

6. All communications between either the assuming or ceding insurer with the policyholders, including letters, memoranda, identification cards, advertisements or other material;

7. Affirmative consent of the owner is not required, but if obtained, the consent form shall be part of the submission. The certificate of assumption form shall not include a provision indicating that consent of the policyholder is deemed or implied as the result of some positive or negative action;

8. A certification by the assuming insurer that it will adhere to all conditions and representations which were part of the original filing of the forms being assumed;

9. Certifications by the assuming and ceding insurers that any communications by a policyholder with the ceding insurer will have the same legal status as a communication which is sent directly to the assuming insurer. Additionally, the ceding insurer shall certify that it will maintain systems to forward all communications of this nature to the assuming insurer;

10. The certificate of assumption form shall include the following:

- i. An appropriate title, such as Certificate of Assumption;
- ii. The business address of both the ceding and assuming insurers;
- iii. Clear directions regarding the submission of payments and claims; and
- iv. The signature of an officer of the insurer, and a statement that the form is to be attached to and made part of the policy; and

11. If health insurance or credit insurance is being assumed, the assuming insurer shall agree that rate revisions will be based on the experience since the original issue date. It is the responsibility of the assuming insurer to obtain and maintain the necessary experience data.

11:4-40.9 File and use eligibility

(a) An insurer may deliver or issue for delivery in this State a form providing life, health or annuity benefits, and accompanying rates if applicable, without obtaining prior approval from the Commissioner pursuant to this subchapter provided the form is set forth in this section as a type eligible for file and use and is filed with the Commissioner pursuant to the procedures set forth at N.J.A.C. 11:4-40.10, or the form is specifically exempt from compliance with this subchapter.

(b) The following types of non-variable individual life insurance forms shall be eligible for file and use pursuant to this section:

1. Scheduled premium term policies without cash values, other than universal/flexible-factor forms, multiple-

life forms with survivorship benefits, limited death benefit forms, policies with re-entry options, single premium forms, field issued forms or funeral insurance;

2. Accidental death benefit;
3. Business exchange/substitute insured;
4. Cost of living benefit;
5. Option to purchase additional insurance;
6. Waiver of premium;
7. Spouse and/or child rider;
8. Individual retirement account (IRA) endorsement; and
9. Applications.

(c) The following types of non-variable individual annuity forms shall be eligible for file and use pursuant to this section:

1. Immediate annuities, other than structured settlement, field issued forms or funeral insurance;
2. Scheduled premium deferred annuities, other than structured settlement, field issued forms or funeral insurance;
3. Flexible premium deferred annuities, other than structured settlement, field issued forms or funeral insurance;
4. Individual retirement account (IRA) endorsement;
5. Waiver of premium; and
6. Applications.

(d) The following types of individual health insurance forms shall be eligible for file and use pursuant to this section:

1. Business buyout, keyperson and overhead expense disability income policies;
2. Medical expense conversion policies in which a portion of the premium is chargeable to or subsidized by the group policy from which conversion is made;
3. Benefit riders for use with the type of policies set forth at (d)1 and 2 above; and
4. Applications other than those used with medicare supplement and long-term care policies.

(e) The following types of non-variable group life insurance forms shall be eligible for file and use pursuant to this section:

1. Policies and certificate forms which provide life insurance benefits only, and which do not provide cash values or loan values other than funeral expense;
2. Retired lives reserve contracts;

3. Benefit riders for use with the type of policies set forth at (e)1 and 2 above; and

4. Applications and evidence of coverage forms.

(f) The following types of group health insurance forms shall be eligible for file and use pursuant to this section:

1. Policies, certificates and evidence of coverage which provide only temporary disability benefits pursuant to N.J.S.A. 34:15-1 et seq.;

2. Policies and certificates which provide only disability income benefits for loss due to both accident and sickness and which are sold exclusively to employer groups;

3. Benefit riders for use with the type of policies set forth at (f)1 and 2 above; and

4. Applications and evidence of coverage forms.

(g) In the month of September or October of each year, the Department shall conduct a hearing pursuant to P.L. 1995, c.73 for the purpose of determining the specific types of forms eligible for file and use pursuant to this section.

1. The hearing shall be preceded by a notice of hearing published in the New Jersey Register at least 30 days prior to the date of the hearing, which notice shall include information concerning the date by which, and the person to whom, written public comment may be made. Notice shall also be provided to persons who have previously requested receipt of such notice.

2. The notice published in the New Jersey Register and as otherwise provided pursuant to (g)1 above shall also request that persons who wish to testify at the hearing provide the Department with timely notice of this intention, including a brief summary of the subject matter of their testimony.

