

See: 36 N.J.R. 3940(a).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 37 N.J.R. 3463(a).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 38 N.J.R. 3928(b).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 39 N.J.R. 3566(c).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 40 N.J.R. 5294(b).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 41 N.J.R. 3464(a).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 42 N.J.R. 2150(b).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 43 N.J.R. 3205(a).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 44 N.J.R. 2313(b).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 45 N.J.R. 2274(b).  
 Public Notice: Life/Health/Annuity Forms Certification Eligibility.  
 See: 46 N.J.R. 2047(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. 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.

**APPENDIX**

(RESERVED)

Repealed by R.2010 d.157, effective July 19, 2010.

See: 41 N.J.R. 3371(a), 42 N.J.R. 1610(a).

Appendix was "New Jersey Department of Insurance Policyform Review".

## SUBCHAPTER 40A. "40 STATES" FILE AND USE STANDARDS AND PROCEDURES

### 11:4-40A.1 Purpose and scope

(a) The purpose of this subchapter is to implement P.L. 2001, c.237 (N.J.S.A. 17B:25-18.4), which establishes a special procedure whereby insurers may forego prior approval of certain life insurance, annuity and variable contract forms.

(b) This subchapter shall apply to all individual life insurance, individual annuity, group annuity, group life, variable life and variable annuity contract forms to be issued by an insurer authorized to do business in this State. This subchapter shall not apply to any health insurance policy, or contract forms or benefits, including specified disease or critical illness policies, contracts or benefits. This subchapter shall not apply to individual and group annuity or life insurance forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.

Amended by R.2011 d.265, effective November 7, 2011.  
See: 43 N.J.R. 819(a), 43 N.J.R. 3026(a).

In (b), inserted the last sentence.

### 11:4-40A.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 all contracts meeting the definition set forth at N.J.S.A. 17B:17-5.

"Available for sale or use" means that the insurer has complied with the state's laws, regulations, and procedures to allow the insurer to sell or use the form in that state.

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

"Department" means the Department of Banking and Insurance.

"Form," "contract form" and "policy form" mean all annuity contract forms; all life insurance policy and contract forms; all variable contract forms; and all group insurance certificates as defined within this subchapter, including endorsements, riders and application forms.

"Health insurance" means all policies, contracts and benefits meeting the definition set forth at N.J.S.A. 17B:17-4, including specified disease and critical illness policies, contracts and benefits as defined at N.J.A.C. 11:4-53.

"Improper certification" means providing any misrepresentation or false statement material to a certification form.

"Life insurance" means all policies and contracts meeting the definition set forth at N.J.S.A. 17B:17-3.

"Responsible officer of the insurer" means a corporate officer of the level of vice president or higher, or of equivalent title within the insurer's structure, who is either the 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.

"Unique product features or design" means that the contract language that expresses the methodology used to calculate values, benefits and rates is materially the same. Non-material differences include unique requirements mandated by a state's law (for example, mandated use of a unisex mortality table); synonyms used (for example, "period" instead of "term," "face amount" instead of "insurance amount"); and quantitative differences of no more than 10 percent (for example, one policy contains a \$50.00 charge, while another contains a \$55.00 charge). Standard contract provisions are not considered part of the unique product feature or design.

"Variable contracts" means all contracts meeting the definition set forth at N.J.S.A. 17B:28-1 et seq.

### 11:4-40A.3 Eligibility

(a) Forms submitted to the Commissioner on the basis that they have been made available for sale or use in 40 states, subject to state variations that do not alter the unique features or design of the product, shall be eligible for sale or use pursuant to the requirements of this subchapter. Notwithstanding eligibility, any such form shall comply with New Jersey law regarding standard contract provisions as identified below.

#### 1. Individual Life:

- i. Free Look as set forth in N.J.S.A. 17B:25-2.1;
- ii. Grace Period as set forth in N.J.S.A. 17B:25-3;
- iii. Incontestability as set forth in N.J.S.A. 17B:25-4, 16 and 17;
- iv. Entire Contract as set forth in N.J.S.A. 17B:25-5;
- v. Misstatement of Age as set forth in N.J.S.A. 17B:25-6;
- vi. Dividends as set forth in N.J.S.A. 17B:25-7;
- vii. Policy Loan as set forth in N.J.S.A. 17B:25-8;
- viii. Reinstatement as set forth in N.J.S.A. 17B:25-9;
- ix. Payment of Premium as set forth in N.J.S.A. 17B:25-10;
- x. Automatic Premium Loan Notice as set forth in N.J.S.A. 17B:25-10.1;
- xi. Payment of Claims as set forth in N.J.S.A. 17B:25-11;
- xii. Beneficiary as set forth in N.J.S.A. 17B:25-12;