

CHAPTER 15

GROUP SELF-INSURANCE

Authority

N.J.S.A. 17:1C-6(e), 17:1-8.1, 34:15-77 et seq., and 40A:10-36 et seq.

Source and Effective Date

R.1994 d.551, effective October 17, 1994.
See: 26 N.J.R. 2518(a), 26 N.J.R. 3356(a), 26 N.J.R. 4407(b).

Executive Order No. 66(1978) Expiration Date

Chapter 15, Group Self-Insurance, expires October 17, 1999.

Chapter Historical Note

Chapter 15, Group Self-Insurance, was originally adopted as R.1984 d.172, effective May 21, 1984. See: 16 N.J.R. 340(a), 16 N.J.R. 1273(a). Subchapter 2, Joint Insurance Funds for Local Government Units, was originally adopted as R.1984 d.540, effective December 3, 1984. See: 16 N.J.R. 1164(a), 16 N.J.R. 3310(b). Pursuant to Executive Order No. 66(1978), Chapter 15 was readopted as R.1989 d.585, effective October 26, 1989. See: 21 N.J.R. 1817(a), 21 N.J.R. 3668(a). Subchapter 3, Joint Insurance Funds for Local Governmental Units Providing Group Health and Term Life Benefits, was adopted as R.1993 d.354, effective July 19, 1993. See: 25 N.J.R. 436(a), 25 N.J.R. 3220(a).

Pursuant to Executive Order No. 66(1978), Chapter 15 was readopted as R.1994 d.551. See: Source and Effective Date.

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SUBCHAPTER 1. HOSPITAL WORKERS' COMPENSATION GROUP SELF-INSURANCE

11:15-1.1 Purpose

P.L. 1983, c.376, approved November 10, 1983, authorizes 10 or more employers licensed by the state as hospitals under the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., to apply to the Commissioner of Insurance, pursuant to rules and regulations established by him, for his permission to enter into agreements to pool their liabilities under the New Jersey Workers' Compensation Law for the purpose of qualifying as self-insurers. The general purpose of this chapter is to promulgate such rules and regulations as are deemed by the Commissioner to be necessary to implement, supplement, and effectuate the minimum conditions and provisions of P.L. 1983, c.376.

11:15-1.2 Definitions

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

"Act" means the provisions of the New Jersey Workers' Compensation Law regarding self-insurance as contained in N.J.S.A. 34:15-77, as amended and supplemented by P.L. 1983, c.376.

SUBCHAPTER 6. JOINT INSURANCE FUNDS FOR NONPROFIT CORPORATIONS AND KEYS AMENDMENT FACILITIES

- 11:15-6.1 Purpose and scope

“Actuary” means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

“Administrator” means an individual, partnership, or corporation engaged by a group to carry out the policies established by the group and to provide day-to-day management of the group.

“Bona fide hospital association” means any association of more than 10 hospitals which has been in existence for more than five years.

“Commissioner” means the Commissioner of Insurance of the State of New Jersey or an employee of the New Jersey Department of Insurance designated by him to act on his behalf.

“Contribution” means the amount contributed by each member of a group.

“Excess insurance” means insurance, purchased from an insurance company appropriately licensed in the State of New Jersey or qualified by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance or indemnity agreement on a specific per occurrence or per accident or annual aggregate basis.

“Group” means a self-insurance group organized by 10 or more hospitals which enter into agreements to pool their liabilities for worker’s compensation benefits and employer’s liability obligations in a manner approved by the Commissioner under the authority of the Act and these regulations.

“Hospital” means a health care facility licensed as a hospital by the New Jersey Department of Health pursuant to N.J.S.A. 26:2H-1 et seq.

“Indemnity and trust agreement” means a written contract signed by the members of the group under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement for workers’ compensation benefits, which agreement shall also create a trust and govern the operation thereof under which monies shall be held by one or more trustees as fiduciaries for the benefit of persons qualifying to receive workers’ compensation awards or payments from employers participating in the group.

“Insolvent” or “Insolvency” means the inability of a hospital workers’ compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all its outstanding liabilities after paying all accrued claims owed by it.

“Service organization” means a person, partnership, corporation or other legal entity which provides services to a group not provided by the administrator, including but not limited to:

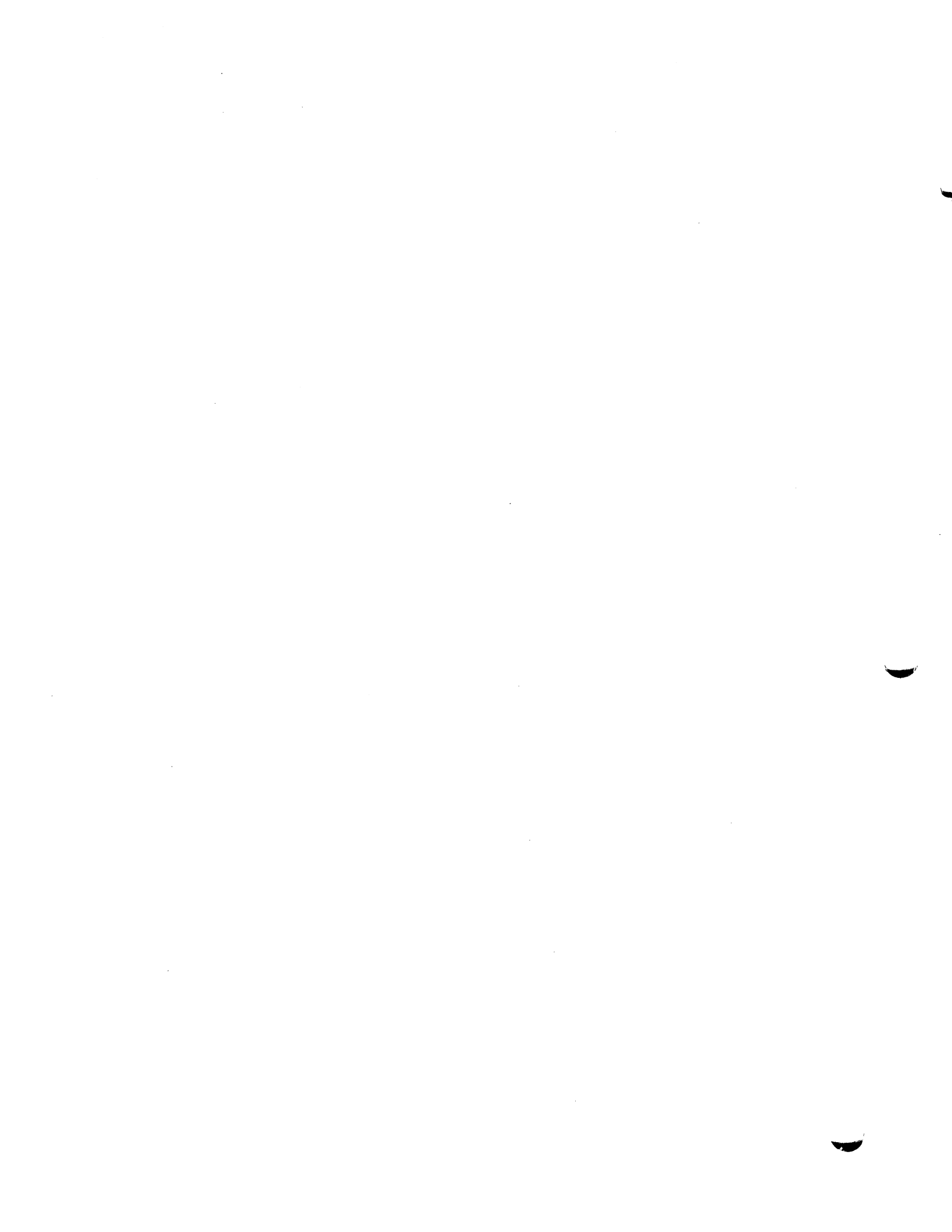
1. Claims adjustment,
2. Safety engineering,
3. Compilation of statistics and the preparation of contribution, loss expense and tax reports,
4. Preparation of other required self-insurance reports, and
5. Development of any member’s contribution and fees.

“Workers’ compensation”, when used as a modifier of “benefits”, “liabilities”, or “obligations”, means both workers’ compensation and employer’s liability.

11:15-1.3 Qualifications for initial approval and continued authority to act as a group

(a) A proposed group shall file its application with the Commissioner for his approval on a form prescribed by him and accompanied by a nonrefundable processing fee in the amount of \$1,000. The application shall include the group’s name, location of its principal office, date of organization, name and address of each of its trustees and its administrator or general manager, and service organizations, the name and address of each member hospital, and such other information as the Commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of subsection (b) below;
2. A copy of the articles of association, if any;



“Excess insurance” means insurance, purchased from an insurance company appropriately licensed in the State of New Jersey or qualified by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance or indemnity agreement on a specific per occurrence or per accident or annual aggregate basis.

“Group” means a self-insurance group organized by 10 or more hospitals which enter into agreements to pool their liabilities for worker’s compensation benefits and employer’s liability obligations in a manner approved by the Commissioner under the authority of the Act and these regulations.

“Hospital” means a health care facility licensed as a hospital by the New Jersey Department of Health pursuant to N.J.S.A. 26:2H-1 et seq.

“Indemnity and trust agreement” means a written contract signed by the members of the group under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement for workers’ compensation benefits, which agreement shall also create a trust and govern the operation thereof under which monies shall be held by one or more trustees as fiduciaries for the benefit of persons qualifying to receive workers’ compensation awards or payments from employers participating in the group.

“Insolvent” or “Insolvency” means the inability of a hospital workers’ compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all its outstanding liabilities after paying all accrued claims owed by it.

“Service organization” means a person, partnership, corporation or other legal entity which provides services to a group not provided by the administrator, including but not limited to:

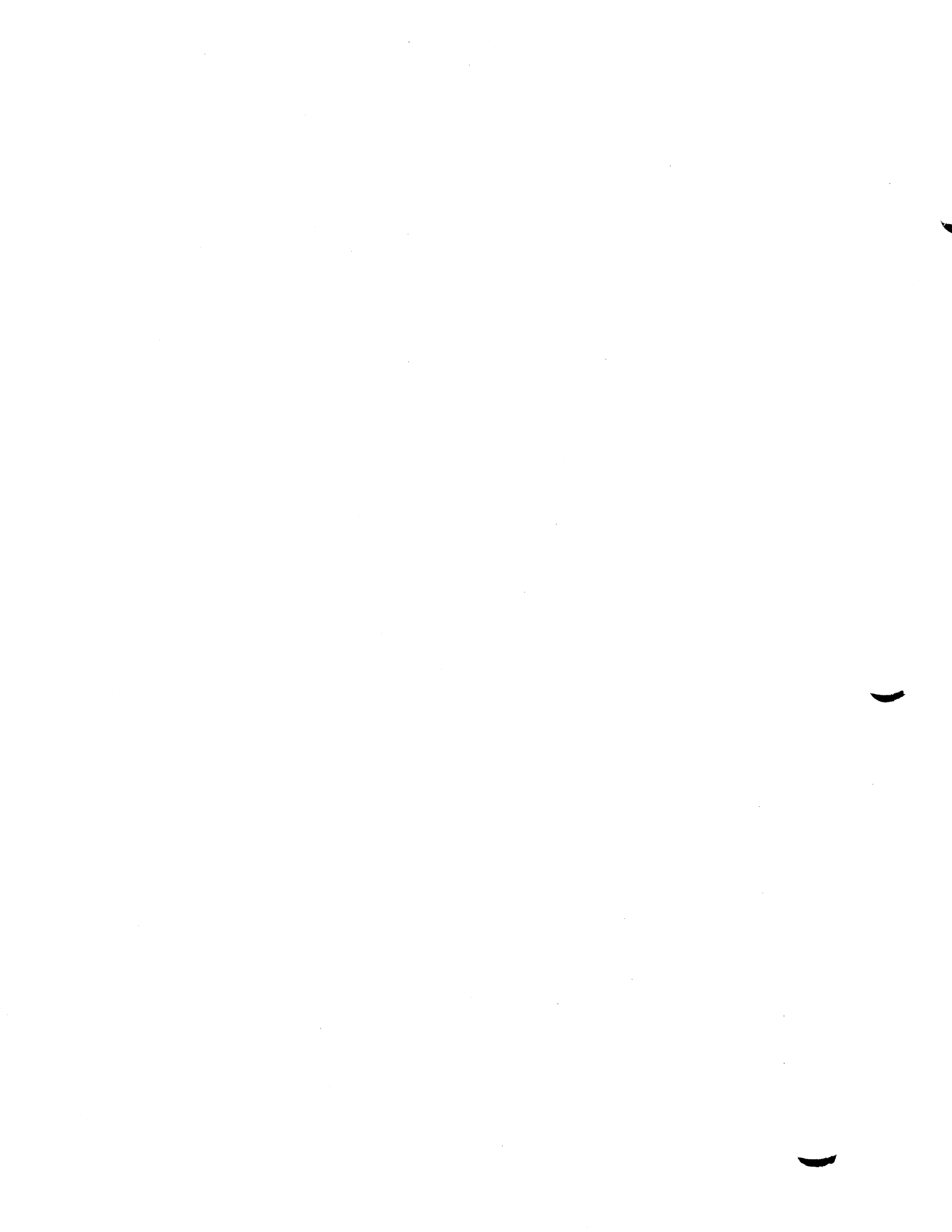
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(a) A proposed group shall file its application with the Commissioner for his approval on a form prescribed by him and accompanied by a nonrefundable processing fee in the amount of \$1,000. The application shall include the group’s name, location of its principal office, date of organization, name and address of each of its trustees and its administrator or general manager, and service organizations, the name and address of each member hospital, and such other information as the Commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of subsection (b) below;
2. A copy of the articles of association, if any;



11:15-1.18 Public record

Any document filed with the Commissioner pursuant to the Act or these regulations shall be deemed a public record and available for inspection at the New Jersey Department of Insurance during usual business hours.

