

**CHAPTER 3**

**AUTOMOBILE INSURANCE**

**Authority**

N.J.S.A. 17:1C-6(e) and 17:1-8.1.

**Source and Effective Date**

R.1996 d.58, effective January 4, 1996.  
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 3, Automobile Insurance, expires on January 4, 2001.

**Chapter Historical Note**

Chapter 3, New Jersey Automobile Insurance Plan, became effective January 31, 1972 as R.1972 d.20. See: 3 N.J.R. 223(d), 4 N.J.R. 49(d). Subchapter 7, Automobile Reparation Reform Act, became effective December 4, 1972 as R.1972 d.244. See: 4 N.J.R. 270(a), 5 N.J.R. 13(c).

1973 Revisions: Amendments became effective January 3, 1973 as R.1973 d.3. See: 4 N.J.R. 307(a), 5 N.J.R. 47(d). Further amendments became effective January 25, 1973 as R.1973 d.30. See: 4 N.J.R. 305(b), 5 N.J.R. 48(a). Further amendments became effective January 26, 1973 as R.1973 d.35. See: 5 N.J.R. 20(b). Further amendments became effective May 31, 1973 as R.1973 d.140. See: 5 N.J.R. 150(a), 5 N.J.R. 229(b). Further amendments became effective August 31, 1973. See: 5 N.J.R. 350(b). Further amendments became effective December 4, 1973 as R.1973 d.337. See: 6 N.J.R. 15(d).

1974 Revisions: Amendments became effective July 24, 1974 as R.1974 d.208. See: 6 N.J.R. 322(b).

1975 Revisions: Amendments became effective July 1, 1975 as R.1975 d.130. See: 7 N.J.R. 113(a), 7 N.J.R. 276(d).

1976 Revisions: Subchapter 10, Auto Physical Damage Claims, became effective May 1, 1976 as R.1976 d.46 and R.1976 d.47. See: 8 N.J.R. 38(b), 8 N.J.R. 136(b). Amendments became effective October 18, 1976 as R.1976 d.328. See: 8 N.J.R. 421(a), 8 N.J.R. 516(a). Further amendments became effective November 22, 1976 as R.1976 d.371. See: 8 N.J.R. 481(b), 8 N.J.R. 559(c).

1977 Revisions: Amendments became effective March 23, 1977 as R.1977 d.100. See: 9 N.J.R. 178(b). Further amendments became effective March 31, 1977 as R.1977 d.114. See: 9 N.J.R. 127(a), 9 N.J.R. 239(a).

1978 Revisions: Amendments became effective January 1, 1978 as R.1977 d.437. See: 9 N.J.R. 435(d), 9 N.J.R. 586(b). Further amendments became effective January 19, 1978 as R.1978 d.12. See: 9 N.J.R. 585(c), 10 N.J.R. 69(c).

1979 Revisions: Amendments became effective August 17, 1979 as R.1979 d.155. See: 11 N.J.R. 142(a), 11 N.J.R. 250(a).

1982 Revisions: Amendments became effective August 16, 1982 as R.1982 d.246. See: 14 N.J.R. 543(b), 14 N.J.R. 917(d).

1983 Revisions: Subchapter 8, Nonrenewal of Automobile Insurance Policies, was readopted effective June 6, 1983 as R.1983 d.190. See: 15 N.J.R. 231(a), 15 N.J.R. 927(a). Subchapter 12, Automobile Rate Filers: Flattening of Premium Taxes and Assessments Made for the Unsatisfied Claim and Judgment Fund, became effective October 3, 1983 as R.1983 d.424. See: 15 N.J.R. 1170(a), 15 N.J.R. 1666(a). Subchapter 13, Automobile Rate Filers: Deductibles for Private Passenger Automobile Collision and Comprehensive Coverage, became effective October 17, 1983 as R.1983 d.467. See: 15 N.J.R. 1342(a), 15 N.J.R. 1769(b). Subchapter 6, Insurance Identification Card, was

readopted effective December 29, 1983 as R.1983 d.648. See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

1984 Revisions: Sections 13.3, 13.4 and 13.5 were originally amended as an emergency amendment effective January 4, 1984 as R.1984 d.3. See: 15 N.J.R. 1961(a), 16 N.J.R. 246(c). Amendments became effective January 17, 1984 as R.1983 d.648. See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c). Public Notice for automobile insurance written notice/buyer's guide coverage selection form as contained in Subchapter 15. See: 16 N.J.R. 254(d). Subchapter 15, Standards for Written Notice: Buyer's Guide and Coverage Selection Form, became effective April 2, 1984 as R.1984 d.114. See: 15 N.J.R. 2142(a), 16 N.J.R. 733(a). Subchapter 14, Personal Injury Protection Options, became effective April 2, 1984 as R.1984 d.116. See: 15 N.J.R. 2139(a), 16 N.J.R. 730(b). Subchapter 7 was scheduled to expire August 17, 1984. The Governor granted a waiver of the scheduled expiration date from August 17, 1984 to November 15, 1984. On November 15, 1984, the Governor granted a second waiver from November 15, 1984 to February 13, 1985. Amendments became effective November 5, 1984 as R.1984 d.480. See: 16 N.J.R. 1692(a), 16 N.J.R. 3037(b).

1985 Revisions: Subchapter 7 was readopted pursuant to Executive Order No. 66(1978) effective February 13, 1985 with amendments effective March 18, 1985. See: 17 N.J.R. 43(a), 17 N.J.R. 707(b). Further amendments became effective February 19, 1985 (operative April 22, 1985) as R.1985 d.72. See: 16 N.J.R. 3285(a), 17 N.J.R. 458(c). Subchapter 17, Rating Organizations, became effective October 6, 1985 as R.1985 d.609. See: 16 N.J.R. 2936(a), 17 N.J.R. 2905(a). Further amendments became effective December 16, 1985 as R.1985 d.629. See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).

1986 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 3, Automobile Insurance was readopted effective January 6, 1986 (operative May 6, 1986) as R.1985 d.654. See: 16 N.J.R. 3286(a), 17 N.J.R. 89(b). Subchapter 20, Reporting Financial Disclosure and Excess Profit Reports, became effective April 7, 1986 as R.1986 d.111. See: 17 N.J.R. 2597(a), 18 N.J.R. 692(a). Subchapter 8, Nonrenewal of Automobile Insurance Policies, was revised effective October 6, 1986 as R.1986 d.418. See: 18 N.J.R. 1079(a), 18 N.J.R. 2039(a). Subchapter 17, Rating Organizations, was repealed and new rules became effective October 6, 1986 as R.1986 d.419. See: 18 N.J.R. 1171(b), 18 N.J.R. 2045(a). Subchapter 22, Coverage Option Survey: Personal Injury Protection and Tort Threshold Options, became effective November 17, 1986 as R.1986 d.463. See: 18 N.J.R. 1344(b), 18 N.J.R. 2329(a).

1987 Revisions: Subchapter 7 was extensively revised effective March 16, 1987 as R.1987 d.140. See: 19 N.J.R. 44(a), 19 N.J.R. 453(a). Sections 1 through 4 were repealed, section 5 was recodified to section 6 and new rules were adopted for sections 1 through 5. As part of R.1987 d.142, section 13.3 was amended, effective March 16, 1987. See: 19 N.J.R. 46(a), 19 N.J.R. 455(a). Further amendments became effective June 15, 1987 as R.1987 d.249. See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a). Subchapter 23, Dangerous Drivers or Drivers with Excessive Claims, became effective December 21, 1987 as R.1987 d.527. See: 19 N.J.R. 1880(a), 19 N.J.R. 2403(b). Public Notice: Rescission of Circular Letter # 75. See: 19 N.J.R. 570(c).

1989 Revisions: Subchapter 26, Accident Claims; Subchapter 27, Unsatisfied Claim and Judgment Fund Board; and Subchapter 28, Unsatisfied Claim and Judgment Fund's Reimbursement of Excess Medical Expense Benefits Paid by Insurers, were adopted as new rules by R.1989 d.268, effective May 15, 1989. See: 21 N.J.R. 688(a), 21 N.J.R. 1363(a). Subchapter 20, Reporting Financial Disclosure and Excess Profit Reports, was repealed and replaced by R.1989 d.277, effective May 15, 1989. See: 21 N.J.R. 667(b), 21 N.J.R. 1335(a), 21 N.J.R. 1517(b). Subchapter 24, Policy Constants; and Subchapter 25, Residual Market Equalization Charges (RMECs), were adopted as new rules by R.1989 d.278, effective May 15, 1989. See: 20 N.J.R. 3104(a), 21 N.J.R. 1358(b). Subchapter 20A, Standard Limiting Effect of Negative Excess Investment Income in the Computation of Excess Profits, was adopted as new rules by R.1989 d.306, effective June 5, 1989. See: 21 N.J.R. 842(a), 21 N.J.R. 1517(c). Subchapter 17,

Rating Organizations, was repealed by R.1989 d.328, effective June 19, 1989. See: 21 N.J.R. 973(a), 21 N.J.R. 1708(a). Subchapter 30, Motor Vehicle Self-Insurance, was adopted as new rules by R.1989 d.584, effective November 20, 1989. See: 21 N.J.R. 2876(a), 21 N.J.R. 3666(b).

1990 Revisions: Subchapter 31, Examination of the Financial Experience of Private Passenger Automobile Insurers, was adopted as new rules by R.1990 d.108, effective February 5, 1990. See: 21 N.J.R. 3726(a), 22 N.J.R. 425(a). Subchapter 18, Private Passenger Automobile Insurance: Rate Filing Review Procedures, was adopted as new rules by R.1990 d.109, effective February 5, 1990. See: 21 N.J.R. 3422(b), 22 N.J.R. 421(a). Subchapter 16, Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance, was adopted as new rules by R.1990 d.116, effective February 5, 1990. See: 21 N.J.R. 2182(a), 22 N.J.R. 399(a). Subchapter 1, Provisions and Operations, was repealed and replaced by Subchapter 1, Commercial Automobile Insurance Plan, by R.1990 d.118, effective February 5, 1990. See: 21 N.J.R. 3613(a), 22 N.J.R. 392(b). Subchapter 16A, Flex Rate Percentage Calculations for Private Passenger Automobile Insurance, was adopted as new rules by R.1990 d.161, effective March 19, 1990. See: 21 N.J.R. 3719(a), 22 N.J.R. 963(a). Amendments to Subchapter 31 were adopted as R.1990 d.290, effective June 4, 1990. See: 22 N.J.R. 1026(a), 22 N.J.R. 1725(b). Subchapter 34, Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule, was adopted as emergency new rules by R.1990 d.620, effective November 26, 1990 (operative April 1, 1991). See: 22 N.J.R. 3847(a). Subchapter 36, Automobile Physical Damage Insurance Inspection Procedures, was adopted as emergency new rules by R.1990 d.622, effective November 26, 1990 (operative March 1, 1991). See: 22 N.J.R. 3861(a). Subchapter 38, Towing and Storage Fee Schedule, was adopted as emergency new rules by R.1990 d.623, effective November 26, 1990 (operative January 1, 1991). See: 22 N.J.R. 3874(a). Subchapter 29, Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage, was adopted as emergency new rules by R.1990 d.624, effective November 26, 1990 (operative January 1, 1991). See: 22 N.J.R. 3809(a). Subchapter 37, Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance, was adopted as emergency new rules by R.1990 d.625, effective November 26, 1990. See: 22 N.J.R. 3777(a). Subchapter 35, Private Passenger Automobile Insurance Underwriting Rules, was adopted as emergency new rules by R.1990 d.627, effective November 26, 1990. See: 22 N.J.R. 3856(a). Subchapter 19, Standard/Non-Standard Rating Plans, was adopted as emergency new rules by R.1990 d.628, effective November 26, 1990. See: 22 N.J.R. 3804(a).

1991 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 3 was readopted as R.1991 d.45, effective January 4, 1991, with amendments effective February 4, 1991. As part of R.1991 d.45, Subchapters 2 through 5, concerning the Automobile Insurance Plan (AIP), were repealed effective February 4, 1991. See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b). Subchapter 37 was readopted as R.1991 d.90, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3777(a), 23 N.J.R. 597(a). Subchapter 19 was readopted as R.1991 d.92, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3804(a), 23 N.J.R. 532(a). Subchapter 34 was readopted as R.1991 d.93, effective January 25, 1991 (operative April 1, 1991), with changes effective February 19, 1991. See: 22 N.J.R. 3847(a), 23 N.J.R. 572(a). Subchapter 35 was readopted as R.1991 d.94, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3856(a), 23 N.J.R. 577(a). Subchapter 36 was readopted as R.1991 d.95, effective January 25, 1991 (operative October 1, 1992), with changes effective February 19, 1991. See: 22 N.J.R. 3861(a), 23 N.J.R. 579(a), 23 N.J.R. 1132(c). Subchapter 29 was readopted as R.1991 d.96, effective January 15, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3809(a), 23 N.J.R. 536(a). Subchapter 38 was readopted as R.1991 d.97, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3874(a), 23 N.J.R. 592(a). Subchapter 24, Policy Constants, was repealed by R.1991 d.216, effective April 15, 1991. See: 22 N.J.R. 3441(a), 23 N.J.R. 1132(a). Subchapter 25, Residual Market Equalization Charges (RMECs), was repealed by R.1991 d.217, effective April 15, 1991. See: 22 N.J.R. 3442(a), 23 N.J.R. 1132(b). Subchapter 39, Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft, Vehicle Recovery and Safety Features, was adopted as new rules by R.1991 d.363, effective July 15, 1991 (operative September 1, 1991). See: 23 N.J.R. 384(a), 23 N.J.R. 2144(a).

1992 Revisions: Subchapter 33, Appeals from Denial of Automobile Insurance, was adopted as new rules by R.1992 d.192, effective April 30, 1992. See: 24 N.J.R. 546(a), 24 N.J.R. 1510(a). Subchapter 40, Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons, was adopted as new rules by R.1992 d.207, effective May 4, 1992. See: 23 N.J.R. 3736(a), 24 N.J.R. 336(a), 24 N.J.R. 1796(b). Subchapter 2, New Jersey Personal Automobile Insurance Plan, was adopted as new rules by R.1992 d.370, effective September 21, 1992. See: 24 N.J.R. 331(a), 24 N.J.R. 3400(a). Subchapter 3, Limited Assignment Distribution Servicing Carriers, was adopted as new rules by R.1992 d.371, effective September 21, 1992. See: 24 N.J.R. 519(a), 24 N.J.R. 3414(a). Subchapter 42, Producer Assignment Program, was adopted as emergency new rules by R.1992 d.381, effective September 4, 1992 (expires November 3, 1992). See: 24 N.J.R. 3421(a). Subchapter 42 was readopted as R.1992 d.482, effective November 2, 1992, with changes effective December 7, 1992. See: 24 N.J.R. 3421(a), 24 N.J.R. 4397(a).

1993 Revisions: Subchapter 44, Special Rules for Effecting Coverage for Private Passenger Automobile Insurance, was adopted as emergency new rules by R.1993 d.135, effective March 1, 1993 (operative March 8, 1993; expires April 30, 1993). See: 25 N.J.R. 1290(a). Subchapter 44 was readopted as R.1993 d.238, effective April 30, 1993. See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

1994 Revisions: Subchapter 2B, Market Transition Facility of New Jersey Suspension of Claims, was adopted as emergency new rules by R.1994 d.164, effective March 1, 1994 (expires April 30, 1994). See: 26 N.J.R. 1393(a). Subchapter 2B was readopted as R.1994 d.261, effective April 29, 1994. See: 26 N.J.R. 1393(a), 26 N.J.R. 2288(a). Subchapter 32, Certification of Compliance: Mandatory Liability Coverages, was adopted as new rules by R.1994 d.477, effective September 19, 1994. See: 26 N.J.R. 1939(a), 26 N.J.R. 3866(a).

1995 Revisions: Subchapter 31, Examination of the Financial Experience of Private Passenger Automobile Insurers, was repealed by R.1995 d.171, effective March 20, 1995. See: 27 N.J.R. 41(a), 27 N.J.R. 1190(b). Subchapter 45, Insurers Required to Provide Survey Information, was adopted as new rules by R.1995 d.235, effective May 1, 1995. See: 27 N.J.R. 289(a), 27 N.J.R. 1803(a).

1996 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 3 was readopted as R.1996 d.58, effective January 4, 1996, with amendments effective February 5, 1996. As part of R.1996 d.58, Subchapter 2A, New Jersey Automobile Full Insurance Underwriting Association Claims Payment Deferral; Subchapter 3, Limited Assignment Distribution Servicing Carriers; and Subchapter 23, Dangerous Drivers or Drivers with Excessive Claims, were repealed effective February 5, 1996. See: Source and Effective Date. See, also, section annotations.

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## APPENDIX

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE  
INSURANCE PLAN**11:3-1.1 Purpose and scope**

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Personal Automobile Insurance Plan and any private passenger vehicle that is owned by or driven by a person who meets the definition of an eligible person pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34;
2. To provide for the apportionment of insurance coverage for eligible applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market; and
3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks eligible for coverage under the provisions of this subchapter.

Amended by R.1996 d.58, effective February 5, 1996.  
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).  
Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

**11:3-1.2 Definitions**

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

“CAIP” means the Commercial Automobile Insurance Plan pursuant to this subchapter.

“CAIP manager” means the entity employed by the Governing Committee to manage and conduct the administrative affairs of the CAIP on a daily basis.

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

“Eligible applicant” means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is unable to obtain automobile insurance in New Jersey in the voluntary market and is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute other than the CAIP. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver’s license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

“Emergency type vehicle” means any land vehicle, used to respond to distress calls, fires, or rescue, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars and ambulances.

“Gross participation” means a participant’s Voluntary All Other Automobile Direct Written Premiums derived from information contained in the annual statement times a fraction, the numerator of which is the sum of the plan’s total written premiums for that year and the Statewide total Voluntary All Other Automobile Direct Written Premiums which are eligible for depopulation credit for that policy year, and the denominator of which is the Statewide total Voluntary All Other Automobile Net Direct Written Premiums of all participants for that second prior year.

“Light truck” means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

“Motor vehicle” means any land vehicle propelled otherwise than by muscular power including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

“Net participation” means a participant’s gross participation for that policy year less its business eligible for depopulation credit for that policy year.

“Net participation percentage” means a participant’s net participation for that policy year in proportion to the comparable Statewide total net participation for all participants.

“Operating headquarters” means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive

offices are, corporate decisions are made and corporate functions are performed.

“Participant” means an insurer licensed and authorized to write motor vehicle liability and physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

“Policy year” means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

“Private passenger automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any voluntary or residual market mechanism created by statute, and is owned by an individual or husband and wife; or owned jointly by two or more relatives other than husband and wife; or owned jointly by two or more resident individuals; or owned by a corporation, partnership and unincorporated association, governmental agency, or registered to a professional designation (that is, T/A, PA or P.C.) where such autos are furnished to individuals and not used for business purposes.

“Private passenger type automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership or any other entity except an individual or husband and wife.

“Voluntary All Other Automobile Direct Written Premiums” means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. CAIP direct written premiums included in the figures which the participant wrote as a service carrier for CAIP;
2. Any direct written premiums included in the figures from insureds who are eligible applicants for any residual market mechanism created by statute other than the CAIP.
3. Any reinsurance premiums assumed from other insurers included in the figures; and
4. Any premiums for Death and Disability coverage included in the figures.

Amended by R.1991 d.45, effective February 4, 1991.  
See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Deleted definition of NJAFIUA and references to it; added text to definitions for “Private passenger automobile” and “Voluntary All Other Automobile Direct Written Premiums.”

Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

### 11:3-1.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of automobile insurance for qualified applicants to be known as the Commercial Automobile Insurance Plan hereafter referred to as “CAIP.”

(b) CAIP shall be administered by the governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) Every insurer admitted to transact and transacting motor vehicle insurance in the State of New Jersey shall participate in CAIP to the extent required by this subchapter and the plan of operation.

Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

### 11:3-1.4 Governing committee

(a) CAIP shall be administered by a governing committee of 14 members.

1. Eight members shall be salaried employees of an insurer which is a participant of CAIP.
2. Three members shall be licensed producers.
3. One member shall be public representative who is knowledgeable about automobile insurance matters but who is not employed by, or otherwise affiliated with, insurance producers, or other entities of the insurance industry.
4. One member shall be a salaried employee of a servicing carrier for the CAIP, provided that neither the servicing carrier nor any affiliate of the servicing carrier otherwise serves as a member of the governing committee.
5. The Commissioner or his or her designee shall be an ex-officio member of the committee.

(b) The following organizations shall each nominate two members to represent participants of CAIP:

1. The Alliance of American Insurers;
2. The American Insurance Association; and
3. The National Association of Independent Insurers.

(c) Participants which are not members of the organizations in (b) above shall nominate two members to represent participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;
2. Insurance Brokers Association of New Jersey; and
3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner and shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) The governing committee of the existing Commercial Automobile Insurance Plan shall act as the governing committee for CAIP until the CAIP governing committee is appointed pursuant to this section.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(h) Pursuant to this subchapter and the plan of operation, the governing committee shall have the following duties:

1. To assume the assets and liabilities of the Commercial Automobile Insurance Plan on behalf of the member insurers;

(d) The Commissioner may propose an amendment to the plan of operation by communicating the proposed amendment to the governing committee. If the governing committee does not adopt amendments acceptable to the Commissioner within 30 days, the Commissioner may certify amendments with an effective date to the governing committee. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposed amendments are provided to the governing committee.

Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

#### Case Notes

Former New Jersey assigned risk scheme in automobile liability coverage mentioned in discussion of methods available to a state to deal with the social consequences of adverse risk selection. *Owens v. Aetna Life & Casualty Co.*, 654 F.2d 218 (3rd Cir.1981), certiorari denied 102 S.Ct. 657, 454 U.S. 1092, 70 L.Ed.2d 631 (1981).

Broker who mailed application for automobile insurance after expiration of prior policy was not de facto agent of servicing insurer under assigned risk plan and lacked authority to bind servicing insurer. *Rodriguez v. Hudson County Collision Co.*, 296 N.J.Super. 213, 686 A.2d 776 (A.D.1997).

#### 11:3-1.7 Coverage

(a) CAIP shall provide to eligible applicants, bodily injury liability and property damage liability coverages as follows:

1. CAIP shall provide basic combined single limit of \$35,000 and statutory uninsured motorist coverage except:

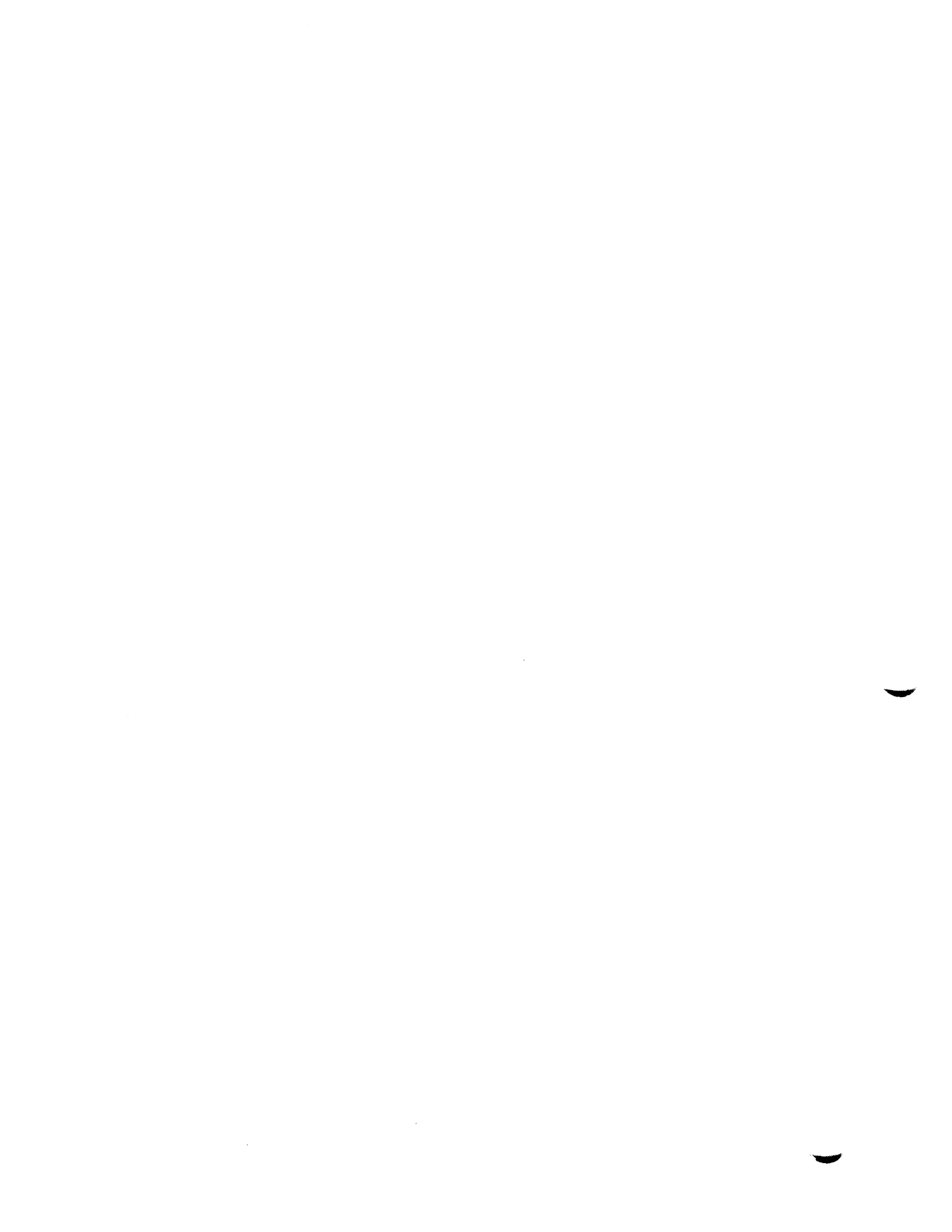
i. When limits in excess of the basic combined single limit of \$35,000 are required by law, the plan shall offer limits adequate to comply with the minimum requirements of that law, except with respect to limits over \$5 million in which case excess coverage is conditioned upon the plan being able to secure facultative reinsurance. CAIP shall provide a policy for limits less than the minimum requirements of the law when evidence of adequate excess insurance is provided by the producer or the insured.

ii. CAIP shall provide limits adequate to comply with the provisions of the financial responsibility law of any state in which the motor vehicle will be operated, but only while the vehicle is being operated in that state.

iii. CAIP shall also offer the optional limits of liability as specified in the plan of operation.

(b) CAIP shall offer to eligible applicants, additional uninsured or underinsured motorist coverage as follows:

1. Additional uninsured and underinsured motorist coverage shall be provided as an option to the named insured up to the limits set forth in N.J.S.A. 17:28-1.1b and subject to the deductibles specified in the plan of operation. The limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage respectively.



2. Uninsured and underinsured motorist coverage shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

3. Uninsured motorist coverage shall be subject to the policy terms, conditions and exclusions approved by the Commissioner, including, but not limited to, unauthorized settlements, nonduplication of coverage, subrogation and arbitration.

(c) CAIP shall provide to eligible applicants, basic and additional personal injury protection coverage as follows:

1. With respect to those automobiles subject to the New Jersey Automobile Reparation Reform Act, CAIP shall provide basic personal injury protection coverage under every automobile liability policy as required by the Act and shall also offer to the named insured Additional Personal Injury Protection as required by the Act and by regulations promulgated by the Commissioner thereunder.

(d) CAIP shall provide to eligible applicants, physical damage coverage as follows:

1. CAIP shall only offer physical damage coverage to:
  - i. Private passenger vehicles;
  - ii. Private passenger type vehicles;
  - iii. Light trucks;
  - iv. Motorcycles;
  - v. Recreational trailers (excluding trailers used as residences); and
  - vi. Social services vehicles of the private passenger, station wagon, van or mini-bus type owned by or operated on behalf of a non-profit entity used to transport, without charge, the elderly or handicapped.
2. Notwithstanding (d)1 above, CAIP shall not offer physical damage coverage to:
  - i. Risks consisting of fleets of 10 or more vehicles not including trailers and semi-trailers;
  - ii. Vehicles more than 25 or more years old;
  - iii. Vehicles with a seating capacity in excess of 20;
  - iv. Any emergency type vehicle; and
  - v. Any vehicle which is operated under a registration plate not issued for a specific vehicle.

3. Comprehensive and collision coverage shall be provided on an actual cash value basis, less deductible, subject to a maximum loss payable of such amount at which physical damage coverage may be exported in accordance with the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43. CAIP shall also offer optional higher deductibles as specified in the plan of operation.

4. Physical damage coverage shall be offered only in connection with a policy written by the plan affording bodily injury and property damage coverage.

