

New Rule, R.1998 d.302, effective June 15, 1998.  
See: 30 N.J.R. 267(a), 30 N.J.R. 2214(a).

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SUBCHAPTERS 38 THROUGH 39. (RESERVED)

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SUBCHAPTER 40. LIFE/HEALTH/ANNUITY  
FORMS

**11:4-40.1 Purpose and scope**

(a) The purpose of this subchapter is to implement P.L. 1995, c.73 (the Life and Health Insurance and Health Maintenance Organization Form Approval Reform Act) by setting forth standards and procedures whereby all life insurance, health insurance, and annuity forms, and rates where applicable, are to be submitted to the Commissioner for his or her approval prior to use. This subchapter also establishes a file and use system for certain forms deemed eligible by the Commissioner provided that a certification is filed that the particular form complies with the law and rules applicable to it.

(b) This subchapter shall apply to all life insurance, health insurance and annuity forms issued pursuant to N.J.S.A. 17B:17-1 et seq.; all hospital service corporation contracts issued pursuant to N.J.S.A. 17:48-1 et seq.; all medical service corporation contracts issued pursuant to N.J.S.A. 17:48A-1 et seq.; all health service corporation contracts issued pursuant to N.J.S.A. 17:48E-1 et seq.; and all health maintenance organization contracts, evidence of coverage and related forms issued pursuant to N.J.S.A. 26:2J-1 et seq. This subchapter shall not apply to any forms issued pursuant to N.J.S.A. 17B:27A-2 et seq. or 17B:27A-17 et seq., but shall apply to all forms issued pursuant to N.J.S.A. 17B:27A-7 and N.J.S.A. 17B:27A-19.

**11:4-40.2 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 definitions of life insurance or health insurance as set forth in this section, 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. A contract which includes extra benefits of the kinds set forth in the definitions of life insurance or health insurance set forth in this section shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

“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 shall have been placed.

“Department” means the New Jersey Department of Banking and Insurance.

“Form” or “policy form” or “life/health/annuity form or contract” means any individual or group policy form or contract providing life insurance, health insurance or annuity benefits; any application for such a policy, contract or certificate if a written application is required and is to be made part of that policy or contract; any rider or endorsement for use with such a policy or contract; certificates of such insurance; any evidence of such insurability form; any health maintenance organization contract; and any evidence of such coverage or related form delivered or issued for delivery in this State.

“Funeral insurance policy” means a policy as defined at N.J.S.A. 17B:17-5.1.

“Health insurance” means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. Health insurance does not include workers’ compensation coverage or stop-loss coverage.

“Insurer” means a hospital service corporation operating pursuant to N.J.S.A. 17:48-1 et seq.; a medical service corporation operating pursuant to N.J.S.A. 17:48A-1 et seq.; a health service corporation operating pursuant to N.J.S.A. 17:48E-1 et seq.; a life, health or annuity company operating pursuant to N.J.S.A. 17B:17-1 et seq.; and a fraternal benefit society operating pursuant to N.J.S.A. 17:44A-1 et seq. to the extent that it issues certificates or evidence of coverage forms containing accident or health benefits. A fraternal benefit society that issues certificates containing life insurance benefits is not considered an insurer for purposes of this subchapter.

“Life insurance” means a policy or contract whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the cessation of human life. Life insurance also includes the granting of endowment benefits and optional modes of settlement of proceeds of life insurance, as well as provisions for additional benefits in the event of death by accident or accidental means or in the

event of dismemberment or loss of sight; or safeguarding such insurance against lapse or giving a special surrender value, or special benefit or annuity in the event that the insured shall become totally and permanently disabled, whether such provisions are incorporated in a policy or contract of life insurance or in a policy or contract supplemental thereto. Life insurance does not include worker's compensation coverage.

"Limited death benefit policy" means a policy as defined at N.J.A.C. 11:4-21.

"Published guidelines" means guidelines published by the Commissioner on or before April 10, 1995.

"Responsible officer of the insurer" means a corporate officer of the level of vice president or higher, or of an equivalent title within the insurer's corporate structure, who is either an actuary of the insurer with responsibility for the type of form filed, or the individual with responsibility for managing the form filing process for the insurer with regard to the type of form filed.

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

"State" means the State of New Jersey.