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS PROVIDING PROPERTY AND LIABILITY COVERAGES

11:15-2.1 Purpose and scope

(a) N.J.S.A. 40A:10-36 et seq. authorizes two or more local units of government to join together to establish a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation, and for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverages approved by the Commissioner. A fund may also provide its members with safety and loss control programs and may jointly purchase, on behalf of its membership, safety and loss control services, training, equipment and apparatus, in connection with the provision of the coverages set forth above. This subchapter provides rules for the establishment, operation, oversight, modification and dissolution of such funds.

(b) No local unit of government shall join together with any local unit or units to act as a joint insurance fund except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) Except as otherwise specifically provided, all of the requirements of this subchapter shall apply to any joint insurance fund formed to insure against liability, property damage, or workers' compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor.

Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Amended definition of "actuary".
Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Amended (a) to allow funds to provide members with safety and loss control programs and services; Added (c) regarding applicability of this subchapter.

11:15-2.2 Definitions

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

"Actuary" means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years

recent experience in loss reserving; an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years recent experience in loss reserving.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of the fund, a fund member, or an independent contractor.

"Automobile and equipment liability" means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the local unit or owned by or under the control of any subdivisions thereof including its departments, boards, agencies, commissions or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

"Chairman" means the chairman of the fund commission, elected by the commission pursuant to N.J.S.A. 40A:10-37.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Employers' liability" means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his employment by the public employer, which is not covered by a workers' compensation law.

"Environmental impairment liability fund" means a joint insurance fund formed for the sole purpose of insuring against bodily injury and property damage claims arising from environmental liability and legal representation therefor to the extent and for coverages set forth in this subchapter.

"Excess carrier" means an insurer that provides excess insurance or reinsurance to a fund.

"Excess insurance" means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, or from any other entity authorized to provide such coverage in this State pursuant to law, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, or per accident, or annual aggregate basis.

“Executive committee” means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq.

“Fiscal year” or “fund year” means the calendar year January 1 through December 31.

“General liability” means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers’ compensation and employers’ liability.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

“Insolvent fund” means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

“Intertrust fund transfer” means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

“Interyear fund transfer” means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

“Joint insurance fund” or “Fund” means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against liability, property damage, and workers’ compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor, to the extent and for coverages approved by the Commissioner pursuant to the authority of N.J.S.A. 40A:10-36 et seq. and this subchapter.

“Joint insurance fund commissioners” means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36 et seq.

“Lead agency” means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

“Local unit of government” or “local unit” means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A:64A-25.40 and 40A:10-51), any contracting unit as defined in N.J.S.A. 40A:11-2 or boards of education of certain school districts, to the extent permitted pursuant to N.J.S.A. 40A:10-52 through 57.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-2.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-2.21, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Property damage” means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the local unit or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

“Secretary” means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter, and such other duties as designated by the fund.

“Unpaid claims” or “unpaid losses” means case reserves and reserves for incurred but not reported claims attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Workers’ compensation law” means the provisions of N.J.S.A. 34:15-7 et seq.

Amended by R.1989 d.507, effective September 18, 1989.
See: 21 N.J.R. 3051(b), 21 N.J.R. 3017(a).

Definitions for “Fiscal year”, “Intertrust fund transfer”, “Interyear fund transfer”, “Net current surplus”, and “Unpaid claims” added.
Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Amended definitions of “actuary”, “indemnity and trust agreement”, “local unit of government” and “property damage”; added “automobile and equipment liability” and deleted “motor vehicular and equipment liability”.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Added definitions for “Chairman”, “Environmental impairment liability fund”, “Producer” and “Secretary” and amend “Administrator”, “Excess insurance”, “Executive committee”, “Indemnity and trust agreement”, “Joint insurance fund”, “Joint insurance fund commissioners”, “Lead agency”, “Local unit of government”, “Net current surplus”, “Servicing organization”, “Unpaid claims” and “Workers’ compensation law”.

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

11:15-2.3 Agreement to join joint insurance fund; duration

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the fund’s bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-39. The agreement shall specify the extent of the local unit’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). The agreement shall also specify that the fund members have never defaulted on claims if self-insured and have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement. In lieu of filing with the Department and Department of Community Affairs copies of the

new ordinance or resolution and new indemnity and trust agreement referred to in N.J.A.C. 11:15-2.6(b)10 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined the fund.

(c) For purposes of N.J.S.A. 40A:10-52, the governing body of any municipality and the board of education of the local school district operating within that municipality may, subject to N.J.S.A. 40A:10-52, by ordinance or resolution, as the case may be, agree to join together for purposes of insuring coverages as set forth in that statute, provided that the district is not part of a limited purpose regional school district, an all purpose regional school district, or a consolidated school district. All purpose regional school districts, consolidated school districts, limited purpose regional school districts, the board of education of local school districts which are part of a limited purpose regional school district as described above, and county vocational school districts and the board of education of local school districts within a county vocational school district, may otherwise agree to join together with one or more constituent municipalities for the purposes of insuring coverages as described in and in accordance with N.J.S.A. 40A:10-53 to 57, as applicable. The board of education of a local or regional school district, consolidated school district or county vocational school district may not otherwise join with any municipality to form a fund pursuant to N.J.S.A. 40A:10-36 et seq. for the purpose of insuring coverages of the kinds set forth in N.J.S.A. 40A:10-52 to 57, except pursuant to this subsection. Notwithstanding any other provision to the contrary, no board of education, except the board of education of county vocational school districts, may join together with a municipality or other local unit for the purpose of providing contributory or non-contributory group health insurance or term life insurance, or both, to employees or their dependents, or both, as otherwise permitted pursuant to N.J.S.A. 40A:10-36 et seq.

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Changes reflect current practice and changes in applicable statutes.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Amended existing text and redesignated section as (a) and (b); and added (c).

11:15-2.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the “Local Fiscal Affairs Law” (N.J.S.A. 40A:5-1 et seq.), the “Local Public Contracts Law” (N.J.S.A. 40A:11-1 et seq.), regulations (including, but not limited to, N.J.A.C. 5:34), the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 40A:10-38, 17:12B-241 and 17:16I-1 et seq., and in the case of a joint insurance fund providing environmental impairment liability coverage, the “Local Bond Law” (N.J.S.A.

40A:2-1 et seq.), but shall not be subject to the debt limitation set forth in N.J.S.A. 40A:2-6.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall utilize as its fiscal year, the calendar year, January 1 through December 31.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2, or to the extent the fund is comprised of entities other than municipalities, possess the appropriate professional credentials required by the Department of Community Affairs pursuant to the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.). The custodian shall report to the fund commissioners at least quarterly on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare in November of each year the proposed budget for the fund's subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member, the anticipated amounts and sources of assessments and other income to be received during the fiscal year, and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held in accordance with N.J.S.A. 40A:4-1 et seq. giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than December 31 of each year, the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

4. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund, except as provided at N.J.A.C. 11:15-2.22(e), and shall be retained by the secretary of the fund or fund administrator at the discretion of the fund commissioners or executive committee.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

i. For financial information, seven years from the date of their creation; for claims information, seven years after all claims for that year have been fully paid; or

ii. Until the completion and filing of the next financial condition examination of the fund by the Commissioner.

(h) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the administrator's or lead agency's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.

(j) All officers, employees and agents of the joint insurance fund, including the administrator and servicing organization of the fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

At (g) added "fund administrator" as retainer of records and at (i) added specifications to reports.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

At (a) added requirements for provision of environmental impairment liability coverage; at (e) required custodian of funds to be a certified municipal finance officer; at (f) changed the basis on which the annual budget is prepared; at (g) added 1.i and 1.ii; and at (k) amended duties of the lead agency.

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

Case Notes

County insurance fund established as joint municipal pool was entitled to immunity from antitrust liability, despite fact that it was neither insurance company nor insurer under state law; fund was subject to Commissioner's regulation and was designed to spread self-insurance

risks of municipal governments. *Shapiro v. Middlesex County Mun. Joint Ins. Fund*, 704 A.2d 1316, 307 N.J.Super. 453 (A.D. 1998).

11:15-2.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioner and the Commissioner of the Department of Community Affairs, as provided in N.J.S.A. 40A:10-41, its bylaws and plan of risk management and any amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified at N.J.A.C. 11:15-2.6, and such other information as the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-2.6. The loose-leaf sheets used shall be eight and one-half inches wide by 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth in this subsection to the Department and one copy to the Department of Community Affairs. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-2.6 shall constitute the fund's bylaws and plan of risk management for purposes of N.J.S.A. 40A:10-41. No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management, including all of the information required pursuant to N.J.A.C. 11:15-2.6, have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management shall take effect until such amendment is approved by the Commissioner.

(d) Within 10 days following any change in the information or documentation required to accompany the filing of the fund's bylaws or amendments thereto, as provided in (a) above, the fund shall file notice of the change, with the Department and the Department of Community Affairs.

(e) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-2.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions, as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department and the Department of Community Affairs at:

1. New Jersey Department of Banking and Insurance

Division of Financial Examinations
Attn: Municipal JIF Admissions
20 West State Street
PO Box 325
Trenton, NJ 08625-0325; and

2. New Jersey Department of Community Affairs

Division of Local Government Services
101 South Broad Street
PO Box 803
Trenton, NJ 08625-0803

Emergency amendment, R.1984 d.616, effective December 24, 1984 (expires February 22, 1985).

See: 17 N.J.R. 218(a).

(a) substantially amended.

Adopted by R.1985 d.128, effective February 22, 1985.

See: 17 N.J.R. 218(a), 17 N.J.R. 709(a).

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Substantially amended (a) and (b) and added (e) through (g).

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

11:15-2.6 Bylaws and plan of risk management; contents

(a) The commissioners of a joint insurance fund shall prepare and, after the approval, by resolution, of the governing body of each participating local governmental unit, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commissioners and alternates and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency;

2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;

3. Procedures for the establishment, maintenance and administration of appropriate reserves in accordance with sound actuarial principles;

4. Procedures for the purchase of direct insurance or reinsurance if any;

5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-2.16;

6. Procedures governing loss adjustment and legal fees;

7. Procedures for the joining of the fund by a non-member local unit;

8. Procedures in compliance with N.J.A.C. 11:15-2.10 for the withdrawal or expulsion from the fund by a local unit, including any requirement that a terminated or withdrawing member provide security in a form and amount acceptable to the Commissioner and fund commissioners as applicable, as a guarantee for the continued payment of the member's obligations pursuant to N.J.A.C. 11:15-2.10(c);

9. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations; and

10. Procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments.

(b) In addition, the bylaws shall:

1. Include the fund's name, location of its principal office, date of organization, and name and address of each initial member;

2. Specify the insurance coverages to be provided by the fund and the minimum participation required of any member;

3. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

4. Be accompanied by a pro forma financial statement, with underlying assumptions and methodology, on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

5. Where self-insured, provide a plan for specific and aggregate excess insurance or reinsurance and for retention in accordance with sound actuarial principles and the plan of risk management;

6. Be accompanied by proof of competent personnel and ample facilities within the fund organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or present a contract with a servicing organization for the provision of such services;

7. Establish the claims handling procedure to be utilized by the fund which procedure shall provide for the prompt, fair and equitable settlement of claims;

8. Establish the complaint handling procedure to be utilized by the fund;

9. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-2.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and Commissioner of the Department of Community Affairs;

10. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-2.2, and in a form satisfactory to the Commissioner.

i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

ii. Where a fund, other than an environmental impairment liability fund, shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in (b)10ii(1) through (4) below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability, and may provide for the establishment of contingency accounts, each by fund year, as follows:

(1) Workers' compensation and employers' liability;

(2) Liability, other than motor vehicle;

(3) Property damage, including automobile physical damage;

(4) Automobile liability;

(5) General contingencies, if deemed appropriate by the fund, to replenish the administrative account established pursuant to N.J.A.C. 11:15-2.14 for that specific fund year; and

(6) Loss fund contingencies, if deemed appropriate by the fund, to replenish a trust account established pursuant to (b)10ii(1) through (4) above for that specific fund year; and where the total amount of monies assessed and allocated to the accounts established pursuant to (b)10ii(1) through (4) and this subparagraph (b)10ii(6) are utilized to satisfy the amounts estimated by the fund's actuary to be necessary to pay claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability set forth in (b)10ii(1) through (4) above for that fund year.

iii. Where an environmental impairment liability fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in (b)10iii(1) through (3) below, or where the fund has issued bonds pursuant to N.J.S.A. 40A:10-38.1 and this subchapter, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of

claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability, and for the service of the debt on any bonds issued, and may provide for the establishment of contingency accounts, each by fund year, as follows:

(1) Legal or defense services;

(2) Environmental management or risk management services;

(3) Any bodily injury or property damage liability or other coverages, separated by specific coverage, for which individual members join the fund for coverage, including, but not limited to, above-ground/underground storage tank and/or off-site storage/spills, sudden and accidental spills, and third-party liability;

(4) Debt service for any bonds issued pursuant to N.J.S.A. 40A:10-38.1;

(5) General contingencies, if deemed appropriate by the fund, to replenish the administrative account for that specific fund year as set forth in (b)10ii(5) above; and