5. Upon request, CAIP shall issue a loss payable clause for the benefit of a lienholder.

Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

### 11:3-1.8 Eligibility

(a) As a prerequisite for insurance from CAIP, a prospective insured must attempt, within 60 days prior to the date of application, to obtain automobile insurance in New Jersey, and be unable to obtain such insurance. The prospective insured must certify, in the application form prescribed by CAIP, that the applicant has attempted, but has been unable, to obtain automobile insurance in New Jersey through ordinary methods. An applicant so certifying shall be considered for assignment upon making application in good faith to the CAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements of a material nature in the prescribed application form approved by the Commissioner.

(b) For any risk consisting of 10 or more vehicles, the applicant must also provide:

1. A copy of the notice of cancellation or nonrenewal from the applicant's previous insurer, or an explanation concerning why the applicant was not insured; and
2. A certification that the applicant has been refused insurance within 60 days of the date of application from at least three named insurers licensed to transact automobile business in New Jersey. Such certification shall list the three insurers.

(c) No producer shall bind a risk for CAIP or submit an application for insurance to CAIP if such producer knows that the risk currently has or has been offered coverage from the voluntary market.

(d) An eligible applicant shall not be afforded coverage until it:

1. Submits an application as prescribed in the plan of operation;
2. Pays the premium, or portion thereof, required in the plan of operation;

3. Is accepted for coverage by CAIP as provided for in the plan of operation; and

4. Completes such other requirements as set forth in the plan of operation.

Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

#### Case Notes

Broker who mailed application for automobile insurance after expiration of prior policy was not de facto agent of servicing insurer under assigned risk plan and lacked authority to bind servicing insurer. *Rodriguez v. Hudson County Collision Co.*, 296 N.J.Super. 213, 686 A.2d 776 (A.D.1997).

#### 11:3-1.9 Rates and policy forms

(a) CAIP shall continue to use the rates, rules, surcharges, minimum premiums, classifications and policy forms approved for the Commercial Automobile Insurance Plan until modified or changed pursuant to this subchapter.

(b) The governing committee shall file all rates, rules, surcharges, minimum premiums, classifications and policy forms to be used by CAIP for the prior approval of the Commissioner. Proceedings to review these filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall consider the experience of risks insured by the plan and shall not be excessive, inadequate or unfairly discriminatory.

(c) For any risk with less than 10 vehicles, the premium shall be subject to a merit rating plan established in the plan of operation. Every rate filing shall include an analysis of the adequacy of the merit rating plan.

(d) Any risk with 10 or more vehicles not including trailers and semi-trailers shall be considered as a fleet. CAIP shall file base rates for fleets with the Commissioner for his or her prior approval which are different than the rates for non-fleet risks if CAIP determines that the loss expectancy of fleet risks insured by CAIP is different than the loss expectancy of non-fleet risks insured by CAIP.

(e) Fleet risks shall be subject to an experience rating plan established in the plan of operation, which shall set forth the criteria for eligibility of the experience rating plan. If any fleet risk is determined to be ineligible for the experience rating plan, the risk shall be subject to a merit rating plan established in the plan of operation.

(f) Any risk with basic limits premium of \$100,000 or greater shall also be subject to a retrospective rating plan established in the plan of operation. In the event CAIP finds that the premium from all retrospectively rated risks combined is inadequate, or excessive, CAIP shall file with the Commissioner for his or her prior approval a change in the retrospective rating formulas, including a percentage surcharge on all retrospectively rated risks if necessary, so that the total premium from retrospectively rated risks is adequate based on the combined experience of retrospectively rated risks insured by the plan.

Amended by R.1996 d.502, effective October 21, 1996.  
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

#### 11:3-1.10 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, servicing carrier or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

### SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

#### 11:3-2.1 Purpose and scope

(a) This subchapter establishes a plan pursuant to N.J.S.A. 17:29D-1 for the providing and apportionment of personal private passenger automobile insurance coverage for automobiles which are owned or operated by qualified applicants.

(b) The purposes of this subchapter are:

1. To provide the coverages described herein, subject to the conditions stated;

2. To establish a procedure for the equitable distribution of risks assigned to insurance companies; and

3. To preserve to the public the benefits of price competition by encouraging maximum use of the voluntary private insurance system.

(c) The provisions of this subchapter shall apply to all insurers admitted to transact private passenger automobile insurance in this State and all qualified applicants for automobile insurance through the PAIP, except as otherwise provided in this subchapter.

**11:3-2.2 Definitions**

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

An "affiliate" of, or a person "affiliated" with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or camper type vehicle used for recreational purposes, owned by an individual or jointly by individuals who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching; and solely for the purpose of this plan, a motorcycle as defined in N.J.S.A. 39:1-1. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and

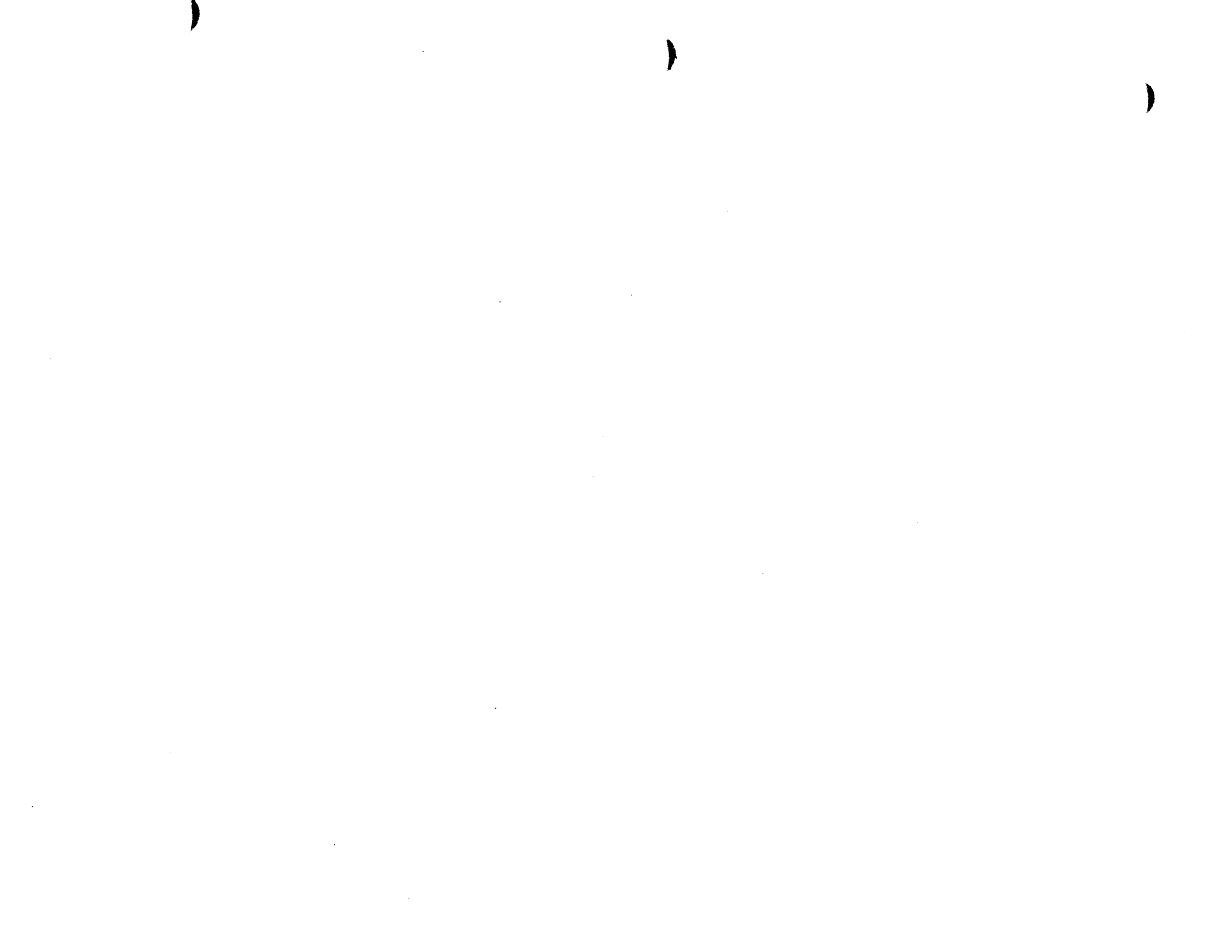
otherwise meets this definition, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of automobiles, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorist insurance.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity authorized to transact the business of private passenger automobile insurance in this State, except any residual market mechanism created by or pursuant to statute.



Recodified from 11:3-2B.5 and amended by R.1995 d.50, effective January 17, 1995.

See: 26 N.J.R. 4590(a), 27 N.J.R. 368(a).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

### 11:3-2B.8 Confidentiality of documents

The information provided by a claimant pursuant to N.J.A.C. 11:3-2B.6 or 2B.7 as part of an application for a hardship exemption or appeal from a decision of the MTF shall be confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq.

Recodified from 11:3-2B.6 and amended by R.1995 d.50, effective January 17, 1995.

See: 26 N.J.R. 4590(a), 27 N.J.R. 368(a).

## SUBCHAPTERS 3 THROUGH 4. (RESERVED)

## SUBCHAPTER 5. PERSONAL INJURY PROTECTION DISPUTE RESOLUTION

### Authority

N.J.S.A. 17:1-8.1 and 17:1-15e, 39:6A-1.2, 39:6A-5.1 and 5.2.

### Source and Effective Date

R.1998 d.593, effective December 21, 1998.

See: 30 N.J.R. 3359(a), 30 N.J.R. 4437(a).

### 11:3-5.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the resolution of disputes concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance. This subchapter implements N.J.S.A. 39:6A-5.1 and 5.2, which provide that PIP disputes shall be resolved by binding alternate dispute resolution as provided in the policy form approved by the Commissioner. This subchapter also implements provisions of N.J.S.A. 2A:23A-1 et seq., as applicable to PIP dispute resolution.

(b) This subchapter shall apply to disputes arising under policies of private passenger automobile insurance, on either a personal lines or commercial lines policy form, that provide medical expense benefits and other benefits under personal injury protection coverage, as follows:

1. PIP benefits under a standard automobile insurance policy pursuant to N.J.S.A. 39:6A-4;
2. PIP benefits under a basic automobile insurance policy pursuant to N.J.S.A. 39:6A-3.1;

3. PIP benefits provided by the UCJF pursuant to N.J.S.A. 39:6-86.1; and

4. Additional PIP benefits provided pursuant to N.J.S.A. 39:6A-10.

(c) This subchapter shall apply to policies issued or renewed on or after March 22, 1999 in accordance with the approved policy terms.

### 11:3-5.2 Definitions

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

"Administrator" means the dispute resolution organization designated by the Commissioner pursuant to N.J.S.A. 39:6A-5.1 and N.J.A.C. 11:3-5.3.

"Basic policy" means an automobile insurance policy issued pursuant to N.J.S.A. 39:6A-3.1 and N.J.A.C. 11:3-3.

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

"Control" or "controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of P.L. 1970, c.22 (N.J.S.A. 17:27A-1 et seq.). This presumption may be rebutted by a showing made in the manner provided by N.J.S.A. 17:27A-3j that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard, and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Department" means the New Jersey Department of Banking and Insurance.

"Dispute resolution organization" or "DRO" means an organization that meets the standards set forth in N.J.S.A. 39:6A-5.1 and N.J.A.C. 11:3-5.4.

"Dispute resolution professional" or "DRP" means a natural person who meets the standards set forth in N.J.A.C. 11:3-5.5

“Medical review organization” or “MRO” means an organization of health care professionals who are licensed in New Jersey, which is certified by the Commissioner to engage in unbiased medical review of the medical care provided to persons injured in automobile accidents in accordance with N.J.S.A. 39:6A-5.2 and this subchapter. The term includes either ;

1. Any peer review organization with which the Federal Health Care Financing Administration or the State contracts for medical review of Medicare or medical assistance services; or
2. Any independent health care review company.

“Personal Automobile Insurance Plan” or “PAIP” means the personal lines automobile insurance residual market mechanism established pursuant to N.J.S.A. 17:29D-1 by N.J.A.C. 11:3-2.

“Personal injury protection” or “PIP” means the coverage provided by a policy of automobile insurance pursuant to N.J.S.A. 39:6A-3.1 or 39:6A-4.

“PIP dispute” includes, but is not limited to, matters concerning:

1. Interpretation of the insurance contract’s PIP provisions;
2. Whether the medical treatment or diagnostic tests are in accordance with the provisions of applicable statutes and rules for the basic and standard policies and in compliance with the terms of the policy;
3. Eligibility of the treatment or service for compensation or reimbursement, including whether the injury is causally related to the accident and the application of deductible and copayment provisions;
4. Eligibility of the provider performing the service to be compensated or reimbursed under the terms of the policy and the provisions of N.J.A.C. 11:3-4, and including whether the provider is licensed or certified to perform the treatment or service;
5. Whether the treatment was actually performed;
6. Whether the diagnostic tests performed are recognized by the Professional Boards in the Division of Consumer Affairs, Department of Law and Public Safety, administered in accordance with their standards, and approved by the Commissioner at N.J.A.C. 11:3-4;
7. The necessity and appropriateness of consultation with other health care providers;
8. Disputes involving the application of, or adherence to, the automobile insurance medical fee schedule at N.J.A.C. 11:3-29;
9. Whether the treatment or service is reasonable, necessary and in accordance with medical protocols adopted by the Commissioner at N.J.A.C. 11:3-4; or

10. Amounts claimed for PIP income continuation benefits, essential services benefits, death benefits and funeral expense benefits.

“Provider” or “health care provider” is as defined at N.J.A.C. 11:3-4.2.

“Standard policy” means an automobile insurance policy including PIP coverage as provided in N.J.S.A. 39:6A-4.

“UCJF” means the Unsatisfied Claim and Judgement Fund created pursuant to N.J.S.A. 39:6-61 et seq.

### 11:3-5.3 Designation of the administrator

(a) The Commissioner shall designate a dispute resolution organization as the administrator of the PIP alternate dispute resolution system by entering into a contract with a dispute resolution organization.

(b) The contract designating the administrator shall be for a term not to exceed five years, but may be extended according to its terms until a new administrator is designated and substituted. Nothing in this subsection shall prohibit an administrator from succeeding itself, if so designated in accordance with N.J.S.A. 39:6A-5.1 and this subchapter. The contract may provide for adjustments in the price paid for services performed over the life of the contract.

(c) The Commissioner shall request competitive proposals from among qualified dispute resolution organizations interested in serving as administrator.

(d) Dispute resolution organizations shall submit the following documents and information in connection with their proposal to serve as administrator:

1. A dispute resolution plan that describes how the organization shall meet the requirements of the Act and these rules, which shall include procedures and rules governing the dispute resolution process to ensure adherence to the standards of performance set forth in N.J.S.A. 39:6A-5.1 and 5.2 and this subchapter;
2. A description of the organization and biographical information about the key personnel that shall be responsible for executing the duties of the administrator;
3. A description of the management information systems that shall be utilized by the organization;
4. A draft budget for at least the first two years;
5. A cost proposal, which shall provide for the payment of the administrator’s expenses, including the cost of dispute resolution professionals, from fees generated from the users of the system;
6. Such other information as may be provided by law, and that the Commissioner or the Treasurer may request in order to understand and evaluate the applicant’s proposal.

**11:3-6.3 Temporary identification card (form IV-2)**

(a) The specifications for temporary insurance identification cards are set forth below:

1. The size shall be the same as the permanent identification card;
2. The weight and color shall be minimum 24 pound white stock;
3. The color shall be the same as the permanent identification card;
4. Number of copies: One original;
5. The content of the temporary card shall be the same as the permanent identification card except as noted below:
  - i. Title: "TEMPORARY" to precede heading on card;
  - ii. Policy number: Indicate policy number if available; otherwise, the application or binder number is acceptable;
  - iii. Effective date: Month, day and year that coverage becomes effective. Expiration date is not required;
  - iv. Expiration: The card shall contain the following statement: "This card expires 60 days after the effective date shown above";
  - v. Assignment of form number IV2T (1/96), to be shown in the upper left corner.

As amended, R.1973 d.35, eff. January 26, 1973.

See: 5 N.J.R. 20(b).

As amended, R.1974 d.208, eff. July 24, 1974.

See: 6 N.J.R. 322(b).

As amended, R.1983 d.648, eff. January 17, 1984.

See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Language changes and clarification.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Deleted subsection (b), describing components of the New Jersey Automobile Insurance Plan.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

**11:3-6.4 General provisions**

(a) The order of the information to be contained on the identification cards may be rearranged in order to accommodate fixed printout systems already established by a

company. No changes shall be made without obtaining approval of the New Jersey Division of Motor Vehicles.

(b) Additional information may be printed on the reverse side of the identification cards, provided the additional information is appropriately captioned and is not at variance with the information required.

(c) One identification card shall be issued for each vehicle insured under the policy. Replacement identification card or cards will be issued at the request of the insured in the event of loss.

(d) Each identification card shall be effective for no more than 14 months from the effective date indicated on its face. A replacement identification card shall be issued to all insureds each year upon renewal of the policy. A replacement identification card must be issued upon either a change of vehicle or the acquisition of additional vehicles. Upon assignment of a new policy number, a new card must also be issued.

(e) Identification cards will not be required for trailers as the liability burden is on the towing or power unit.

(f) The insurer shall, prior to the expiration of a 60-day temporary identification card, issue to the insured a permanent identification card.

(g) Insurers may continue to use existing supplies of form number IV2A (1/73) and ACORD 50(1/83) until June 30, 1996. Thereafter, insurers shall only be permitted to issue insurance identification cards which comply with this subchapter. Insurance identification cards issued in compliance with this subchapter shall be valid for the term of the policy referenced thereon.

As amended, R.1973 d.35, effective January 26, 1973.

See: 5 N.J.R. 20(b).

As amended, R.1983 d.648, effective January 17, 1984.

See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Dated material at (e) deleted.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

**11:3-6.5 Commercial motor vehicles; exemption**

Commercial motor vehicles regulated by the Interstate Commerce Commission or the New Jersey Department of Public Utility Commissioners shall be exempted from this regulation.

NOTE: To require an I.C.C. or P.U.C. carrier to carry such an identification card would be an unnecessary duplication. The insurance and filing requirements of the I.C.C. and the P.U.C. present a comparable safeguard to that sought by the newly required identification insurance cards.

R.1973 d.3, effective January 3, 1973.  
See: 4 N.J.R. 307(a), 5 N.J.R. 47(d).

## SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

### 11:3-7.1 Purpose

This subchapter implements certain provisions of the Automobile Reparation Reform Act, N.J.S.A. 39:6A-1 et seq., including the Commissioner's authority to establish the amounts and terms of additional personal injury protection benefits which must be provided in policies covering automobiles as defined in N.J.S.A. 39:6A-2.

#### Case Notes

Additional personal injury protection coverage applied to all persons for whom basic coverage was provided. *Clendaniel v. New Jersey Manufacturers Insurance Co.*, 190 N.J.Super. 286, 463 A.2d 369 (App. Div.1983), affirmed in part, reversed in part 96 N.J. 361, 476 A.2d 263 (1984).

Individual held to be "surviving spouse" until conclusive determination of divorce reached. *Allstate Insurance Co. v. Skolny*, 86 N.J. 112, 429 A.2d 1045 (1981).

### 11:3-7.2 General requirements applicable to additional personal injury protection benefits

(a) In addition to the basic personal injury protection benefits which insurers must provide pursuant to N.J.S.A. 39:6A-4, insurers shall make available to the named insured, and, at his or her option, to any resident relatives in the named insured's household additional income continuation benefits, essential services benefits, death benefits and funeral expense benefits pursuant to N.J.S.A. 39:6A-10 and this subchapter.

(b) The additional benefit indicated in each option that an insurer may offer for income continuation benefits and essential services benefits represents the aggregate of the basic and additional personal injury protection benefits.

(c) Any additional income continuation benefits that an insurer may offer shall be limited to 75 percent of the insured's weekly income.

(d) The limits which are applicable to any additional personal injury protection benefits that an insurer may offer shall apply on a per person, per accident basis.

(e) Each insurer shall make available as an option additional income continuation benefits for as long as the disability persists.

1. Each insurer shall furnish rates for such benefits upon the request of the insured.

(f) Any additional death benefits which an insurer may offer shall be payable without regard to the period of time elapsing between the date of the accident and the date of death provided death occurs within two years of the accident and results from bodily injury from that accident.

1. The requirements of (f) above shall apply to any claim for additional death benefits where death occurs on or after April 21, 1986.

i. With respect to any claim presented on or after the effective date of this subchapter, each insurer shall disclose the availability of additional death benefits in conformance with the applicable provisions of N.J.A.C. 11:2-17.1 et seq.

ii. With respect to any claim initiated prior to the effective date of this subchapter, each insurer shall take appropriate steps to determine whether additional death benefits are payable, pursuant to (f) above. These steps shall include, but need not be limited to, review of claims closed on or after April 21, 1986 for the purpose of ascertaining the applicability of additional death benefits. Upon determining that such benefits are payable, each insurer shall provide written notice to eligible beneficiaries and process the claim in accord with N.J.S.A. 39:6A-5 and the applicable provisions of N.J.A.C. 11:2-17.1 et seq.

(g) In addition to the minimum schedule of additional personal injury protection benefits set forth at N.J.A.C. 11:3-7.4(b), any insurer may provide other additional personal injury protection benefit options subject to review and approval of its filing by the Department of Insurance. Any additional options offered by the insurer must be in compliance with the standards and requirements set forth in this subchapter.

(h) Insurers may also make available to named insureds covered under N.J.S.A. 39:6A-4, and at their option, to resident relatives in the household of the named insured or to other persons provided medical expense coverage pursuant to this statutory provision, or both, additional first party medical expense benefit coverage pursuant to N.J.S.A. 39:6A-10.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

New (h) added enabling insurers to make available additional first party medical expense benefit coverage in excess of \$250,000 as per P.L. 1990 c.8.

**Case Notes**

Insurer made sufficient offer of basic income continuation benefits for as long as disability exists. *Werts v. New Jersey Mfrs. Ins. Co.*, 250 N.J.Super. 580, 595 A.2d 1110 (A.D.1991), certification denied 127 N.J. 554, 606 A.2d 366.

After death of named insured in accident, maximum scheduled income continuation and essential services benefits held payable to husband of named insured. *Muschette v. The Gateway Insurance Co.*, 149 N.J.Super. 89, 373 A.2d 406 (App.Div.1977) certification denied 75 N.J. 27, 379 A.2d 258, affirmed 76 N.J. 560, 388 A.2d 964 (1978).

**11:3-7.3 Personal injury protection policy forms or endorsements**

(a) All policy forms or endorsements that provide personal injury protection benefits required by N.J.S.A. 39:6A-4 shall specify that such benefits shall be afforded by the insurer of the injured person subject to any deductibles or exclusions elected by the policyholder pursuant to N.J.S.A. 39:6A-4.3. The required personal injury protection benefits are set forth below:

1. Medical expense benefits;
2. Income continuation benefits;
3. Essential services benefits;
4. Death benefits; and
5. Funeral expense benefits.

(b) Each policy form or endorsement covering an automobile as defined at N.J.S.A. 39:6A-2 shall include excess medical payments coverage, corresponding to Section II, Extended Medical Expense Benefits Coverage of the personal automobile policy. Insurers must include a minimum coverage of \$1,000 and may offer coverage of \$10,000.

(c) Each policy form or endorsement providing additional personal injury protection benefits shall specify that, pursuant to N.J.S.A. 39:6A-10, additional death benefits under the policy shall be payable without regard to the period of time elapsing between the date of the accident and the date of death provided death occurs within two years of the accident and results from bodily injury from that accident.

Amended by R.1996 d.58, effective February 5, 1996.  
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

**Law Review and Journal Commentaries**

Auto Insurance—PIP. Steven P. Bann, 138 N.J.L.J. No. 16, 49 (1994).

Survey of Recent Developments in United States and New Jersey Law. Michael Ben-David, Stacy A. Dowling, Kristina K. Pappa, Douglas Friedman, Michael S. Rubin, Kerrie Restieri-Heslin, 25 Seton Hall L.Rev. 1332 (1995).

**Case Notes**

Extended medical-expense benefits coverage; not included within antistacking provision. *Ingersoll v. Aetna Cas. and Sur. Co.*, 138 N.J. 236, 649 A.2d 1269 (1994).

Absence of income continuation benefits covering either named insured and/or household relatives did not require reformation of policy. *Olivero by Olivero v. New Jersey Mfrs. Ins. Co.*, 227 N.J.Super. 367, 547 A.2d 710 (A.D.1988), certification denied 115 N.J. 76, 556 A.2d 1219.

Insurer of automobile in which injured party was riding had to reimburse injured party's insurer on pro rata basis for PIP benefits paid. *Colonial Penn Ins. Co. v. Allstate Ins. Co.*, 214 N.J.Super. 453, 519 A.2d 935 (App.Div.1986).

Driver who was neither a relative nor resident of named insured's household, held not entitled to coverage. *Kuzan v. Prudential Property & Casualty Insurance Co.*, 195 N.J.Super. 553, 480 A.2d 960 (Law Div.1984).

Insurer of car owned by insured's wife held entitled to contribution from insurer of car leased by insured in which insured was injured in a one-car accident. *Federal Insurance Co. v. Liberty Mutual Insurance Co.*, 190 N.J.Super. 605, 464 A.2d 1197 (App.Div.1983).

Additional coverage held but provided for all persons for whom basic coverage was provided. *Clendaniel v. New Jersey Manufacturers Insurance Co.*, 190 N.J.Super. 286, 463 A.2d 369 (App.Div.1983), affirmed in part, reversed in part 96 N.J. 361, 476 A.2d 263 (1984).

Minor passenger on moped which collided with automobile held not a "pedestrian" and, therefore, not entitled to medical benefits under automobile's personal injury protection coverage. *McKenna v. Wisowski*, 181 N.J.Super. 482, 438 A.2d 355 (Ch.Div.1981).

Individual held to be "surviving spouse" until conclusive determination of divorce reached. *Allstate Insurance Co. v. Skolny*, 86 N.J. 112, 429 A.2d 1045 (1981).

Insurer's declaratory judgment action held not barred by pendency of New York action between parties. *Lumbermens Mutual Casualty Co. v. Carriere*, 163 N.J.Super. 7, 394 A.2d 132 (App.Div.1978) on remand 170 N.J.Super. 437, 406 A.2d 994.

**11:3-7.4 Minimum schedule of additional personal injury protection coverage benefits**

(a) Every rate filer's schedule of rates for additional personal injury protection benefits, other than medical expense benefits, shall provide at least the benefit schedules set forth in Table 1 in (b) below.

(b) The additional personal injury protection coverage table follows:

Table 1

Option	Income		Essential Services		Death	Funeral Expense
	Weekly	Total	Per Day	Total		
1	\$100	\$10,400	\$12	\$ 8,760	\$10,000	\$2,000
2	125	13,000	20	14,600	10,000	2,000
3	175	18,200	20	14,600	10,000	2,000
4	250	26,000	20	14,600	10,000	2,000
5	400	41,600	20	14,600	10,000	2,000
6	500	52,000	20	14,600	10,000	2,000
7	600	62,400	20	14,600	10,000	2,000
8	700	72,800	20	14,600	10,000	2,000
9	100	unlimited	12	8,760	10,000	2,000
10	125	unlimited	20	14,600	10,000	2,000
11	175	unlimited	20	14,600	10,000	2,000
12	250	unlimited	20	14,600	10,000	2,000
13	400	unlimited	20	14,600	10,000	2,000
14	500	unlimited	20	14,600	10,000	2,000
15	600	unlimited	20	14,600	10,000	2,000
16	700	unlimited	20	14,600	10,000	2,000

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Changes required by "The Fair Automobile Insurance Reform Act of 1990", P.L. 1990 c.8.

1. Total recovery - Allocated loss adjustment expenses = Net recovery.

$$\frac{\text{Deductible}}{\text{Total loss}} \times \text{Net recovery} = \text{Insured's Share of recovery.}$$

2. Application of formula: Assume a loss of \$500.00 subject to a \$100.00 deductible with \$50.00 in allocated loss adjustment expenses:

i. If there is full recovery of \$500.00: computation of net recovery:

$$\$500.00 - \$50.00 = \$450.00$$

Computation of insured's share of recovery:

$$\frac{\$100.00}{\$500.00} \times \$450.00 = \$90.00$$

ii. If there is a partial recovery of \$300.00: computation of new recovery: \$300.00 - \$50.00 = \$250.00

Computation of insured's share of recovery:

$$\frac{\$100.00}{\$500.00} \times \$250.00 = \$50.00$$

(c) Unless the insurer returns its insured's full deductible the insured shall attempt to effect full recovery in clear liability cases and shall not enter into any intercompany agreements that provide for the acceptance of lesser amounts on a formula basis.