3. The notice shall indicate whether the hearing shall address the merits of maintaining all forms currently on the file and use eligibility list, or whether the hearing will consider only specific additions, deletions or clarifications regarding the list.

4. The hearing shall be conducted by a hearing officer designated by the Commissioner. The length of testimony permitted at the hearing and the receipt of questions from the floor will be within the discretion of the hearing officer.

5. A transcript of the hearing shall be made and a copy thereof shall be made available to any interested person upon request and payment of the appropriate fee.

6. The record of the hearing shall include the following:

- i. Timely-received written public comments;
- ii. The transcript of the hearing; and
- iii. Any other information which the hearing officer may deem relevant.

7. The record and transcript of the hearing shall be public records pursuant to N.J.S.A. 47:1A-1 et seq. except to the extent that any information is submitted pursuant to a statute or rule providing for confidentiality.

8. Upon review of the file and use eligibility list hearing record, the Commissioner shall determine within 30 days whether any modifications should be made by rule to the current list.

9. If the Commissioner determines during the term of a duly promulgated file and use eligibility list that changed conditions require a modification of the list, the Commissioner may amend the list by rule following a hearing conducted pursuant to this subsection.

Public Notice: Hearing to determine forms eligible for filing and use.
See: 28 N.J.R. 4121(a).

Public Notice: Hearing to determine forms eligible for filing and use.
See: 30 N.J.R. 3108(b).

Public Notice: Hearing to determine forms eligible for filing and use.
See: 33 N.J.R. 3379(a).

Amended by R.2001 d.408, effective November 5, 2001.

See: 33 N.J.R. 2263(a), 33 N.J.R. 3747(a).

In (a), added “; or the form is specifically exempt from compliance with this subchapter”; deleted former (g); recodified former (h) as (g) and substituted “(g)1” for “(h)1” in (h)2.

11:4-40.10 File and use procedures

(a) An insurer seeking to file and use a form specified at N.J.A.C. 11:4-40.9 to be eligible for file and use shall, in addition to the items set forth at N.J.A.C. 11:4-40.5(b), submit the following to the Department:

1. A certification memorandum signed and acknowledged by a responsible officer of the insurer, which shall include the following:

i. A statement that the certification is filed pursuant to P.L. 1995, c.73, section 17;

ii. A statement that the responsible officer signing the certification memorandum is authorized to execute the document;

iii. A statement that the responsible officer signing the certification memorandum is familiar with the insurer's filing and all laws, regulations, bulletins and published guidelines applicable to the particular type of form, and that the form complies with all laws, regulations, bulletins and published guidelines applicable to the particular type of form;

iv. A statement that the insurer intends for the Department to rely on the certification in accepting the filing made pursuant to this subsection;

v. A statement that the responsible officer signing the certification memorandum is aware of the penalties for submitting an improper certification or false filing;

vi. A statement that the responsible officer signing the certification memorandum has supervised and is responsible for the completion and submission to the Department of the checklist required for the particular type of form; and

vii. A statement that the insurer shall not use the form before receipt of the form is acknowledged by the Department.

(b) The Department shall provide the insurer with a written acknowledgement that the Department received the form and a proper certification.

(c) Upon receipt of the written acknowledgment described in (b) above, the insurer may use the form in this State.

(d) If the Commissioner determines that the form submitted to the Department by the insurer pursuant to (a) above fails to comply with any law, or regulation, bulletin or published guideline applicable to the particular type of form, the Department shall notify the insurer in writing of the specific reasons for objecting to the form, and may disapprove the form for further use in this State.

(e) If the Commissioner determines that the certification submitted to the Department by the insurer pursuant to (a) above is an improper certification, the insurer shall be subject to the following penalties specifically determined by the Commissioner in consideration of the severity of the

violation based on the potential adverse impact to the public and whether it is the insurer's first such violation:

1. A fine not to exceed \$50,000; and

2. A maximum penalty of \$1,000 per contract or certificate issued with a form determined to be improperly certified pursuant to this subsection.

i. For purposes of this subsection, an "improper certification" means a certification that provides any misrepresentation or false statement material to a certification form.

(f) If, following notice and a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, an insurer is found by the Commissioner to be in violation of any of the requirements of this section, the form may be disapproved and the insurer may be barred from participating in the certification process pursuant to this section for a period not to exceed one year. These penalties are in addition to any penalties that may be imposed pursuant to any other law or regulation applicable to the particular insurer for such violation(s).

11:4-40.11 Service fees

A form submitted by an insurer to the Commissioner for either prior approval or file and use pursuant to this subchapter shall be accompanied by the service fee(s) set forth at N.J.A.C. 11:1-32 unless the insurer is exempt from the payment of such fees pursuant to section 13 of P.L. 1995, c.156, enacted on June 30, 1995.