(6) Loss fund contingencies, if deemed appropriate by the fund, to replenish a trust account established pursuant to (b)10iii(1) through (3) above for that specific fund year; and where the total amount of monies assessed or raised through the issuance of any bonds and allocated to the accounts established pursuant to (b)10iii(1) through (3) and this subparagraph (b)10iii(6) are utilized to satisfy the amounts estimated by the fund's actuary to be necessary to pay claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability set forth in (b)10iii(1) through (3) above for that fund year.

iv. In addition to the accounts set forth in (b)10iii above, an environmental impairment liability fund that issues bonds shall establish a separate contingency account in accordance with N.J.A.C. 11:15-2.13(b).

v. A fund shall not be otherwise required to establish separate trust accounts as required by (b)10ii or iii above for each fund year, or for each risk or liability as specified in (b)ii and (b)iii above, provided the fund provides a plan in its bylaws which provides for the recording and accounting of all transactions by fund year for each risk or liability as specified in (b)ii and (b)iii above, as applicable.

vi. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner and the Commissioner of the Department of Community Affairs;

11. Provide procedures for the establishment, maintenance and administration of reserves for unearned assessments, loss reserves and loss expense reserves and for the determination and distribution of assessment and/or investment refunds, in accordance with sound actuarial principles;

12. With respect to the funds providing for self-insurance of workers' compensation liabilities, the bylaws of each fund shall:

i. Guarantee benefit levels equal to those required by the workers' compensation law and other applicable statutes and provide a plan for the prompt payment of such benefits. Information documenting an individual member's financial strength and liquidity shall be made available to the Department upon the Department's written request and in a form specified by the Department;

ii. Mandate a minimum contribution of at least \$250,000 for the fund's first year of operation and thereafter the minimum contribution shall be at least \$500,000 for each subsequent year of operation unless approved by the Commissioner;

iii. Unless otherwise approved by the Commissioner, provide for assessments based upon the Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual on file with the Commissioner;

13. Be accompanied by copies of duly executed resolutions by two or more local units evidencing their intent to form the fund; and

14. Be accompanied by a non-refundable filing fee in the amount of \$1,500.

(c) The bylaws shall be accompanied by the following information and documentation and any amendments thereto:

1. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

2. Copies of the fund's prospective and executed agreements or contracts and any renewal or new agreements or contracts with any administrator, servicing organization or custodian of the fund's assets. Such agreements or contracts shall specify the duties of, and compensation to be paid to, each such entity. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization or administrator, as well as any services to be performed which are subcontracted;

i. To the extent the terms and conditions of any renewal agreement or contract and the parties thereto remain unchanged from the prior year, a copy of the renewal agreement or contract shall not be required. In lieu of filing a copy of the renewal agreement or contract, the fund shall file a notice with the Department and Department of Community Affairs in the format of Exhibit A in the Appendix, incorporated herein by reference, that the agreement has been renewed, and that the terms and conditions of the agreement or contract and parties thereto remain unchanged from the prior year.

ii. Copies of any changes to the agreements or contracts shall be filed with the Department and Department of Community Affairs within 10 days after such changes are approved by the fund;

3. A fidelity bond for all persons handling fund assets in a form and amount acceptable to the Commissioner;

4. A surety bond for the claims administrator or any other servicing organization deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner; and a surety bond for any other servicing organization as deemed appropriate by the fund commissioners in a form and amount acceptable to the fund commissioners;

5. Evidence of errors and omissions insurance coverage for the servicing organization(s), administrator and producer, if employed by the fund, who negotiates excess insurance or reinsurance on behalf of the fund;

6. A designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

7. A list of commissioners, officers and executive committee members, updated annually;

8. Data forms, in the format set forth in Exhibit B in the Appendix, incorporated herein by reference, incorporating the appropriate and necessary professional qualifications for senior officers and directors of the administrator and servicing organizations providing services to the fund updated and submitted to the Commissioner annually. An entity providing services to more than one fund may submit one data form for all funds formed pursuant to this subchapter which the entity services;

i. To the extent the information contained in the data forms remains unchanged from the prior year, the fund need not file updated forms, provided that the fund files a notice with the Department and Department of Community Affairs, in the format of Exhibit C in the Appendix, incorporated herein by reference, that the same individuals are utilized and that the information in the data forms remains unchanged from the prior year.

9. Copies of each insurance or reinsurance policy purchased by the fund;

10. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the fund. The description shall include, but not be limited to, copies of all producer contracts, which shall include a description of the producer's obligations, responsibilities and compensation; the duration of such contracts; and an indication whether the contracts are subject to renewal. Copies of renewal contracts or a notice of renewal shall also be provided consistent with the requirements set forth in (c)2 above.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable;

11. A cash management plan, which shall include the designation of depository institution(s) for the holding of fund monies and the fund's investment policy; and

12. A copy of the application form to be utilized by the fund for prospective new members applying for membership in the fund.

(d) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided at N.J.A.C. 11:15-2.5(a), file its plan of risk management and any amendment thereto with the Department as provided in N.J.S.A. 40A:10-41 containing the information as specified in (e) below.

(e) The commissioners shall prepare, or cause to be prepared a plan of risk management for the joint insurance fund. The plan description shall include, but not be limited to:

1. The perils or liability to be insured against;
2. The limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier, or reinsurance;
3. The amount of risk to be retained by the fund;
4. The amount of unpaid claims to be established;
5. The proposed method of assessing contributions to be paid by each member of the fund;
6. Procedures governing loss adjustment and legal fees;
7. Coverage to be purchased from a commercial insurer, if any;
8. Reinsurance to be purchased, if any, and the amount of premium therefor.
9. Procedures for the closure of fund years including the maintenance of all relevant accounting records;
10. The assumptions and methodology used for the calculation of appropriate reserves required to be established, maintained and administered in accordance with sound actuarial principles pursuant to (a)3 above;
11. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-2.22; and
12. For environmental impairment liability funds, a full description of all coverages to be provided, including, but not limited to, defense services, environmental management or risk management services, above-ground/underground storage tank and/or off-site storage/spills involving sudden and accidental claims, and third-party liability claims.

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he deems it expedient, but at a minimum not less frequently than once every five years, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of any fund. For the purpose of the examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, or may request the fund commissioners or the executive committee, if any, to authorize and employ such person or persons to conduct the same or to assist therein as he deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the fund examined to the appropriate entity or person upon presentation of a detailed account.

1. For purposes of completing an examination of any fund pursuant to N.J.S.A. 40A:10-47 and this subchapter, the Commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the fund.

2. Every fund or person from whom information is sought, including its officers, directors and agents, shall provide the Commissioner or other person appointed as an examiner pursuant to this subsection, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the fund being examined.

3. The administrator and servicing organization(s), and their officers, directors, employees and agents, or other person, shall facilitate the examination and aid in the examination so far as it is in their power to do so. The Commissioner may, in accordance with the procedures set forth in N.J.A.C. 11:15-2.8, suspend or terminate the authority of any fund, if the fund, by its administrator, servicing organizations, or officers, directors, employees, or agents thereof, refuses to submit to an examination or to comply with any reasonable request of the examiners.

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Added new (c)8 and 9; made more specific various provisions throughout.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Combined (a)8 and (a)9 as (a)8; redesignated (a)10 as (a)9; added a new (a)10; added (b)10.i through (b)10.vi, (b)13, (b)14, (c)2.i, (c)8.i, (c)10, (c)11, (e)9 through (e)12 and (f)1 through (f)3 and made other minor amendments.

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

11:15-2.7 Disapproval of bylaws and plan of risk management

If the Commissioner determines that the bylaws or plan of risk management of the fund or any subsequent amendments thereto do not contain all of the information set forth in N.J.A.C. 11:15-2.6, are not submitted in the proper format set forth in N.J.A.C. 11:15-2.5, or otherwise do not meet the requirements of N.J.S.A. 40A:10-36 et seq. or this subchapter, the Commissioner shall disapprove the bylaws or plan of risk management and notify the fund in writing, which notice shall contain the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved by the Commissioner within 30 working days of receipt of the bylaws and plan of risk management or any amendments or changes thereto, which contain all of the information and documentation set forth in N.J.A.C. 11:15-2.6, in the format set forth in N.J.A.C. 11:15-2.5, and which meet the requirements of N.J.S.A. 40A:10-36 et seq. and this subchapter, the bylaws and plan shall be deemed approved.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Provided citations to appropriate N.J.S.A. sections and made minor changes.

Amended by R.1996 d.534, effective November 18, 1996.
See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

11:15-2.8 Revocation of approval

(a) After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of any fund, or direct or take any action deemed necessary for good cause, to enable a fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if a fund:

1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes or may cause an adverse affect upon the ability of the fund to pay expected losses;
2. Fails to pay any fee or assessment;
3. Fails to pay any claim within 30 days after a final judgment is rendered against the fund or the fund's obligation for such claim otherwise becomes final;
4. Fails to comply with any of the provisions of N.J.S.A. 40A:10-36 et seq. or this subchapter, or with any lawful order of the Commissioner with the time prescribed; or
5. Fails to follow its approved bylaws or plan of risk management.

(b) In addition, the Commissioner may suspend or terminate a fund's authority if, after notice and opportunity for hearing, he or she finds that:

1. There was a material misrepresentation in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs;

2. The fund, or any of its commissioners, administrator, servicing organization or agents has otherwise shown itself to be untrustworthy or incompetent; or

3. The fund, its commissioners, administrator, servicing organization or agents has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Expanded Commissioners' powers in (a) and including servicing organizations and their agents in (b).

Amended by R.1996 d.534, effective November 18, 1996.
See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

11:15-2.9 Approval of nonmembers

(a) Prospective new members of the fund shall submit an application for membership to the fund's commissioners, or executive committee, as applicable, on a form acceptable to the Commissioner. Such application shall include a copy of the resolution of participation and executed indemnity trust agreement. The commissioners or executive committee may approve or disapprove the application for additional members, pursuant to the bylaws of the fund.

(b) Any application approved by the fund shall within 15 days of approval by the fund be filed with the Department and the Department of Community Affairs and shall be accompanied by a revised budget with assessment detail, if otherwise required pursuant to N.J.A.C. 11:15-2.4(f)6, an actuarial statement regarding the adequacy of the member's assessment to cover anticipated losses; and any amendments to the fund's bylaws and plan of risk management as may be necessary. The fund shall file only the specific changes to the bylaws or risk management program in effect for the current fund year. Where a fund purchases direct insurance, or where an actuary has determined a "per capita" rate for the member's assessment to cover anticipated losses which has been previously filed with the Department, actuarial certification of the adequacy of these same rates for each new member is not required. The Commissioner may nevertheless require actuarial certification of a per capita rate for the new member's assessment to cover anticipated losses if, in his or her opinion, the new member will impose an extraordinary impact on the exposure of the fund. In addition, the fund shall file the following information in the form of Exhibit D in the Appendix incorporated herein by reference with the Department and Department of Community Affairs within 15 days after approval of a new member:

1. The name and address of the new member;
2. The effective date of coverage;
3. The name of the new member's risk manager;
4. The name of the new member's fund commissioners and alternates in accordance with N.J.A.C. 11:15-2.6(a);
5. The lines of coverage for which the new member participates;

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Exception to requirement of separate administrative account added.

11:15-2.15 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessment as required by the joint insurance fund. During the first year of operation of a joint insurance fund these contributions shall be paid in two equal installments, the first installment payable no later than January 15 and the second installment payable no later than May 15 or in any other manner that the Commissioner in his discretion may direct. Subsequent years' assessments may be paid in such installments as shall be provided in the fund's bylaws, provided, however, that the full assessment shall be paid by each member no later than August 1, or in such other manner as provided in the fund's bylaws as approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(b) Each member's annual assessment shall consist of an amount allocated for the administrative account, payment of interest and repayment of principal on bonds issued for environmental impairment liability funds, when appropriate, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which such member participates.

(c) The total amount of each member's annual assessments to the fund shall be certified by the fund commissioners to the governing body of each participant at least one month prior to the beginning of the next fiscal year. As a condition of continued participation in the fund, each member shall pay the amount certified at such time and in such manner provided in the fund's bylaws.

(d) Unless otherwise approved by the Commissioner, the annual assessment of each fund member providing for the self-insurance of workers' compensation and employers' liability coverages shall be based upon the Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual on file with the Commissioner. The Commissioner may withdraw his or her approval of any assessment if he or she finds that such assessment is unreasonable or inadequate for the members of the fund to which it applies. In taking any action under this section, the Commissioner may require that the fund commissioners, the executive committee, the administrator, any servicing organization or agent of the fund provide such information as he or she deems necessary.

(e) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-2.16.

(f) In the case of an environmental liability fund, notwithstanding any provision of this section to the contrary, an annual assessment may be funded by proceeds of any bonds issued by the fund pursuant to N.J.S.A. 40A:10-38.1, including any interest income earned thereon, in an amount not to

exceed 25 percent of the amount of such assessment. Any remaining amounts from the proceeds of a bond issue and interest income shall be deposited in the contingency account established pursuant to N.J.A.C. 11:15-2.13(b). The 25 percent limitation shall not apply to the funding of any supplemental assessments that may be required pursuant to N.J.A.C. 11:15-2.16. In no event shall the proceeds of a bond issue be used to replenish the administrative account, but interest income earned on such proceeds may be used for this purpose.

Emergency amendment, R.1984 d.616, effective December 24, 1984 (expires February 22, 1985).

See: 17 N.J.R. 218(a).

(a) substantially amended.

Adopted by R.1985 d.128, effective February 22, 1985.

See: 17 N.J.R. 218(a), 17 N.J.R. 709(a).