(d) If an insurer has paid a physical damage claim that is subject to a deductible and it elects not to pursue its subrogation claim where the probability of recovery exists, the insurer shall so notify its insured in writing within 60 calendar days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify its insured within the time periods prescribed above and the statute of limitations or period required for notice or claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured's deductible.

Amended by R.1985 d.629, effective December 16, 1985.  
See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).

Substituted "the insured" for "it".

### 11:3-10.8 Repair estimates

If the insurer requires that its insured obtain more than one estimate of motor vehicle damage, the reasonable cost of such additional estimates, if any, shall be borne by the insurer unless the estimator does the work.

### 11:3-10.9 Referral of insured to the at-fault party

There shall be no attempt to discourage an insured from filing a physical damage claim, nor shall an insurer encourage its insured to assert a claim against a third party in lieu of filing a physical damage claim under the insured's policy.

### 11:3-10.10 Examinations by the New Jersey Insurance Department

To ensure compliance with this rule, the Department of Insurance personnel will investigate the market performance of insurers. To enable department personnel to reconstruct an insurer's activities pursuant to the provisions of this rule,

each insurer must maintain a complete file on each claim settled pursuant to this rule. The claim file shall contain all communications, transactions, notes and work papers relating to the claim. With respect to automobile damage claims, the file also shall include the name, address, telephone number and license number of any auto body repair facility that has been utilized by the insurer in the adjustment of the loss or repair of the automobile. All papers in the file must be accurately dated by the insurer.

Amended by R.1985 d.629, effective December 16, 1985.

See: 16 N.J.R. 3170(a), 17 N.J.R. 2988(a).

"Rule" substituted for "regulation".

Amended by R.1987 d.249, effective June 15, 1987.

See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).

Added text "With respect to . . . of the automobile."

#### Case Notes

Insurers' activities in estimating repair costs held not an Antitrust Act violation. *Chick's Auto Body v. State Farm Mutual Automobile Insurance Co.*, 168 N.J.Super 68, 401 A.2d 722 (Law Div.1979), affirmed per curiam 176 N.J.Super. 320, 423 A.2d 311 (App.Div.1980).

## SUBCHAPTER 11. MOPED INSURANCE

### 11:3-11.1 Required coverages for mopeds

(a) No policy insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, operation or use of a motorized bicycle as defined in N.J.S.A. 39:1-1, as amended, shall be issued in the State to the owner (or parent or guardian of an owner under 18 years of age) of any motorized bicycle principally garaged or operated in this State unless it includes coverage for the owner and operator in the following minimum amounts or limits.

1. Bodily injury;

i. An amount or limit of \$15,000, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

ii. An amount or limit, subject to such limit for any one person so injured or killed, of \$30,000, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident.

2. Property damage: An amount or limit of \$5,000 in the aggregate for damage to property of others resulting from one accident.

(b) Every liability insurance policy as described in (a) above, issued or renewed on or after the operative date of this subsection, shall provide personal injury protection coverage benefits, in accordance with N.J.S.A. 39:6A-4, to pedestrians who sustain bodily injury in this State caused by the named insured's motorized bicycle or caused by being struck by or from the motorized bicycle.

1. Every rating organization and insurer making its own rates for policies covering motorized bicycles shall submit to the Commissioner of Insurance filings of rules, rates and forms within 30 days of the effective date of this subsection.

(c) Every business entity or individual owner who rents motorized bicycles shall maintain liability insurance coverage pursuant to N.J.S.A. 39:4-14.3e in the minimum amounts or limits set forth in (a) above.

(d) Any such coverages as described in subsections (a), (b) and (c) above shall describe the make and model, piston displacement, and serial number (VIN) of each motorized bicycle insured. This information shall also constitute the description of vehicle required on insurance identification cards, and N.J.A.C. 11:3-5.1 through 6.4 shall apply to moped coverage except where the language is clearly inappropriate.

(e) The policy period for the coverages described in subsection (a) of this section shall commence at 12:01 A.M. of the effective date shown in the policy declaration page, unless expressly set forth in the policy or in a binder or other contracts for temporary insurance.

(f) Any insurer authorized to write motor vehicle coverage may write moped coverage.

R.1978 d.12, eff. January 19, 1978.

See: 9 N.J.R. 585(c), 10 N.J.R. 69(c).

Amended by R.1985 d.72, effective February 19, 1985 (operative April 22, 1985).

See: 16 N.J.R. 3285(a), 17 N.J.R. 458(c).

(b) added; old (b)-(d) recodified to (c)-(e).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

## SUBCHAPTER 12. AUTOMOBILE RATE FILERS: FLATTENING OF PREMIUM TAXES AND ASSESSMENTS MADE FOR UNSATISFIED CLAIM AND JUDGMENT FUND

### 11:3-12.1 Purpose

The New Jersey Automobile Insurance Reform Act of 1982 (N.J.S.A. 17:29A-33 et al.) requires that each insurer calculate and collect, on a flat and uniform basis per insured automobile statewide, the taxes which are paid pursuant to N.J.S.A. 54:18A-1 et seq. and certain assessments made pursuant to N.J.S.A. 39:6-64, 66 and 67. This subchapter provides rules for the implementation of these requirements.

Amended by R.1996 d.58, effective February 5, 1996.  
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

### 11:3-12.2 Scope

(a) This subchapter applies to every insurer authorized to transact the business of automobile insurance in the State and every rating organization engaged in the business of rate-making for such insurers.

(b) The provisions of this subchapter are not intended to supersede or amend any other law or regulation.

### 11:3-12.3 Definitions

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

"Assessments" mean any assessment to be made pursuant to N.J.S.A. 39:6-64, 66 and 67, excluding assessments made to reimburse a filer for medical benefits payable under N.J.S.A. 39:6A-4 in excess of \$75,000.

"Commissioner" means the Commissioner of Insurance.

"Filer" means a rating organization or any insurer making its own rates.

"Insurer" means any person or persons, corporation, association, partnership, or company authorized by the laws of this State to transact the business of insurance in this State.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of rate-making for two or more insurers.

"Taxes" mean those taxes required to be paid pursuant to N.J.S.A. 54:18A-1 et seq.

2. For mid-term policy changes, the request shall be effective the day following the date of postmark or, when personal delivery is made or if the postmark is illegible, the day following the receipt by the insurer or insurance producer of the signed Request To Exclude Named Driver form or request to reinstate the excluded driver;

3. For changes upon renewal, the changes shall be effective on the date of the next policy renewal if post-marked or received by the insurer or by an insurance producer prior to the renewal date.

(e) By February 19, 1999, all personal private passenger automobile insurers shall make a filing with the Commissioner to permit a named excluded driver. The filing shall include the following:

- 1. The named excluded driver endorsement;

2. Rule changes and rating procedures necessary to offer the option, including how the option will interface with the insurer's tier rating system; and

3. Other documents to be provided to an insured or applicant that describe or explain the named excluded driver option.

(f) The named excluded driver(s) and vehicle(s) shall be listed on the declaration page or on a supplemental declaration page.

(g) Notwithstanding any other provision of the law to the contrary, no person, including, but not limited to, an insurer or an insurance producer, shall be liable in an action for damages on account of the election of the named excluded driver endorsement.

New Rule, R.1998 d.594, effective December 21, 1998.  
See: 30 N.J.R. 2567(a), 30 N.J.R. 4446(a).

**APPENDIX**

**REQUEST TO EXCLUDE NAMED DRIVER**

Named insured (as shown on policy declaration)

Policy number \_\_\_\_\_

I, a Named Insured of the above policy, authorize the driver(s) listed below to be excluded from collision and comprehensive coverage (also known as "other than collision coverage") on my insurance policy for the specified vehicle(s). I understand:

1. In consideration of the premium for which the policy is written, comprehensive and collision coverages afforded by the policy will not apply to any damages, losses or claims while the designated automobile is being used or operated by the excluded driver(s) listed below.

2. This exclusion applies regardless of any provision in the policy defining insured Persons.

3. This exclusion applies to any claim of a Loss Payee shown on the Policy Declarations to the extent of the lienholder's interest in the insured auto and that I am responsible for any claim to the Loss Payee.

4. This agreement will be binding and will apply to all future renewals, reinstatements, and changes in my policy unless the specified automobile(s) is/are removed from the policy, a new automobile replaces the specified automobile on the policy, or the insurer or its representative receives my signed written request to discontinue the exclusion.

5. Notwithstanding any other provision of the law to the contrary, no person, including, but not limited to, an insurer or an insurance producer, shall be liable in an action for damages on account of the election of the named excluded driver endorsement.

Date: \_\_\_\_\_ Signature(s) of Named Insured(s) \_\_\_\_\_

	Driver Excluded	Driver's License #	Vehicle
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

New Rule, R.1998 d.594, effective December 21, 1998.  
See: 30 N.J.R. 2567(a), 30 N.J.R. 4446(a).

**SUBCHAPTER 14. PERSONAL INJURY PROTECTION OPTIONS**

**11:3-14.1 Purpose**

The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (N.J.S.A. 17:28-1.1 et seq.) requires each automobile insurer offering personal injury protection coverage to provide, at appropriately reduced premiums, optional deductibles and/or exclu-

sions. This subchapter establishes rules for the implementation of these requirements.

Amended by R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Substituted "appropriately" for "approximately" and deleted "set-offs".

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

### 11:3-14.2 Scope

This subchapter applies to every insurer, including any residual market mechanism created by any New Jersey statute, authorized to transact the business of automobile insurance in this State.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to extend the applicability of the subchapter to all residual market mechanisms created by New Jersey statutory law consistent with the provisions of the Fair Automobile Insurance Reform Act of 1990 creating certain residual market mechanisms and eliminating, over time, the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) (see sections 34 and 88 of the Act), also amended to delete reference to rating organizations pursuant to section 69 of the Act.

### 11:3-14.3 Optional medical expense benefit deductibles for personal injury protection coverage

(a) Effective December 3, 1983, each insurer must provide, at appropriately reduced premiums, the option to select medical expense benefit deductibles of \$500.00, \$1,000 and \$2,500 on all automobile policies which include personal injury protection coverages.

(b) The medical expense deductibles shall apply on a per accident basis.

(c) Any optional medical expense deductible elected by the named insured shall apply only to the named insured and any resident relative in the name insured's household, who is not a named insured under another automobile policy and not to any other person eligible for personal injury protection benefits required to be provided in accordance with N.J.S.A. 39:6A-4.

(d) The buyer's guide and written notice specified in N.J.S.A. 39:6A-23 shall satisfy the requirements of this subchapter.

(e) Premium credits calculated and represented as a percentage of the applicable premium shall be provided for each deductible. The premium percentage shall be uniform by filer on a statewide basis.

(f) Should an applicant or policyholder fail to elect a deductible, the basic \$250.00 deductible provided by N.J.S.A. 39:6A-23 shall apply and an appropriate premium shall be charged.

(g) The deductible option elected by the named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed written request to eliminate or change the deductible.

As amended, R.1984 d.480, eff. November 5, 1984.

See: 16 N.J.R. 1692(a), 16 N.J.R. 3037(b).

Substantially amended (a)-(d).

Amended by R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Deleted (d); recodified (e)-(h) as (d)-(g) and substantially amended (d) and (f).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

#### Case Notes

Economically independent mother-in-law who resided with insured, was not bound by insured's cost containment options. *Swyersky v. Prudential Commercial Ins. Co.*, a Subsidiary of Prudential Ins. Co. of America, 229 N.J.Super. 608, 552 A.2d 240 (L.1988), reversed 240 N.J.Super. 37, 572 A.2d 219, on remand 263 N.J.Super. 544, 623 A.2d 310.

#### 11:3-14.4 Optional exclusion of income continuation benefits, essential services benefits, death benefits and funeral expense benefits

(a) Automobile insurers offering personal injury protection coverage shall, at an appropriate reduced premium, provide the named insured the option to exclude all of the following benefits from such coverage:

1. Income continuation benefits;
2. Essential services benefits;
3. Death benefits;
4. Funeral expense benefits.

(b) Election of the exclusion shall result in the elimination of all elements of personal injury protection coverage except medical expense benefits.

(c) An exclusion elected by the named insured in accordance with this subchapter shall apply only to the named insured, and any resident relative in the named insured's household, who is not a named insured under another automobile insurance policy but not to any other person eligible for personal injury protection benefits to be provided in accordance with N.J.S.A. 39:6A-4.

(d) Additional personal injury protection coverage pursuant to N.J.S.A. 39:6A-10 shall not be available to any named insured selecting the exclusion or to any relative resident in his household.

(e) No new automobile insurance policy shall be issued on or after July 1, 1984 unless the option to exclude personal injury protection benefits in accord with this section is made available to the applicant. In the case of any automobile policy expected to be in force on July 1, 1984, the named insured shall be provided not later than May 15, 1984 with the opportunity to elect, effective July 1, 1984, the personal injury protection coverage exclusion in accord with this section. Any notice of renewal of an automobile insurance policy with an effective date subsequent to July 1, 1984 shall be accompanied by a notice to the named insured providing the opportunity to elect personal injury protection coverage exclusion in accord with this subchapter.

(f) A premium credit calculated and represented as a percentage of the applicable premium shall be provided for the exclusion. The premium percentage shall be uniform by filer on a statewide basis.

(g) The buyer's guide and written notice specified in N.J.S.A. 39:6A-23 shall satisfy the requirements of this subchapter.

(h) Should an applicant or named insured fail to elect the exclusion, full personal injury protection coverage shall be deemed to have been selected and an appropriate premium shall be charged.

(i) The exclusion elected by a named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed written request for its elimination.

As amended, R.1984 d.480, eff. November 5, 1984.

See: 16 N.J.R. 1692(a), 16 N.J.R. 3037(b).

(c): added "household, who is . . . insurance policy".

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

#### 11:3-14.5 Option to choose health care insurance coverage as primary coverage

(a) Pursuant to N.J.S.A. 39:6A-4.3, for policies issued or renewed on or after January 1, 1991, an insurer shall

provide the option that other health insurance coverage or benefits of the insured, including health care services provided by a health maintenance organization and any coverage or benefits provided under any Federal or State program, are the primary coverage for medical expense benefits for personal injury protection coverage; provided, however, that this option shall not apply to any coverage or benefits provided pursuant to Medicare or Medicaid.

(b) The Coverage Selection Form (see N.J.A.C. 11:3-15.7) shall require insureds or prospective insureds to identify the health insurer(s) providing primary personal injury protection medical expense benefits. This identification shall fulfill the requirement in N.J.S.A. 39:6A-4.3 that named insureds provide proof that they and members of their family residing in the household are covered by health insurance coverage or benefits.

As amended, R.1984 d.480, eff. November 5, 1984.

See: 16 N.J.R. 1692(a), 16 N.J.R. 3037(b).

(b): added "who is not . . . insurance policy".

Repealed by R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

This section was "Setoff option entitling an automobile insurer paying PIP medical expense benefits to reimbursement under certain conditions".

New Rule, R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

#### 11:3-14.6 Refund or credit of unearned premium

Every automobile insurer offering personal injury protection coverage shall establish a fair, practicable and non-discriminatory plan for the refund or application of credit of any unearned premium resulting from the selection of any deductible and/or exclusion option pursuant to this subchapter.

Amended by R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Deleted "setoff".

#### 11:3-14.7 Filing requirements

(a) Every automobile filer shall submit to the Commissioner for approval filings of rates or manual rules which provide the optional medical expense benefit deductibles for personal injury protection coverage.

(b) Within 30 days of the effective date of this subchapter, every automobile filer shall submit to the Commissioner for approval filings of rates or manual rules which provide the optional exclusion from personal injury protection coverage of income continuation benefits, essential service benefits, death benefits, and funeral expense benefits.

(c) All filings submitted for approval pursuant to this subchapter, and all changes and amendments thereto, shall be prepared in accordance with insurance laws and regulations, including the applicable provisions of N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:1-2 and the Department's existing filing procedures.

(d) The filing of a rating organization shall be applicable to the members and subscribers of the organization who have authorized the organization to file on their behalf.

Amended by R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Repealed (c) and recodified (d)-(e) as (c)-(d).

#### 11:3-14.8 Application of the option to choose health care insurance coverage as the primary insurer

When an insured or prospective insured elects to have a health insurer provide primary personal injury protection medical expenses benefits, the medical expenses benefits available to the insured under his or her automobile policy's personal injury protection provisions shall become a secondary benefits provider. The order of benefit determination shall be in accordance with N.J.A.C. 11:3-37.

Emergency New Rule, R.1990 d.625, effective November 26, 1990 (expires January 25, 1991).

See: 22 N.J.R. 3777(a).

Adopted Concurrent Proposal, R.1991 d.90, effective January 25, 1991.

See: 23 N.J.R. 3777(a), 23 N.J.R. 697(a).

Provisions of emergency new rule R.1990 d.625 readopted without change.

### SUBCHAPTER 15. STANDARDS FOR WRITTEN NOTICE: BUYER'S GUIDE AND COVERAGE SELECTION FORM

#### 11:3-15.1 Purpose

(a) N.J.S.A. 39:6A-23 requires the Commissioner of the Department of Insurance to promulgate standards for the written notice to be provided to applicants for automobile insurance and to policyholders seeking renewal of coverage. This written notice includes a Buyer's Guide and a Coverage Selection Form as required by N.J.S.A. 39:6A-23. This subchapter implements this statutory requirement and establishes the necessary minimum standards insurance companies authorized to transact the business of private passenger automobile insurance, including any residual market mechanism created by any New Jersey statute, shall use in giving notice of available coverages, options and rate credits.

(b) The purpose of the standards is to help consumers understand the choices they will make. The standards prescribe an attractive format and plain language describing the choices in general, thereby encouraging consumers to read the documents and to make informed choices about the auto insurance coverages and options available to them.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Old text was repealed.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to delete references to the NJAFIUA and to substitute therefor a general reference to residual market mechanisms created by New Jersey statute consistent with "The Fair Automobile Insurance Reform Act of 1990", P.L. 1980 c.8.

### 11:3-15.2 Scope

This subchapter applies to every insurance company authorized to transact the business of private passenger automobile insurance in this State and to any residual market mechanism created by any New Jersey statute.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Old text was repealed.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to delete references to the NJAFIUA and to substitute therefor a general reference to residual market mechanisms created by New Jersey statute consistent with "The Fair Automobile Insurance Reform Act of 1990", P.L. 1980 c.8.

### 11:3-15.3 Definitions

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

"Department" means the Department of Insurance of the State of New Jersey.

"Insurance company" means any person, corporation, association, partnership, company and any other legal entity issuing a contract of private passenger automobile insurance, including any residual market mechanism established pursuant to any New Jersey statute. As appropriate, "insurance company" shall also mean a servicing carrier for a residual market mechanism.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Repealed old rule, "effective date."

Amended by R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

NJAFIUA added to definition of "insurance company".

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Changed definition of "Insurance Company" for consistency with "The Fair Automobile Insurance Reform Act of 1990", P.L. 1990 c.8.

#### Case Notes

Insured was not entitled to underinsured motorist benefits; insurance carried by two vehicles which struck his was greater than the amount of uninsured coverage which he could have obtained. *Pinto v. Garretson*, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

Insurer and agent were not liable in allegedly failing to inform insured about higher levels of underinsured motorist coverage. *Pinto v. Garretson*, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

### 11:3-15.4 Compliance

Pursuant to N.J.S.A. 39:6A-23, no new private passenger automobile insurance policy or renewal shall be issued on or after January 1, 1989, unless the application for the policy or

renewal is accompanied by a written notice which meets the minimum standards prescribed in this subchapter.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Repealed "General context of written notice".

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

#### Case Notes

Insurance agent had no obligation to contact insureds to provide explanation of notice provided by insurance carrier. *Bruce v. James P. MacLean Firm*, 238 N.J.Super. 501, 570 A.2d 49 (L.1989), affirmed 238 N.J.Super. 408, 570 A.2d 1.

"Notice of coverage" provisions imposed duty on carrier to prove only that it mass mailed requisite materials concerning optional coverage to its insureds. *Bruce v. James P. MacLean Firm*, 238 N.J.Super. 501, 570 A.2d 49 (L.1989), affirmed 238 N.J.Super. 408, 570 A.2d 1.

### 11:3-15.5 Content of written notice; receipt by public

(a) The written notice shall include the New Jersey Auto Insurance Buyer's Guide and the Coverage Selection Form as they appear in this subchapter.

(b) Each named insured of an automobile insurance policy shall receive a Buyer's Guide and a Coverage Selection Form:

1. When application is made for a new policy;
2. As part of a notice of renewal; and
3. When mid-term changes are requested which require the use of a Coverage Selection Form (see N.J.A.C. 11:3-15.9).

(c) The Coverage Selection Form shall be used in accordance with the requirements of N.J.A.C. 11:3-15.9.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Repealed "General content of buyer's guide".

Amended by R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

(c) deleted.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to clarify when a Buyer's Guide and Coverage Selection Form are required to be received by the public, and, for convenience to the reader, to reference the rules concerning the use of the Coverage Selection Form (see section 13 of the "Fair Automobile Insurance Reform Act of 1990").

#### Case Notes

Insured could not have jury trial in reformation action for agent's failure to inform insured of available underinsured motorist coverage. *Weinisch v. Sawyer*, 123 N.J. 333, 587 A.2d 615 (1991).

Direct writing insurer was not responsible for insured's inadequate underinsured motorist (UIM) coverage. *Andriani v. New Jersey Mfrs. Ins. Co.*, 245 N.J.Super. 252, 584 A.2d 875 (A.D.1991), certification denied 126 N.J. 327, 598 A.2d 886.

Client-initiated contacts with insurance brokers can result in broker's duty to exercise skill and possess knowledge concerning coverages.

Avery v. Arthur E. Armitage Agency, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insurer's buyer's guide and coverage selection form complied with regulations. Avery v. Arthur E. Armitage Agency, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insurer that was already voluntarily offering underinsured motorist coverage prior to January 1, 1984 did not have adjustment period until July 1, 1984. Sikking v. Nelson, 242 N.J.Super. 185, 576 A.2d 311 (A.D.1990).

"Notice of coverage" provisions required carrier to prove only that it mass mailed requisite materials. Bruce v. James P. MacLean Firm, 238 N.J.Super. 501, 570 A.2d 49 (L.1989), affirmed 238 N.J.Super. 408, 570 A.2d 1.

Insured was not entitled to underinsured motorist benefits; insurance carried by two vehicles which struck his was greater than the amount of uninsured coverage which he could have obtained. Pinto v. Garretson, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

Insurer and agent were not liable in allegedly failing to inform insured about higher levels of underinsured motorist coverage. Pinto v. Garretson, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

Whether insured was contributorily negligent was for jury. Weinisch v. Sawyer, 237 N.J.Super. 195, 567 A.2d 259 (A.D.1989), certification granted 121 N.J. 658, 583 A.2d 345, reversed 123 N.J. 333, 587 A.2d 615.

### 11:3-15.6 Minimum Standards for New Jersey Auto Insurance Buyer's Guide

(a) Any insurance company may comply with this subchapter by using a camera-ready typeset Buyer's Guide produced by the Department. To obtain this camera-ready Buyer's Guide, an insurance company may contact the Division of Public Affairs, Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625-0325.

(b) Insurance companies that wish to produce their own plates may do so according to the requirements prescribed in this subchapter.

(c) In preparing the Buyer's Guide, insurance companies shall use the text provided in this subchapter. Insurance companies which do not offer all the coverages described in the Buyer's Guide shall delete those sections and shall indicate clearly that they do not offer those coverages. Insurance companies may add information to the Buyer's Guide provided that the additional information is consistent with the purpose of the written notice.

(d) To assure conformity with this subchapter, each insurance company shall file its Buyer's Guide with the Division of Public Affairs. The filing shall include a sample copy of the insurance company's Buyer's Guide and a letter listing all alterations and additions, if any, made from the text appearing in this section. The filing shall be made once when the first Buyer's Guide is issued by the insurance company and again whenever changes are made.

(e) When changes are made in Buyer's Guide, the new Buyer's Guide shall be filed with the Division of Public Affairs within seven days of its use, and the bottom of the last page shall clearly state the month and year in which the changes were implemented. Insurers shall be permitted to use existing supplies of the current Buyer's Guide until June 30, 1996. After that date, only use of a Buyer's Guide conforming to these rules shall be permitted.

(f) The size of the pages of the Buyer's Guide shall not be smaller than three and a half inches by eight and one-half inches. The camera-ready Buyer's Guide produced by the Department shall use pages measuring five and one-half inches by eight and one-half inches.

(g) An insurance company which uses the Department's camera-ready Buyer's Guide shall not reduce the image or the size of its pages. The Buyer's Guide shall be bound. If an insurance company intends to fit this printed booklet in a common-size four-inch by nine-inch business envelope, the booklet may be folded once lengthwise.

(h) The Buyer's Guide shall be printed on paper of a quality sufficient to assure that printing does not bleed from one side to the other. The cover may be of the same or better paper quality as the pages.

(i) The type size used in the Buyer's Guide shall be at least 10-point. The camera-ready material provided by the Department shall be 12-point type.

(j) The type style used shall be within the discretion of the insurance company, but it shall be suitable for the use of boldface type for emphasis. In the text required by this subchapter, material which appears in boldface shall be printed in boldface type. The type style used in the camera-ready material provided by the Department shall be Times Roman.

(k) To provide adequate white space for an attractive format, the typeset shall be paragraphed consistent with the text of the Buyer's Guide in (m) below. Additionally, at least one line shall be skipped between each paragraph.

(l) The Buyer's Guide shall have a cover with the following title in large type: "New Jersey Auto Insurance Buyer's Guide." In regular type, the cover shall state, "This contains only general information and is not a legal document." An insurance company may include its name and/or company logo on the cover.

(m) An insurance company which writes at least two percent of the New Jersey private passenger automobile market, and each NJAFIUA servicing carrier, shall print its name and toll-free telephone number on the last page of the Buyer's Guide.

(n) An insurance company which does not offer additional medical expense benefits above limits of \$250,000 per person, per accident, shall not include any reference to this optional coverage in its Buyer's Guide, nor shall any reference be made to such coverage in its Coverage Selection Form.

(o) The text of the New Jersey Auto Insurance Buyers' Guide follows:

New Jersey  
Auto Insurance  
Buyers' Guide

This contains only general information and is not a legal document.

Summary

New Jersey consumers have specific rights regarding the purchase of auto insurance coverage.

For instance, if the insurance company you choose will not sell you auto insurance, the company must tell you why and, upon your request, the company must respond in writing. If you are not satisfied with the company's response, you can ask the New Jersey Department of Insurance for help. Under certain circumstances, you may also ask for a hearing. Any consumer who believes that his or her insurance company has improperly charged him or her for an at-fault accident can contact the Department, which will investigate the allegations.

The insurance agent or the insurance company also must tell you whether you qualify for auto insurance coverage with one of its other companies or affiliates. Auto insurance applicants with eight or fewer eligibility points can obtain coverage from the company to which they apply, if they fulfill all other eligibility requirements.

You also have the right to receive from your agent auto insurance premium quotes from all the insurance companies he or she represents for which you qualify.

The law requires that you maintain auto liability coverage which, subject to the terms and limits of the policy, protects you in case you are sued, and pays for damages that you cause to someone else's property. Please see page XX.

You are also required to purchase personal injury protection, which pays the auto accident-related medical bills of you and your family. Please see page XX.

You can choose whether your health insurance will pay first for injuries stemming from auto accidents (if you have health insurance which pays for such injuries), or whether you want your auto insurer to pay medical expenses first. You may save on your auto premiums by choosing the health option. To find out more about your medical bene-

fits and options, please see the section beginning on page XX.

Your medical benefits are now capped at \$250,000. That means your auto insurer can only pay up to \$250,000 per person, per accident. But, for an additional premium, you may be able to purchase more coverage for yourself or your family.

You must also carry uninsured motorist coverage, which pays for damages caused by a driver who has no insurance. Please see page XX.

If you want additional coverage, you can buy collision or comprehensive, which pays for damages to your own car or for auto theft. These will add to your total insurance cost. In many cases, State law requires a special insurance inspection of a vehicle before this coverage takes effect. You can save on your collision or comprehensive coverage by choosing higher deductibles. Please see page XX.

The law also allows you to choose whether you want an unlimited right to sue for auto-related damages—the "no threshold" option—or to save money by limiting your right to sue for serious injuries only—the "lawsuit threshold" option (also known as the "verbal threshold"). Please see page XX.

The buyer's guide will explain each of these terms. It will also help you fill out the Coverage Selection Form. You can also learn how to get a comparison of premiums for all auto insurers (page XX).

Explanation of Coverages

Your auto insurance policy is actually several kinds of policies, or coverages, rolled into one.

For each coverage, you are charged a separate price, which is known as the premium.

You pay only one price for auto insurance, but that price is determined by adding the premiums for all the coverages you buy.

Use your coverage selection form to indicate what coverages you will buy in accordance with New Jersey law.