"Stop loss or excess risk insurance" means insurance designed to reimburse a self-funded arrangement for catastrophic and unexpected expenses exceeding specified per person retention limits of no less than \$25,000 per year and/or aggregate retention limits of no less than 125 percent of expected claims per year, wherein neither the employees nor other individuals are third party beneficiaries under the policy, contract or plan.

"Universal flexible-factor form" means any life insurance policy, rider or endorsement, whether participating or non-participating, which permits the insurer to reserve the right to modify (upward or downward) premiums, premium factors (interests, mortality, expenses), or benefits (death benefits, cash or loan values) on the basis of future anticipated or emerging experience.

Amended by R.2001 d.7, effective January 2, 2001.  
Sec: 32 N.J.R. 3546(a), 33 N.J.R. 101(a).

#### 11:4-40.3 Life/health/annuity form approval standards

(a) All life, health and annuity forms shall comply with the standards set forth in this subchapter and in any other applicable statutes, rules and published guidelines before being delivered or issued for delivery in this State.

(b) No form delivered or issued for delivery in this State shall contain provisions which are unjust, unfair, inequitable, misleading or contrary to law or to the public policy of this State.

(c) Annuity contracts, other than individual contracts and synthetic guaranteed investment contracts, are exempt from compliance with this subchapter.

Amended by R.2001 d.408, effective November 5, 2001.  
Sec: 33 N.J.R. 2263(a), 33 N.J.R. 3747(a).  
Added (c).

#### 11:4-40.4 General requirements

(a) All insurers submitting forms or other correspondence to the Department pursuant to this subchapter shall comply with the following general procedures:

1. All individual health, group health, blanket, prepaid legal contracts, group life and service corporation forms and other related correspondence submitted or resubmitted for approval or for file and use pursuant to this subchapter shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance  
Health Bureau  
20 West State Street  
PO Box 470  
Trenton, NJ 08625-0470

2. All individual life, credit life and health, mortgage guaranty, separate account, variable contract and annuity forms and other related correspondence pursuant to this subchapter submitted or resubmitted for approval or for file and use shall be submitted to the Department at the following address:

New Jersey Department of Banking and Insurance  
Life Bureau  
20 West State Street  
PO Box 470  
Trenton, NJ 08625-0470

3. All submissions and resubmissions of forms to the Department shall include a self-addressed, stamped envelope.

4. For purposes of computing time limits in this subchapter, "days" shall mean calendar days, except that when the last day of any specified time period is a Saturday, Sunday or State holiday, then the time period shall end on the next following business day. With regard to any specified time period relating to documents or correspondence transmitted between the Department and the insurer, the Department shall rely on one of the following:

i. The date appearing on a clear, legible postmark affixed by the United States Postal Service;

ii. The legible date of receipt from the sender appearing on the transmission documents of a private delivery service; or

iii. In the absence of either (a)4i or ii above, the actual date of receipt by the Department.

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”.

Public Notice: Notice of Public Hearing; Life/Health/Annuity Forms Certification Eligibility.

See: 34 N.J.R. 3544(b).

Public Notice: Life/Health/Annuity Forms certification eligibility.

See: 35 N.J.R. 4144(a).

#### 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. 17:27, 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. 17:27-32 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.

APPENDIX

EXHIBIT A

FOR DEPARTMENT OF INSURANCE  
USE ONLY, DO NOT USE SHADED AREAS

PAGE:  OF

NEW JERSEY  
DEPARTMENT OF INSURANCE  
POLICYFORM REVIEW

**\*\* NEW SUBMISSION \*\***

SUBMISSION NO.:  -  -

NAIC CODE:

COMPANY NAME:

GROUP CODE (if any):

DATE SENT:  /  /

DATE RECEIVED:  /  /

SERVICE FEE submitted:  .  (if applicable)

CHECK NUMBER:

CHECK DATE:  /  /

CATEGORY OF FORMS:

NUMBER OF FORMS SUBMITTED:

POLICYFORM NUMBER	COVER. TYPE	FORM TYPE	REQ. TYPE	RATE CHANGE (%)
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ATTACHMENT 1

INSTRUCTIONS FOR INITIAL SUBMISSION  
DATA FORMS

The Initial Submission Data Form requires that you provide codes for the Category, Coverage Type, and Request Type. These codes are attached.

Submission No:

Leave Blank-For Department Use.

NAIC Code:

5 Digit NAIC Code. All companies are identified in the system by NAIC code rather than name.