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Provided for payment of interest and principal on environmental impairment liability fund bonds in (a); amended basis of worker's compensation assessment in (d) and added (f).

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

11:15-2.16 Supplemental assessments

(a) Each fund shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the fund's claim or loss retention or administrative accounts to assure payment of the fund's obligations, including payment of benefits under the workers' compensation law.

1. The fund shall assess each participating member an additional proportionate amount, as provided in the fund's bylaws and plan of risk management or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The fund commissioners shall submit to the Commissioner and the Commissioner of the Department of Community Affairs a report of the causes of the account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The participants shall provide such additional assessments in accordance with the provisions of Local Budget Law (N.J.S.A. 40A:4-1 et seq.), or Local Authority Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.), as applicable.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Technical corrections.

11:15-2.17 Failure or refusal to provide required assessments

Should any member of a fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify in writing the Commissioner and the Commissioner of the Department of Community Affairs.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).
Technical corrections.

11:15-2.18 Individual loss reserve funds

(a) Whenever the risk management plan of a joint insurance fund requires the fund's members to individually retain a specific amount of risk, potential liability, or incurred losses, the participant shall provide for such liability, or incurred loss:

1. As a deductible to be charged to the operating expenses of the incurring department or agency;
2. Through a separate item of appropriation for the fund year in its annual budget; or
3. Through establishment of an insurance fund pursuant to N.J.S.A. 40A:10-1 et seq.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).
In (a)2 changed year of appropriation to the fund year.

11:15-2.19 Certification of funds

Prior to any commitment or agreement requiring the expenditures of funds by the fund, the custodian of the fund's assets shall certify the availability of sufficient unencumbered funds in the account to fully pay all charges or commitments to be accepted.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).
Minor wording changes.

11:15-2.20 Investments; application of investment income

(a) The free balance of any account maintained by a fund, whether for claim or loss retention, administrative, contingency, or, in the case of an environmental impairment liability fund, the contingency account to be funded by bond proceeds pursuant to N.J.A.C. 11:15-2.13(b), shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b. In addition, the fund commissioners may transfer monies held to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the fund in accordance with standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. Any monies transferred to the Director for investment may not thereafter be withdrawn except under the conditions set forth in N.J.S.A. 40A:10-38b.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be allocated to each such account by fund year.

(c) The investment and interest income earned by investment of the assets of administrative and contingency accounts shall be credited to that account.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

At (a) provided for investment of environmental impairment liability contingency funds and transfer of monies to the Treasury Department's Division of Investment for investment on behalf of the fund.

11:15-2.21 Refund; interyear fund transfers

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the fund not sooner than the time periods after the end of the fiscal year as set forth in (b) and (c) below.

(b) The fund may seek approval from the Commissioner to make initial and subsequent refund payments from a claims or loss retention fund account remaining from any year which has been completed for at least the time periods set forth in this subsection and (c) below by submitting a written notification to the Department and Department of Community Affairs at least 30 days prior to the proposed refund. For a fund other than an environmental impairment liability fund, if the Commissioner does not disapprove, in writing, the request to make the refund within the 30 day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30 day period. An environmental impairment liability fund may not refund any monies without the prior approval of the Commissioner. The written notification shall be accompanied by appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that the loss and loss expense reserves are adequate for the fund to have an overall surplus for that fiscal year; and such other information that the Commissioner may require. For an environmental impairment liability fund, the initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus in the account from which the refund is made must equal or exceed 35 percent of unpaid claims for the account for the fiscal year, plus an amount in the fund's debt service account equal to two years' debt service on any outstanding bonds. Unpaid claim reserves, including reserves for incurred but not reported claims, shall be established at full value and not discounted, and shall be so certified by an actuary. For a fund other than an environmental impairment liability fund, the initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus in the account from which the refund is made must equal or exceed the surplus retention requirement to be calculated as follows:

(e) The fund commissioners or the executive committee, if any, may designate an administrator or lead agency to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee meetings, if any, shall detail the areas of authority delegated to the administrator or lead agency.

(f) Any employee, officer or director of an administrator, servicing organization or insurance producer that may be appointed pursuant to N.J.A.C. 11:15-2.6(c)10 shall disclose to the fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

In (a) and (b) deleted Commissioner's prior approval in favor of notification of the Commissioner: renumbered former (d) as (e); and added new (d) and (f).

11:15-2.27 Conflict of interest

All officials or employees of a participating local unit or any members of the family of such officials or employees shall comply with N.J.S.A. 40A:9-22.1 et seq. (the "Local Government Ethics Law").

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Rewrote section.

11:15-2.28 Notice and hearings

(a) The Commissioner shall give prior written notice of any proposed suspension or revocation of authority, cease and desist order, or other enforcement action to the fund commissioners, executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the interested party of its right to request a hearing on the proposed enforcement action. A copy of such written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The interested party involved shall have 20 days from the mailing of the notice to request a hearing, on the proposed enforcement action. Such a hearing shall be conducted in accordance with 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. Failure to mail a request for hearing within the time prescribed shall result in the suspension, revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

At (b) provided for hearings in accordance with the Administrative Procedure Act.

11:15-2.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-2.28, the Commissioner may issue an order revoking or suspending a fund's authority or requiring a person or fund to cease and desist from engaging in an act or practice to be in violation of any provision of N.J.S.A. 40A:10-36 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, the Commissioner may issue an order requiring the fund commissioners, or the executive committee, if any, to dismiss an administrator or servicing organization or terminate the service contract of an administrator or servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibility by such administrator or servicing organization, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Substituted "fund" for "joint insurance fund" and added references to "servicing organizations" throughout.

11:15-2.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

APPENDIX (RESERVED)

New Rule, R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Repealed by R.1996 d.534, effective November 18, 1996.
See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

Appendix was "Exhibit A: New Jersey Department of Insurance Certification of Joint Insurance Fund Professionals" and "Exhibit B: New Jersey Department of Insurance Fund Professionals".

**SUBCHAPTER 3. JOINT INSURANCE FUNDS
FOR LOCAL GOVERNMENTAL UNITS
PROVIDING GROUP HEALTH AND TERM
LIFE BENEFITS**

11:15-3.1 Purpose and scope

(a) This subchapter sets forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more local units for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents, and to any other person eligible for coverage by a member local unit pursuant to N.J.S.A. 40A:10-36 et seq.

(b) This subchapter shall apply to all local units seeking to form a joint insurance fund for the purpose of providing contributory and non-contributory group health or group term life insurance and all joint insurance funds formed for such purpose pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) No local unit of government shall join together with any other local unit or units to act as a joint insurance fund for the purpose of providing contributory or non-contributory group health or group term life insurance except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

(d) The authority of a joint insurance fund formed for the purpose of providing contributory and non-contributory group health insurance or group term life insurance, or both, shall be limited solely to those coverages.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.2 Definitions

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

“Actuary” in the case of health insurance means a fellow in good standing of the Society of Actuaries or the Casualty Actuarial Society with at least three years recent experience in health insurance pricing and reserving; “actuary” in the case of life insurance means a fellow in good standing of the Society of Actuaries with at least three years recent experience in life insurance pricing and reserving.

“Administrator” means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of the fund, a fund member or an independent contractor.

“Chairman” means the chairman of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

“Department” means the Department of Banking and Insurance.

“Dependent” means dependent as defined pursuant to N.J.S.A. 40A:10-16.

“Executive committee” means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq.

“Fiscal year” or “fund year” means the calendar year January 1 through December 31.

“Health insurance” means health insurance as defined pursuant to N.J.S.A. 17B:17-4; service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State, including basic health care services and/or supplemental health care services provided by health maintenance organizations; or dental care services provided by dental plan organizations and dental service corporations.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to the agreement arising from their participation in the fund.

“Insolvent fund” means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after July 19, 1993.

“Joint insurance fund” or “fund” means a group established by two or more local units of government to create a self-insurance fund for the sole purpose of providing contributory or non-contributory group health insurance or group term life insurance to their employees or dependants and to any other person eligible for coverage by a member local unit pursuant to law, approved by the Department pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

“Joint insurance fund commissioners” means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36 et seq.

“Lead agency” means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

“Life insurance” means life insurance as defined pursuant to N.J.S.A. 17B:117-3.

“Local unit of government,” “local unit” or “member” means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A-25.40 and 40A:10-51) or any contracting unit as defined in N.J.S.A. 40A:11-2.

“Member” means a local unit which is a member of a local unit joint insurance fund formed pursuant to this subchapter.

“Net current surplus” or “surplus” means the excess of the fund’s unencumbered assets over its reserves and liabilities.

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Run-in liability” means liability for claims incurred but not reported by a prospective member in connection with the provision of health benefits during the period prior to joining the fund.

“Run-out liability” means liability for claims incurred but not reported by a former fund member during the period it was a member.

“Secretary” means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

“Servicing organization” or “program manager” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any functions as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of plan documents, employee booklets and other documents, risk selection and pricing, stop-loss or reinsurance producer services which include producer negotiations on behalf of the fund for stop-loss or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. or this subchapter, and such other duties as designated by the fund.

“Stop-loss insurance” or “reinsurance” means insurance, purchased from an insurer authorized or admitted in the State of New Jersey to transact life or health insurance, as

applicable, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per individual or annual aggregate basis.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.3 Agreement to join joint insurance fund; duration

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution or ordinance shall provide for execution of a written agreement specifically conditioning membership on acceptance of the fund’s bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-36 et seq. The agreement shall specify the extent of the local unit’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6) and subject to N.J.A.C. 11:15-3.10. The agreement shall also specify that the fund members have never defaulted on claims if self-insured, and, if not self-insured, have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance prior to the execution of the new membership agreement. In lieu of filing copies of the new agreement and new indemnity and trust agreement referred to in N.J.A.C. 11:15-3.6(b)6 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the “Local Fiscal Affairs Law” (N.J.S.A. 40A:5-1 et seq.), the “Local Public Contracts Law” (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:34), and the various statutes authorizing

the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:16I-1 et seq.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall utilize as its fiscal year, the calendar year January 1 through December 31.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2. The custodian shall report to the fund commissioners at least quarterly on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare, not later than 60 days prior to the beginning of the fund's subsequent fiscal year, the proposed budget for that subsequent year. The budget shall identify the proposed items and amounts of expenditure for its operation in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held in accordance with N.J.S.A. 40A:4-1 et seq. giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than the end of the fund's current fiscal year, the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-3.21(e), shall be retained by the fund administrator or program manager at the discretion of the fund commissioners. All books, records, files and documents of the fund shall be retained for not less than five years.

(h) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. The reports shall be made at least quarterly and may be made more frequently at the discretion of the trustees and shall include, but not be limited to, the minutes, the administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that the reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. The reports shall also be made available to the Department for review during any examination of the joint insurance fund. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.

(j) All officers, employees and agents, including the administrator, servicing organization and program manager of the joint insurance fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

(l) Each fund shall cover a minimum of 1,000 employees in a self-funded health care plan providing hospital, surgical and medical benefits. A fund may cover less than 1,000 employees with the approval of the Commissioner if he or she determines that the proposed risk retention is actuarially sound in relationship to the projected employee participation.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioners of Banking and Insurance and Community Affairs, as provided in N.J.S.A. 40A:10-41, its bylaws and plan of risk management and any subsequent amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified at N.J.A.C. 11:15-3.6(c) and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-3.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth in this section. All information shall be submitted completely and accurately.

1. All filings and accompanying documents shall be submitted to the Department and the Department of Community Affairs.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-3.6 shall constitute the fund's bylaws and plan of risk management for purposes of N.J.S.A. 40A:10-41. In order to facilitate the filing and review

process, the review of a filing shall be separated into two stages. The information set forth in N.J.A.C. 11:15-5.6(a) through (d) constitutes the initial stage. Within 90 days of the Commissioner's acceptance of the initial information filed, the fund shall complete the filing process by submitting the information set forth in N.J.A.C. 11:15-3.6(e). Failure to file the required subsequent information within 90 days may result in the disapproval of the fund's filing. No joint insurance fund shall insure, contract or provide insurance coverage to its members until its bylaws and plan of risk management and other information required pursuant to N.J.A.C. 11:15-3.6 have been approved by the Commissioner and such approval becomes effective pursuant to (c) below.

(c) In order to provide a sufficient time for transition from the plan for the provision of health or term life benefits in effect immediately prior to joining the fund to the plan for the provision of such benefits through the fund, any approval of a fund's bylaws and plan of risk management shall take effect and become operative 60 days after the date of approval.

(d) No amendment to a fund's bylaws or plan of risk management, or change in the information or documentation required to accompany the filing of the fund's bylaws of plan of risk management as provided in (a) above, shall take effect until the amendment or change is approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(e) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-3.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department at:

1. New Jersey Department of Banking and Insurance

Division of Life and Health
 Attn. Municipal Health JIF Admissions
 20 West State Street
 CN 325
 Trenton, NJ 08625; and

2. New Jersey Department of Community Affairs

Division of Local Government Services
 101 South Broad Street
 CN 803
 Trenton, New Jersey 08625-0803.

