. 17B:25-11; and

3. A provision describing any conditions for partial withdrawals, partial surrenders, loans, transfers and new deposits. Any required minimum amount for a partial withdrawal, partial surrender, loan or transfer shall not exceed $1,000.

(b) In addition to the standards set forth at (a) above, all individual life insurance and annuities contracts on a variable basis shall comply with the requirements of N.J.S.A. 17B:28-1 et seq., and with all statutes and regulations applicable to non-variable life and annuity forms which are not inconsistent with the variable nature of the form.

(c) All individual life insurance contracts on a variable basis shall include a period of free review as described at N.J.A.C. 11:4-41.3(b)1. The amount to be returned to the policyholder following cancellation of the contract pursuant to this subsection shall be no less than premiums (including fees and charges) applied to the separate account, adjusted for investment gains and losses, plus premiums (including fees and charges) applied to any general account option.

(d) Individual life insurance and annuities contracts on a variable basis may include the following:

1. The contract may permit monies to be deposited into a general account fund. Such fund shall be subject to the Department's requirements for individual general account contracts, including, but not limited to, those set forth at N.J.A.C. 11:4-41 and 11:4-43.

2. The contract may contain variable wording, identified by the use of brackets, to describe the separate account funds and related charges. Variable wording may also be used in application forms which describe separate account funds.

(e) Death benefits in annuity contracts issued on a variable basis will be considered subsidiary or incidental if they satisfy one of the following conditions:

1. A death benefit equal to or less than the contract value (annuity account value or surrender value);

2. A death benefit equal to or less than a "highest periodic value" calculated for any prior period for which the contract was in force (for instance, highest contract anniversary value, highest monthly value, highest five-year value) adjusted for subsequent premiums and withdrawals;

3. A death benefit equal to or less than the greater of the contract value or the accumulation of premiums at a specified interest rate (adjusted for withdrawals) not to exceed 200 percent of premiums, such premiums to be reduced by withdrawals;

4. A death benefit equal to or less than a percentage of the "earnings" or "gain" on the contract (defined as the contract value less premiums paid plus withdrawals), provided that the amount of the death benefit in addition to the contract value is no greater than 50 percent of the gain on the contract;

5. A death benefit based on a combination of an "accumulation" death benefit ((e)3 above) and a death benefit based upon the "gain" of the contract ((e)4 above), provided that the combined amount does not exceed the greater of the two death benefits described in (e)3 and 4 above;

6. Any other death benefit which a qualified actuary, as defined in N.J.A.C. 11:4-47.2, certifies and demonstrates to the Department has an expected and/or maximum value that is within 25 percent of the value of a death benefit permitted by (e)1 through 5 above.

Amended by R.2000 d.130, effective March 20, 2000.
See: 31 N.J.R. 3910(a), 32 N.J.R. 1024(a).
In (a), deleted a former 1, recodified former 2 through 4 as 1 through 3, and substituted "$1,000" for "$500.00" at the end of the second sentence in the new 3.
Amended by R.2001 d.410, effective November 5, 2001.
See: 33 N.J.R. 2265(a), 33 N.J.R. 3748(a).
In (a), rewrote 2 and 3; added new (c) and recodified former (c) as (d).
Amended by R.2006 d.374, effective October 16, 2006.
See: 37 N.J.R. 3543(a), 38 N.J.R. 4488(b).
Added (e).

### 11:4-44.4 Prohibited provisions

(a) The following restrictions shall apply to all individual life insurance and annuities contracts on a variable basis:

1. The insurer shall not reserve the right to unilaterally terminate or discontinue transfer privileges. Suspension of such privilege for a reasonable period is permitted if administered in a nondiscriminatory manner.

2. The insurer shall not require a signature guarantee of the owner for withdrawals, surrenders, loans or transfers.

3. The insurer shall not reserve the right to terminate the contract for suspension in premium activity or for failure to maintain minimal amounts in the separate account, unless the reduction in values in the separate account is the direct result of partial withdrawal or surrender activity. However, an insurer may automatically transfer all monies to one fund or division of the separate account if the value of the separate account falls below a stated minimum. Any conditions for the transfer shall be described in the contract form. This paragraph shall not require an insurer to continue a scheduled, required premium contract beyond any grace period or nonforfeiture benefit provided by the contract or required by law.

Amended by R.2001 d.410, effective November 5, 2001.
See: 33 N.J.R. 2265(a), 33 N.J.R. 3748(a).
In (a), deleted former 3 and recodified former 4 as 3.

### 11:4-44.5 (Reserved)

Repealed by R.2003 d.54, effective February 3, 2003.
See: 34 N.J.R. 3194(a), 35 N.J.R. 618(a).
Section was "Standards for individual market value adjusted annuities".

## SUBCHAPTER 45. PERIODIC REPORTS