

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Life/Health Annuity Forms

Adopted Amendments: N.J.A.C. 11:4-40.4, 40.5 and 40A.4

Adopted Repeal: N.J.A.C. 11:4-40 Appendix

Proposed: September 21, 2009 at 41 N.J.R. 3371(a).

Adopted: June 23, 2010 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: June 24, 2010 as R. 2010 d. 157, **with substantive changes** not required additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:17-1 et seq., 17:48-1 et seq., 17:48A-1 et seq., 17:48E-1 et seq., 26:2J-1 et seq., 17B:27A-1 and 17B:27A-19.

Effective Date: July 19, 2010

Expiration Date: March 14, 2011

Summary of Public Comment and Agency Response:

The Department received one timely comment from the American Council of Life Insurers (ACLI).

COMMENT: The commenter stated that N.J.A.C. 11:4-40A.4(a)1 is being amended to require that a notary signature be included on the certification memorandum and that the notary signature be shown outside of the seal.

The commenter contends that according to the American Society of Notaries, the primary duty of a Notary Public is to show that a disinterested party (the Notary Public) has duly notified the signer of an instrument as to the importance of such document, and that the signer of such document has declared that the signer's identity, signature, and reasons for signing such instrument are genuine. The commenter believes that the signature and seal of a Notary Public "**DO NOT**" (emphasis added) prove these facts conclusively, but provide prima facie proof of them, and allow persons in trade and commerce to rely upon the truth and veracity of the Notary Public as a third party who has no personal interest in the transaction. The commenter stated that it does not understand the benefit gained by the Department requiring that a notary signature be included on the certification memorandum.

The commenter contends that the Department already has the authority to punish a company which submits a certification memorandum that includes fraudulent information. N.J.A.C. 11:4-40A-5 provides that the Department can fine an insurer for an improper certification (up to \$50,000) and in addition may bar the insurer from participating in the certification process for up to one year (after a hearing). The commenter believes that the fines and possible exclusion are incentive enough for insurers to submit a valid certification memorandum.

The commenter stated that certification signatures by officers of companies are not unique, yet it cannot recall any state law or Federal law which requires a notary signature to be included with an officer's certification signature. In fact, not even the Sarbanes-Oxley Act of 2002 requires a notary signature in any of the complex regulatory filing requirements. In addition, no other state System for Electronic Rate and Form Filing (SERFF) filing requires a notary signature. Therefore, the commenter suggests that N.J.A.C. 11:4-40A-4(a)1 be amended

to remove the new notary signature requirement and that Bulletin No. 09-34 (which was issued on October 27, 2009 after the proposed rules were introduced) also be amended to also remove the notary signature requirement.

RESPONSE: The Department disagrees with the commenter. The requirement at N.J.A.C. 11:4-40A.4(a)1 that the notary signature be included on the certification memorandum is not a new requirement. The existing regulation at N.J.A.C. 11:4-40A.4(a)1i provides that: “The certification shall be acknowledged by a responsible officer of the insurer. The acknowledgement process shall be the same as that which applies to documents for recording instruments conveying or affecting interests in real estate in this State pursuant to N.J.S.A. 46:14-2.1 et seq.” The Department notes that N.J.S.A.46:14-2.1a. provides, in pertinent part, that: “...To acknowledge a deed or other instrument made on behalf of a corporation or other entity, the maker shall appear before an officer specified in R.S.46:14-6.1 and state that the maker was authorized to execute the instrument on behalf of the entity and that the maker executed the instrument as the act of the entity.” N.J.S.A. 46:14-6.1 references attorneys, notary publics and certain governmental officials as authorized to take acknowledgements.

The Department notes that N.J.A.C.11:4-40(a)1 is being amended to require that the notary’s signature be shown outside of the seal. This amendment is intended to address the problem of the Department’s receipt of numerous certifications where the notary’s written and printed signatures are not legible because the imprint of the notary seal is placed over them. Prior to SERFF, if the Department could not read the information under the notary seal the filing would have been returned for “No Action.” For SERFF filings, the Department is permitting companies to maintain the original copies with the notarized signature in their permanent files.

However, the Department does require that the information on the scanned or PDF copy of the notarized certification be legible.

Summary of Agency-Initiated Changes:

The Department is changing the January 1, 2010 dates in N.J.A.C. 11:4-40.4(a)1 to reflect the amendments' July 19, 2010 effective date.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and repeal regulate the business of insurance and are not subject to any Federal requirement or standards.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

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, individual life, credit life and health, mortgage guaranty, separate account, variable contract and annuity, group credit, synthetic guaranteed investment contract 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 through the use of the National Association of Insurance Commissioners electronic filing system known as System for Electronic Rate and Form Filing (SERFF). As of *[January 1]****July 19***, 2010, the Office of Life and Health will no longer accept any rate or policy form filings other than through SERFF. Any such filings received after *[January 1]****July 19***, 2010 in any method other than through SERFF will be closed with no action taken and returned to the company without review. Insurers shall submit a paper copy of any materials submitted via SERFF if requested by the Department.

2. (No change from proposal.)