Amended by R.1996 d.535, effective November 18, 1996.
 See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.6 Bylaws and plan of risk management; contents

(a) The prospective commissioners of a joint insurance fund shall prepare and, after the approval by resolution of the governing body of each participating local governmental unit, adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and alternate commissioners and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency;
2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;
3. Procedures for the establishment, maintenance and administration of appropriate reserves in accordance with sound actuarial principles, including the assumptions and methodology to be used for the calculation of policy and claim reserves;
4. Procedures for the purchase of direct insurance, or reinsurance, if any;
5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-3.16;
6. Procedures governing loss adjustment and legal fees;
7. Procedures and admissions criteria for the joining of the fund by a non-member local unit;
8. Procedures in compliance with N.J.A.C. 11:15-3.10 for the withdrawal from the fund by a local unit;
9. Procedures for the expulsion of a member local unit;
10. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations; and

11. Procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments.

(b) In addition, the bylaws shall:

1. Include the fund's name;
2. Provide that upon each fiscal year renewal of the fund, coverages and benefit levels as may be determined and specified by the fund and its members; provided the affected persons receive written notice of any changes in coverage or benefit levels at least 30 days prior to taking effect and that a copy of the written notice and the relevant rate changes shall be filed with the Department 30 days prior to taking effect;
3. Specify the subrogation rights of the fund;
4. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;
5. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-3.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and the Department of Community Affairs;
6. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-3.2, and in a form satisfactory to the Commissioner.
 - i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.
 - ii. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts by fund year for each of the following from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums for each risk or liability:
 - (1) Employer contributions to group health insurance;
 - (2) Employee contributions to contributory group health insurance;
 - (3) Employer contributions to group term life insurance;
 - (4) Employee contributions to contributory group term life insurance;
 - (5) Employer contributions to contingency accounts;

(6) Employee contributions to contingency accounts; and

(7) Other trust accounts as required by the Commissioner.

iii. Notwithstanding (b)6ii above to the contrary, a fund shall not be required to establish separate trust accounts for employee contributions, provided the fund provides a plan in its bylaws as required by (b)7 below which provides for the recording and accounting of the employee contributions of each member.

iv. A fund shall not otherwise be required to establish separate trust accounts as required by (b)6ii above for each fund year, provided the fund provides a plan in its bylaws which provides for the recording and accounting of all transactions by fund year;

v. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner;

7. If applicable pursuant to (b)6iii or iv above, be accompanied by a plan which provides for the recording and accounting of the employee contributions of each member, including, but not limited to, the collection and distribution of such employee contributions, and/or a plan for the recording and accounting of all transactions by fund year;

8. Be accompanied by a copy of a resolution or ordinance of intent to form the fund from at least two local units;

9. Be accompanied by a feasibility study which shall include, but not be limited to:

i. The proposed date that the fund intends to begin providing coverage;

ii. The proposed location of the fund's principal office;

iii. The name and address of the fund's prospective charter members;

iv. The pro forma budget and assessments for the fund's first fiscal year;

v. A certification by an actuary that the pro forma budget is actuarially sound; and

vi. The minimum number of employees to be covered before the fund begins to provide coverage. Funds providing health or life insurance on a self-insured basis shall have membership resolutions from local units representing at least 1,000 covered employees before beginning to provide coverage; and

10. Be accompanied by a non-refundable filing fee in the amount of \$1,500.

(c) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided in (a) above, file its plan of

risk management and any amendments thereto with the Department as provided in N.J.S.A. 40A:10-41 containing the information as specified in (d) below.

(d) The commissioners shall prepare, or cause to be prepared, a risk management program for the joint insurance fund. The plan description shall include, but not be limited to:

1. The lines of coverage to be provided and the minimum participation required of any member which, for the initial fiscal year of the fund, shall be the coverages and benefit levels of the member local units immediately prior to joining the fund unless changes in the coverages or benefit levels are approved by the Commissioner pursuant to N.J.A.C. 11:15-3.7;

2. The limits of coverage, whether self-insurance, insurance purchased from an insurer, or reinsurance;

3. The amount of risk to be retained by the fund on a self insured basis, which for group term life insurance shall not exceed a face amount of \$5,000 per covered employee;

4. The assumptions and methodology to be used to calculate the policy and claims reserves;

5. The proposed method of assessing contributions to be paid by each member of the fund;

6. Coverage to be purchased from an insurer if any;

7. Stop-loss insurance or reinsurance to be purchased, as required pursuant to N.J.A.C. 11:15-3.23, and the amount of premium therefor;

8. The initial and renewal assessment methodologies, including rating methodologies, for the plan and individual members including actuarial principles, assumptions and methods of calculations in sufficient detail to enable the Commissioner to determine that the charges are not excessive, inadequate or unfairly discriminatory;

9. The rating periods for initial members and for members joining the fund during the fund's fiscal year;

10. The adjusted assessments and the underlying factors considered in the development of the adjusted rates, if the rates for members joining the fund during the fund's fiscal year are to be adjusted;

11. Provision of preferred provider, managed care and health maintenance organization networks and copies of any proposed and executed contracts or agreements for such services;

12. Procedures for open enrollment for all covered individuals not later than the first month of the fund's initial fiscal year, and annually thereafter for each subsequent fiscal year;

13. Options for the conversion of benefits, if any, and a detailed description of procedures for continuation of

coverage for former employees of a member which terminates its membership in the fund;

14. The disclosure of all benefit limits for all covered benefits in plan booklets, certificates or other documents made available to covered participants;

15. The participation rules when all or part of the premium is to be derived from funds contributed by covered employees;

16. Retirees coverage including the assessment and rating plan for such coverage;

17. The limits of coverage for newborn or adopted children, which shall be automatic from birth or adoption for 31 days and which may include an additional assessment for coverage beyond 31 days;

18. Provision for plan documents, benefit plan booklets and specimens of such which must contain at least the following information and be provided to all fund participants within 30 days of membership or renewal:

i. General information, including the following:

- (1) Enrollment procedures and eligibility;
- (2) Dependent eligibility;
- (3) The time coverage begins;
- (4) Timeframes within which coverage may be changed;
- (5) The time coverage ends;
- (6) Provisions for continuation of coverage;
- (7) Conversion privileges; and
- (8) The forms and instructions for enrollment;

ii. A description of benefits, including the following:

- (1) Definitions;
- (2) A description of each benefit, including the following:
 - (A) Eligible services and supplies;
 - (B) Deductibles and co-payments; and
 - (C) Examples of the above as needed; and
- (3) Exclusions;

iii. Claim procedures, including the following:

- (1) Submission of claims;
- (2) Proof of loss;
- (3) Complaint and internal appeal procedures; and

iv. Cost containment programs, including the following:

- (1) Pre-admission programs;

(2) Second surgical opinion programs;

(3) Other cost containment programs; and

(4) Application and level of employee penalties (if any);

19. A summary statement which describes the benefits currently provided to covered employees by each prospective member of the fund, and the benefits proposed to be provided by the fund;

20. The procedures for the closure of fund years including the maintenance of all relevant accounting records;

21. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-5.21;

22. Whether the fund will be responsible for the "run-in" or "run-out" liability of each member;

i. If the fund is responsible for the "run-in" or "run-out" liability of a member, or both, the fund shall demonstrate that it has so notified all prospective members of this obligation, and the fund shall demonstrate that it has made adequate provision for the funding of those obligations, which shall not be on a cash flow basis, and which shall be certified by an actuary; and

ii. If the fund does not assume either the "run-in" or "run-out" liability of a member, the fund shall indicate the manner by which these obligations will be satisfied; and

23. Provision for a claim audit to be performed by an individual or corporation with experience in auditing self-insured health plans.

i. Such claims audit shall be performed upon completion of the first fund year after the fund's inception, and at least once every three years thereafter, or at such time as may be required by the Commissioner.

(e) The Commissioner shall notify the fund in writing whether the initial information submitted pursuant to (a) through (d) above meets the requirements of N.J.S.A. 40A:10-36 et seq. and this subchapter and whether the initial information has been accepted. If the Commissioner does not reject the initial information within 30 working days, the initial information shall be deemed accepted. Within 90 calendar days of the Commissioner's acceptance of the information submitted pursuant to (a), (b), (c) and (d) above, the fund shall complete the application process by submitting the following additional information and documentation:

1. The location of the fund's principal office, date of organization, and name and address of each initial member;

2. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

3. Copies of the fund's prospective and executed agreements or contracts, and any renewal or new agreements or contracts with any administrator, servicing organization or program manager. Such agreements or contracts shall specify the duties of, and the compensation to be paid to, each such entity. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization, program manager or administrator, as well as any services to be performed which are subcontracted.

i. To the extent the terms and conditions of any renewal agreement or contract and the parties thereto remain unchanged from the prior year, a copy of the renewal agreement or contract shall not be required. In lieu of filing a copy of the renewal agreement, the fund shall file a notice with the Department and Department of Community Affairs in the format set forth in Exhibit A in the Appendix incorporated herein by reference, that the agreement has been renewed, and that the terms and conditions of the agreement or contract and parties thereto remain unchanged from the prior year;

ii. Copies of any changes to the agreements or contracts shall be filed with the Department and Department of Community Affairs within 10 days after such changes are approved by the fund;

4. A cash management plan, which shall include the designation of depository institution(s) for the holding of fund monies and the fund's investment policy;

5. A fidelity bond for all persons handling fund assets in a form and amount acceptable to the Commissioner;

6. A surety bond for the claims administrator or any other servicing organization deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner; and a surety bond for any other servicing organization as deemed appropriate by the fund commissioners in a form and amount acceptable to the fund commissioners;

7. Errors and omissions coverage for the servicing organization, program manager, administrator, and producer who negotiates stop-loss or reinsurance on behalf of the fund;

8. A designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

9. A list of commissioners, officers, executive committee members, and servicing organizations, updated annually;

10. Data forms, in the format set forth in Exhibit B in the Appendix incorporated herein by reference, incorporating the appropriate and necessary professional qualifications for senior officers and directors of the administrator and servicing organizations providing services to the fund, updated and submitted to the Commissioner annually. An entity providing services to more than one fund may submit one data form for all funds formed pursuant to this subchapter which the entity services;

i. To the extent the information contained in the data forms remains unchanged from the prior year, the fund need not file updated forms provided that the fund files a notice with the Department and Department of Community Affairs, in the format set forth in Exhibit C in the Appendix incorporated herein by reference, that the same individuals are utilized and that the information in the data forms remains unchanged from the prior year;

11. Copies of each insurance and reinsurance policy purchased by the fund, including a copy of the cover note or binder;

12. A pro forma financial statement based on the fund's actual membership on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

13. Where self-insured, a plan for specific and aggregate stop-loss insurance or reinsurance and/or for retention in accordance with sound actuarial principles and the plan of risk management;

14. Proof of competent personnel and ample facilities within the fund organization with respect to claims administration, including a claims processing manual, and underwriting matters, or present a contract with a qualified servicing organization(s) for the provision of such services specifying compensation schedules and standards of performance;

15. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the fund. The description shall include, but not be limited to, copies of all producer contracts, which shall include a description of the producers' obligations, responsibilities and compensation; the duration of such contracts; and an indication whether the contracts are subject to renewal. Copies of renewal contracts or a notice of renewal shall also be provided consistent with the requirements set forth in (e)3 above.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable;

16. The claims handling procedure to be utilized by the fund which shall provide for the prompt, fair, equitable

and confidential settlement of claims and which shall be administered in compliance with N.J.S.A. 17B:30-13.1 and 13.2, and N.J.A.C. 11:2-17 and 11:15-3.22;

17. The complaint handling procedure to be utilized by the fund which shall provide for the confidentiality of the claimant's identity in compliance with N.J.A.C. 11:15-3.22 and including, but not limited to, procedures for the resolution of disputed claims operated and adjudicated by an independent organization or arbitrator, which shall be at no cost to the claimant; and

18. A copy of the application form to be utilized by the fund for prospective new members applying for membership in the fund.

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he or she deems it expedient, but at a minimum not less frequently than once every five years, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of any fund. For the purpose of the examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, or may request the fund commissioners or the executive committee, if any, to authorize and employ such person or persons to conduct the same or to assist therein as he or she deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the fund examined to the appropriate entity or person upon presentation of a detailed account.

1. For purposes of completing an examination of any fund pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter, the Commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the fund.

2. Every fund or person from whom information is sought, including its officers, directors and agents, shall provide the Commissioner or other person appointed as an examiner pursuant to this subsection, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the fund being examined.

3. The administrator and servicing organization(s), and their officers, directors, employees and agents, or other person, shall facilitate the examination and aid in the examination so far as it is in their power to do so. The Commissioner may, in accordance with the procedure set forth in N.J.A.C. 11:15-3.8, suspend or terminate the authority of any fund, if the fund, by its administrator, servicing organizations, or officers, directors, employees, or agents thereof, refuses to submit to an examination or to comply with any reasonable request of the examiners.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.7 Disapproval of bylaws and plan of risk management

(a) If the Commissioner determines that the bylaws or plan of risk management of the fund and all other information required pursuant to N.J.A.C. 11:15-3.6, or any subsequent amendments or changes thereto, do not contain all of the information set forth in N.J.A.C. 11:15-3.6, is not submitted in the proper format set forth in N.J.A.C. 11:15-3.5, or otherwise do not meet the requirements of N.J.S.A. 40A:10-36 et seq. or this subchapter, the Commissioner shall disapprove the bylaws or plan of risk management and shall notify the fund in writing, which notice shall contain the specific reasons for disapproval, and the requirements to be met before approval may be granted.

(b) If, after submission of all of the information set forth in N.J.A.C. 11:15-3.6, the bylaws and plan of risk management containing all of the information required by N.J.A.C. 11:15-3.6, in the format required by N.J.A.C. 11:15-3.5, are not disapproved by the Commissioner within 30 working days of receipt of the supplemental information set forth in N.J.A.C. 11:15-3.6(e), the bylaws and plan shall be deemed approved, pursuant to N.J.S.A. 40A:10-41c. Such approval shall become effective 60 days after the date of approval pursuant to N.J.A.C. 11:15-3.3(c).