The coverages are:

LIABILITY  
PERSONAL INJURY PROTECTION  
UNINSURED/UNDERINSURED MOTORIST  
COLLISION  
COMPREHENSIVE

Use these explanations to help you complete the coverage selection form.

Liability Coverage  
(Required by Law)

Item 1 on the Coverage Selection Form

Liability coverage pays for injuries to other people or damages to their property if you are legally responsible for their losses. The company will pay damages only up to the amount of coverage you have chosen.

There are two kinds of liability coverage:

Bodily injury coverage involves cases in which other people are hurt or die as a result of an auto accident. If you are legally responsible, it will compensate these people for pain, suffering or other personal hardships, and will also pay for some economic damages, such as lost wages.

Property damage coverage will reimburse other people if you are legally liable for damage to their belongings as a result of an auto accident.

If a liability claim is filed against you, your insurance company will investigate the claim and will decide whether it should be paid, negotiated, or defended in court. Your insurance company will pay the legal bills.

Under State law, you must buy coverage which will pay, for each accident, at least in the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$5,000 for property damage.

Some companies sell a combined single limit policy, which must provide at least \$35,000 of coverage per accident.

Higher limits of liability coverage are available at relatively low cost.

If you cause an accident and do not have enough insurance to cover your legal responsibilities, you then are personally responsible and could lose some of your assets or spend years paying this debt.

**PREMIUM COST SAVER: Lawsuit  
Threshold (Verbal Threshold)**

Item 2 on the Coverage Selection Form

In order to hold down insurance premiums, New Jersey motorists may choose to limit when they may sue for noneconomic loss which means pain, suffering and inconvenience resulting from an auto accident.

The lawsuit threshold option, also known as the verbal threshold, uses words, rather than a dollar amount of medical bills, to describe when a suit may be filed. If you select this limitation, then you, your spouse and children living with you who are not covered by name by another auto insurance policy will not be able to sue unless the injury sustained appears on this list:

- death;
- dismemberment;
- significant disfigurement;
- a fracture;
- loss of a fetus;
- permanent loss of use of a body organ, member, function or system;
- permanent consequential limitation of use of a body organ or member;
- significant limitation of use of a body function or system; or
- a medically determined injury or impairment of a nonpermanent nature which prevents the injured person from performing substantially all of the material acts which constitute the person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment. (N.J.S.A. 39:6A-8, effective January 1, 1989)

You can reject this threshold and retain the right to sue for any auto-related injury. This option, called "no threshold", will increase the price of your insurance policy.

Under state law, you must choose either the lawsuit threshold or the no threshold option. The same choice should be made under all policies that you have. If you do not choose one of these options, you are considered by law to have selected the lawsuit threshold option.

**Personal Injury Protection (PIP)  
(Required by Law)**

Item 3 on the Coverage Selection Form

New Jersey law requires Personal Injury Protection, sometimes called PIP or no-fault coverage, which pays all reasonable medical bills up to a maximum of \$250,000 per person, per accident regardless of who caused the auto accident.

However, you may also have the option to select your health insurer or health maintenance organization to pay your auto accident no-fault claims.

Basic PIP Coverage

- **Medical Expenses:** Payment of reasonable and necessary medical expenses within certain limits set by State law—\$250 deductible for each accident, only 80 percent reimbursement for the expenses from \$251 through \$5,000 for each accident, and a maximum benefit of \$250,000 per person per accident.

- **Income Continuation:** If you cannot work because of an auto accident injury, you can collect up to \$100 a week up to a total limit of \$5,200 for lost wages.

- **Essential Services:** You can collect as much as \$12 a day, up to a total limit of \$4,380 to pay someone to do necessary services that you normally do yourself, such as cleaning your house, mowing your lawn, shoveling snow or doing laundry.

- **Death Benefit:** If you die from auto accident injuries, your family or estate will receive any benefits you have not already collected under the income continuation and essential services coverages.

- **Funeral Expense Benefit:** In addition to the death benefit, reasonable funeral expenses are covered up to \$1,000.

#### PREMIUM COST SAVER: PIP Medical Expenses Only Coverage

If you wish, you can buy PIP medical coverage without any income continuation, essential services, death benefits and funeral expense benefits. This is called PIP medical expenses only.

You might want this premium cost-saving option if you and relatives who live with you would not lose income if any of you were disabled by an auto accident. For example, this option should be considered if your sources of income are pensions, Social Security or investments which would continue regardless of an auto accident, and if someone is always available to care for your personal needs, and if your funeral expenses are covered in some other way.

But the option is a package deal. Either you keep all four of these non-medical expense PIP benefits, or you drop them all. You cannot pick and choose.

#### Additional PIP Coverage

On the other hand, you and relatives who live with you and who do not have their own auto insurance policies might want higher benefits. You can purchase higher benefits for income protection and essential services, and higher death benefits, than the amounts provided in the basic PIP plan.

#### Additional Medical Expense Coverage

Your auto insurance company may also offer additional medical expense benefits above limits of \$250,000 per person, per accident.

If you buy additional benefits, the price of your insurance will be higher.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

#### Personal Injury Protection (PIP)

##### Health Insurance Option (Premium Cost Saving Option) Item 4 on Coverage Selection Form

Most New Jersey residents have the option of selecting their health coverage provider, rather than their auto insurance company, to pay for their no-fault medical expense claims. A health coverage provider may be an insurance company, an HMO or some other type of benefit plan provided by your employer.

Medicare and Medicaid will NOT provide primary coverage. If your health benefits are provided by either Medicare or Medicaid, you cannot choose this option.

If you select your health coverage provider to be the primary payer of auto no-fault claims, you may save on your auto premium. Before selecting this option, however, check to make sure that your health coverage provider will pay for auto accident injury treatment expenses. If your employer supplies your health coverage, your employer should be able to give you this information; otherwise, check with your health coverage provider directly.

Deductibles and co-payments of your health policy or plan will still apply. The coverage limits of your health policy or plan will also be in effect.

Most HMOs offer unlimited coverage. Most other health coverage providers offer lifetime benefit limits of \$1 million.

That means the health coverage provider will pay all eligible health claims, as long as they do not total more than \$1 million during your lifetime. Be sure to ask your health coverage provider what limits apply under your policy or plan.

Your health policy or plan may not cover all procedures or treatments. Exclusions listed in your policy or plan will apply. But your auto insurer should pay for necessary expenses not covered by your health policy or plan.

If you choose your health coverage provider to be responsible for paying auto accident-related medical bills, you must provide the name of your health coverage provider and the policy, plan, membership or certificate number on the Coverage Selection Form. You must also maintain your health coverage.

If you are in an accident and your coverage is no longer in effect, your auto insurer must pay PIP medical benefits. However, you will be required to pay a \$750 additional deductible.

PIP Medical Expenses Deductible  
Auto Insurer Option

Item 5 on Coverage Selection Form

This option involves only the medical bills paid by PIP, not the income continuation, essential services, death benefits or funeral expense benefits, which will be paid under basic PIP coverage regardless of whether you select your health insurer or auto insurer to be the primary payer of your auto accident-related medical bills.

Under New Jersey law, unless you choose your health insurer to pay your auto accident-related medical bills, your auto insurance policy will cover your medical bills up to a maximum of \$250,000 per person, per accident, if you are injured in an auto accident.

However, for the first \$5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the treatment of others covered by your policy. There is a \$250 deductible, meaning the first \$250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment, which means that for the bills from \$251 to \$5,000, the policy will pay only 80 percent. No co-payment applies to medical expenses between \$5,001 and \$250,000 per person, per accident.

(NOTE: Companies offering higher PIP limits may state that benefits above \$5,000 are paid up to the limit selected.)

You can choose PIP deductibles of \$250, \$500, \$1,000 or \$2,500. A larger PIP deductible will reduce the price of your auto insurance. The 20 percent co-payment still applies to expenses between the deductible chosen and \$5,000.

You should consider the \$2,500 PIP deductible if you are already covered by a health insurance policy or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance will not pay.

Before taking this option, ask your health insurance company or HMO two things:

Will your health policy or HMO cover auto accident-related medical bills not paid by auto insurance? The Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto accident-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group sold out of state or by an employer's self-insurance plan. Find out.

What are your health policy's or HMO's own deductible, co-payments and exclusions? Find out what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your pocket for medical treatment. Those rules will apply if you use your health plan to cover the \$2,500 PIP deductible.

Uninsured/Underinsured Motorist Coverage

(Required by Law)

Item 6 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which do not require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to you, your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons or for damage to your car or its contents.

There are other motorists who have auto insurance coverage but with very low limits. When you buy uninsured motorist coverage above the minimum limits required by law, you are also provided coverage to protect you from those motorists who are underinsured. If you are in an accident caused by such a motorist, underinsured motorist coverage will pay damages up to the difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.

You must purchase uninsured motorist coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$5,000 for property damage.

Many companies sell a combined single limit policy, which must provide at least \$35,000 of coverage per accident. The property damage coverage has a basic \$500 deductible, which means that you pay the first \$500 of a claim under that coverage.

You can buy higher uninsured/underinsured motorist coverage limits, but only as high as the liability coverages you have purchased. Most companies sell up to \$250,000/\$500,000/\$100,000 of coverage or a combined single limit of \$500,000.

Collision and Comprehensive Coverages  
(Optional)

Items 7 and 8 on Coverage Selection Form

Collision coverage and comprehensive (also known as "other than collision") coverage pay for damage to your car. These coverages will pay to repair your car or pay for its value at the time of the loss if it is stolen or declared a total loss.

These coverages are not required by law. However, if you borrowed money to buy your car or if you are leasing the car, the lender or lessor may require you to buy these coverages. Note that some companies will provide collision coverage only if you buy comprehensive coverage too. Contact your company for details.

Collision coverage pays for damage to your car caused by your car hitting things like other cars, trees or telephone poles, or for the car overturning, or for other moving objects hitting your car.

Comprehensive insurance pays for nearly every other kind of damage to your car, such as fire, theft, flood, vandalism, or contact with a bird or animal.

In order to obtain collision or comprehensive coverage for a newly insured vehicle, you must notify your auto insurance company immediately. Under state law, in most cases, collision or comprehensive coverage cannot be provided on a newly acquired vehicle until the auto insurance company is notified. Also, many such vehicles must be inspected for insurance purposes before coverage can be provided. See the section entitled "Mandatory Insurance Inspection" for more details.

**PREMIUM COST SAVER:**

No Collision or No Comprehensive

If your car is older and is paid for, consider eliminating collision or comprehensive coverage, or both. This decision will reduce your premium.

To make the decision, consider what you will pay for these coverages versus the possible benefit if you file a claim.

Collision and comprehensive coverages will reimburse you only up to the actual cash value of your car. The insurance payment probably will be less than the actual cash value because of your policy's deductibles.

**PREMIUM COST SAVER:**

Collision and Comprehensive Deductibles

If you decide that you need collision or comprehensive coverage or both, a significant way to hold down the price of your insurance policy is to select higher deductibles.

If you file a claim, a deductible is the amount of money you will pay before the insurance company starts paying. Deductibles are a way of reducing insurance company costs, and thereby decreasing the price of your insurance policy.

The standard deductible for collision and comprehensive coverages in New Jersey is \$500. You still have the right to buy collision or comprehensive coverage with higher or lower deductibles; lower deductibles will increase the price of your insurance policy.

**MANDATORY INSURANCE INSPECTION**

For Newly Insured Vehicles

Under state law, many vehicles to be insured for collision or comprehensive (also known as "other than collision") coverage must first be inspected for insurance purposes. The law is intended to reduce insurance fraud by documenting the condition of newly insured private passenger automobiles.

Whenever you acquire a vehicle and desire collision or comprehensive coverage on it, you should notify your auto insurer immediately. The company will tell you everything necessary to comply with the law and obtain the coverage you desire.

Until you notify your auto insurance company, the vehicle may not be covered for collision or comprehensive.

It is important to understand that the mandatory insurance inspection is in addition to the Motor Vehicle Inspection program conducted by the State of New Jersey. The two inspections are separate and unrelated requirements.

In many cases, an insurance inspection may not be necessary. The law says that insurance inspections may be waived for vehicles which are older than seven model years. The law also says that an insurance inspection may not be necessary for a new automobile purchased from a franchised dealer if you submit an invoice documenting your purchase. And if your auto insurance policy has been in effect for four years or longer, an inspection may not be required by law. Your auto insurance company will explain when you call.

Otherwise, an inspection is required for newly insured vehicles. If your vehicle must be inspected, your auto insurer can provide temporary coverage for only seven days after the day you notify the company about the vehicle.

The only way to make sure that you meet the state requirements and receive the coverage you want is to call your auto insurance company before or as soon as any change of a vehicle occurs.

**ANTI-THEFT AND SAFETY DISCOUNTS**

State law requires all auto insurers to provide comprehensive and collision premium discounts for certain anti-theft

devices and safety features. Most insurers use make and model year rating. Their rates already include the discounts.

**Anti-Theft Device Discount**—Your auto insurance company encourages the use of anti-theft and vehicle recovery devices as another means to reduce losses. The following types of devices are among those which may qualify for a reduction in the comprehensive premium:

1. Alarm system;
2. Fuel cut-off;
3. Hydraulic brake lock;
4. Ignition or starter cut-off;
5. Steering wheel collar;
6. Transmitter which enables the location of the vehicle to be traced; or
7. Window etching vehicle identification system.

Other types may also qualify.

If your auto is equipped with an anti-theft or vehicle recovery device, contact your auto insurance company for an anti-theft questionnaire.

**Safety Feature Discount**—Your auto insurance company encourages the use of safety features as another means to reduce losses. The following types of safety features are among those which may qualify for a reduction in the collision premium:

1. Anti-lock braking system;
2. Traction control systems;
3. Five-mile-per-hour bumpers;

Other types may also qualify.

#### Price Comparison

If you would like a copy of the annual auto insurance premium comparison published by the New Jersey Department of Insurance, please send a stamped, self-addressed envelope to:

Auto Comparison  
Division of Public Affairs  
NJ Department of Insurance  
CN 325  
Trenton, NJ 08625-0325

(p) As appropriate, an insurance company may substitute its name in the Buyer's Guide.

(q) As appropriate, an insurance company which offers only split limits may delete language in the Buyer's Guide explaining combined limits, and an insurance company which offers only combined limits may delete language regarding split limits. If an insurance company does not offer limits as low as the minimums required by law, that information may be inserted in this paragraph.

(r) An insurance company which offers higher benefits than described in the text of the Buyer's Guide may modify the relevant paragraph to explain those higher benefits.

(s) An insurance company which uses only one term, "Comprehensive" or "Other Than Collision," to describe this coverage, may delete reference to the inappropriate term.

As amended, R.1984 d.479, eff. November 5, 1984.

See: 16 N.J.R. 1693(a), 16 N.J.R. 3038(a).

(a)3: added "as amended by P.L. 1984 c.40".

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Repealed "Specific coverages and options to be included in written notice and buyer's guide".

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1990).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Subsection (n) of this section is amended to delete in its entirety the text of the Buyer's Guide and to substitute new text therefor. The new text is written in plain language pursuant to the requirement of section 13 of the "Fair Automobile Insurance Reform Act of 1990" and incorporated several changes required to be made in the Coverage Selection Form by the Act; also amended to delete the provision that the Department, upon request from an insurer, will prepare a coverage-ready final page of the Buyer's Guide.

R.1992 d.218, effective May 18, 1992.

See: 24 N.J.R. 523(a), 24 N.J.R. 1898(b).

In (c), "Insurance companies... shall delete those sections" was "may delete...". Added new (n), regarding additional medical benefits, and redesignated existing (n) as (o), with extensive revisions to Buyer's Guide. Redesignated existing (o) through (r) as (p) through (s). Amended by R.1996, d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

In (e) provided for supplies of the current Buyer's Guide, in (g) deleted "by glue or staples" following "bound", and in (o) rewrote the Buyer's Guide.

#### Case Notes

Whether tort-feasor's vehicle is underinsured is not determined relative to injured person's damages or relative to judgment or judgments against tort-feasor, but rather relative to limits of coverage purchased by or for injured person. *Calabrese v. Selective Ins. Co. of America*, 297 N.J.Super. 423, 688 A.2d 606 (A.D.1997).

Driver who owned no automobile and was injured in cohabitant's car was entitled to underinsured motorist benefits. *Market Transition Facility of New Jersey By and Through Amgro Ins. Co. v. Parisi-Lusardi*, 293 N.J.Super.471, 681 A.2d 660 (A.D.1996).

Motorcyclist's tort claim for personal injuries sustained when his motorcycle collided with automobile subject to verbal threshold; he chose that option for liability policy covering only his personally owned automobile and not his motorcycle, even though he was not eligible for personal injury protection benefits under that policy. *Koff v. Carrubba*, 290 N.J.Super. 544, 676 A.2d 184 (A.D.1996).

Insured who was injured by uninsured motorist and underinsured motorist was entitled to recover no more than \$75,000 as maximum limit of liability per accident; not entitled to recover maximum uninsured benefits and maximum underinsured benefits; overruling *Conigliario v. Hanover Ins. Co.*, 233 N.J.Super. 627, 559 A.2d 875. *Hesser v. Harleysville-Garden State Ins. Co.*, 287 N.J.Super. 47, 670 A.2d 123 (A.D.1996).

The Automobile Reparation Reform Act limits on recovery from tort-feasor. *Roig v. Kelsey*, 135 N.J. 500, 641 A.2d 248 (1994).

No regulation prevents insurer from providing greater underinsured motorist coverage to insured than is provided under insured' personal insurance. *French v. New Jersey School Bd. Ass'n Ins. Group*, 149 N.J. 478, 694 A.2d 1008 (N.J. 1997).

Motorist could reasonably and objectively expect to be buying protection up to declared legal limits. *Clegg v. New Jersey Auto. Full Underwriting Ass'n By and Through Cigna Ins. Co.*, 254 N.J.Super. 634, 604 A.2d 179 (A.D.1992).

There was common-law duty on part of insurance carriers or their agents to advise insureds concerning possible need for higher policy limits upon policy renewal. *Wang v. Allstate Ins. Co.*, 125 N.J. 2, 592 A.2d 527 (1991).

Insured could not have jury trial in reformation action for agent's failure to inform insured of available underinsured motorist coverage. *Weinisch v. Sawyer*, 123 N.J. 333, 587 A.2d 615 (1991).

Direct writing insurer was not responsible for insured's inadequate underinsured motorist (UIM) coverage. *Andriani v. New Jersey Mfrs. Ins. Co.*, 245 N.J.Super. 252, 584 A.2d 875 (A.D.1991), certification denied 126 N.J. 327, 598 A.2d 886.

Client-initiated contacts with insurance brokers can result in broker's duty to exercise skill and possess knowledge concerning coverages. *Avery v. Arthur E. Armitage Agency*, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insurer's buyer's guide and coverage selection form complied with regulations. *Avery v. Arthur E. Armitage Agency*, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Automobile insurer that was already voluntarily offering underinsured motorist coverage prior to January 1, 1984 did not have adjustment period until July 1, 1984. *Sikking v. Nelson*, 242 N.J.Super. 185, 576 A.2d 311 (A.D.1990).

"Notice of coverage" provisions required carrier to prove only that it mass mailed requisite materials. *Bruce v. James P. MacLean Firm*, 238 N.J.Super. 501, 570 A.2d 49 (L.1989), affirmed 238 N.J.Super. 408, 570 A.2d 1.

Whether insured was contributorily negligent was question for jury. *Weinisch v. Sawyer*, 237 N.J.Super. 195, 567 A.2d 259 (A.D.1989), certification granted 121 N.J. 658, 583 A.2d 345, reversed 123 N.J. 333, 587 A.2d 615.

Buyer's guide and coverage selection form did not contain inherent bias or confusion on basis that Commissioner made reference to "basic limit" as opposed to "basic tort option." *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Buyer's guide and coverage selection form which gave basic tort option, as opposed to no-threshold option, a favorite status, was justifiable. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D. 1989), certification denied 118 N.J. 181, 570 A.2d 950.

Commissioner's regulations did not have to require that coverage selection form inform consumers of exact dollar amount of premium savings arising from election. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Commissioner's use of term "lawsuit threshold" in buyer's guide and coverage selection form, as opposed to "verbal threshold" did not lead to confusion. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Insurance Commissioner acted properly when he required that coverage selection form contain provision referring consumers to their automobile insurance companies in event of questions on coverage. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Model coverage selection form, was not arbitrary, unreasonable or capricious, and was substantially consistent with statutory language. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Two statutes, one requiring that coverage selection form state the percentage difference in premium rates or dollar savings between the two tort options for suing for noneconomic loss and the other requiring that coverage selection form identify range of premium rate credit or dollar savings or both; were not inconsistent. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

### 11:3-15.7 Minimum standards for coverage selection form

(a) The Coverage Selection Form shall be printed on at least two pages of paper, of sufficient size to be easily readable. As space shall be provided at the top of the front page for the consumer's name to be hand printed, and a space shall be provided at the bottom of the last page for the consumer's signature and date.

(b) The insurance company may include additional lines for application number, policy number or other necessary information.

(c) An insurance company may expand the form to solicit additional information, including, but not limited to, the names of resident relatives eligible for PIP benefits, or different collision and comprehension deductibles applying to different vehicles covered by the same policy.

(d) The type size shall be at least 12-point.

(e) The Department will not provide camera-ready typeset for the Coverage Selection Form.

(f) The Coverage Selection Form shall include the range of premium rate differences as indicated by this subchapter. Each insurance company shall determine the numbers for use in these sections. When the numbers on the Coverage Selection Form change for any reason, including, but not limited to, rate changes, a new Coverage Selection Form with the current numbers shall be printed.

(g) The Coverage Selection Form shall include the language in (h) below, except that language marked "(NOTE)", which describes language which the insurance company shall insert.

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name: \_\_\_\_\_

For new policies, you must choose one option for each item below. For changes upon renewal and mid-term policy changes, you must use this Form when you:

- (a) elect the "No Threshold" option;
- (b) change from the "No Threshold" option to the "Lawsuit Threshold" option;
- (c) desire collision or comprehensive deductibles other than \$500;
- (d) desire to change to the \$500 deductible for collision or comprehensive coverage;
- (e) desire your health insurer to be the primary insurer to pay for your auto accident-related medical bills; or
- (f) desire your auto insurance carrier to be the primary insurer for your auto accident-related medical bills.

The following item numbers match the explanations in the New Jersey Auto Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered.)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold (Otherwise known as the "Verbal Threshold")

Do you accept the basic limit on the right to sue if injured in an auto accident?

- Yes. I want the Lawsuit Threshold.

No. I want No Threshold. My bodily injury liability premium will be \_\_\_% to \_\_\_% higher if I select the No Threshold option instead of the Lawsuit Threshold, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium at current rates will be \$\_\_\_ to \$\_\_\_ higher on each \_\_\_\_\_ renewal of my policy if I select the No Threshold option instead of the Lawsuit Threshold. I understand that I can contact my insurance company or my insurance producer i.e., agent or broker) for specific details.

(NOTE: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual.")

(NOTE: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

NOTE: Insurance companies or their producers or representatives shall not be held liable in an action for damages either on account of the choice of a tort option (lawsuit threshold/verbal threshold or no threshold) made by an insured or on account of the tort option imposed by law if no choice is made, except for damages caused as the result of a willful, wanton or grossly negligent act of commission or omission.

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

Basic PIP Coverage which includes income continuation, essential services, death benefits and funeral expense benefits as well as medical expense benefits, or

PIP Medical Expenses Only Coverage, for a \_\_\_% to \_\_\_% savings in the \_\_\_\_\_ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.);

Additional PIP Coverage at an extra cost. NOTE: This option is not available if you have selected PIP Medical Expenses Only Coverage. Contact your insurance company or insurance producer (i.e., agent or broker) for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.)

Additional Medical Expense Coverage.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

4. PIP Health Insurance Option. Choose if you want your health insurer, other than Medicare or Medicaid, to be your primary carrier to pay your auto accident-related medical benefits. Check with your employer or health insurer to see if you are eligible and request an answer in writing. To choose this option, health coverage must cover the named insured and members of his family residing in the household.

Yes, I choose the PIP health insurer option.

(NOTE: Your auto insurance company may invalidate this option selection and request payment of the discounted premium amount if it checks but cannot verify that (1) your health coverage is in effect, and (2) your health insurer will provide primary coverage for your auto accident-related medical expenses.

The name of my health insurer(s) is (are):

- 1. \_\_\_\_\_
Number: \_\_\_\_\_
>Policy, Plan, Membership or Group
>Certificate Number (circle one)
2. \_\_\_\_\_
Number: \_\_\_\_\_
>Policy, Plan, Membership or Group
>Certificate Number (circle one)

No, I do not want the PIP health insurer option.

5. PIP Medical Expenses Deductible. Choose only one:

- \$250 deductible, minimum required by law.
 \$500 deductible, for a \_\_\_% to \_\_\_% reduction in the Basic PIP premium.
 \$1,000 deductible, for a \_\_\_% to \_\_\_% reduction in the Basic PIP premium.
 \$2,500 deductible, for a \_\_\_% to \_\_\_% reduction in the Basic PIP premium.

6. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself? Your auto insurance company must offer this coverage up to the bodily injury and property damage liability limits you have selected.

- \_\_\_\_\_
 \_\_\_\_\_
 \_\_\_\_\_
 \_\_\_\_\_

(NOTE: List the same options available for liability coverage above. Other options may also be listed.)

NOTE: Insurance companies or their producers or representatives shall not be held liable in an action for damages either on account of the choice of a given level of motor vehicle insurance coverage made by an insured, as long as those limits provide at least the minimum coverage required by law, or on account of the insured not choosing to purchase underinsured motorists coverage, collision coverage or comprehensive coverage, except for damages caused as the result of a willful, wanton or grossly negligent act of commission or omission.

7. Do you choose "collision" coverage?

- No. I do not wish to be covered for collision damage.
 Yes, with the basic \$500 deductible.
 Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000. This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).
 Yes, with the deductible circled here: \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(WARNING: YOU MAY NOT BE ABLE TO ADD COLLISION COVERAGE TO AN EXISTING VEHICLE OR TO ADD AN ADDITIONAL OR REPLACEMENT VEHICLE TO YOUR EXISTING POLICY WITHOUT FIRST HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

8. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

- No. I do not wish to be covered for comprehensive damage.
 Yes, with the basic \$500 deductible.
 Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000. This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

Yes, with the deductible circled here: \$50, \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the \$200 deductible or \$250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)

(WARNING: YOU MAY NOT BE ABLE TO ADD COMPREHENSIVE COVERAGE TO AN EXISTING VEHICLE OR TO ADD AN ADDITIONAL OR REPLACEMENT VEHICLE TO YOUR EXISTING POLICY WITHOUT FIRST HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

I have read the Buyer's Guide outlining the coverage options available to me. The limits available for uninsured and underinsured motorists coverage have been explained to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its insurance producer (i.e., agent or broker) with the company's binding authority receives my request that a change be made.

For new policyholders, I understand that:

(a) if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option;

(b) if I carry collision or comprehensive coverage without making a written choice for Item 7 or Item 8, I will receive the \$500 deductible; and

(c) if I do not make a written choice for the PIP health insurer option in Item 4, my auto insurer will be the primary health insurer for PIP medical expense benefits.

I understand that if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except when changes are required by a law becoming effective during the term of my previous policy.

I understand that these choices take effect in the following manner:

(1) for new policies and mid-term policy changes, the choices on this Form are effective the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following receipt of this Form by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority; and

(2) for changes upon renewal, the changes to be made on this Form are effective on the date of the next policy renewal if postmarked or received by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority prior to the renewal date.

ANY PERSON WHO KNOWINGLY MAKES AN APPLICATION FOR MOTOR VEHICLE INSURANCE COVERAGE CONTAINING ANY STATEMENT THAT THE APPLICANT RESIDES OR IS DOMICILED IN THIS STATE WHEN, IN FACT, THAT APPLICANT RESIDES OR IS DOMICILED IN A STATE OTHER THAN THIS STATE, IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

Please check the appropriate box to which this form applies  
 NEW POLICY  Mid-Term Change  Renewal Change

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

(i) To assure conformity with this subchapter, each insurance company shall file its Coverage Selection Form with the Division of Public Affairs. Whenever the Coverage Selection Form is changed, the new form shall be filed, and the month and year the changes were implemented shall be clearly stated at the bottom of the revised form. Deadlines for implementation and filing requirements regarding the Coverage Selection Form shall be the same as for the Buyer's Guide. See N.J.A.C. 11:3-15.6(e).

(j) Insurance company shall be required to calculate the percentage and dollar change in premium (or rate) arising from the selection of the No Threshold option as indicated in (j)1 through 4 below. In these calculations, premium (or rate) shall include any expense fee.