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.8 Suspension, termination, assumption of control, or other action by Commissioner

(a) After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of any joint insurance fund, or direct or take any action deemed necessary for good cause, to enable a fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if a fund:

1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes an adverse effect upon the ability of the fund to pay expected losses;
2. Fails to timely pay any fee or assessment, as required under this subchapter;
3. Fails to comply with any of the provisions of N.J.S.A. 40A:10-36 et seq. or this subchapter, or with any lawful order of the Commissioner within the time prescribed; or
4. Fails to follow its approved bylaws or plan of risk management.

(b) In addition, the Commissioner may terminate or suspend a fund's authority if, after notice and opportunity for a hearing, he or she finds that:

(b) The interested party involved shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with 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. Failure to mail a request for a hearing within the time prescribed shall result in the suspension, revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order revoking or suspending a fund's authority or requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 40A:10-36 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring the joint insurance fund commissioners, or the executive committee, if any to dismiss an administrator, servicing organization or program manager or terminate the contract of an administrator, servicing organization or program manager because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by the administrator, servicing organization or program manager, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

SUBCHAPTER 4. JOINT INSURANCE FUNDS FOR SCHOOL BOARDS PROVIDING PROPERTY AND LIABILITY COVERAGES

Authority

N.J.S.A. 17:1-8.1, 17:1C-6(e), 18A:18B-1 et seq., and P.L. 1995. c.74.

Source and Effective Date

R.1996 d.277, effective June 17, 1996.
See: 28 N.J.R. 765(a), 28 N.J.R. 3135(a).

11:15-4.1 Purpose and scope

(a) The subchapter sets forth the filing requirements and approval procedures for school board joint insurance funds pursuant to N.J.S.A. 18A:18B-1 et seq.

(b) This subchapter applies to all school board joint insurance funds formed pursuant to N.J.S.A. 18A:18B-1 et seq.

11:15-4.2 Definitions

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

“Actuary” means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an Associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

“Administrator” means a person, partnership, corporation or other legal entity engaged by the joint insurance fund trustees, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund trustees and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency an employee of the fund, a fund member, or an independent contractor.

“Automobile and equipment liability” means liability resulting from the use of or operation of motor vehicles, equipment or apparatus owned by or controlled by the member.

“Chairman” means the chairman of the board of trustees as may be elected or designated by the trustees.

“Commissioner” means the Commissioner of the Department of Insurance.

“Department” means the Department of Insurance.

“Employers' liability” means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his or her employment by the employer, which is not covered by a workers' compensation law.

“Excess carrier” means an insurer that provides excess insurance or reinsurance to a fund.

“Excess insurance” means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per accident, or annual aggregate basis.

“Fiscal year” or “fund year” means the fiscal year July 1 through June 30.

“General liability” means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers’ compensation and employers’ liability.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial conditions, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

“Insolvent fund” means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

“Intertrust fund transfer” means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

“Interyear fund transfer” means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

“Joint insurance fund” or “fund” means a joint self-insurance fund established by a school board insurance group pursuant to N.J.S.A. 18A:18B-1 et seq. The joint self-insurance fund is a fund of public moneys from contributions made by members of a school board insurance group for the purpose of securing insurance protection, risk management programs, or related services as authorized by N.J.S.A. 18A:18B-1 et seq.

“Member” means a school board which is a member of a school board joint insurance fund.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-4.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-4.21 incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Producer” means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Property damage” means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the member.

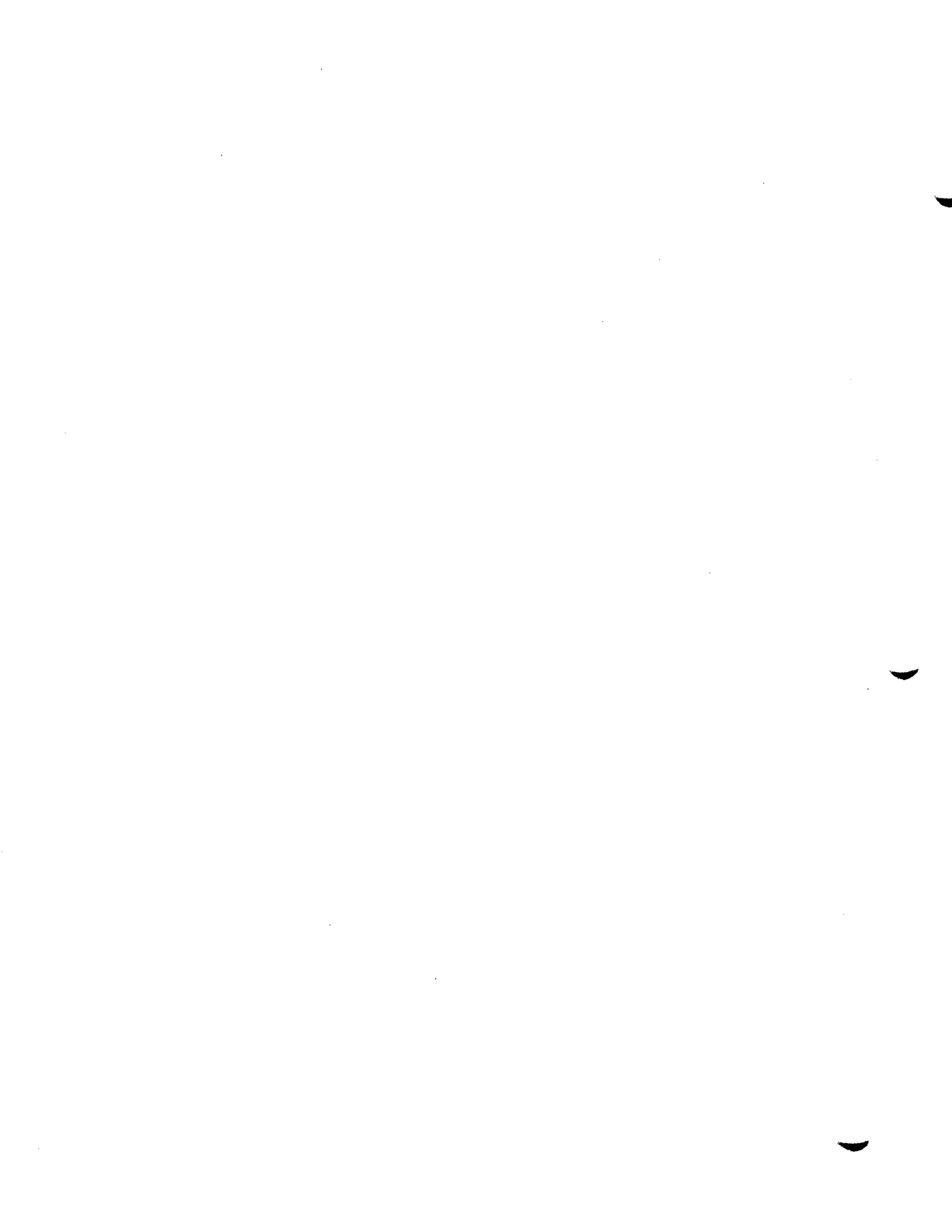
“Risk management program” means a plan and activities carried out under the plan, by a joint insurance fund to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.A. 18A:18B-1 et seq., including safety engineering and other loss prevention and control techniques. Risk management program also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the fund.

“Secretary” means the secretary of the board of trustees as may be designated by the trustees.

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the trustees including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter, and such other duties as designated by the fund.

“Trustees” means the board of trustees established pursuant to the bylaws of the joint insurance fund to govern or manage the risk management programs, joint self-insurance fund or funds and related services of the group.

“Unpaid claims” or “unpaid losses” means case reserves and reserves for incurred but not reported claims attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.



“Workers’ compensation law” means the provisions of N.J.S.A. 34:15-7 et seq.

11:15-4.3 Agreement to join joint insurance fund; duration

(a) Any two or more boards of education may form and become members of a school board joint insurance fund. A school board may take this action by resolution of the board.

(b) The resolution shall provide for execution of a written agreement specifically conditioning membership on acceptance and adoption of the fund’s bylaws. The agreement shall specify the extent of the member’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership if applicable, and shall specify that the fund members have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the joint insurance fund. In lieu of filing copies of the new agreement and indemnity and trust agreement referred to in N.J.A.C. 11:15-4.6(c)10 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

(c) A joint insurance fund formed pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter shall have the power to insure, contract or provide for any insurable interest of the member solely for the following:

1. Any loss or damage to its property, real or personal, motor vehicles, equipment or apparatus;
2. Any loss or damage from liability resulting from the use or operation of motor vehicles, equipment or apparatus owned or controlled by it;
3. Any loss or damage from liability for its own acts or omissions and for acts or omissions of its officers, employees or servants arising out of and in the course of the performance of their duties, including, but not limited to, any liability established by the “New Jersey Tort Claims Act”, N.J.S.A. 59:1-1 et seq., or by any Federal or other law;
4. Loss or damage from liability as established by N.J.S.A. 34:15-1 et seq.; or
5. Expenses of defending any claim against the school board or county college, officer, employee or servant arising out of and in the course of performance of their duties, whether or not liability exists on the claim.

11:15-4.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the Public

Schools Contracts Law (N.J.S.A. 18A:18A-1 et seq.) and the applicable regulations of the State Investment Council governing the investment of surplus public monies of the State.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of trustees.

(c) A joint insurance fund shall be governed by the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.), and all other applicable laws in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the trustees at least quarterly on investment and interest income.

(e) The trustees shall annually prepare not later than the time required by law for the preparation of the budget for school boards, the proposed budget for the fund’s subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund’s proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than June 30 of each year, the trustees shall adopt by majority vote the budget for the fund’s operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership or majority vote of a quorum of the board of trustees of the joint insurance fund.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating member.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner within 30 days of adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(f) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-4.22(e), shall be retained by the fund administrator or fund secretary, if any, at the discretion of the board of trustees.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

i. For financial information, seven years from the date of their creation; for claims information, seven years after all claims for that year have been fully paid; or

ii. Until the completion and filing of the next financial condition examination of the fund by the Commissioner.

(g) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(h) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the trustees and shall include, but not be limited to, the minutes, the trustee's or fund administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the trustees, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.

(i) All officers, employees and agents of the joint insurance fund, including the administrator and servicing organization of the fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

11:15-4.5 Bylaws and risk management program; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioner its bylaws and risk management program and any amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified in N.J.A.C. 11:15-4.6(d) and (e), and such other information as the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-4.6. The loose-leaf sheets used shall be eight and one-half inches wide by 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth in this subsection. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-4.6 shall constitute the fund's bylaws and risk management program pursuant to N.J.S.A. 18A:18B-4. No joint insurance fund shall begin providing insurance coverage to its members until its bylaws and risk management program, including all of the information required pursuant to N.J.A.C. 11:15-4.6, have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or risk management program shall take effect until such amendment is approved by the Commissioner.

(d) Within 10 days following any change in the information or documentation required to accompany the filing of the fund's bylaws or amendments thereto, as provided in (a) above, the fund shall file notice of the change with the Department.

(e) The bylaws and risk management program and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the risk management program shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-4.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions, as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Insurance
 Division of Financial Examinations
 Attn: School Board P/C JIF Admissions
 20 West State Street
 CN 325
 Trenton, New Jersey 08625-0325

11:15-4.6 Bylaws and risk management program; contents

(a) The trustees shall prepare and, after the approval by resolution of the governing body of each participating member, shall adopt bylaws for the joint insurance fund. The bylaws shall:

1. Set forth a statement of purpose of the group;
2. Set forth provisions for organization of the group, including governance by a board of trustees;
3. Provide for the delivery of a risk management program in conjunction with any joint self-insurance fund or funds which the board of trustees shall establish;
4. Set forth procedures to enforce the collection of any contributions or payments in default;
5. Set forth membership standards as required in N.J.S.A. 18A:18B-3;
6. Require that, for each joint self-insurance fund, a contract or contracts of specific and aggregate excess insurance or reinsurance is maintained;
7. Set forth procedures for:
 - i. Withdrawal from the group and a fund by a member, including any requirement that a terminated or withdrawing member provide security in a form and amount acceptable to the Commissioner or trustees, as applicable, as a guarantee for the continued payment of the member's obligations pursuant to N.J.A.C. 11:15-4.10(c);
 - ii. Termination of the group or fund and disposition of assets; and
 - iii. Determining the obligations, if any, of a member in the event that the group is unable to pay indemnification obligations and expenses payable from a fund administered by it;

8. Require an annual certified audit and an actuarial opinion statement on loss reserves pursuant to the Loss Reserve Opinions rules, N.J.A.C. 11:1-21, to be prepared and filed with the Commissioner;

9. Require an annual, supplemental semi-annual, and quarterly financial reporting schedule, as applicable, to be filed on a form prescribed by the Commissioner;

10. Require that any joint self-insurance fund or funds be developed and operated in accordance with accepted and sound actuarial practices;

11. Provide that any expenditure of moneys in a fund be in furtherance of the purpose of the fund;

12. Provide for expulsion of a member;

13. Provide procedures governing trust fund accounts, including transfers, withdrawals and distribution surplus therefrom and supplemental assessments; and

14. Set forth other provisions as desired for operation and governance of the group.

(b) The bylaws of a joint insurance fund shall provide for governance of the fund by a board of trustees selected in accordance with the provisions of the bylaws. The bylaws shall provide for trustee powers and duties and shall include, but not be limited to, the following powers of the board of trustees:

1. To determine and establish contributions and rates, loss reserves, surplus, limits of coverage, limits of excess insurance or reinsurance, coverage documents, refunds and other financial and operating policies of the group or fund;

2. To invest moneys held in trust under any fund in investments which are approved for investment by regulation of the State Investment Council for surplus public moneys of the State or, at the discretion of the board, to transfer moneys held in trust under any fund to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the board in accordance with the standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. However, any moneys transferred to the Director for investment may not thereafter be withdrawn except upon withdrawal of a member from the group or a fund or termination of the group or a fund or in specific amounts in payment of specific claims, administrative expenses or member dividends upon affidavit of the director or other chief executive officer of the group;

3. To purchase, acquire, hold, lease, sell and convey real and personal property, all of which property shall be exempt from taxation under N.J.S.A. 54:4-1 et seq.;

4. To collect and disburse all money due to or payable by the fund, or authorize such collection and disbursement;

5. To enter into contracts with other persons or with public bodies of this State for any professional, administrative or other services as may be necessary to carry out the purposes of the fund;

6. To purchase and serve as the master policyholders, if desired, for any insurance, including excess insurance or reinsurance;

7. To prepare, or cause to be prepared, a risk management program for the joint insurance fund;

8. As the need arises, from time to time, to amend the bylaws and risk management program of the fund pursuant to N.J.S.A. 18A:18B-4 and this subchapter; and

9. To do all other things necessary and proper to carry out the purposes for which the fund is established.

(c) In addition, the bylaws shall:

1. Include the fund's name, location of its principal office, date of organization, and name and address of each initial member;

2. Specify the insurance coverages to be provided by the fund and the minimum participation required of any member;

3. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

4. Be accompanied by a pro forma financial statement, with underlying assumptions and methodology, on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

5. Where self-insured, provide a plan for specific and aggregate excess insurance or reinsurance and for retention in accordance with sound actuarial principles and the risk management program;

6. Be accompanied by proof of competent personnel and ample facilities within the fund organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or present a contract with a servicing organization(s) for the provision of such services;

7. Establish the claims handling procedure to be utilized by the fund which procedure shall provide for the prompt, fair and equitable settlement of claims;

8. Establish the complaint handling procedure to be utilized by the fund;

9. Be accompanied by a sample copy of the resolution and written agreement adopted by each participating member as specified at N.J.A.C. 11:15-4.3. Within 30 days of approval, the fund shall send certified copies of the resolution and written agreement from each participant to the Commissioner;

10. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-4.2, and in a form satisfactory to the Commissioner.

i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the trustees as fiduciaries for the benefit of fund claimants.

ii. Where a fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability, and may provide for the establishment of contingency accounts, each by fund year, as follows:

(1) Workers' compensation and employers' liability;

(2) Liability, other than motor vehicle;

(3) Property damage, including automobile physical damage;

(4) Automobile liability;

(5) Defense costs for claims against the board, district, officer, employee or servant pursuant to N.J.S.A. 18A:18B-2e;

(6) General contingencies, if deemed appropriate by the fund, to replenish the administrative account established pursuant to N.J.A.C. 11:15-4.14 for that specific fund year; and

(7) Loss fund contingencies, if deemed appropriate by the fund, to replenish a trust account established pursuant to (c)10ii(1) through (5) above for that specific fund year; and where the total amount of monies assessed and allocated to the accounts established pursuant to (c)10ii(1) through (5) and this subparagraph are utilized to satisfy the amounts estimated by the fund's actuary to be necessary to pay claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability set forth in (c)10ii(1) through (5) above for that fund year.

iii. A fund shall not be otherwise required to establish separate trust accounts as required by (c)10ii above for each fund year, or for each risk or liability as specified in (c)10ii above, provided the fund provides a plan in its bylaws which provides for the recording and accounting of all transactions by fund year for each risk or liability as specified in (c)10ii above, as applicable.

iv. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner;

4. Any material changes in information from that previously submitted; and

5. Such other information as may be requested by the Department from a particular fund.

(b) In addition to the reports required pursuant to (a) above, for the initial two fiscal years of a fund, a fund shall file with the Department quarterly unaudited statements of the financial condition of the fund in a form acceptable to the Commissioner within 60 days after the end of each calendar quarter. After the initial two years, a fund shall file with the Department semiannual unaudited statements of the financial condition of the fund in a form acceptable to the Commissioner within 60 days after the end of each six-month period. The semi-annual report covering the six-month period ending June 30 shall include a compilation of the results reported in the semi-annual report for the period ending December 31 immediately preceding. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant or the actuarial opinion statement shall not be required.

11:15-4.25 Examination of funds

(a) In addition to any examination conducted pursuant to N.J.A.C. 11:15-4.6(g), the Commissioner may conduct an examination of any fund as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the fund may be insolvent or in a financial condition detrimental to its members or the public. It shall be the duty of the fund members, trustees, and administrator to notify the Commissioner of any information indicating that any fund may be in a financial condition detrimental to the fund's members or the public.

(b) The members or trustees may, upon majority vote, request that the Commissioner order an examination of any fund member which the trustees in good faith believe may be in a financial condition detrimental to other fund members or to the public.

(c) Any examination made pursuant to N.J.S.A. 18A:18B-7 and this subchapter shall be conducted in accordance with the procedures set forth in N.J.A.C. 11:15-4.6(g).

11:15-4.26 Servicing organizations; administrator

(a) No servicing organization of a fund or producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of that fund, or be an employee, officer or director of the administrator, unless notice of such interest has been provided to the trustees and members.

(b) No administrator of a fund, or its employees, officers or directors shall be an employee, officer or director of, or

have either a direct or indirect financial interest in, a servicing organization of that fund, or an insurance producer appointed by that fund pursuant to N.J.A.C. 11:15-4.6(d)10, unless notice of such interest has been provided to the trustees and members.

(c) Each contract with a servicing organization providing claims adjustment and administration services shall include a clause stating: "Unless the trustees otherwise permit, the servicing organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

(d) The fund commissioners shall notify the Department within 10 days of any determination to terminate or non-renew any agreement with a servicing organization. The notification shall include a detailed statement that sets forth the manner and method by which claims handling and other obligations performed by the servicing organization will be provided or a statement that sets forth the reasons why the fund commissioners believe that the particular service is no longer necessary.

(e) The trustees may designate an administrator to carry out the policies established by the trustees and to provide day-to-day management of the fund. The minutes of the trustees' meetings shall detail the areas of authority delegated to the administrator.

(f) Any employee, officer or director of an administrator, servicing organization, or producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10 shall disclose to the trustees any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.

11:15-4.27 Conflict of interest

All school officials and members of their immediate families shall comply with N.J.S.A. 18A:12-21 et seq. (the "School Ethics Act"), and any other applicable law governing the conduct of members, officers or employees of school boards.

11:15-4.28 Notice and hearing

(a) The Commissioner shall give prior written notice of any proposed suspension, revocation of authority, cease and desist order, or other enforcement action to the trustees or member as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the interested party of its right to request a hearing on the proposed enforcement action.

(b) The interested party involved shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be

conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for a hearing within the time prescribed shall result in the suspension, revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

11:15-4.29 Orders

(a) After notice and opportunity for a hearing, as provided in 11:15-4.28, the Commissioner may issue an order revoking or suspending a fund's authority or requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 18A:18B-1 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-4.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-4.28, the Commissioner may issue an order requiring the trustees to dismiss an administrator or servicing organization or terminate the contract of an administrator or servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by such administrator or servicing organization, or any of the employees, officers or directors thereof.

11:15-4.30 Compliance dates

(a) Except as otherwise specifically provided in this subchapter, funds subject to this subchapter shall comply with all of the requirements contained in this subchapter commencing with the fund year immediately following June 17, 1996, or December 14, 1996, whichever is later.

(b) Unless otherwise provided by this subchapter, all information and documents and any amendments thereto required by this subchapter shall be filed within 30 days from the date such information or document is due or such change or amendment has occurred.

11:15-4.31 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

SUBCHAPTER 5. JOINT INSURANCE FUNDS FOR SCHOOL BOARDS PROVIDING GROUP HEALTH AND TERM LIFE BENEFITS

Authority

N.J.S.A. 17:1C-6(e), 17:1-8.1, 18A:18B-1 et seq., and P.L. 1995, c.74.

Source and Effective Date

R.1996 d.278, effective June 17, 1996.
See: 28 N.J.R. 779(a), 28 N.J.R. 3156(a).

11:15-5.1 Purpose and scope

(a) This subchapter sets forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more school boards for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents, and to any other person eligible for coverage by a member school board pursuant to N.J.S.A. 18A:18B-1 et seq.

(b) This subchapter shall apply to all school boards seeking to form a joint insurance fund for the purpose of providing contributory and non-contributory group health or group term life insurance and all joint insurance funds formed for such purpose pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter.

(c) No school board shall join together with any other school board or school boards to act as a joint insurance fund for the purpose of providing contributory or non-contributory group health or group term life insurance except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 18A:18B-1 et seq. and this subchapter.

(d) The authority of a joint insurance fund formed for the purpose of providing contributory and non-contributory group health insurance or group term life insurance, or both, shall be limited solely to those coverages.

11:15-5.2 Definitions

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

"Actuary" in the case of health insurance means a Fellow in good standing of the Society of Actuaries or the Casualty Actuarial Society with at least three years recent experience in health insurance pricing and reserving; "actuary" in the case of life insurance means a Fellow in good standing of the Society of Actuaries with at least three years recent experience in life insurance pricing and reserving.

“Administrator” means a person, partnership, corporation or other legal entity engaged by the joint insurance fund trustees, as defined in this section, to act as executive director to carry out the policies established by the joint insurance fund trustees and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of the fund, a fund member or an independent contractor.

“Chairman” means the chairman of the board of trustees as may be elected or designated by the trustees.

“Commissioner” means the Commissioner of the Department of Insurance.

“Department” means the Department of Insurance.

“Dependent” means dependent as defined pursuant to N.J.S.A. 18A:18B-2.

“Fiscal year” or “fund year” means the fiscal year July 1 through June 30.

“Health insurance” means health insurance as defined pursuant to N.J.S.A. 17B:17-4; service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State, including basic health care services and/or supplemental health care services provided by health maintenance organizations; or dental care services provided by dental plan organizations and dental service corporations.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to the agreement arising from their participation in the fund.

“Insolvent fund” means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

“Joint insurance fund” or “fund” means a group established by two or more school boards to create a self-insurance fund for the sole purposes of providing contributory or non-contributory group health insurance or group term life insurance to their employees or dependents and to any other person eligible for coverage by a member school board pursuant to law, approved by the Department pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter.

“Life insurance” means life insurance as defined pursuant to N.J.S.A. 17B:17-3.

“Member” means a school board which is a member of a school board joint insurance fund formed pursuant to this subchapter.

“Net current surplus” or “surplus” means the excess of the fund’s unencumbered assets over its reserves and liabilities.

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Risk management program” means a plan and activities carried out under that plan, by a joint insurance fund to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.A. 18A:18B-1 et seq. Risk management program also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the fund.

“Run-in liability” means liability for claims incurred but not reported by a prospective member in connection with the provision of health benefits during the period prior to joining the fund.

“Run-out liability” means liability for claims incurred but not reported by a former fund member during the period it was a member.

“Secretary” means the secretary of the board of trustees as may be designated by the trustees.

“Servicing organization” or “program manager” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any functions as designated by the fund trustees including, but not limited to, actuarial services, claims administration, cost containment services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of plan documents, employee booklets and other documents, risk selection and pricing, stop-loss or reinsurance producer services which include producer negotiations on behalf of the fund for stop-loss or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 18A:18B-1 et seq. or this subchapter, and such other duties as designated by the fund.

“Stop-loss insurance” or “reinsurance” means insurance, purchased from an insurer authorized or admitted in the State of New Jersey to transact life or health insurance, as applicable, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per individual or annual aggregate basis.

“Trustees” means the board of trustees established pursuant to the bylaws of the joint insurance fund to govern or manage the risk management programs, joint self-insurance fund or funds and related services of the group.

11:15-5.3 Agreement to join joint insurance fund; duration

(a) Any two or more boards of education may form and become members of a school board joint insurance fund formed for the sole purpose of providing contributory or non-contributory group health and term life benefits to the members’ employees and their dependents. A school board may take this action by resolution of the board.

(b) The resolution shall provide for execution of a written agreement specifically conditioning membership on acceptance of the fund’s bylaws as approved and adopted pursuant to N.J.S.A. 18A:18B-1 et seq. The agreement shall specify the extent of the member’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, if applicable. The agreement shall also specify that the fund members have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. In lieu of filing copies of the new agreement and new indemnity and trust agreement referred to in N.J.A.C. 11:15-5.6(c)6 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

11:15-5.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the “Public Schools Contracts Law” (N.J.S.A. 18A:18A-1 et seq.), and the applicable regulations of the State Investment Council governing the investment of surplus public monies of the State.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of trustees.

(c) A joint insurance fund shall be governed by the “Public School Contracts Law” (N.J.S.A. 18A:18A-1 et seq.), and all other applicable laws in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies. The resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall periodically report to the fund commissioners on investment and interest income.

(e) The board of trustees shall annually prepare, not later than the time required by law for the preparation of the budget for school boards, the proposed budget for the fund’s subsequent year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund’s proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than June 30 of each year, the trustees shall adopt by majority vote the budget for the fund’s operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership or majority vote of a quorum of the board of trustees of the joint insurance fund.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating member.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(f) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-5.21(e), shall be retained by the fund administrator or program manager at the discretion of the board of trustees. All books, records, files and documents of the fund shall be retained for not less than five years.