1. The Percentage Change Calculation: The percentage increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by calculating the No Threshold rate as a percentage increase relative to the comparable Lawsuit Threshold rate. The low end of the percentage range shall be produced by calculating the percentage increase in the bodily injury liability premium of a policy with a \$250,000/\$500,000 split limit or a \$500,000 single limit when the motorist goes from the Lawsuit Threshold option to the No Threshold option. This calculation shall be made for the territory with the lowest basic limit Lawsuit Threshold rate, and shall assume pleasure usage by an age 30-64, married male principal operator. The high end of the percentage range shall be produced by making the same type of calculation using a policy with basic limits for the territory with the highest basic limit Lawsuit Threshold rate, and shall assume business usage by a youthful, unmarried male principal operator.

2. The Dollar Change Calculation: The dollar increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by subtracting the Lawsuit Threshold rate from the comparable No Threshold rate. The low end of the dollar range shall be produced by calculating the dollar change using a policy with basic limits for the territory with the lowest basic limit Lawsuit Threshold rate, and shall assume personal usage by an age 30-64, married male principal operator. The high end of the dollar range shall be calculated using a \$250,000/\$500,000 split limit or a \$500,000 single limit policy for the territory with the highest basic limit (verbal) Lawsuit Threshold rate, and shall assume business usage by a youthful, unmarried male principal operator. Because the range of the possible additional dollar cost will depend upon territory, bodily injury liability loss limits, and other factors, insurers shall be permitted to use round numbers to represent the approximate range of the cost increase. For example, if the smallest dollar rate increase was \$56.00 and the largest \$305.00, the insurer may use the range \$50.00 to \$310.00 on its Coverage Selection Form.

### 3. Premium Basis for Single Limit Liability Coverage:

i. For single limit liability coverage, the percentage range calculation that is described in (j)1 above shall be based upon the applicable bodily injury liability rate. This calculation shall not be made on the basis of a combined rate containing a charge for bodily injury liability, personal injury protection (PIP), and property damage liability.

ii. For single limit liability coverage, the dollar range calculation that is described in (j)2 above shall be based upon the applicable liability rate. In contrast to the procedure in (j)3i above, the dollar change calculation shall be made on the basis of a complete rate containing a charge for bodily injury liability, personal injury protection (PIP), and property damage liability.

4. Insurance companies shall submit to the Division of Public Affairs, New Jersey Department of Insurance, PO Box 325, Trenton, New Jersey 08625-0325, within seven days of its first use, a copy of the Coverage Selection Form prepared pursuant to this subsection together with:

i. An example showing the calculation of the high and low values for the percentage and dollar change ranges;

ii. Data about the insurance company's territorial rates to confirm that the highest and lowest basic limit Lawsuit Threshold rates have been used in the example. The filing of a rating page showing a list of basic limit rates by territory shall be sufficient;

iii. Data about the insurance company's increased limits liability rating, vehicle usage, and type of driver factors to confirm that the proper relativities have been used in the example. The filing of the appropriate rating pages shall be sufficient; and

iv. For those insurance companies offering only single limit liability coverage, an explanation of the procedure used to develop the bodily injury liability rate from which the percentage and dollar change amounts have been determined. This explanation shall include an example of the calculation methodology.

(k) Insurance companies which do not offer all the coverages described in the Coverage Selection Form shall list those coverages on the form and shall clearly state that those coverages are not available from that company.

New Rule, R.1989 d.117, effective February 21, 1989.

See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).

Section was "Statement on the possible coordination of other health benefits coverage with the personal injury protection medical expense options".

Amended by R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

Amendments made to bring rule in line with changes in N.J.S.A. 39:6A-23 made by P.L. 1988 c.119.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to be consistent with N.J.A.C. 11:3-15.6; the text of the Coverage Selection Form is amended both to clarify the current Form and requirements and to respond to changes required by the "Fair Automobile Insurance Reform Act of 1990".

R.1992 d.218, effective May 18, 1992.

See: 24 N.J.R. 523(a), 24 N.J.R. 1898(b).

In (h), added Note to 3, Warning statement to 7 and 8, and prohibition against domicile misstatement to (2).

Amended by R.1994 d.195, effective April 18, 1994.

See: 26 N.J.R. 85(a), 26 N.J.R. 1659(a).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.1998 d.412, effective August 3, 1998.

See: 30 N.J.R. 1747(a), 30 N.J.R. 2927(a).

In (a), substituted "of sufficient size to be easily readable" for "size eight and one-half inches by 11 inches" at the end of the first sentence.

#### Case Notes

Buyer's guide and coverage selection form in regulations promulgated by Insurance Commissioner to implement revisions to no-fault automobile insurance law did not contain inherent bias or confusion on basis that Commissioner made reference to "basic limit" as opposed to "basic tort option." *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Buyer's guide and coverage selection form which gave basic tort option, as opposed to no-threshold option, a favorite status, was justifiable. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D. 1989), certification denied 118 N.J. 181, 570 A.2d 950.

Insurance Commissioner acted properly when he required that coverage selection form contain provision referring consumers to their automobile insurance companies in event of questions on coverage. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Insurance Commissioner's proposed regulations, which implemented revisions to nonfault automobile insurance law requiring consumers to select between two options of coverage for automobile accident-related bodily injury, did not have to require that coverage selection form inform consumers of exact dollar amount of premium savings arising from election. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Model coverage selection form, proposed by regulations promulgated by Insurance Commissioner for implementing legislative revisions to no-fault automobile insurance law requiring consumers to select between two options of coverage for automobile accident-related bodily injury. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

Statute requiring that no-fault automobile insurance coverage selection form state the percentage difference in premium rates or dollar savings between the two tort options for suing for noneconomic loss was not inconsistent with statute requiring that coverage selection form identify range of premium rate credit or dollar savings or both. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

When promulgating regulations to implement revisions to no-fault automobile insurance law, Commissioner's use of term "lawsuit threshold" in buyer's guide and coverage selection form, as opposed to "verbal threshold", did not lead to confusion. *Emmer v. Merin*, 233 N.J.Super. 568, 559 A.2d 845 (A.D.1989), certification denied 118 N.J. 181, 570 A.2d 950.

#### 11:3-15.8 (Reserved)

#### 11:3-15.9 Use of Coverage Selection Form

(a) For all new policies, an insurance company or an insurance producer with the company's binding authority shall receive a signed Coverage Selection Form indicating

the prospective insured's coverage choices. Coverage shall not become effective until the signed Coverage Selection Form is received from the named insured, unless otherwise authorized by law.

(b) For all policy renewals, the insurance company shall provide its Coverage Selection Form to the named insured with the notice of renewal. For mid-term policy changes, the insurance company shall provide its Coverage Selection Form to the named insured upon his request for a mid-term change when the change is required to be made on the Form. Coverage may be renewed or amended, with or without the signed Coverage Selection Form from the named insured, except as set forth in (b)1i through vi below where a signed Coverage Selection Form is required.

1. An insurance company may require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any coverage change; provided, however, that an insurance company shall require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any of the coverage changes in (b)1i to vi below.

- i. The election of the "No Threshold" option;
- ii. Changing from the "No Threshold" option to the "Lawsuit Threshold" option;
- iii. When the named insured desires collision or comprehensive deductibles other than \$500.00;
- iv. When the named insured desires to change to the \$500.00 deductible for collision or comprehensive coverage;
- v. When the named insured desires his health insurance carrier to be the primary insurer for PIP medical expense coverage benefits; or
- vi. When the named insured desires his auto insurance carrier to be the primary insurer for PIP medical expense coverage benefits.

(c) The coverage changes in (b)1i through vi above shall become effective in the following manner, except when coverage for comprehensive or collision is effected by a required inspection pursuant to N.J.A.C. 11:3-36.

1. For all new policies and mid-term policy changes required to be made on the Coverage Selection Form, the choices on the Coverage Selection Form shall be effective the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following receipt of the Form by the insurance company or an insurance producer with the company's binding authority;

2. For changes upon renewal, the changes required to be made on the Coverage Selection Form shall be effective on the date of the next policy renewal if postmarked or received by the insurance company or by an insurance producer with the company's binding authority prior to the renewal date.

New Rule, R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

Amended to clarify when a Coverage Selection Form must be used and when the changes made thereon become effective.

R.1992 d.218, effective May 18, 1992.

See: 24 N.J.R. 523(a), 24 N.J.R. 1898(b).

In (c), added exception regarding comprehensive and collision.

#### Case Notes

New Jersey Automobile Full Insurance Underwriting Association satisfied its duty to provide first-time insured with notice of personal injury income protection coverage options; it provided buyer's guides and coverage selection forms to insured's broker and received back signed policy application and selection form. *MacKenzie v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 299 N.J.Super. 112, 690 A.2d 668 (A.D.1997).

Insured was not entitled to jury trial in suit for reformation of automobile policy. *Weinisch v. Sawyer*, 123 N.J. 333, 587 A.2d 615 (1991).

Direct writing insurer was not responsible for insured's inadequate underinsured motorist (UIM) coverage. *Andriani v. New Jersey Mfrs. Ins. Co.*, 245 N.J.Super. 252, 584 A.2d 875 (A.D.1991), certification denied 126 N.J. 327, 598 A.2d 886.

Client-initiated contacts with insurance brokers can result in broker's duty to exercise skill and possess knowledge concerning coverages. *Avery v. Arthur E. Armitage Agency*, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insurer's buyer's guide and coverage selection form complied with regulations regarding optional underinsured motorist coverage. *Avery v. Arthur E. Armitage Agency*, 242 N.J.Super. 293, 576 A.2d 907 (A.D.1990).

Insured was not entitled to underinsured motorist benefits for bodily injury; insurance carried by two vehicles which struck his automobile was greater than the amount of uninsured motorist coverage which he could have obtained. *Pinto v. Garretson*, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

Insurer and agent were not liable in allegedly failing to inform insured about higher levels of underinsured motorist coverage. *Pinto v. Garretson*, 237 N.J.Super. 444, 568 A.2d 119 (A.D.1989).

#### 11:3-15.10 Effect on other notice requirements

The Buyer's Guide and written notice incorporate and therefore satisfy any and all other notice requirements previously set forth for the coverage options required by the New Jersey Automobile Reparation Reform Act, the New Jersey Automobile Insurance Reform Act of 1982 and the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984.

Recodified from N.J.A.C. 11:3-15.9, R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).

See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

**11:3-15.11 Penalties**

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as prescribed by law.

New Rule, R.1989 d.117, effective February 21, 1989.  
See: 20 N.J.R. 2984(a), 21 N.J.R. 558(b).  
Recodified from N.J.A.C. 11:3-15.10, R.1989 d.624, effective December 18, 1989 (operative January 1, 1990).  
See: 21 N.J.R. 3244(a), 21 N.J.R. 3922(a).

**11:3-19A.3 General provisions**

(a) Insurers that write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business under a tier rating plan, in accordance with N.J.S.A. 17:29A-46.1 and this subchapter. No insurer shall use or implement any underwriting rule for a tier rating plan not filed and approved as set forth herein.

(b) In determining the number of tiers in a multi-tier rating program, the insurer shall consider the following factors:

1. The homogeneity of risk characteristics;
2. The number of exposures for credibility determinations;
3. The experience of the insurer and its affiliates; and
4. Actuarial judgment.

(c) When requested by the Department, insurers shall demonstrate that the expected losses between the tiers will vary in accordance with the risk characteristics.

(d) The rating system associated with the various tiers shall comply with all existing statutes and rules governing private passenger automobile insurance and shall reflect all premium credits and premium discounts required by statute or rule. Pursuant to N.J.S.A. 17:33B-14.1, there shall be no differential in rates of the insured for a single speeding violation by the insured of less than 15 miles per hour.

(e) Each insurer shall provide a notice explaining the insurer's tier rating system and an applicant/insured's placement within the system upon:

1. An application for coverage;
2. The first renewal of any policy after an insured has adopted an approved tier rating plan; or
3. An insured's request.

(f) The placement of applicants and insureds at or within a tier and the movement of insureds between tiers shall be based on underwriting rules that comply with N.J.A.C. 11:3-19A.5(b), are mutually exclusive per tier, objective and not applied so as to violate any statute or regulation of the United States or the State of New Jersey.

(g) Underwriting rules shall be included in the insured's rule section of the manual. The underwriting rules shall clearly identify the rating tier to which the rules shall be applied and how the rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(h) The ratemaking restrictions established in N.J.S.A. 17:29A-36 shall be applied to each tier within an insurer's rate making plan.

**11:3-19A.4 Filing requirements for tier rating plans**

(a) An insurer seeking to establish or to modify a tier rating plan shall file with the Commissioner the following items:

1. A complete set of underwriting rules containing the standards for each tier and the rating differentials between the tiers;
2. A narrative description of the plan, which shall include:
  - i. The percentage difference between tier rate levels;
  - ii. The insurer's plan for determining placement and renewal of an insured at a tier level; and
  - iii. If the plan is submitted by a group of affiliated companies, the identity of all individual insurance companies in the group that transact private passenger automobile insurance business in New Jersey and the tiers to be used by each;
3. Rating examples as set forth in the Appendix to this subchapter, incorporated herein by reference. Where a driver qualifies for more than one rating tier; the insurer may provide the premium for different tiers together with the factors that might result in the placement of the insured in a lower tier; and

4. No later than 10 days prior to the effective date of the plan, copies of manual rate pages for each rate level together with rating examples and a copy of the notice explaining the insurer's tier rating system pursuant to N.J.A.C. 11:3-19A.3(e).

(b) In addition to the items contained in (a) above, insurers initially substituting a tier rating plan for a standard/nonstandard rating plan pursuant to N.J.A.C. 11:3-19, and insurers initially adopting a rating organization's loss cost tier rating plan, shall also file the following:

1. The expected distribution by tier of current exposures when placed within each tier and the rate effect, including the maximum and minimum individual rate change for each tier; and
2. Calculations demonstrating that the initial rating plan is revenue neutral by coverage in accordance with N.J.S.A. 17:29A-46.4.

(c) When a filer's rating system contains more than one tier, a percentage rate differential shall be applied to the base rates contained in the initial filed and approved tier rating plan.

**11:3-19A.5 Standards of approval, disapproval or modification of underwriting rules and tier rating plans**

(a) A tier rating plan shall be disapproved for any of the following reasons:

1. The plan does not comply with N.J.S.A. 17:29A-46.1 et seq. and this subchapter;

2. The plan does not provide that the insurer or affiliated companies shall insure all applicants and insureds defined as "eligible persons" in N.J.A.C. 11:3-34;

3. The plan assigns a vehicle insured under the policy to a higher than standard tier solely for the accumulation of six or less motor vehicle violation points by any named insured. For purposes of this subsection, any named insured also includes insureds that are principal operators of the vehicles based on the insurers manual rules. The motor vehicle points of a person who has more than six motor vehicle points and who is not a named insured or principal operator on any policy in the household may be used to place one vehicle in the household in a higher than standard tier. The motor vehicle points of a person who has six or fewer motor vehicle points and who is not a named insured or principal operator on any policy in the household shall not be used to place any policy in the household in a higher than standard tier;

4. The insurer failed to submit the items required to be filed pursuant to this subchapter; or

5. The plan fails to meet any of the standards for rating systems established by statute or administrative rule.

(b) Underwriting rules for tier placement in a tier rating plan shall meet the following standards:

1. No rule shall be based on the territory in which an insured resides or any other factor which the Commissioner finds to be a surrogate thereof;

2. Underwriting rules shall be based on a reasonable and demonstrable relationship between the risk characteristic of the driver(s) and vehicle(s) insured and the hazards insured against;

3. Underwriting rules shall be based on objective, specific and verifiable criteria. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.;

4. Underwriting rules shall not be based on the previous coverage of an insured or applicant by a substandard insurer in such a way that the insurer is relying upon application of the previous insurers underwriting rules and not its own;

5. Underwriting rules shall not be based on the nonrenewal of an insured prior to June 30, 1997 in accordance with N.J.S.A. 17:29C-7.1b or 7.1c except as permitted by N.J.A.C. 11:3-19A.7(f); and

6. Underwriting rules shall not be based on race, color, creed, religion, national origin or ancestry.

#### 11:3-19A.6 Policy renewals and notice to insureds

(a) An insurer that has implemented a tier rating plan shall issue and renew its policies at the appropriate tier for which the risk qualifies in accordance with the insurer's approved underwriting rules. The transfer of a risk from one tier to another within an insurer's tier rating plan shall not be deemed to be nonrenewal of the policy as provided by N.J.S.A. 39:6A-2, if the insurer complies with the provisions set forth below:

1. If the insured qualifies for a lower rated tier after having been insured at a higher rated tier, the insurer shall renew the insured at the lower rated tier in accordance with procedures set forth in N.J.A.C. 11:3-8.3(a) through (e).

2. If the insured qualifies for a higher than standard tier after having been insured at a standard or lower than standard tier, the insurer shall renew the insured at the higher rated tier in accordance with procedures set forth in N.J.A.C. 11:3-8.3(a) through (e) after providing notice to the insured as follows:

i. Written notice advising the insured that he or she is being placed in a higher than standard tier resulting in a greater premium shall be sent to the policyholder at least 60 days prior to the policy expiration date; the policy renewal notice may include notice of renewal for all vehicles insured on the policy in satisfaction of the requirements of N.J.A.C. 11:3-8.3.

(b) An insurer that has implemented a tier rating plan shall state on the policy declaration page, or some other writing accompanying the policy, the tier level that was used to rate the policy.

#### 11:3-19A.7 Underwriting rules for eligible persons

(a) All affiliated companies shall file for approval underwriting rules that provide that the affiliated companies will make an offer to renew any of its insureds who are defined as an "eligible person" in N.J.A.C. 11:3-34.

(b) All affiliated companies shall file for approval underwriting rules that provide the insurer shall not refuse to insure, refuse to renew or limit coverage available to any of its insured, or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

(d) Underwriting rules for eligible persons shall not provide that coverage will be declined based on whether a member of the insured household is not an "eligible person" as defined in N.J.A.C. 11:3-34 unless the member of the insured household accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purposes of this section:

2. The acceptance from the insured of a certificate or other documentation from an approved defensive driving course provider that indicates that the insured successfully completed a defensive driving course.

(c) Insurers shall provide written notification of the availability of the rate reduction with all new business and renewals.

#### 11:3-24.6 Penalties

Failure of an insurer to comply with these rules may result in the imposition of penalties prescribed by law.

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### SUBCHAPTER 25. PRIVATE PASSENGER AUTOMOBILE INSURANCE: NOTIFICATION BY TREATING MEDICAL PROVIDERS

#### Authority

N.J.S.A. 17:1-15e, 17:1-8.1 and N.J.S.A. 39:6A-5.

#### Source and Effective Date

R.1997 d.14, effective January 6, 1997.  
See: 28 N.J.R. 3876(a), 29 N.J.R. 132(a).

#### 11:3-25.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 39:6A-5, as amended by P.L. 1995, c.407, by establishing procedures to be followed by treating medical providers to give timely notification of the commencement of medical treatment for injuries sustained in automobile accidents. The subchapter sets forth:

1. Time limits for the filing of notification of the commencement of treatment for PIP claims;
2. The actions to be taken upon failure to comply with the notification time limits, including reduction or denial of claim payments;
3. The factors to be considered in evaluation of a late notification; and
4. The rights of providers when payment is reduced or denied for failure to comply with the notification requirements.

(b) This subchapter shall apply to every insurer authorized to transact the business of automobile insurance in this State. The subchapter applies to treatment for injuries resulting from automobile accidents that occur after July 8, 1996.

### 11:3-25.2 Definitions

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

“Coverage status” means the status of PIP coverage for an injured party pursuant to N.J.S.A. 39:6A-5.

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

“Eligible charge” means the treating medical provider’s usual, customary and reasonable charge or the upper limit on the medical fee schedule as found in N.J.A.C. 11:3-29.6, whichever is lower subject to provisions of N.J.A.C. 11:3-29.4.

“Emergency care” means all medically necessary treatment of a traumatic injury or a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbance and/or symptoms of substance abuse) such that absence of immediate attention could reasonably be expected to result in: death; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part. Such emergency care shall include all necessary care immediately following an automobile accident, including, but not limited to, immediate pre-hospital care, transportation to a hospital or trauma center, emergency room care, surgery, critical and acute care. Emergency care extends during the period of initial hospitalization until the patient is discharged from acute care by the attending physician.

“Multiple treating medical provider” means a treating medical provider as defined herein that provides emergency care, in association with one or more other treating medical providers.

“Notification” or “notice” means a written communication, transmitted by mail, facsimile or electronic message (“E-mail”).

“Personal injury protection” or “PIP” means the coverage set forth at N.J.S.A. 39:6A-4.

“PIP information” means: the name and address of the insured and the name and address of the injured party, if different; the name of the PIP insurer and the address established by the insurer for notification of commencement of medical treatment pursuant to N.J.A.C. 11:3-25.3(c); the policy number of the insurance policy providing PIP benefits; and the date of the accident/injury. A treating medical provider may obtain this information from the insured, the

injured party, the hospital, a police report or any other reasonably available source.

“Secondary medical providers” means those medical service practitioners and providers who provide medical products, care and services to a person injured in an automobile accident only after having received a prescription from a treating medical provider. Secondary medical providers shall include, but are not limited to, pharmacists, visiting nurses, prosthetics fabricators and providers of durable medical equipment products. Notwithstanding the existence of a prescription of a treating medical provider, physical therapists, chiropractors and any secondary medical provider who seeks payment of an eligible charge in excess of \$500.00 for individual services or products provided on one occasion or in the course of 30 days shall not be considered secondary medical providers.

“Treating medical provider” means any licensee of the State of New Jersey whose services are reimbursable under personal injury protection coverage, including but not limited to, persons licensed to practice medicine and surgery, psychology, chiropractic, physical therapy, dentistry, and such other medical treatment practitioners as provide a method of healing, including religious methods, to persons injured in automobile accidents. “Treating medical provider” shall also include those secondary medical providers, as defined in this section, who seek payment of an eligible charge in excess of \$500.00 for individual services or products provided on one occasion or in the course of 30 days. “Treating medical provider” also includes general hospitals, acute care hospitals, trauma centers, rehabilitation facilities, mental hospitals, convalescent homes, nursing homes and other institutions, whether operated for profit or not, which maintain or operate facilities for health care, whose services are compensated by personal injury protection insurance.

### 11:3-25.3 Notification of commencement of treatment

(a) When medical treatment is rendered for which a claim for payment will be made pursuant to the PIP coverage of a private passenger automobile insurance policy, a treating medical provider shall provide notice to the PIP insurer no later than 21 days following the date of the commencement of such treatment.

(b) Notice shall be sent by the treating medical provider to the insurer at the address established by the insurer for the receipt of such notice.

(c) Insurers shall establish one address where notice must be sent by treating medical providers pursuant to these rules. Insurers shall provide this address, and may provide a facsimile transmission number, and E-mail address if any, on all insurance identification cards issued by the insurer after January 6, 1997.

(d) In accordance with the provisions of N.J.A.C. 11:3-25.10, insurers shall file with the Department the ad-

dress, and may provide a facsimile transmission number, and E-mail address, if any, where notice of commencement of treatment should be sent. Insurers shall also include the name and telephone number of a contact person at the insurer for this purpose. Such information shall be added to a list of insurer addresses maintained by the Department.

(e) Notice sent to the address printed on a valid insurance identification card or on the Department's current list of addresses shall be presumed to have been sent to the proper address.

(f) Within 14 days after receiving notice of the commencement of treatment, the insurer shall notify the treating medical provider of the coverage status of the person receiving treatment. If the notice from the insurer states that the coverage status of the person receiving treatment is unknown, the insurer shall make a determination of coverage and provide written confirmation to the treating medical provider no later than 60 days from receipt of notice of commencement of treatment. Examples where the coverage status may not be known are when the injured person is not a named insured, principal or occasional operator, or is not otherwise listed as a resident of the insured household on the most recent information provided to the insurer by the named insured.

(g) The notice requirements set forth in (a) through (c) above and the eligible charge reductions contained in N.J.A.C. 11:3-25.5 shall not apply to secondary medical providers, except as noted in the definition of that term found in N.J.A.C. 11:3-25.2.

(h) In calculating the time for notice in (a) and (f) above, the day treatment begins or the day the insurer receives notice from the treating medical provider is not to be included. If the last day for providing notice falls on a Saturday, Sunday or legal holiday, the time runs to the next business day.

#### 11:3-25.4 Content of notice and proof of receipt

(a) The treating medical provider shall send the written notice required by N.J.A.C. 11:3-25.3(a) to the PIP insurer on either:

1. The "Notification of Commencement of Medical Treatment Form" found in Appendix A, appended to and incorporated by reference in this subchapter; or
2. A bill or invoice rendered by the treating medical provider that includes the information required in the "Notification of Commencement of Medical Treatment Form" in Appendix A.

(b) When any notice required by this subchapter is mailed, the postmark shall be the proof of mailing. The insurer shall retain evidence of untimely mailing of the notice whenever it denies or reduces payment pursuant to N.J.A.C. 11:3-25.5.

(c) If facsimile or E-mail notice is authorized by the insurer, and any notice required by this subchapter is sent by facsimile or by E-mail, the proof of notice shall be the facsimile transmission receipt generated by the sender's facsimile machine, a copy of the E-mail message showing the date and time of transmittal or an acknowledgment of receipt generated by the receiving system. Nothing in this section shall prohibit treating medical providers and insurers from mutually agreeing to accept other proofs of notice for electronic transmissions. It shall be the responsibility of the treating medical provider to retain proof of notice of commencement of treatment transmitted by facsimile or other electronic means.

(d) Any notice given pursuant to this subchapter shall be deemed to have been made on the date of postmark or the date of transmission in the case of facsimile transmission and E-mail.

#### 11:3-25.5 Late notification

(a) In the event notice of commencement of medical treatment is made after 21 days, the insurer shall advise the treating medical provider in writing of the late notification and may reserve the right to deny or reduce payment in accordance with (b) below.

(b) Where notice of the commencement of medical treatment is not timely provided in accordance with this subchapter, an insurer may apply the following reductions to the eligible charges:

1. 22 to 30 days after the commencement of treatment: 10 percent reduction.
2. 31 to 60 days after the commencement of treatment: 25 percent reduction.
3. 61 to 120 days after the commencement of treatment: 50 percent reduction.
4. 121 to 160 days after the commencement of treatment: 75 percent reduction.
5. 161 or more days from the commencement of treatment: 100 percent reduction.

(c) If notice is not provided as required by this subchapter, the reduction formula set forth in (b) above shall apply to all eligible charges for which the treating medical provider seeks payment through such late notice.

(d) Insurers shall not reduce an eligible charge under the following circumstances:

1. When the provider is a multiple treating medical provider giving emergency care as defined in N.J.A.C. 11:3-25.2;
2. When the provider is a secondary medical provider as defined in N.J.A.C. 11:3-25.2; or

3. When the medical condition of the injured party made it impossible to comply with the notice requirement.

New Rule, R.1997 d.14, effective January 6, 1997 (operative March 7, 1997).  
See: 28 N.J.R. 3876(a), 29 N.J.R. 132(a).

**11:3-25.6 Standards for adjustment of reduction**

(a) Notwithstanding the reductions set forth in N.J.A.C. 11:3-25.5(b), insurers may choose to pay the full or a less reduced amount of an eligible charge based upon consideration of the following factors:

1. Whether the treating medical provider has previously provided untimely notice under this subchapter or has established a pattern of untimely notice;
2. The cost of medical treatment provided by the treating medical provider between the time treatment commenced, when notice was due and when it was provided;
3. The injured party was a pedestrian who did not have PIP coverage as the named insured or resident relative under another policy and the circumstances are such that additional time is necessary to identify the policy under which coverage is being provided;
4. Any potential adverse impact on the public; and
5. Such other factors as the insurer may determine.

(b) Within 60 days of receipt of notice, or such additional time as may be afforded under N.J.S.A. 39:6A-5g, the insurer shall give the treating medical provider notice of its final determination as to payment, reduction or denial of payment of an eligible charge. Such notice shall be clearly labeled "Final Determination," and it shall refer clearly to the injured party, the insured, the claim number, the date of accident, the date of first treatment, the date notice of the commencement of treatment was made and the acceptance or rejection of any of the standards of adjustment of the reduction in (a) above and N.J.A.C. 11:3-25.5(b).

**11:3-25.7 Payment from insurers only**

Whenever an eligible charge has been reduced or denied pursuant to N.J.A.C. 11:3-25.5(b), the treating medical provider shall not seek to obtain payment directly from the insured or the person receiving treatment.

**11:3-25.8 Procedure for appeals**

A treating medical provider who fails to notify the insurer within 21 days and whose claim has been reduced or denied by the insurer pursuant to N.J.A.C. 11:3-25.5(b) may, in the discretion of a judge of Superior Court, be permitted to refile such claim provided that the insurer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of the receipt of the insurer's final determination of reduction or denial of payment and shall be made upon motion based upon affidavits showing sufficient reasons for the

failure to notify the insurer within 21 days of the commencement of treatment.

**11:3-25.9 Reporting requirement**

(a) By February 5, 1997, every insurer shall file with the Department the address, facsimile number (if notice by facsimile is permitted) and E-mail address, if any, of the designated location for the filing of notice required under this subchapter. Insurers shall use Appendix B, appended to and incorporated by reference in this subchapter, to report the information required by this subsection.

(b) Insurers shall complete and file the information in Appendix B by January 1 of each year.

(c) Completed copies of Appendix B shall be submitted to:

Department of Banking and Insurance  
Director of Public Affairs  
CN 325  
Trenton, New Jersey 08625

**11:3-25.10 Compliance**

For treatments rendered between January 6, 1997 and July 6, 1997, all eligible charge reductions set forth in N.J.A.C. 11:3-25.5(b) shall be reduced by 50 percent (for example, a 10 percent reduction shall be five percent, a 25 percent reduction shall be 12.5 percent, etc.).

**APPENDIX A**

**Notification of Commencement of Medical Treatment  
(to be filed with insurer)**

Name, address and phone No. of Treating Medical Provider:

\_\_\_\_\_

Fax No. (optional) \_\_\_\_\_

Name and address of patient: \_\_\_\_\_  
Name and address of insured: (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Insurer Name: \_\_\_\_\_

Insurer Address: \_\_\_\_\_

\_\_\_\_\_ Policy No. \_\_\_\_\_

Date of accident/injury: \_\_\_\_\_

Date of first treatment: \_\_\_\_\_

**APPENDIX B**

**Address for Notification of Commencement  
of Medical Treatment**

Insurance Co. Name: \_\_\_\_\_

NAIC Group #: \_\_\_\_\_ NAIC Company #: \_\_\_\_\_

Address established by insurer for the filing of the notification of the commencement of PIP treatment by Treating Medical Providers

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

To be filed with:

Department of Insurance  
 Division of Public Affairs  
 CN 325  
 Trenton, NJ 08625  
 Attn: Notification of Treatment List

## SUBCHAPTER 26. UNSATISFIED CLAIM AND JUDGMENT FUND: NOTICE OF INTENT

### 11:3-26.1 Claim information

(a) Notice of intention to make a claim under N.J.S.A. 39:6-65 shall contain the following information:

1. The claimant's name, address, date of birth and social security number;
2. The time, date, location, municipality and county in which the loss occurred;
3. The identity of the operators and vehicles involved in the accident, including the name and address of the owner and operator and the license plate number of the vehicle;
4. Such witnesses to said accident as are then known;
5. A short description of the accident, including the claimant's role or position therein;

6. A description of the injuries then known, and attached thereto a medical certificate if then available. In any event the medical certificate shall be filed as soon as available;

7. A description of the damage sustained to property, and attached thereto an estimate of the cost of repairs if then available; and

8. The policy number of any insurance applicable to the accident, including the name and address of all insurance companies involved.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

In (a)1-5: added text to contents of claim information notice. Added new (a)8.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

### 11:3-26.2 Claim filing; form

(a) A Notice of Intention to make Claim under N.J.S.A. 39:6-65 may be filed on form UCJF #72 of the Unsatisfied Claim and Judgment Fund Board designated as a "Notice of Intention to Make Claim", incorporated herein by reference as Appendix A.

(b) A written notice to the Board in any other form that contains the information required by this section shall be acceptable.

(c) A notice of intention to make a claim that does not contain the items identified in N.J.A.C. 11:3-26.1(a) 1 through 8 shall be returned to the sender and deemed to be not filed with the Unsatisfied Claim and Judgment Fund (UCJF) for the purpose of complying with N.J.S.A. 39:6-65 and shall not toll the statute of limitations.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Added new subsection (c).

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.1997 d.85, effective February 18, 1997.

See: 28 N.J.R. 5030(a), 29 N.J.R. 551(a).

In (a), inserted form number and reference to Appendix A.

APPENDIX A

NEW JERSEY DEPARTMENT OF INSURANCE

UCJ- \_\_\_\_\_

TO: UNSATISFIED CLAIM AND JUDGMENT FUND  
CN 326  
TRENTON NJ 08625-0326

NOTICE OF INTENTION TO MAKE CLAIM

NOTICE OF INTENTION TO MAKE CLAIM FOR PAYMENT FROM THE FUND MUST BE MADE WITHIN NINETY (90) DAYS OF THE DATE OF THE ACCIDENT; OTHERWISE, THE RIGHT TO COLLECT FROM THE FUND WILL BE LOST. N.J.S.A. 39:6-65

READ SECTION 7 BEFORE COMPLETING THIS FORM. ANSWER ALL QUESTIONS. INCOMPLETE FORMS MAY BE RETURNED. N.J.A.C. 11:3-26.2

1-CLAIMANT

CLAIMANT NAME \_\_\_\_\_  
LAST FIRST MI SOC. SEC. # DATE OF BIRTH

ADDRESS \_\_\_\_\_ COUNTY \_\_\_\_\_

MUNICIPALITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

Were you injured? Yes No If yes, describe injuries \_\_\_\_\_

If you were injured, a medical certificate must accompany this notice, or must be filed as soon as possible. N.J.A.C. 11:3-26.1(a)(6) Did you sustain property damage other than to your vehicle? Yes No If yes, submit cost of repairs if available. \$ \_\_\_\_\_ N.J.A.C. 11:3-26.1(a)(7)

2-THE ACCIDENT

DATE OF ACCIDENT \_\_\_\_\_ TIME OF ACCIDENT \_\_\_\_\_  A.M.  P.M. CHECK ONE

LOCATION OF ACCIDENT-STREET/HIGHWAY \_\_\_\_\_

MUNICIPALITY \_\_\_\_\_ STATE \_\_\_\_\_ COUNTY \_\_\_\_\_

DESCRIBE ACCIDENT \_\_\_\_\_

WERE YOU A:  PEDESTRIAN (OR)  PASSENGER IN VEHICLE NO. \_\_\_\_\_  DRIVER  
(See below for vehicle number)

Vehicle No. 1-License Plate No. \_\_\_\_\_  
Owned by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driven by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver's License No. \_\_\_\_\_  
Insured by: \_\_\_\_\_  
Policy No. \_\_\_\_\_  
Agent \_\_\_\_\_

Vehicle No. 2-License Plate No. \_\_\_\_\_  
Owned by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driven by: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver's License No. \_\_\_\_\_  
Insured by: \_\_\_\_\_  
Policy No. \_\_\_\_\_  
Agent \_\_\_\_\_

3-WITNESSES TO THE ACCIDENT

(FIRST NAME) (LAST NAME) Address (STREET) (CITY) (STATE)

(FIRST NAME) (LAST NAME) Address (STREET) (CITY) (STATE)

IMPORTANT-QUESTIONS ON REVERSE SIDE MUST BE ANSWERED AND FORM SIGNED.

UCJF #72



New Rule, R.1997 d.85, effective February 18, 1997.  
See: 28 N.J.R. 5030(a), 29 N.J.R. 551(a).

## SUBCHAPTER 27. UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

### 11:3-27.1 Uninsured's current financial status

(a) Upon review of a case by the Unsatisfied Claim and Judgment Fund Board, if the Board does not have sufficient current information to determine whether or not the uninsured's installment payment is reasonable, a request will be addressed to the uninsured asking for a statement of current financial status.

(b) If the uninsured fails to furnish a completed statement of current financial status within a time period to be established by the executive director, the Unsatisfied Claim and Judgment Fund Board will request the Director of Motor Vehicles to suspend the license and all registrations of the uninsured pursuant to N.J.S.A. 39:5-30 and 39:5-87, for failure to furnish this information.

## SUBCHAPTER 28. UNSATISFIED CLAIM AND JUDGMENT FUND'S REIMBURSEMENT OF EXCESS MEDICAL EXPENSE BENEFITS PAID BY INSURERS

### 11:3-28.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures to ensure that only appropriate, reimburseable claims are submitted to the Fund by insurers by requiring investigation of the medical necessity for certain claims; requiring the audit of claims of \$10,000 or more submitted by licensed providers of health care services or claims of \$25,000 or more by health care facilities; and requiring prior approval of claims for alterations to vehicles and residences. This subchapter also requires insurers to pursue the proper, alternative sources for reimbursement where such other sources of funds are available.

(b) This subchapter applies to all insurers authorized in this State to write the kinds of insurance specified in paragraphs d and e of N.J.S.A. 17:17-1.

Repeal and New Rule, R.1993 d.583, effective November 15, 1993.  
See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

Section was "Notification of potential for payment of excess medical expense benefits".

### 11:3-28.2 Definitions

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

"Board" means the Unsatisfied Claim and Judgment Fund Board created in accordance with N.J.S.A. 39:6-64.

"Diagnosis related groups" or "DRG" means a patient classification scheme in which cases are grouped by shared characteristics of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications. Each DRG exhibits a consistent amount of resource consumption as measured by some unit (for example, length of stay or dollars).

"Excess medical expense benefits" means medical expense benefits paid in accordance with N.J.S.A. 39:6A-4a which are in excess of \$75,000 resulting from personal injury to any one person in any one accident.

"Fund" means the Unsatisfied Claim and Judgment Fund established pursuant to N.J.S.A. 39:6-61 et seq.

"Health care facility" means a facility or institution, whether public or private, engaged principally in providing services for diagnosis of treatment of pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, outpatient clinic, dispensary or residential health care facility.

"Health care service" means the preadmission, outpatient, inpatient and postdischarge care provided in or by a health care facility, and such other items or services as are necessary for such care, which are provided by or under the supervision of a physician for the purpose of diagnosis or treatment of pain, injury, disability, deformity or physical condition, including, but not limited to, nursing service, home care nursing and other paramedical service, ambulance service, service provided by an intern, resident in training or physician whose compensation is provided through agreement with a health care facility, laboratory service, medical social service, drugs, biologicals, supplies, appliances, equipment, bed and board.

"Insurer" means any person authorized or admitted in this State to write the kinds of insurance specified in paragraphs d and e of N.J.S.A. 17:17-1, pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable. "Insurer" shall not include a surplus lines insurer eligible to write business pursuant to N.J.S.A. 17:22-6.40 et seq.

"Licensed nursing personnel" or "licensed nurse" means a nurse licensed by the New Jersey State Board of Nursing or the equivalent from another jurisdiction.

"Medical expense benefits" means medical expense benefits paid in accordance with N.J.S.A. 39:6A-4a.

"Medically necessary" means services or supplies including tests or examinations that are needed for the medical

care of a diagnosed injury. To be considered "needed" a service or supply must be ordered by a licensed physician and be commonly and customarily recognized throughout the medical profession as appropriate in the treatment of the particular injury for which it was ordered. Neither educational, experimental nor investigational procedures will be deemed "needed" or "medically necessary" for purposes of these rules.

"Per diem" means a daily fixed charge which includes room and board and other fees for services and supplies.

"PIP coverage" means personal injury protection coverage as described at N.J.S.A. 39:6A-4.

"Person" means any individual, association, company, corporation, insurer, joint stock company, organization, partnership, society, syndicate, trust, any combination of the foregoing acting in concert or any other entity.

"Pre-screen" means an off-site review of the billings from a health care facility to determine whether the care given and amounts charged are appropriate.

"Provider" means any person that furnishes services or equipment for medical expense benefits for which payment is required to be made under PIP coverage in automobile insurance policies, but does not include health care facilities.

"Reimbursement" refers to reimbursement to insurers by the Fund as provided at N.J.S.A. 39:6-73.1.

"Uninsured motorist claims" means claims submitted against operators of uninsured vehicles and hit and run claims submitted pursuant to N.J.S.A. 39:6-61.

New Rule, R.1993 d.583, effective November 15, 1993.  
See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).  
Amended by R.1994 d.597, effective December 5, 1994.  
See: 26 N.J.R. 2190(a), 26 N.J.R. 4772(a).  
Amended by R.1997 d.535, effective December 15, 1997.  
See: 29 N.J.R. 4246(a), 29 N.J.R. 5309(a).  
Amended "Insurer".

### **11:3-28.3 Report of claims when the carrier has paid at least \$50,000 for medical expense benefits**

In cases where the potential exposure to the automobile liability insurer exceeds \$75,000, the insurer shall report on UCJF Form 1(321) (incorporated herein by reference as Form 1 in Appendix A) whenever medical expense benefits in a total amount of \$50,000 have been paid on account of personal injury to any one person in any one accident.

Recodified from 11:3-28.2 and amended by R.1993 d.583, effective November 15, 1993.  
See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).  
Amended by R.1997 d.85, effective February 18, 1997.  
See: 28 N.J.R. 5030(a), 29 N.J.R. 551(a).  
Amended form references.

### **11:3-28.4 Notice of change in the amount of reserves**

Whenever an automobile liability insurer has paid medical expense benefits on account of personal injury to any one person in any one accident in a total amount of \$50,000, said insurer shall notify the Fund of any changes in the amount of reserves established for payment of the claim or closing of the file.

Recodified from 11:3-28.3 and amended by R.1993 d.583, effective November 15, 1993.  
See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

### **11:3-28.5 Supplemental forms to be submitted to the Fund**

(a) UCJF Form 2(RR) (incorporated herein by reference as Form 2 in Appendix A), shall be filed with the Fund within 90 days after an automobile insurer has paid medical expense benefits on account of personal injury to any one person in any one accident in a total amount in excess of \$75,000. Such form together with UCJF Form 3(323) (incorporated herein by reference as Form 3 in Appendix A) shall be filed each quarter thereafter that the insurer seeks reimbursement.

(b) Any office of an insurer seeking reimbursement of funds from the UCJF for personal injury protection medical expense must also complete and file with the UCJF a New Jersey Information Questionnaire, UCJF Form 4(W-9) (incorporated herein by reference as Form 4 in Appendix A).

Recodified from 11:3-28.4 and amended by R.1993 d.583, effective November 15, 1993.  
See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).  
Amended by R.1997 d.85, effective February 18, 1997.  
See: 28 N.J.R. 5030(a), 29 N.J.R. 551(a).  
In (a), amended form references; and added (b).

### **11:3-28.6 Insurer's continuing obligation to investigate claims**

(a) An automobile liability insurer shall be required to discharge its duty of investigating claims where the potential exposure to the insurer exceeds \$75,000. Said insurer's duty and obligation with regard to claim handling shall exist and continue to exist notwithstanding this rule. The Executive Director may direct such investigations as often as he or she deems necessary. All expenses relating to the investigation of claims, including expenses for medical examinations, file maintenance and cost containment measures, are the responsibility of the automobile liability insurer.

(b) The failure to properly discharge the duty of investigating a claim may result in the imposition of a penalty, to be determined by the UCJF Board of Directors, against the insurer's request for reimbursement.

Amended by R.1991 d.45, effective February 4, 1991.  
See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Added new subsection (b) to text, therein creating subsection (a) to existing text.

Recodified from 11:3-28.5 and amended by R.1993 d.583, effective November 15, 1993.

See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

#### Case Notes

Insurer may request claimant to undergo physical or mental examination after cessation of benefits. *New Jersey Auto. Full Ins. Underwriting Ass'n v. Jallah*, 256 N.J.Super. 134, 606 A.2d 839 (A.D.1992).

Insurer may seek examination under oath of claimant after termination of benefits or demand of arbitration. *New Jersey Auto. Full Ins. Underwriting Ass'n v. Jallah*, 256 N.J.Super. 134, 606 A.2d 839 (A.D. 1992).

Insurer's denial of benefits to claimant who refused examination under oath was not warranted. *New Jersey Auto. Full Ins. Underwriting Ass'n v. Jallah*, 256 N.J.Super. 134, 606 A.2d 839 (A.D.1992).

### 11:3-28.7 Reimbursement of excess medical expense benefits paid by insurers

(a) Insurers shall submit to the Fund itemized accounts with supporting documentation of excess medical expense benefit claim payments as soon as practicable after the close of the quarter for which reimbursement is sought. The Fund shall reimburse automobile liability insurers for excess medical expense benefits on a quarterly basis. Insurers shall not be reimbursed for interest, attorney fees or punitive damages.

1. For a period of one year from the date of payment of a claim for excess medical expense benefits by an insurer, the insurer may submit to the Fund a request for reimbursement of a claim which was not included in the insurer's quarterly submission. The insurer shall include with its request, specific documentation to identify the subject payment.

2. Failure to comply with the requirements set forth in (a)1 above shall result in a denial by the Fund of the reimbursement request which was omitted from the quarterly submission.

(b) The Fund shall not reimburse an insurer for excess medical expense benefits if it is determined that there are multiple insurance policies applicable to a claim unless an insurer has expended medical benefits in an amount exceeding \$75,000 on account of personal injury to any one person in any one accident. Where there are two or more different primary insurers liable, the Fund shall not reimburse such an insurer for excess medical expense benefits unless each primary insurer has expended medical benefits in an amount exceeding \$75,000 on account of personal injury to any one person in any one accident.

(c) Where the Fund has reimbursed an insurer for excess medical expense benefits and thereafter determines that there were or are multiple insurance policies applicable to the underlying claim, the insurer shall return all moneys paid from the Fund. The insurer(s) shall apportion the medical benefits payment and make individual application to the Fund where the potential exposure to the insurer(s)

exceeds \$75,000 on account of personal injury to any one person in any one accident.

(d) Whenever an insurer recovers amounts expended by it for medical benefits, it shall not be reimbursed for excess medical expense benefits unless it has fully repaid the amount previously reimbursed by the Fund.

Recodified from 11:3-28.6 and amended by R.1993 d.583, effective November 15, 1993.

See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

#### Case Notes

Unsatisfied Claim and Judgment Fund not required to reimburse insurers of out-of-state vehicles for PIP benefits in excess of \$75,000. *Martin v. Home Ins. Co.*, 141 N.J. 279, 661 A.2d 808 (1995).

### 11:3-28.8 Audits

Upon request of the Fund, the insurer(s) shall present for audit at the direction of the Executive Director at a New Jersey location all policy and claim records on which notice of potential for payment of excess medical expense benefits have been submitted.

Recodified from 11:3-28.7 and amended by R.1993 d.583, effective November 15, 1993.

See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

### 11:3-28.9 Reporting of losses for personal injury protection payments in excess of \$75,000

(a) For purposes of completing page 14, Exhibit of Premiums and Losses, of the annual statement filed pursuant to N.J.S.A. 17:23-1, the insurer shall include the total amount of losses for private passenger automobile and commercial automobile personal injury protection payments (lines 19.1 and 19.3), including those in excess of \$75,000. Insurers shall also provide a footnote on page 14 that indicates the amount of losses reported, excluding losses from payments of private passenger automobile and commercial automobile personal injury protection payments in excess of \$75,000.

(b) For purposes of completing Schedule F of the annual statement, insurers shall consider the assumption and reimbursement by the Fund of private passenger automobile and commercial automobile personal injury protection payments in excess of \$75,000 as a reinsurance transaction. Insurers shall consider assessments paid to the UCJF pursuant to N.J.S.A. 39:6-63 based on the insurer's premiums for private passenger automobile liability insurance (including PIP) and commercial automobile liability insurance (including PIP) as ceded premium, pro rated for the appropriate line of business on which the assessment was based.

(c) Insurers shall comply with the provisions of this section beginning with the annual statement due March 1, 1994 (covering the calendar year ended December 31, 1993). For purposes of completing the annual statement due March 1, 1993 (covering the calendar year ended December 31, 1992), insurers shall file by no later than July 1, 1993 a

supplemental page 14 and schedule F of the annual statement in accordance with the provisions of this section.

New Rule, R.1993 d.178, effective April 19, 1993.

See: 24 N.J.R. 3215(a), 24 N.J.R. 1769(a).

Recodified from 11:3-28.8 and amended by R.1993 d.583, effective November 15, 1993.

See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

### **11:3-28.10 Insurers' obligations to investigate and audit bills for medical benefits**

(a) For purposes of reimbursement by the Fund, an insurer shall conduct an investigation and audit of claims submitted by health care facilities where such claims are equal to or in excess of \$25,000.

1. Failure of an insurer to complete an audit in accordance with these rules shall result in a 20 percent reduction in payment to the insurer by the Fund of the unaudited, reimbursable bill.

2. Per diem billings for health care facilities are not subject to the audit requirements set forth in this subchapter.

3. An insurer shall conduct an initial on-site audit for charges by health care facilities to determine whether the level of care, need and charges are appropriate.

4. An insurer may pay 80 percent of the provider's bill prior to completion of the initial on-site audit. The remaining amount due, if any, shall be paid following completion of the insurer's audit.

5. Annual on-site audits shall be completed in 12-month intervals, from the initial on-site audit and shall be filed with the Fund within 90 days of completion of the audit; and

6. Whenever a change in services occurs such as, but not limited to, the level of care, the daily room rate or additional charges, an insurer shall conduct an on-site audit and shall provide the audit and auditor's statement to the Fund with the next reimbursement request.

7. All other audits shall be conducted prior to payment to the health care facility and may be performed on a pre-screen basis as set forth in (e) below.

(b) For purposes of reimbursement by the Fund, an insurer shall conduct an investigation and audit of claims submitted by providers where such claims are equal to or in excess of \$10,000.

1. Failure of an insurer to complete an audit in accordance with this subchapter shall result in a 20 percent reduction in payment to the insurer by the Fund of the unaudited, reimbursable bill.

(c) The thresholds in (a) and (b) above are cumulative for each confinement associated with damages resulting from bodily injuries arising out of the ownership, maintenance or use of a motor vehicle in this State and shall incorporate all claims submitted per confinement by the health care facility or by each individual provider.

(d) To be eligible for reimbursement by the Fund, insurers shall audit, prior to payment, bills submitted for continuous treatment from any health care facility or provider which exceed or may exceed the applicable threshold.

(e) Audits of all providers and health care facilities conducted pursuant to this subchapter, including the audit of DRG bills and any successor pricing, shall be performed by:

1. Licensed nursing personnel with two years experience or training in required auditing and hospital practices; or

2. An outside auditing firm retained by the insurer for such purposes.

(f) Audits performed shall include, but not be limited to, confirmation of compliance with the medical fee schedule set forth at N.J.A.C. 11:3-29 including those situations where the insurer does not provide the primary coverage to the claimant.

(g) An insurer is not required to conduct a separate, independent audit, if it has obtained a true copy of an audit conducted by the primary insurer or health insurer.

(h) Insurers shall append copies of audits conducted, including those conducted by the primary insurer or health insurer, and the auditor's statements with the reimbursement request filed with the Fund in accordance with N.J.A.C. 11:3-28.7.

New Rule, R.1993 d.583, effective November 15, 1993.

See: 25 N.J.R. 2636(b), 25 N.J.R. 5219(a).

### **11:3-28.11 Modifications to vehicles**

(a) An insurer shall obtain prior approval from the Fund for modifications to a claimant's vehicle, or vehicle to be used for the benefit of the claimant, the cost of which may be reimbursed by the Fund.

(b) An insurer shall submit a written request to the Fund, seeking approval of modifications which are equal to or in excess of \$1,000, within 30 days of a claimant's request for modifications.

(c) A request to obtain prior approval from the Fund shall include the following:

1. A written recommendation for the modification by the claimant's primary care physician including:

NEW JERSEY COUNTY/MUNICIPALITY CODES
Enter the Appropriate Four-Digit Number on Line 6, Vendor Data

ATLANTIC COUNTY

- 0101 - Absecon City
0102 - Atlantic City
0103 - Brigantine City
0104 - Buena Vista
0105 - Buena Vista Twp.
0106 - Corbin City
0107 - Egg Harbor City
0108 - Egg Harbor Twp.
0109 - Estell Manor City
0110 - Folsom Bor.
0111 - Galloway Twp.
0112 - Hamilton Twp.
0113 - Hammonton Town
0114 - Lunewood City
0115 - Longport Bor.
0116 - Margate City
0117 - Mullica Twp.
0118 - Northfield City
0119 - Pleasantville City
0120 - Port Republic City
0121 - Somers Point City
0122 - Vantnor City
0123 - Weymouth Twp.

BERGEN COUNTY

- 0201 - Allendale Bor.
0202 - Alpine Bor.
0203 - Bergenfield Bor.
0204 - Bogota Bor.
0205 - Carlstadt Bor.
0206 - Cliffside Park Bor.
0207 - Closter Bor.
0208 - Cresskill Bor.
0209 - Demarest Bor.
0210 - Dumont Bor.
0211 - Elmwood Park Bor.
0212 - East Rutherford Bor.
0213 - Edgewater Bor.
0214 - Emerson Bor.
0215 - Englewood City
0216 - Englewood Cliffs Bor.
0217 - Fair Lawn Bor.
0218 - Fairview Bor.
0219 - Fort Lee Bor.
0220 - Franklin Lakes Bor.
0221 - Garfield City
0222 - Glen Rock Bor.
0223 - Hackensack City
0224 - Hamington Park Bor.
0225 - Hasbrouck Heights Bor.
0226 - Haworth Bor.
0227 - Hillsdale Bor.
0228 - Hohokus Bor.
0229 - Leonia Bor.
0230 - Little Ferry Bor.
0231 - Lodi Bor.
0232 - Lyndhurst Twp.
0233 - Mahwah Twp.
0234 - Maywood Bor.
0235 - Midland Park Bor.
0236 - Montvale Bor.
0237 - Moonachie Bor.
0238 - New Milford Bor.
0239 - North Arlington Bor.
0240 - Northvale Bor.
0241 - Norwood Bor.
0242 - Oakland Bor.
0243 - Old Tappan Bor.
0244 - Oradell Bor.
0245 - Palisades Park Bor.
0246 - Paramus Bor.
0247 - Park Ridge Bor.
0248 - Ramsey Bor.
0249 - Ridgefield Bor.
0250 - Ridgefield Park Village
0251 - Ridgewood Village
0252 - Riveredge Bor.
0253 - Riverdale Twp.
0254 - Rochelle Park Twp.
0255 - Rockleigh Bor.
0256 - Rutherford Bor.
0257 - Saddle Brook Twp.
0258 - Saddle River Bor.
0259 - South Hackensack Twp.
0260 - Teaneck Twp.
0261 - Tenafly Bor.
0262 - Teterboro Bor.
0263 - Upper Saddle River Bor.
0264 - Waldwick Bor.
0265 - Wallington Bor.
0266 - Washington Twp.
0267 - Westwood Bor.
0268 - Woodcliff Lake Bor.
0269 - Wood-Ridge Bor.
0270 - Wyckoff Twp.

CAMDEN COUNTY

- 0401 - Audubon Bor.
0402 - Audubon Park Bor.
0403 - Barrington Bor.
0404 - Bellmaw Bor.
0405 - Berlin Bor.
0406 - Berlin Twp.
0407 - Brooklawn Bor.
0408 - Camden City
0409 - Cherry Hill Twp.
0410 - Chesilhurst Bor.
0411 - Clementon Bor.
0412 - Collingswood Bor.
0413 - Gibbsboro Bor.
0414 - Gloucester City
0415 - Gloucester Twp.
0416 - Haddon Twp.
0417 - Haddonfield Bor.
0418 - Haddon Heights Bor.
0419 - Hi Nella Bor.
0420 - Laurel Springs Bor.
0421 - Lansdale Bor.
0422 - Magnolia Bor.
0423 - Merchantville Bor.
0424 - Mt. Ephraim Bor.
0425 - Oaklyn Bor.
0426 - Oakton Bor.
0427 - Pennsauken Twp.
0428 - Pine Hill Bor.
0429 - Pine Valley Bor.
0430 - Runnemede Bor.
0431 - Somerdale Bor.
0432 - Stratford Bor.
0433 - Tavistock Bor.
0434 - Voorhees Twp.
0435 - Waterford Twp.
0436 - Winslow Twp.
0437 - Woodlynne Bor.

CAPE MAY COUNTY

- 0501 - Avalon Bor.
0502 - Cape May City
0503 - Cape May Point Bor.
0504 - Dennis Twp.
0505 - Lower Twp.
0506 - Middle Twp.
0507 - North Wildwood City
0508 - Ocean City City
0509 - Sea Isle City City
0510 - Stone Harbor Bor.
0511 - Upper Twp.
0512 - West Cape May Bor.
0513 - West Wildwood Bor.
0514 - Wildwood City
0515 - Wildwood Crest Bor.
0516 - Woodbine Bor.

CUMBERLAND COUNTY

- 0601 - Bridgeton City
0602 - Commercial City
0603 - Deerfield Twp.
0604 - Downe Twp.
0605 - Fairfield Twp.

BURLINGTON COUNTY

- 0301 - Bass River Twp.
0302 - Beverly City
0303 - Bordentown City

- 0304 - Bordentown Twp.
0305 - Burlington City
0306 - Burlington Twp.
0307 - Chesterfield Twp.
0308 - Cinnaminson Twp.
0309 - Delancey Twp.
0310 - Delran Twp.
0311 - Eastampton Twp.
0312 - Edgewater Park Twp.
0313 - Evesham Twp.
0314 - Fieldsboro Bor.
0315 - Florence Twp.
0316 - Hainesport Twp.
0317 - Lumberton Twp.
0318 - Mansfield Twp.
0319 - Maple Shade Twp.
0320 - Medford Twp.
0321 - Medford Lakes Bor.
0322 - Moorestown Twp.
0323 - Mount Holly Twp.
0324 - Mount Laurel Twp.
0325 - New Hanover Twp.
0326 - No. Hanover Twp.
0327 - Palmyra Bor.
0328 - Pemberton Bor.
0329 - Pemberton Twp.
0330 - Riverside Twp.
0331 - Riverton Bor.
0332 - Shamong Twp.
0333 - Southampton Twp.
0334 - Springfield Twp.
0335 - Tabernacle Twp.
0336 - Washington Twp.
0337 - Westampton Twp.
0338 - Willingboro Twp.
0339 - Woodland Twp.
0340 - Wrightstown Bor.

ESSEX COUNTY

- 0701 - Belville Twp.
0702 - Bloomfield Twp.
0703 - Caldwell Borough Twp.
0704 - Cedar Grove Twp.
0705 - East Orange City
0706 - Essex Falls Twp.
0707 - Fairfield Twp.
0708 - Glen Ridge Twp.
0709 - Irvington Twp.
0710 - Livingston Twp.
0711 - Maplewood Twp.
0712 - Millburn Twp.
0713 - Montclair Twp.
0714 - Newark City
0715 - North Caldwell Twp.
0716 - Nutley Twp.
0717 - Orange City Twp.
0718 - Roseland Bor.
0719 - North Orange Village
0720 - Verona Twp.
0721 - West Caldwell Twp.
0722 - West Orange Twp.

GLOUCESTER COUNTY

- 0801 - Clayton Bor.
0802 - Deptford Twp.
0803 - East Greenwich Twp.
0804 - Elk Twp.
0805 - Franklin Twp.
0806 - Glassboro Bor.
0807 - Greenwich Twp.
0808 - Harrison Twp.
0809 - Logan Twp.
0810 - Mantua Twp.
0811 - Monroe Twp.
0812 - National Park Bor.
0813 - Newfield Bor.
0814 - Paulsboro Bor.
0815 - Pitman Bor.
0816 - South Harrison Twp.
0817 - Swedesboro Bor.
0818 - Washington Twp.
0819 - Wenonah Bor.
0820 - West Deptford Twp.
0821 - Westfield Bor.
0822 - Woodbury City
0823 - Woodbury Heights Bor.
0824 - Woolwich Twp.

HUDSON COUNTY

- 0901 - Bayonne City
0902 - East Newark Bor.
0903 - Guttenburg Town
0904 - Harrison Town
0905 - Hoboken City
0906 - Jersey City City
0907 - Kearny Town
0908 - North Bergen Twp.
0909 - Secaucus Town
0910 - Union City City
0911 - Weehawken Twp.
0912 - West New York

HUNTERDON COUNTY

- 1001 - Alexandria Twp.
1002 - Bethlehem Twp.
1003 - Bloomsbury Bor.
1004 - Calton Bor.
1005 - Clinton Town
1006 - Clinton Twp.
1007 - Delaware Twp.
1008 - East Amwell Twp.
1009 - Flemington Bor.
1010 - Franklin Twp.
1011 - Frenchtown Bor.
1012 - Glen Gardner Bor.
1013 - Hampton Bor.
1014 - High Bridge Bor.
1015 - Holland Twp.
1016 - Kingwood Twp.
1017 - Lambertville City
1018 - Lebanon Bor.
1019 - Lebanon Twp.
1020 - Milford Bor.
1021 - Raritan Twp.
1022 - Readington Twp.
1023 - Stockton Bor.
1024 - Tewksbury Twp.
1025 - Union Twp.
1026 - West Amwell Twp.

MERCER COUNTY

- 1101 - East Windsor Twp.
1102 - Ewing Twp.
1103 - Hamilton Twp.
1104 - Highstown Bor.
1105 - Hopewell Bor.
1106 - Hopewell Twp.
1107 - Lawrence Twp.
1108 - Pennington Bor.
1109 - Princeton Bor.
1110 - Princeton Twp.
1111 - Trenton City
1112 - Washington Twp.
1113 - West Windsor Twp.

MIDDLESEX COUNTY

- 1201 - Carteret Bor.
1202 - Cranbury Twp.
1203 - Dunellen Bor.
1204 - East Brunswick
1205 - Edison Twp.
1206 - Helmetta Bor.
1207 - Highland Park Bor.
1208 - Jamesburg Bor.
1209 - Metuchen Bor.
1210 - Middlesex Bor.
1211 - Milltown Bor.
1212 - Monroe Twp.
1213 - New Brunswick City
1214 - North Brunswick Twp.
1215 - Old Bridge Twp.
1216 - Perth Amboy City
1217 - Piscataway Twp.
1218 - Plainsboro Twp.
1219 - Sayreville Bor.
1220 - South Amboy City
1221 - South Brunswick Twp.
1222 - South Plainfield Bor.
1223 - South River Bor.
1224 - Spotswood Twp.
1225 - Woodbridge Twp.

MONMOUTH COUNTY

- 1301 - Aberdeen Twp.
1302 - Allenhurst Bor.
1303 - Allentown Bor.
1304 - Asbury Park City
1305 - Atlantic Highlands Bor.
1306 - Avon-by-the-sea Bor.
1307 - Belmar Bor.
1308 - Bradley Beach Bor.
1309 - Bnnelle Bor.
1310 - Colts Neck Twp.
1311 - Deal Bor.
1312 - Eatontown Bor.
1313 - Englishtown Bor.
1314 - Fair Haven Bor.
1315 - Farmingdale
1316 - Freehold Bor.
1317 - Freehold Twp.
1318 - Hazlet Twp.
1319 - Highlands Bor.
1320 - Holmdel Twp.
1321 - Howell Twp.
1322 - Interlaken Bor.
1323 - Keansburg Bor.
1324 - Keyport Bor.
1325 - Little Silver Bor.
1326 - Loch Arbour Village
1327 - Long Branch City
1328 - Manalapan Bor.
1329 - Manalapan Twp.
1330 - Marlboro Twp.
1331 - Matawan Twp.
1332 - Middletown Twp.
1333 - Millstone Twp.
1334 - Monmouth Beach Bor.
1335 - Neptune Twp.
1336 - Neptune City Bor.
1337 - Ocean Twp.
1338 - Oceanport Bor.
1339 - Red Bank Bor.
1340 - Roosevelt Bor.
1341 - Rumson Bor.
1342 - Sea Bright Bor.
1343 - Sea Girl Bor.
1344 - Shrewsbury Bor.
1345 - Shrewsbury Twp.
1346 - South Belmar Bor.
1347 - Spring Lake Bor.
1348 - Spring Lake Heights Bor.
1349 - Tinton Falls Bor.
1350 - Union Beach Bor.
1351 - Upper Freehold Twp.
1352 - Wall Twp.
1353 - West Long Branch Bor.

MORRIS COUNTY

- 1401 - Boonton Town
1402 - Boonton Twp.
1403 - Butler Bor.

- 1404 - Chatham Bor.
1405 - Chatham Twp.
1406 - Chester Bor.
1407 - Chester Twp.
1408 - Danville Twp.
1409 - Dover Twp.
1410 - East Hanover Twp.
1411 - Florham Park Bor.
1412 - Hanover Twp.
1413 - Harding Twp.
1414 - Jefferson Twp.
1415 - Kinnelon Bor.
1416 - Lincoln Park Bor.
1417 - Madison Bor.
1418 - Mendham Bor.
1419 - Mendham Twp.
1420 - Mine Hill Twp.
1421 - Montville Twp.
1422 - Morris Twp.
1423 - Morris Plains Bor.
1424 - Morristown Town
1425 - Mountain Lakes Bor.
1426 - Mount Arlington Bor.
1427 - Mount Olive Twp.
1428 - Netcong Bor.
1429 - Par-Troy Hills Twp.
1430 - Passaic Twp.
1431 - Pequannock Twp.
1432 - Randolph Twp.
1433 - Riverdale Bor.
1434 - Rockaway Bor.
1435 - Rockaway Twp.
1436 - Roxbury Twp.
1437 - Victory Gardens Bor.
1438 - Washington Twp.
1439 - Wharton Bor.

OCEAN COUNTY

- 1501 - Barnegat Twp.
1502 - Barnegat Lght Bor.
1503 - Bay Head Bor.
1504 - Beach Haven Bor.
1505 - Beachwood Bor.
1506 - Berkeley Twp.
1507 - Brck Twp.
1508 - Dover Twp.
1509 - Eagleswood Twp.
1510 - Harvey Cedars Bor.
1511 - Island Heights Bor.
1512 - Jackson Twp.
1513 - Lacey Twp.
1514 - Lakehurst Bor.
1515 - Lakewood Twp.
1516 - Lavellette Bor.
1517 - Little Egg Harbor Twp.
1518 - Long Beach Twp.
1519 - Manchester Twp.
1520 - Mantoloking Bor.
1521 - Ocean Twp.
1522 - Ocean Gate Bor.
1523 - Pine Beach Bor.
1524 - Plumsted Twp.
1525 - Pt. Pleasant Bor.
1526 - Pt. Pleasant Beach Bor.
1527 - Seaside Heights Bor.
1528 - Seaside Park Bor.
1529 - Ship Bottom Bor.
1530 - South Toms River Bor.
1531 - Stafford Twp.
1532 - Surf City Bor.
1533 - Tuckerton Bor.

PASSAIC COUNTY

- 1601 - Bloomingdale Bor.
1602 - Clifton City
1603 - Haledon Bor.
1604 - Hawthorne Bor.
1605 - Little Falls Twp.
1606 - North Haledon Bor.
1607 - Passaic City
1608 - Paterson City
1609 - Pompton Lakes Bor.
1610 - Prospect Park Bor.
1611 - Ringwood Bor.
1612 - Totowa Bor.
1613 - Wanauque Bor.
1614 - Wayne Twp.
1615 - West Milford Twp.
1616 - West Paterson Bor.

SALEM COUNTY

- 1701 - Alloway Twp.
1702 - Carneys Point Twp.
1703 - Elmer Bor.
1704 - Elinboro Bor.
1705 - Lower Alloways Creek Twp.
1706 - Mannington Twp.
1707 - Oldmans Twp.
1708 - Penns Grove Bor.
1709 - Pennsville Twp.
1710 - Pittsgrove Twp.

SOMERSET COUNTY

- 1801 - Andover Bor.
1802 - Andover Twp.
1803 - Branchville Twp.
1804 - Byram Twp.
1805 - Frankford Twp.
1806 - Franklin Bor.
1807 - Fredon Twp.
1808 - Green Twp.
1809 - Hamburg Bor.
1810 - Hampton Twp.
1811 - Hardystown Twp.
1812 - Hopatcong Bor.
1813 - Lafayette Twp.
1814 - Montague Twp.
1815 - Newton Town
1816 - Ogdensburg Bor.
1817 - Sandyston Twp.
1818 - Sparta Twp.
1819 - Stanhope Bor.
1820 - Stillwater Twp.
1821 - Sussex Bor.
1822 - Vernon Twp.
1823 - Walpack Twp.
1824 - Wantage Twp.

SUSSEX COUNTY

- 1901 - Berkeley Heights Twp.
2002 - Clark Twp.
2003 - Cranford Twp.
2004 - Elizabeth City
2005 - Fanwood Bor.
2006 - Garwood Bor.
2007 - Hillside Twp.
2008 - Kenilworth Bor.
2009 - Linden City
2010 - Mountainside Bor.
2011 - New Providence Bor.
2012 - Plainfield City
2013 - Plainfield Twp.
2014 - Roselle Bor.
2015 - Roselle Park Bor.
2016 - Scotch Plains
2017 - Springfield Twp.
2018 - Summit City
2019 - Union Twp.
2020 - Westfield Twp.
2021 - Winfield Twp.

WARREN COUNTY

- 2101 - Allamuchy Twp.
2102 - Alpha Bor.
2103 - Belvidere Town
2104 - Blirstown Twp.
2105 - Franklin Twp.
2106 - Frelinghuysen Twp.
2107 - Hopewick Twp.
2108 - Hackettstown Town
2109 - Hardwick Twp.
2110 - Harmony Twp.
2111 - Hope Twp.
2112 - Independence Twp.
2113 - Knowlton Twp.
2114 - Liberty Twp.
2115 - Lopatcong Twp.
2116 - Mansfield Twp.
2117 - Oxford Twp.
2118 - Pahaquarry Twp.
2119 - Phillipsburg Town
2120 - Pohatcong Twp.
2121 - Washington Bor.
2122 - Washington Twp.
2123 - White Twp.

Repeal and New Rule, R.1997 d.85, effective February 18, 1997.  
See: 28 N.J.R. 5030(a), 29 N.J.R. 551(a).

$$(a + (b \times c)) < (d \times c)$$

The Fund shall only approve modifications where the above formula applies.

**APPENDIX B**

**AMORTIZATION FORMULA**

The Fund shall evaluate the cost effectiveness of modifications to a residence and shall establish an amortization schedule based on information submitted to the Fund by the insurer. The insurer shall file with the Fund the information in categories (a) through (d) below. This information shall be accompanied by the documentation which supports the information in those categories. The factors which shall be considered by the Fund include:

2. The formula to determine the amount to be amortized monthly is as follows:

$$(d - b)/12 = e$$

3. The formula to determine the term of the amortization schedule is as follows:

$$a/e = f$$

(a) Cost of modifications;

(b) Annual cost of home care, including but not limited to, nursing care, therapy, transportation for medical treatment and medical supplies;

(c) Life expectancy of the injured person;

(d) Annual cost of other residential care alternatives;

(e) Monthly amount amortized; and

(f) Term of amortization in months.

The following examples demonstrate how the formulas shall be applied:

	Example One	Example Two	Example Three
Cost of Modifications	100,000	100,000	100,000
Annual Cost of Home Care	60,000	6,000	60,000
Life Expectancy of Injured Party	30	10	20
Annual Cost of Other Residential Care Alternatives	84,000	120,000	60,000
Cost Effective Formula			
Cost for Home Care	1,900,000	160,000	1,300,000
Cost for Alternative Care	2,520,000	1,200,000	1,200,000
Is Home Modification Cost Effective?	Yes	Yes	No
Amortization Schedule			
Amount Amortized Monthly	\$2,000	\$9,500	
Term of Amortization	50 months	11 months	

**APPENDIX B**

**ITEM 1**

1. The formula which the Fund shall evaluate to determine the cost effectiveness of requested home modifications is as follows:

UNSATISFIED CLAIM AND JUDGMENT FUND

INSTRUCTION SHEET

UCJF FILE NUMBER: \_\_\_\_\_

\_\_\_\_\_ Enter appearance for \_\_\_\_\_

\_\_\_\_\_ OBTAIN PROOF OF SERVICE ON ALL NAMED DEFENDANTS.

\_\_\_\_\_ Proceed with immediate discovery. Serve SPECIAL UCJF ELIGIBILITY INTERROGATORIES.

\_\_\_\_\_ Schedule depositions and/or  
IME if indicated.

\_\_\_\_\_ Obtain conformed copy of  
cancellation notice.

\_\_\_\_\_ Move to dismiss improper defendants:

\_\_\_\_\_ Commissioner of Insurance  
\_\_\_\_\_ Director of Motor Vehicles  
\_\_\_\_\_ UCJF

\_\_\_\_\_ PIP not payable: \_\_\_\_\_ LATE NOTICE  
\_\_\_\_\_ OUT OF STATE VEHICLE  
\_\_\_\_\_ COMMERCIAL VEHICLE  
\_\_\_\_\_ OTHER

\_\_\_\_\_ Claimant ineligible, not a resident of New Jersey.

\_\_\_\_\_ Determine if carrier notified Taxl' Commission of cancellation of policy

\_\_\_\_\_ NOTICE OF INTENTION not sufficiently complete to qualify as a timely filing.

\_\_\_\_\_ File CIB. \_\_\_\_\_ Obtain Police Report

\_\_\_\_\_ Obtain Medical Reports

\_\_\_\_\_ Obtain signed statement of uninsured.

\_\_\_\_\_ Obtain settlement agreement.

\_\_\_\_\_ Contract witness(es)

\_\_\_\_\_ Contact claimant's employer for possible health insurance coverage and Temporary Disability Ben-  
efits.

\_\_\_\_\_ Rule out vehicle ownership in household.

\_\_\_\_\_ Obtain the names, dates of birth and driver's license numbers of all household residents.

\_\_\_\_\_ Other: \_\_\_\_\_

APPENDIX B

ITEM 2

THIS FORM IS A FORMAT AND NOT TO BE USED  
IN SUBMITTING REPORTS TO THE FUND

60 DAY REPORT

UCJ # \_\_\_\_\_ DATE \_\_\_\_\_

CLAIMANT: SS# \_\_\_\_\_ AGE \_\_\_\_\_

CLAIMANT'S ATTORNEY:

ELIGIBILITY OF CLAIMANT:

UNINSURED:

ASSIGNED ATTORNEY:

ASSIGNED ATTORNEY'S ACTIVITY:

DATE OF ACCIDENT: PLACE OF ACCIDENT:

ACCIDENT DESCRIPTION:

LIABILITY:

WITNESSES:

POLICE INVOLVEMENT:

INJURIES:

EXPENSES:

ADJUSTER'S RECOMMENDATION:

WORK TO BE DONE:

COMPANY/CARRIER \_\_\_\_\_

ADJUSTER \_\_\_\_\_

CLAIM # \_\_\_\_\_

PHONE # \_\_\_\_\_

APPENDIX B

ITEM 3

THIS FORM IS A FORMAT AND NOT TO BE USED  
IN SUBMITTING REPORTS TO THE FUND

**6 MONTH SUMMARY REPORT**

UCJ # \_\_\_\_\_ DATE \_\_\_\_\_

SS# \_\_\_\_\_ AGE \_\_\_\_\_

CLAIMANT(S):

CLAIMANT(S) ATTORNEY:

UNINSURED:

ATTORNEY ASSIGNED:

COMPANY ASSIGNED: CLAIM # \_\_\_\_\_

D/A: TIME: PLACE OF ACCIDENT:

SUIT: COURT: COUNTY:

ELIGIBILITY OF CLAIMANT(S):

DESCRIPTION OF ACCIDENT:

LIABILITY:

WITNESSES DESCRIPTION:

POLICE DESCRIPTION:

DESCRIPTION OF INJURIES:

UP TO DATE LIST OF MEDICAL EXPENSES:

CARRIER'S RECOMMENDATION:

ASSIGNED ATTORNEY'S RECOMMENDATION:

WORK TO BE DONE:

ADJUSTER \_\_\_\_\_

PHONE # \_\_\_\_\_

New Rule, R.1994 d.597, effective December 5, 1994.  
See: 26 N.J.R. 2190(a), 26 N.J.R. 4772(a).

**SUBCHAPTER 28A. UNSATISFIED CLAIM AND JUDGMENT FUND ASSESSMENTS**

**Authority**

N.J.S.A. 17:1-8.1, 17:1-15e and 39:6-61 et seq.

**Source and Effective Date**

R.1997 d.535, effective December 15, 1997.  
See: 29 N.J.R. 4246(a), 29 N.J.R. 5309(a).

**11:3-28A.1 Purpose and scope**

(a) This subchapter sets forth the procedures for the assessment of insurers authorized or admitted to transact private passenger or commercial automobile liability insurance in this State pursuant to N.J.S.A. 39:6-63.

(b) This subchapter shall apply to all insurers authorized or admitted to transact private passenger or commercial automobile liability insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable. This subchapter shall not apply to surplus lines insurers that are eligible to write business pursuant to N.J.S.A. 17:22-6.40 et seq.

**11:3-28A.2 Definitions**

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

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

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

“Insurer” means any person authorized or admitted in this State to write the kinds of insurance specified in paragraphs d and e of N.J.S.A. 17:17-1, pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable. “Insurer” shall not include a surplus lines insurer eligible to write business pursuant to N.J.S.A. 17:22-6.40 et seq.

“Net direct written premiums” means direct gross premiums written on policies, insuring against legal liability for bodily injury or death and for damage to property, and personal injury protection coverage provided pursuant to N.J.S.A. 39:6A-4, arising out of the ownership, operation or maintenance of motor vehicles, which are principally garaged in this State, less return premiums thereon and dividends paid to policyholders on such direct business.

“UCJF” means the Unsatisfied Claim and Judgment Fund created pursuant to N.J.S.A. 39:6-61 et seq.

**11:3-28A.3 Creation and maintenance of UCJF**

(a) Pursuant to N.J.S.A. 39:6-63(d), on December 30 of each year, the Commissioner shall calculate the probable amount that will be needed for the UCJF to carry out the provisions of N.J.S.A. 39:6-61 et seq. for the ensuing registration license year (that is, June 1 to May 31 of the following year).

(b) In calculating the probable amount pursuant to (a) above, the Commissioner shall consider the factors set forth in N.J.S.A. 39:6-63(d), including the following:

1. The anticipated UCJF cash balance on June 30 immediately following the year in which the calculation is made;
2. The anticipated UCJF payments, including reimbursement of excess medical expense benefits pursuant to N.J.S.A. 39:6-73.1, for the fiscal year July 1 to June 30 immediately following the year in which the calculation is made;

3. A \$1,000 filing fee.

(b) After the submission of an application, the Commissioner may require an additional fee to cover the costs of further examinations which may include a credit report to be prepared by a credit agency acceptable to the Commissioner.

(c) If an application is approved and the Commissioner receives notification from the Association that the applicant has paid any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively, the Commissioner shall issue a certificate of self-insurance to the applicant.

(d) All certificates of self-insurance are valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to N.J.A.C. 11:3-30.6, for a one year period beginning July 1 and ending June 30 the following year.

#### 11:3-30.6 Renewals

(a) Any certificate holder applying for renewal shall submit the following so that it is received by the Commissioner not later than June 1 of the year of the expiration date of such certificate:

1. An accident and claim activity report on forms to be provided by the Commissioner;
2. A financial statement for the calendar year immediately preceding the expiration date of the certificate of self-insurance certified by a Certified Public Accountant;
3. An updated vehicle listing which shall include a listing of the vehicles subject to any applicable policy

constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively;

4. A \$1,000 renewal fee; and

5. Any other information that is substantially different from the information provided in the original application form or from the information provided in the last renewal period.

(b) After the submission of an application for renewal, the Commissioner may require an additional fee to cover the costs of further examinations which may include a credit report to be prepared by a credit agency acceptable to the Commissioner.

(c) If an application for renewal is approved and the Commissioner receives notification from the Association that the certificate holder has paid any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively, the Commissioner shall issue a new certificate of self-insurance.

#### 11:3-30.7 Surety bond requirement

(a) The Commissioner may require the furnishing of a surety bond and/or evidence of excess insurance.

(b) If the applicant or certificate holder is required to furnish a surety bond, the surety bond shall be in an amount of not less than \$300,000, with an additional \$10,000 for each vehicle registered or leased in the applicant's or certificate holder's name over the minimum required to qualify as self-insurer under this subchapter, up to a maximum amount of \$1,000,000.

**11:3-30.8 Audits and examinations**

(a) The Commissioner may make or cause to be made audits or examinations as may be necessary to determine the ability of the applicant or the certificate holder to discharge its financial obligations as a self-insurer.

(b) The applicant or certificate holder shall pay the reasonable expenses of the audit or examination.

**11:3-30.9 Public entities**

(a) This subchapter does not apply to any motor vehicle owned by the United States, this State, any political subdivision of this State or any municipality therein; nor to any motor vehicle which is subject to the requirements of law requiring insurance or other security on certain types of vehicles, other than the requirements of N.J.S.A. 39:6A-1 et seq. or N.J.S.A. 39:6B-1 et seq.

(b) Notwithstanding the provisions in (a) to the contrary, any public entity that currently has or will establish in the future a self-insurance program or plans to discontinue a self-insurance program currently in effect, shall notify the Commissioner in writing that it currently has, will establish or discontinue such a program.

**11:3-30.10 Cancellation of certificate of self-insurance**

After a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon not less than five days' notice, the Commissioner may cancel a certificate of self-insurance upon reasonable grounds including, but not limited to, failure to pay any judgment within 30 days after such judgment has become final.

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**SUBCHAPTER 31. (RESERVED)**


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**SUBCHAPTER 32. CERTIFICATION OF  
COMPLIANCE: MANDATORY LIABILITY  
COVERAGES**


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**11:3-32.1 Purpose and scope**

(a) This subchapter establishes the procedures and requirements for automobile or motor vehicle insurers to certify that automobile or motor vehicle insurance liability policies issued outside of New Jersey provide coverage pursuant to N.J.S.A. 39:6A-3, 39:6A-4, 39:6B-1, 17:28-1.3 and 17:28-1.1, as required under N.J.S.A. 17:28-1.4, whenever the automobile or motor vehicle insured under such a policy is used or operated in this State.

(b) This subchapter applies to each insurer authorized to transact automobile or motor vehicle insurance business in the State pursuant to N.J.S.A. 17:28-1.4.

**11:3-32.2 Definitions**

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

“Certification” means a written statement certified or sworn to be true and signed by a duly authorized officer of the insurer.

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

“Control” (including the terms “controlling,” “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of this subchapter.

“NAIC” means the National Association of Insurance Commissioners.

**11:3-32.3 Certification compliance requirements**

(a) Each insurer authorized to transact automobile or motor vehicle insurance business in this State pursuant to N.J.S.A. 17:28-1.4 shall file a certification of compliance with the Department on its own behalf and on behalf of:

1. Any insurer that is controlled by the insurer authorized to transact insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage;
2. Any insurer that controls the insurer authorized to transact automobile or motor vehicle liability insurance in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage; and
3. Any insurer under common control by or with the insurer authorized to transact automobile or motor vehicle liability insurance in this State.

(b) The certification insurers are required to file in accordance with (a) above shall include the following information:

1. The name of the insurance company authorized to transact automobile or motor vehicle insurance in New Jersey;

2. The names of insurance companies that transact automobile or motor vehicle insurance in other states or provinces of Canada, that are controlling or controlled by, or are under common control by, or with, the insurer named in (b)1 above;

3. The NAIC group and company number for each insurer named in (b)1 and 2 above;

4. The name, signature, title and telephone number of the company officer authorized to complete the certification; and

5. A statement that the company will provide the coverages required in N.J.S.A. 39:6B-1, N.J.S.A. 39:6A-3, N.J.S.A. 39:6A-4, N.J.S.A. 17:28-1.3 and N.J.S.A. 17:28-1.1 whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

(c) Any insurer that acquires control of, is acquired by or comes under common control of another insurer shall file the required certification of compliance within 30 days of this change in control and include the following information:

1. A certification that contains the information provided in (b)1 through 5 above; and

2. The effective date of the changes in control described in (c) above.

(d) Each insurer required to file a certification shall do so by October 19, 1994.

(e) All certifications shall be submitted to the Department at the following address:

New Jersey Department of Insurance  
Property/Liability Division  
20 West State Street  
CN 325  
Trenton, New Jersey 08625-0325

#### 11:3-32.4 Requests for copies of certifications

(a) Any person requesting a copy of a certification on file with the Department shall make the request in writing and include the complete name of the company or companies for which the certification is requested.

(b) Requests for copies of certification on file with the Department shall be directed to:

New Jersey Department of Insurance  
Property/Liability Division  
20 West State Street  
CN 325  
Trenton, New Jersey 08625-0325

## SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

### 11:3-33.1 Purpose; scope

This subchapter sets forth an appeal procedure for a person who has been either denied personal private passenger automobile insurance or nonrenewed in the voluntary market by an insurer on the basis that they are not an eligible person as defined in N.J.A.C. 11:3-34.4. This subchapter applies to such persons, agents and insurers required to write personal private passenger automobile insurance pursuant to State statutes and rules.

### 11:3-33.2 Definitions

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

“Applicant” means an insured or prospective insured who has made a request for personal private passenger automobile insurance on either a first time or renewal basis.

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Cancellation” means termination of insurance during the policy term pursuant to the provisions of N.J.S.A. 17:29C-7.

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

“Completed written application” means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant’s driver’s license, a copy of the motor vehicle registration of the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

APPENDIX D

IFD 30 D

(COMPANY LETTERHEAD)

NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

YOU ARE NO LONGER INSURED FOR PHYSICAL DAMAGE TO YOUR CAR

(Date of Mailing)

Name of Insured: \_\_\_\_\_
Address: \_\_\_\_\_

POLICY #: \_\_\_\_\_

Dear Policyholder,

The vehicle(s) listed below is (are) no longer covered for FIRE AND THEFT/
COMPREHENSIVE \_\_\_\_\_; COLLISION \_\_\_\_\_;

- 1. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_
2. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_
3. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_
YEAR MAKE MODEL

DATE COVERAGE WAS REQUESTED \_\_\_\_\_
DATE COVERAGE WAS SUSPENDED \_\_\_\_\_

The physical damage coverage(s) indicated above, has (have) been suspended
on the vehicle(s) described, effective 12:01 a.m. on the suspension date. Such
coverage has been suspended due to your failure to comply with the Physical
Damage Insurance Inspection Regulation (N.J.A.C. 11:3-36), as required by the
Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

If your coverage has been suspended for more than ten (10) days, you will
receive a premium adjustment (return premium or credit) for the suspended
coverage(s) within forty-five (45) days from the date of suspension.

The coverage(s) will be restored when you have your vehicle(s) inspected
and the adjusted premium due for such coverage(s) has been paid.

INSURER REPRESENTATIVE

TELEPHONE NUMBER

cc: PRODUCER OF RECORD
LIENHOLDER

**SUBCHAPTER 37. ORDER OF BENEFIT  
DETERMINATION BETWEEN  
AUTOMOBILE PERSONAL INJURY  
PROTECTION AND HEALTH INSURANCE**

**11:3-37.1 Purpose and scope**

The purpose of this subchapter is to establish guidelines for the order of benefit determination between a plan of health insurance and personal injury protection provided through an automobile policy, when a named insured elects to have his or her personal injury protection become secondary coverage for the provision of benefits for medical expenses incurred due to injuries sustained in an automobile accident. The provisions of this subchapter shall apply to all automobile policies, as that term is defined at N.J.S.A. 39:6A-2a, issued to New Jersey residents, or renewed on or after January 1, 1991, and to all health benefits plans which have been or will be delivered or issued for delivery in this State.

**11:3-37.2 Definitions**

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

“Actual benefits” means those benefits determined to be payable for allowable expenses.

“Allowable expense” means a medically necessary, reasonable and customary item of expense covered by an insured’s health benefits plan(s) or PIP plan as an eligible expense, at least in part. When a plan provides benefits in the form of services, the reasonable monetary value of each such service shall be considered as both an allowable expense and a paid benefit.

“Benefits” means the provision of the following in consideration of payment of premiums or fees on a prepaid or postpaid basis:

1. Services, including supplies;
2. Payment of expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

“Eligible expense” means:

1. In the case of health benefits plans, that portion of the medical expenses incurred for treatment of an injury which is covered under the terms and conditions of the plan, without application of the deductible(s) and copayment(s), if any.
2. In the case of PIP plans, that portion of the medical expenses incurred for treatment of an injury which, without considering any deductible and copayment, shall not exceed:

i. The percent or dollar amounts specified on the medical fee schedules, or the actual billed expense, whichever is less; or

ii. The reasonable amount, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an incurred medical expense is not included on the medical fee schedules.

“Health benefits provider” means any person, whether subject to the regulation of the New Jersey Department of Insurance, Department of Health, or both, or not otherwise subject to such regulation, who contracts to provide health services, provide reimbursement for the cost of health services in whole or in part, or to provide for indemnity in the event health services are used, in return for a prepaid or postpaid premium or fee or other consideration, including, but not limited to:

1. Insurers, as defined at N.J.S.A. 17B:17-2;
2. Hospital service corporations, as defined at N.J.S.A. 17:48-1;
3. Medical service corporations, as defined at N.J.S.A. 17:48A-1;
4. Health service corporations, as defined at N.J.S.A. 17:48E-1;
5. Health maintenance organizations, as defined at N.J.S.A. 26:2J-2;
6. Dental service corporations, as defined at N.J.S.A. 17:48C-2;
7. Dental plan organizations, as defined at N.J.S.A. 17:48D-2;
8. Medicare;
9. Medicaid;
10. State Employees Health Benefits Plan;
11. CHAMPUS;
12. Self-insured programs; and
13. An entity organized under the laws of any other state or jurisdiction which delivers certificates to residents of New Jersey evidencing coverage under a contract issued and delivered in a state or jurisdiction other than New Jersey.

“Hospital expenses,” when used by the automobile insurance PIP plan, means those expenses defined at N.J.S.A. 39:6A-2f.

“Injury” means bodily injury sustained by an insured as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile.

“Insured” means a person eligible for coverage, at least in part, for medical expenses incurred for treatment of injuries, under an automobile policy PIP medical expense provision, and who meets the definition of a named insured or family member.

1. Named insured means the person or persons identified as the insured in the automobile policy and if an individual, that person’s spouse, if the spouse is a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage for that spouse shall continue until the expiration of full term of any policy period in effect at the time of the cessation of residency.

2. Family member means any relative of the named insured or the named insured’s spouse who:

- i. Is related to the named insured or named insured’s spouse by blood, marriage, adoption or guardianship;
- ii. Resides in the household of the named insured or spouse of the named insured; and
- iii. Is not a named insured under another automobile policy.

“Medical expenses” means expenses for medical, surgical and dental treatment, professional nursing services, hospital expenses, rehabilitation services, diagnostic services, ambulance services, prosthetic devices, medications and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery, dentistry, psychology or chiropractic in accordance with this State’s laws, or by persons similarly licensed in other states or nations, or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

“Medical fee schedule” means that list of services, procedures and supplies to which have been assigned a maximum fee or percentage of a fee payable by an automobile insurer for expenses incurred as a result of the rendering to an insured any of those specific services, procedures or supplies for injuries, which list is set forth at N.J.A.C. 11:3-29.

“Out-of-State automobile insurance coverage” or “OSA-IC” means any coverage for medical expenses under an automobile insurance policy other than PIP, as PIP is defined herein, including automobile insurance policies issued in another state or jurisdiction.

“PIP” means personal injury protection coverage provided as part of an automobile insurance policy issued in New Jersey, specifically those provisions for medical expenses coverage.

“Plan” means any policy, contract, certificate, booklet, evidence of enrollment, program, or other such term which evidences the existence of a relationship between a health benefits provider or PIP carrier and an insured with respect to the provisions of hospital, medical, surgical, dental and/or other health care related benefits, at least in part.

“Primary coverage” means coverage by any plan which determines its actual benefits payable on allowable expenses incurred by an insured for treatment of injuries without taking into consideration the existence of any coverage for which the insured may be eligible provided secondary in accordance with this subchapter. There may be more than one plan providing the insured primary coverage.

“Secondary coverage” means coverage by any plan which determines its actual benefits payable on all allowable expenses incurred by an insured for treatment of injuries after all plans providing primary coverage have considered expenses incurred and paid actual benefits.

#### Case Notes

Eligibility for coverage under hospitalization policy did not bar hospitalization insurer from resisting contribution toward payments made by insured’s personal injury protection insurer as not having been “reasonable and necessary”. *Bailey v. Garden State Hospitalization Plan*, 290 N.J.Super. 277, 675 A.2d 696 (A.D.1996).

#### 11:3-37.3 Health benefits providers

(a) Nothing in this subchapter shall be construed as requiring any health benefits provider to offer, provide, or continue coverage to or for any individual or group, except as may be set forth by other laws of this State, or of the Federal government.

(b) Nothing in this subchapter shall be construed as requiring any health benefits provider to provide coverage for any treatment or service not otherwise covered under the terms of the applicable health benefits plan.

(c) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver of endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that such expenses or services would be covered under an automobile policy PIP provision for which the insured would be eligible had the named insured on the automobile policy not selected the PIP-as-secondary coverage option.

(d) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver or endorsement, or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that:

1. Such expenses arise from an automobile-related injury;
2. Such expenses are covered or paid by PIP; or
3. Such expenses are covered or paid by OSAIC except for reductions in benefits when the health benefits contract provides secondary coverage as defined in and permitted by this rule.

(e) A health benefits contract or policy may provide that it is always primary to OSAIC, or may provide that it will determine its benefits as if it were secondary to any OSAIC. If the health benefits contract or policy provides that it will determine its benefits as if it were secondary to OSAIC and the OSAIC either contains a provision that it is always excess or secondary, or refuses to cooperate in determining the amount of benefits payable by the health benefits plan as secondary coverage provider, the health benefits plan shall provide primary coverage.

#### Case Notes

Code section invalidating insurance contract exclusions was within ERISA's insurance savings clause. *Jugan v. State Farm Ins. Co.*, 267 N.J.Super. 338, 631 A.2d 582 (L.1993).

Secondary insurer was liable for reasonable medical expenses insured incurred as result of motor vehicle accident. *Jugan v. State Farm Ins. Co.*, 267 N.J.Super. 338, 631 A.2d 582 (L.1993).

#### 11:3-37.4 Application of the PIP-as-secondary coverage option

(a) When a named insured elects the PIP option, whereby the named insured intends that medical expenses incurred for treatment of an injury are to be covered by a health benefits provider or providers, as evidenced on the Coverage Selection Form, then the medical expense provisions of the PIP coverage shall be considered to be secondary coverage for the purposes of the order of benefit determination, and all health benefits plans of an insured subject to the PIP option elected shall be considered to be primary coverage.

(b) The election by the named insured to make PIP medical expense provisions secondary coverage shall apply to only the named insured and family members of the named insured who reside in the named insured's household and are not named insureds under other automobile policies.

(c) The election by the named insured to make PIP medical expense provisions secondary coverage shall continue in force as to subsequent renewal or replacement policies until the automobile policy insurer or its authorized representative receives a properly executed written request revoking the selection of this option.

(d) In the event that an insured is ineligible for health plan coverage of medical expenses, or is eligible for coverage under a dental expense or dental service plan only when an injury occurs, despite the selection of the PIP-as-secondary coverage option by the named insured, benefits shall be provided to the insured through PIP coverage in accordance with N.J.A.C. 11:3-37.8.

#### 11:3-37.5 Health benefit plan standards and the PIP premium reduction

(a) An automobile insurer may eliminate the premium reduction on the base rate applicable to the amount of medical expense benefit chosen in conjunction with the PIP-as-secondary coverage option election if the automobile insurer complies with (b) below, and verifies that the coverage specified by the named insured:

1. Excludes the provision of benefits for treatment of injuries of an eligible insured when expenses incurred in relation to treatment of those injuries are eligible expenses under an automobile policy's PIP provisions; or
2. Provides that it is always secondary, or otherwise will not be a primary provider of benefits;
3. Provides benefits only for dental expenses or dental services; or
4. Provides benefits only for prescription drugs.

(b) An automobile carrier shall notify a named insured if the automobile insurer determines that the health benefits plan(s) specified by the named insured contain exclusionary or restrictive coverage provisions as set forth in (a) above, or if the automobile insurer determines that one or more of the insureds covered under the automobile insurance policy is not provided coverage by at least one of the health benefit plan(s) specified by the named insured, and, therefore, the named insured's premium reduction for PIP medical expense benefits will be eliminated.

1. The notice shall be in writing and shall specify the reasons why the automobile insurer believes the named insured's health plan coverage is not in compliance with this subchapter.
2. The automobile insurer may include in the notice a demand for payment of the premium reduction difference with an explanation that failure to pay the indicated premium reduction difference may result in early cancellation of the automobile policy in accordance with (c) below.

3. The notice shall be sent no later than 30 days prior to the date of cancellation as calculated in accordance with (c) below. A notice which is sent 30 days prior to the date of cancellation shall either contain a statement that it is a notice of cancellation, or be attached to a notice of cancellation, setting forth the effective date of cancellation.

(c) The effective date of the cancellation of a policy for nonpayment of premium shall not be earlier than 10 days prior to the last full day of which premium received by the company, prior to the date of preparation of the cancellation notice, would pay for coverage on a pro rata basis. In calculating the effective date of the cancellation, the premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the time the cancellation notice was prepared shall be the premium used for the calculation and determination of such effective date.

1. No cancellation in accordance with (c) above shall be effective unless prior thereto, the automobile insurer shall have notified the named insured that the premium reduction difference had to be paid to avoid cancellation, as specified in (b)2 above.

2. No cancellation notice shall be mailed prior to 30 days in advance of its effective date.

(d) If the insured provides payment of the full premium amount and subsequently provides proof that coverage is not restricted in the manner set forth in accordance with (a) above, or that all insureds under the automobile policy were provided coverage by a health benefits plan at the time notification of noncoverage was sent, and that such coverage continues and is not restricted in the manner set forth in accordance with (a) above, the automobile insurer shall refund the monies paid in excess of the full reduction, or shall credit any excess paid on the reduced premium to the extent any premium payment is still unpaid on the policy.

#### Case Notes

Automobile insurer was entitled to charge extra premium and impose additional deductible before paying PIP benefits for medical expenses of insured's child after child was injured in automobile accident where insured had designated health insurer as primary insurer for medical expenses arising out of automobile accidents involving himself or his resident relatives but child chose to obtain treatment outside health insurer's network. *New Jersey Mfrs. Ins. Co. v. Longo*, 303 N.J.Super. 286, 696 A.2d 767 (N.J.Super.A.D.1997).

#### 11:3-37.6 Order of benefits determination when PIP is secondary coverage

(a) When the named insured of an automobile policy has selected the PIP-as-secondary coverage option, all health benefits plans for which the insured is eligible shall provide coverage for the allowable expenses incurred by the insured due to an automobile-related injury prior to any benefits for medical expenses being paid by a PIP plan.

(b) If the insured is eligible for coverage under more than one group health benefits plan, the group health benefits plans shall coordinate benefits with one another in accordance with the rules set forth for such plans at N.J.A.C. 11:4-28.

(c) The PIP plan shall provide benefits for allowable expenses remaining uncovered after all health benefits plans for which the insured is eligible have paid benefits towards those allowable expenses.

(d) The PIP plan shall continue to be liable for expenses related to the same occurrence as the expenses are incurred, whether or not the health benefits plan(s) in force at the time of the accident terminate(s) coverage, or benefits provided under the health benefits plan(s) are exhausted subsequent to the occurrence of the accident, up to the maximum PIP benefits available to the insured under the terms of the automobile policy.

(e) Total benefits paid by an insured's health benefits and PIP plans shall not exceed the amount of total allowable expenses.

#### 11:3-37.7 Determination of PIP medical benefits payable when PIP is secondary coverage

(a) In calculating the actual benefits to be paid by the automobile insurer when the PIP-as-secondary coverage option has been selected, the automobile insurer shall first determine the amount of eligible expenses which would have been paid after application of the deductible and copayment limitations had the PIP-as-secondary coverage option not been selected.

1. In the event the remaining allowable expenses are less than the benefits calculated pursuant to (a) above, the automobile insurer shall pay actual benefits equal to the remaining allowable expenses, without reducing the remaining allowable expenses by its deductible or copayments.

2. In the event the remaining allowable expenses are greater than the benefits calculated pursuant to (a) above, the actual benefits paid by the automobile insurer shall be the benefits calculated pursuant to (a) above, without reducing the remaining allowable expenses by its deductible or copayments.

(b) In paying actual benefits, the automobile insurer shall not:

1. Reduce its actual benefits payable on account of any deductibles or copayments of the health benefits plans which have provided benefits ahead of the PIP plan due to the selection of the PIP-as-secondary coverage option; or

2. Reduce its actual benefits payable for any allowable expense remaining uncovered which item of expense otherwise would not be an eligible expense under the PIP plan, except as set forth by (c) below.

(c) In determining remaining uncovered allowable expenses, the automobile insurer shall not consider any amount for items of expense which exceed the dollar or percent amounts recognized by the medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6.

(d) The total amount of benefits to be provided through the PIP medical expense provisions for each insured per accident or occurrence shall not exceed the maximum PIP benefits as provided for by the terms of the policy.

### 11:3-37.8 Health benefits plan coverage ineligibility

(a) When, subsequent to the selection of the PIP-as-secondary coverage option by a named insured, it is determined that an insured did not have health coverage in effect at the time of an injury, or had health coverage in effect at the time of any injury which is such that the PIP-as-secondary coverage option selection could have been invalidated by the automobile insurer and elimination of the premium reduction amount effected in accordance with N.J.A.C. 11:3-37.5(a), but was not, then the insured shall be provided benefits for incurred medical expenses through the PIP medical expense provision.

1. Benefits payable shall be subject to a per accident deductible equalling the total of \$750.00 plus the PIP deductible selected by the named insured of the policy.

2. Benefits payable shall be subject to a 20 percent copayment for amounts less than \$5,000 after the deductible has been satisfied.

3. Determination of the amount of benefits payable shall be made in accordance with medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6 and set forth at N.J.A.C. 11:3-29, or on a reasonable basis, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an item of expense is not included on the medical fee schedules.

4. Total benefits paid for each insured eligible for benefits in any one accident shall not exceed the maximum PIP benefits provided for by the terms of the policy.

(b) All items of medical expense incurred by the insured for treatment of an injury shall be eligible expense to the extent the treatment or procedure from which the expenses arose is recognized on the medical fee schedules, or are reasonable medical expenses in accordance with N.J.S.A. 39:6A-4.

(c) The automobile insurer shall be entitled to recover, for the contract period in which the automobile-related injury occurred, the difference between the reduced premiums paid on the policy and the amount of premium which would have been due on the policy had the named insured not selected the PIP-as-secondary coverage option, and no premium reduction shall be provided on that policy for the PIP-as-secondary coverage option during the remainder of that current contract period.

### 11:3-37.9 Determination of benefits when PIP is primary coverage

(a) When no election has been made by a named insured to make his or her health benefits plan(s) primary coverage provider(s), so that the PIP plan will provide primary coverage for medical expenses incurred for treatment of injuries, the PIP plan shall provide benefits to the insured without consideration of any benefits for which the insured may be eligible under any health benefits plan.

(b) Actual benefits paid by the PIP plan shall be for all medical expenses which are eligible expenses incurred for treatment of injuries, subject to application of the deductible provided for by the terms of the automobile policy, and a 20 percent copayment requirement for amounts incurred after the deductible and up to \$5,000.

(c) Actual benefits payable by a health benefits plan, when the PIP plan is providing primary coverage for medical expenses incurred for treatment of injuries, shall be the lesser of the remaining uncovered allowable expenses or the actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

1. Actual benefits payable may be reduced by the deductible(s) and copayment requirements applicable by the terms of the health benefits plan, and shall not exceed the amount of actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

2. Allowable expenses remaining uncovered, which the health benefits plan(s) shall consider when the PIP plan is providing primary coverage, include:

i. Any PIP deductible(s);

ii. Any PIP copayment amounts;

iii. Any expenses which exceed the medical expense coverage limits of the PIP plan per person per accident, as set forth by the terms of the automobile policy; and

iv. Any expenses not covered by the PIP plan when such expense was determined to be in excess of the reasonable charge for an item of expense not listed on the medical fee schedules, but for which the automobile insurer determined a reasonable charge based on the medical fee schedule for a similar item of expense in the region where the service or equipment was provided.

(d) When a health benefits plan provides hospital expense or service benefits only, or medical expense or service benefits only, and is not otherwise a part of a basic health benefits package, all allowable expenses remaining uncovered shall be considered by that health benefits plan for the provision of benefits, without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by that health benefits plan for the allowable expenses remaining uncovered shall not exceed the total actual benefits which would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

(e) When there is one health benefits plan providing insureds hospital expense or service benefits and another health benefits plan providing insureds medical expense or service benefits as two separate parts of one basic health benefits plan package, the hospital benefits plan and the medical benefits plan shall both consider all allowable expenses remaining uncovered and shall apportion such allowable expenses between the two plans on a pro-rata basis without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by each plan of the health benefits plan package shall not exceed the total actual benefits which would have been payable by each plan had the health benefits plan package been providing primary coverage.

(f) No insured shall be liable to a health care provider for any fees for services or supplies which exceed the dollar or percentage amounts recognized for those services or supplies on the medical fee schedules.

(g) No health benefits plan shall seek repayment from or withhold payment to an insured for amounts paid to the insured in consideration of charges which were in excess of the amounts set forth in the medical fee schedules.

(h) If there is more than one group health benefits plan providing secondary coverage to an insured, these plans may coordinate their benefits with one another in accordance with N.J.A.C. 11:4-28.

#### Case Notes

Costs of home renovations and specialized equipment for quadriplegic insured were "allowable expenses" within meaning of regulation mandating that actual benefits payable by health benefits plan. *Bailey v. Garden State Hospitalization Plan*, 280 N.J.Super. 206, 654 A.2d 1043 (L.1994), affirmed 290 N.J.Super. 277, 675 A.2d 696.

Hospitalization insurer could be held responsible for hospital bills without regard to when they were incurred, and personal injury protection benefits could be used for specialized equipment and home modifications. *Bailey v. Garden State Hospitalization Plan*, 280 N.J.Super. 206, 654 A.2d 1043 (L.1994), affirmed 290 N.J.Super. 277, 675 A.2d 696.

"Primary carrier" is carrier first required to pay personal injury protection benefits preserving its right of contribution from other insurers also liable for such payments. *Bailey v. Garden State Hospitalization Plan*, 280 N.J.Super. 206, 654 A.2d 1043 (L.1994), affirmed 290 N.J.Super. 277, 675 A.2d 696.

#### 11:3-37.10 Explanation of benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

1. Each procedure for which a claim has been made;
2. Eligible expense related to each procedure with an indication of whether the eligible expense is based on the medical fee schedules or is the reasonable charge as determined by the automobile insurer;
3. Actual benefits paid;
4. Any deductible or copayment applied;
5. A concise explanation why any item of expense is considered an ineligible expense, when this occurs; and
6. A statement to insureds that no health care provider may demand or request any payment from any person in excess of those permitted by N.J.A.C. 11:3-29, and that no person is liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by N.J.A.C. 11:3-29 pursuant to N.J.S.A. 39:6A-4.6.

Amended by R.1994 d.564, effective November 21, 1994 (operative January 1, 1995).  
See: 25 N.J.R. 4706(a), 26 N.J.R. 4616(b).

#### Case Notes

Former patient failed to establish that charges reflected in bill were not usual, customary, and reasonable; hospital's witness testified that charges were in accord with other teaching institutions in area and were approved by state insurance commission, and patient's insurance company paid its full share of all charges and did not reject any by claiming that they were not usual, customary, reasonable, and/or necessary. *Hahnemann University Hosp. v. Dudnick*, 292 N.J.Super. 11, 678 A.2d 266 (A.D.1996).

#### 11:3-37.11 Dispute as to primacy of coverage

(a) If, subsequent to the selection of the PIP-as-secondary coverage option by the named insured, injuries are sustained by an insured eligible for health benefits plan coverage, but a dispute exists between the health benefits provider and the automobile insurer, then the health benefits provider shall provide benefit as if it were the primary coverage provider and no PIP benefits were available to the insured. In no event shall the provision of benefits be unreasonably delayed by either a health benefits provider or an automobile insurer.

(b) If the health benefits provider asserts that it is not subject to N.J.A.C. 11:3-37.3, and thus, will not act as the primary coverage provider then the automobile insurer shall assume the role of primary coverage provider, and provide its benefits in accordance with N.J.A.C. 11:3-37.8. The automobile insurer shall be entitled to recover premium reductions in accordance with N.J.A.C. 11:3-37.8(c).

**11:3-37.12 Eligibility under two or more automobile policies**

(a) If an insured is eligible for coverage of medical expenses under more than one automobile policy, the determination as to which automobile policy will assume coverage responsibility for that insured shall be as follows:

1. A named insured shall receive benefits for medical expenses under the terms of the automobile policy on which he or she, or his or her spouse, is identified as the named insured.

2. A family member who is a child of a named insured or the named insured's spouse shall receive benefits for medical expenses under the automobile policy of the named insured, subject to the following:

i. If the child is a child of more than one named insured or of more than one spouse of a named insured, the child shall receive benefits under the terms of the automobile policy of the named insured who has legal custody of that child or whose spouse has legal custody of that child.

ii. If the child is a child of more than one named insured or of more than one named insured's spouse, and legal custody of that child has either never been awarded, or has been awarded jointly, then the child shall receive benefits under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

iii. If the child is a named insured or the spouse of a named insured, (a)1 above shall apply.

3. If neither (a)1 nor (a)2 above apply to an adult or child family member, then that family member shall receive benefits for medical expenses under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

4. If an automobile policy identifies more than one person as a named insured on the automobile policy, the birthday of the named insured whose birthday occurs earliest in the calendar year shall be considered the determinant birthday on that automobile policy.

(b) An insured shall not receive benefits for medical expenses under more than one automobile policy.

(c) If an automobile policy PIP plan provides benefits for medical expenses for an insured who is eligible for medical expense benefits under more than one automobile policy PIP plan, the automobile insurer of the paying PIP plan may seek equitable pro rata contributions from the other automobile policy PIP plan(s) for the benefits actually paid by the paying PIP plan.

**Case Notes**

"Follow-the-family" exclusionary clause, under which policy did not provide personal injury protection benefits to those outside named insured's family if they were entitled to coverage under another policy, did not violate provision of No-Fault Act setting forth permissible exclusions from coverage. *Rutgers Cas. Ins. Co. v. Ohio Cas. Ins. Co.*, 299 N.J.Super. 249, 690 A.2d 1074 (A.D.1997).

Primary carrier must pay PIP benefits and may seek contribution from other carriers. *U.S. Fidelity & Guar. Co. v. Industrial Indem. Co.*, 264 N.J.Super. 379, 624 A.2d 1014 (A.D.1993), certification denied 134 N.J. 484, 634 A.2d 530.

Double recovery of PIP benefits is prohibited. *Martin v. Prudential Ins. Co.*, 255 N.J.Super. 524, 605 A.2d 762 (A.D.1992).

Passenger could recover PIP benefits under both driver's policy and own policy. *Martin v. Prudential Ins. Co.*, 255 N.J.Super. 524, 605 A.2d 762 (A.D.1992).

**11:3-37.13 Penalties**

Each automobile policy or health benefits plan subject to the terms of this subchapter which fails to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.

**11:3-37.14 Severability**

If any provision of this subchapter or application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

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**SUBCHAPTER 38. (RESERVED)**

Subchapter 38, Towing and Storage Fee Schedule, was repealed by R.1999 d.1, effective January 4, 1999. See: 30 N.J.R. 2813(a), 31 N.J.R. 54(c).

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**SUBCHAPTER 39. REDUCTIONS IN PREMIUM CHARGES FOR PRIVATE PASSENGER AUTOMOBILES EQUIPPED WITH ANTI-THEFT, VEHICLE RECOVERY AND SAFETY FEATURES**

**11:3-39.1 Purpose**

The purpose of this subchapter is to encourage consumers to invest in and use anti-theft and vehicle recovery devices and safety features in private passenger automobiles by providing that there shall be a reduction in the base rates applicable to automobile physical damage coverage, in accordance with N.J.S.A. 17:33B-44, for those private passenger automobiles equipped with anti-theft and vehicle recovery devices and safety features.

**11:3-39.2 Scope**

(a) This subchapter shall apply to all insurers which write private passenger automobile insurance in this State.

(b) This subchapter shall apply to all policies which include provisions for physical damage coverage and which are issued or renewed on or after September 1, 1991.

**11:3-39.3 Definitions**

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

“Alarm” means a device which emits sounds audible at 300 feet or more, such as a horn, bell or siren, but does not include those sounds that reasonably may be confused with police or emergency response vehicle sirens.

“Automobile physical damage insurance” means a policy providing one or more of the following coverages:

1. Collision;
2. Comprehensive; and
3. Fire and theft.

“Electronic lock or keyless lock device” means an electronic coding device possessing 10,000 possible combinations or more, which may be unlocked by use of a keyboard or similar data entry device or by means of a remote control device.

“Inspection” means a physical examination of an automobile by an authorized representative of the insurer, in accordance with the standards set forth at N.J.A.C. 11:3-36.6.

“Insured” means the named insured, as defined in the policy, or an applicant for automobile physical damage insurance.

“Insurer” means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes all affiliated companies within a group.

“Nonpassive” means a device or system designed to remain inoperative and nonfunctional until actively engaged by the user.

“Passive” means a device or system designed to become automatically operative and functional when the automobile’s ignition key is moved or stationed in the off position.

“Private passenger automobile” means a vehicle that meets the definition at N.J.S.A. 39:6A-2.

“Tubular lock” means a lock which may be opened by a specific cylindrically shaped key and which possesses at least 50,000 possible combinations.

**11:3-39.4 Reductions in rates for anti-theft and vehicle recovery devices**

(a) Every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its comprehensive and fire and theft coverages, if different, for all private passenger automobiles equipped with one or more anti-theft or vehicle recovery devices, as described at N.J.A.C. 11:3-39.5. The reductions in the base rates shall be as follows:

1. At least five percent for devices which qualify as Category I anti-theft devices;
2. At least 10 percent for devices which qualify as Category II anti-theft devices;
3. At least 15 percent for devices which qualify as Category III anti-theft or vehicle recovery devices; and
4. At least 20 percent for devices which qualify as Category IV anti-theft or vehicle recovery devices.