(g) Each fund shall maintain written minutes of its meetings and shall make the minutes available to the Commissioner upon request.

(h) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. The reports shall be made at least quarterly and may be made more frequently at the discretion of the trustees and shall include, but not be limited to, the minutes, the administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the trustees, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that the reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. The reports shall also be made available to the Department for review during any examination of the joint insurance fund. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.

(i) All officers, employees and agents, including the administrator, servicing organization and program manager of the joint insurance fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

(j) Each fund shall cover a minimum of 1,000 employees in a self-funded health care plan providing hospital, surgical and medical benefits. A fund may cover less than 1,000 employees with the approval of the Commissioner if he or she determines that the proposed risk retention is actuarially sound in relationship to the projected employee participation.

11:15-5.5 Bylaws and plan of risk management program; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioner as provided in N.J.S.A. 18A:18B-4, its bylaws and risk management program and any subsequent amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified at N.J.A.C. 11:15-5.6(c) and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-5.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and be punched for two-ring and three-ring binders, as appropriate. The fund shall submit seven copies of a filing in the format set forth in this subsection. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-5.6 shall constitute the fund's bylaws and risk

management program for purposes of N.J.S.A. 18A:18B-4. In order to facilitate the filing and review process, the review of a filing shall be separated into two stages. The information set forth in N.J.A.C. 11:15-5.6(a) through (e) constitutes the initial stage. Within 90 days of the Commissioner's acceptance of the initial information filed, the fund shall complete the filing process by submitting the information set forth in N.J.A.C. 11:15-5.6(f). Failure to file the required subsequent information within 90 days may result in the disapproval of the fund's filing. No joint insurance fund shall insure, contract or provide insurance coverage to its members until its bylaws and risk management program and other information required pursuant to N.J.A.C. 11:15-5.6 have been approved by the Commissioner and such approval becomes effective pursuant to (c) below.

(c) In order to provide a sufficient time for transition from the plan for the provision of health or term life benefits in effect immediately prior to joining the fund to the plan for the provision of such benefits through the fund, any approval of a fund's bylaws and risk management program shall take effect and become operative 60 days after the date of approval.

(d) No amendment to a fund's bylaws or risk management program, or change in the information or documentation required to accompany the filing of the fund's bylaws or risk management program as provided in (a) above, shall take effect until the amendment or change is approved by the Commissioner.

(e) The bylaws and risk management program and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the risk management program shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-5.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Insurance
 Division of Life and Health
 Attn. School Board Health JIF Admissions
 20 West State Street
 CN 325
 Trenton, NJ 08625

**11:15-5.6 Bylaws and risk management program;
 contents**

(a) The prospective trustees of a joint insurance fund shall prepare and, after the approval by resolution of the governing body of each participating member, adopt bylaws for the joint insurance fund. The bylaws shall:

1. Set forth a statement of purpose of the group;
2. Set forth provisions for organization of the group, including governance by a board of trustees;
3. Provide for the delivery of a risk management program in conjunction with any joint self-insurance fund or funds which the board of trustees shall establish;
4. Set forth procedures to enforce the collection of any contributions or payments in default;
5. Set forth membership standards as required in N.J.S.A. 18A:18B-3;
6. Require that, for each joint self-insurance fund, a contract or contracts of specific and aggregate excess insurance or reinsurance is maintained;
7. Set forth procedures for:
 - i. Withdrawal from the group and a fund by a member, including any requirement that a terminated or withdrawing member provide security in a form and amount acceptable to the Commissioner or trustees, as applicable, as a guarantee for the continued payment of the member's obligations pursuant to N.J.A.C. 11:15-5.10(d);
 - ii. Termination of the group or fund and disposition of assets; and
 - iii. Determining the obligations, if any, of a member in the event that the group is unable to pay indemnification obligations and expenses payable from a fund administered by it;
8. Require an annual certified audit and an actuarial opinion statement on loss reserves to be prepared and filed with the Commissioner;
9. Require an annual, supplemental semi-annual, and quarterly financial reporting schedule, as applicable, to be filed on a form prescribed by the Commissioner;
10. Require that any joint self-insurance fund or funds be developed and operated in accordance with accepted and sound actuarial practices;

11. Provide that any expenditure of moneys in a fund be in furtherance of the purpose of the fund;

12. Provide for expulsion of a member;

13. Provide procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments; and

14. Set forth other provisions as desired for operation and governance of the group.

(b) The bylaws of a joint insurance fund shall provide for governance of the fund by a board of trustees selected in accordance with the provisions of the bylaws. The bylaws shall provide for trustee powers and duties and shall include, but not be limited to, the following powers of the board of trustees:

1. To determine and establish contributions and rates, loss reserves, surplus, limits of coverage, limits of excess (stop-loss) insurance or reinsurance, coverage documents, refunds and other financial and operating policies of the group or fund;
2. To invest moneys held in trust under any fund in investments which are approved for investment by regulation of the State Investment Council for surplus public moneys of the State or, at the discretion of the board, to transfer moneys held in trust under any fund to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the board in accordance with the standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. However, any moneys transferred to the Director for investment may not thereafter be withdrawn except upon withdrawal of a member from the group or a fund or termination of the group or a fund or in specific amounts in payment of specific claims, administrative expenses or member dividends upon affidavit of the director or other chief executive officer of the group;
3. To purchase, acquire, hold, lease, sell and convey real and personal property, all of which property shall be exempt from taxation under N.J.S.A. 54:4-1 et seq.;
4. To collect and disburse all money due to or payable by the fund, or authorize such collection and disbursement;
5. To enter into contracts with other persons or with public bodies of this State for any professional, administrative or other services as may be necessary to carry out the purposes of the fund;
6. To purchase and serve as the master policyholders, if desired, for any insurance, including excess (stop-loss) insurance or reinsurance;
7. To prepare, or cause to be prepared, a risk management program for the joint insurance fund;

(c) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-5.28, the Commissioner may issue an order requiring the trustees to dismiss an administrator, servicing organization or program manager or terminate the contract of an administrator, servicing organization or program manager because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by the administrator, servicing organization or program manager, or any of the employees, officers or directors thereof.

11:15-5.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

SUBCHAPTER 6. JOINT INSURANCE FUNDS FOR NONPROFIT CORPORATIONS AND KEYS AMENDMENT FACILITIES

Authority

N.J.S.A. 17:1-15e and 17:49A-1 et seq.

Source and Effective Date

R.1997 d.151, effective April 7, 1997.
See: 28 N.J.R. 4708(a), 29 N.J.R. 1326(a).

11:15-6.1 Purpose and scope

(a) The subchapter sets forth the filing requirements and approval procedures for nonprofit corporation and Keys amendment facility joint insurance funds pursuant to N.J.S.A. 17:49A-1 et seq.

(b) This subchapter applies to all joint insurance funds formed pursuant to N.J.S.A. 17:49A-1 et seq.

11:15-6.2 Definitions

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

“Actuary” means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving; an Associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an Associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years experience in loss reserving.

“Administrator” means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners, as defined in this section, to act as executive director to carry out the policies established by the joint insurance fund commissioners and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be an employee of the fund, a fund member, or an independent contractor.

“Automobile and equipment liability” means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the member.

“Board” means the board of trustees or the group of persons vested with management of the business and affairs of a nonprofit corporation regardless of the name by which the group or persons is designated.

“Chairman” means the chairman of the insurance fund commission as may be elected or designated by the fund commissioners.

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

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

“Employers’ liability” means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his or her employment by the employer, which is not covered by a workers’ compensation law.

“Excess carrier” means an insurer that provides excess insurance or reinsurance to a fund.

“Excess insurance” means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per accident, or annual aggregate basis.

“Executive committee” means the committee of the insurance fund commissioners, as provided in N.J.S.A. 17:49A-5.

“Fiscal year” or “fund year” means the calendar year January 1 through December 31.

“General liability” means any and all liability which may be insured under the laws of the State of New Jersey, excluding automobile liability, workers’ compensation and employers’ liability.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a fund,

although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

“Insolvent fund” means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after (the effective date of this subchapter).

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

“Intertrust fund transfer” means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

“Interyear fund transfer” means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

“Joint insurance fund” or “Fund” means a group organized by two or more nonprofit corporations or two or more Keys amendment facilities to establish an insurance fund for the purposes of insuring and/or self-insuring against liability, property damage, and workers’ compensation.

“Joint insurance fund commissioners” means the representatives chosen to represent those members in the fund, as provided in N.J.S.A. 17:49A-1 et seq.

“Keys amendment facility” means a medical or non-medical residential setting designated by the State as a facility that meets the requirements of the “Social Security Act”, 42 U.S.C. § 1382e, as implemented by 45 C.F.R. 1397.1 et seq.

“Member” means a nonprofit corporation or Keys amendment facility which is a member of an insurance fund.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-6.6(b)10, including earned investment income, that is in excess of all costs, refunds made pursuant to N.J.A.C. 11:15-6.20 incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Nonprofit corporation” means any corporation organized under the “New Jersey Nonprofit Corporation Act”, N.J.S.A. 15A:1-1 et seq., any corporation as defined by N.J.S.A. 15A:1-2e or any corporation organized pursuant to Title 16 of the Revised Statutes.

“Owner” means the person or group vested with ownership and management of a Keys amendment facility, regardless of the name by which the person or group is designated.

“Plan of risk management” means a plan and activities carried out under the plan, binding upon the participants in a joint insurance fund, to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.A. 17:49A-1 et seq. Plan of risk management also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the fund.

“Producer” means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Property damage” means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the member.

“Recoverable” insurance or reinsurance means the sum of:

1. All monies due from insurance or reinsurance contracts and not yet received for losses paid in excess of the attachment point of such insurance or reinsurance;
2. All monies that would be expected to be recoverable from insurance or reinsurance contracts for unpaid losses in excess of the attachment point of such insurance or reinsurance should those losses be settled at the values set in the reported reserves;
3. That portion of the incurred but not reported reserves that is expected to be recoverable from insurance or reinsurance contracts; and
4. All monies that would be recoverable from aggregate excess insurance or reinsurance should all losses be as reserved for including IBNR reserves.

“Secretary” means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 17:49A-5.

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the trustees including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 17:49A-1 et seq., and this subchapter, and such other duties as designated by the fund.

“Unpaid claims” or “unpaid losses” means case reserves and reserves for incurred but not reported claims attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Workers’ compensation law” means the provisions of N.J.S.A. 34:15-7 et seq.

11:15-6.3 Agreement to join joint insurance fund; duration

(a) The board or owner, as appropriate, of any nonprofit corporation or Keys amendment facility may by resolution or otherwise in writing agree to join together with any other such corporation(s) or facility(ies) to establish a joint insurance fund as defined in this subchapter.

(b) The resolution shall provide for execution of a written agreement specifically conditioning membership on acceptance and adoption of the fund’s bylaws. The agreement shall specify the extent of the member’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership if applicable, and shall specify that the fund members have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the joint insurance fund. In lieu of filing copies of the new agreement and indemnity and trust agreement referred to in N.J.A.C. 11:15-6.6(c)10 for each member’s renewal of membership, the fund shall annually file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

11:15-6.4 General requirements

(a) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its insurance fund commission.

(b) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by this subchapter. The custodian shall report to the fund commissioners at least quarterly on investment and interest income.

(c) The fund commissioners shall annually prepare in November of each year, the proposed budget for the fund’s subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund’s proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted except in accordance with the procedures for such action set forth in the fund’s bylaws as approved by the Commissioner, which procedures shall provide all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than December 31 of each year, the fund commissioners shall adopt by majority vote the budget for the fund’s operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the board or owner, as appropriate, of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership of the joint insurance fund.

5. A copy of any amendment to a fund budget shall be filed quarterly with the board or owner of each participating member.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner within 30 days of adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(d) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and,

except as provided at N.J.A.C. 11:15-6.21(e), shall be retained by the fund administrator or fund secretary, if any, at the discretion of the fund commissioners.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

- i. Seven years from the date of their creation; or
- ii. Until the completion and filing of the next financial condition examination of the fund by the Commissioner following the closing of all reported claims.

(e) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(f) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the fund commissioners and shall include, but not be limited to, the minutes, the fund administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund.

(g) All officers, employees and agents of the joint insurance fund, including the administrator and servicing organization of the fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

11:15-6.5 Bylaws and risk management program; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioner its bylaws and plan of risk management and any amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified in N.J.A.C. 11:15-6.6(d) and 6.6(e), and such other information as the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-6.6. The loose-leaf sheets used shall be eight and one-half inches wide by 11 inches long and punched for two-ring or three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth herein. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-6.6 shall constitute the fund's bylaws and plan of risk management pursuant to N.J.S.A. 17:49A-6 and 17:49A-7. No joint insurance fund shall begin providing insurance coverage to its members until its bylaws and plan of risk management, including all of the information required pursuant to N.J.A.C. 11:15-6.6, have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management shall take effect until such amendment is approved by the Commissioner.

(d) Within 10 days following any change in the information or documentation required to accompany the filing of the fund's bylaws or amendments thereto, as provided in (a) above, the fund shall file notice of the change with the Department.

(e) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-6.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Banking and Insurance
 Division of Financial Examinations
 Attn: Nonprofit Corporation (Keys Amendment Facility)
 JIF Admissions
 20 West State Street
 CN 325
 Trenton, New Jersey 08625-0325

11:15-6.6 Bylaws and plan of risk management; contents

(a) The commissioners shall prepare and, after the approval by resolution of the board or owner of each participating member, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to: