

ii. If the claimant subsequently claims, based upon a written estimate which he/she obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the company shall review the written estimate and respond to the claimant within 10 working days, and may provide or, if requested, must provide the claimant with the name of the repair shop or contractor that will make the repairs in accordance with generally accepted standards for safe and proper repairs.

Amended by R.1988 d.480, effective October 17, 1988.

See: 20 N.J.R. 1159(a), 20 N.J.R. 2578(a).

Added new 10-13; renumbered old 10-11 as 14-15.

Administrative Correction to (a)13.

See: 21 N.J.R. 3666(a).

11:2-17.11 Written notice by insurers of payment of third-party claims

(a) Upon payment of \$5,000 or more in settlement of any third-party liability claim, where the claimant is a natural person, the insurer or its representative (including the insurer's attorney) shall mail to the third-party claimant written notice of payment at the same time payment is made to the third-party claimant's attorney or other representative.

(b) The written notice referred to in (a) above shall be mailed to the claimant by regular mail at the claimant's last known address, and shall include at least the following information:

1. The amount of the payment;
2. The party or parties to whom the check is made payable;
3. The party to whom the check was mailed; and
4. The address of the party to whom the check was mailed.

(c) Nothing in (a) above shall create, or be construed to create, a cause of action for any person or entity, other than the Department of Insurance, against the insurer or its representative based upon a failure to serve such notice, or the defective service of such notice. Nothing in (a) above shall establish, or be construed to establish, a defense for any party to any cause of action based upon a failure by the insurer or its representative to serve such notice, or the defective service of such notice.

New Rule, R.1993 d.681, effective December 20, 1993.

See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

11:2-17.12 Examinations

(a) Each insurer's claim files are subject to examination and inspection by the Commissioner or by his duly appointed designees pursuant to N.J.S.A. 17:23-4, 17:29B-5, 17B:21-3 and 17B:30-16.

(b) Detailed documentation and/or evidence shall be contained in each claim file in order to permit the Com-

missioner or his designated examiners or investigators to reconstruct the company's activities relative to the claims settlement. Such documentation shall include but is not necessarily limited to all investigative reports, payment vouchers, transactions, notices, memoranda and work papers. With respect to automobile damage claims, file documentation 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 such documentation shall be properly dated and, for investigative reports, notes, memoranda and work papers, the parties preparing such documents shall be identified.

(c) Every insurer shall maintain records of all pertinent communications relating to a claim. The records must identify the date of the communication and the parties, and describe the substance of the communication.

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

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

Inserted new text in (b) "With respect to . . . of the automobile."

Recodified from 11:2-17.11 by R.1993 d.681, effective December 20, 1993.

See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

11:2-17.13 Special claims reports

(a) If the Department of Insurance observes that an insurer's claims settlement practices are not meeting the standards established by statute or by this subchapter, the Department may require such insurer to file periodic reports. Depending on the nature and extent of an insurer's deviations from such standards and with due consideration of the insurer's data capabilities, the Commissioner in his discretion may require the report to include some or all of the statistics listed below:

1. The total number of claims submitted;
2. The original amount claimed;
3. The classification by line or insurance of each individual claim;
4. The total number of claims denied;
5. The total number of claims paid;
6. The total number of claims compromised;
7. The amount of each settlement;
8. The total number of claims for which lawsuits are instituted against the insurer, the reason for the lawsuit, and the amount of the final adjudication; and
9. An individual listing showing the disposition and other information for each claim.

Recodified from 11:2-17.12 by R.1993 d.681, effective December 20, 1993.

See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

11:2-17.14 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from 11:2-17.13 by R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

11:2-17.15 Penalties

(a) If, after notice and hearing, the Commissioner finds that a person has violated this subchapter, he shall make his findings in writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such violation. The Commissioner may order payment of a penalty not to exceed \$1,000 for each and every violation unless the person knew or reasonably should have known he was in violation of this subchapter, in which case the penalty shall not be more than \$5,000 for every violation. The Commissioner shall collect the penalty in the name of the State in a summary proceeding in accordance with "the penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.).

(b) Any person who violates a cease and desist order of the Commissioner under (a) above, after it has become final, and while such order is in effect, shall be liable to a penalty not exceeding \$5,000 for each violation, which may be recovered in a civil action. In determining the amount of the penalty the question of whether the violation was willful shall be taken into consideration.

(c) The penalties provided herein shall be in addition to any other penalties authorized by law.

Repeal and New Rule, R.1987 d.249, effective June 15, 1987.
See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).
Petition for Rulemaking.
See: 25 N.J.R. 6065(a).
Recodified from 11:2-17.14 by R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

SUBCHAPTER 18. READABLE POLICIES**11:2-18.1 Purpose**

The Plain Language Law (N.J.S.A. 56:12-1 et seq., as amended) requires certain insurance policies to be written in a "simple, clear, understandable and easily readable way." N.J.S.A. 39:6A-23 requires that each buyer's guide and coverage selection form required by that section to be issued to insureds and prospective insureds for automobile insurance be written in plain language. This subchapter provides rules for the implementation of these provisions.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Added statutory cite and requirements for buyer's guide and coverage selection form.

11:2-18.2 Scope

(a) This subchapter applies to all insurance policies which are issued to individuals to provide coverage for personal, family, or household purposes except life, health and annuity policies defined in N.J.S.A. 17B:17-19a, the "Life and Health Policy Language Simplification Act." Examples of coverage for personal, family or household purposes are:

1. Policies used solely to provide homeowners insurance, dwelling fire insurance on one to four family units, or individual fire insurance on dwelling contents;
2. Policies principally used to provide primary insurance on private passenger automobiles which are individually owned and used for personal or family needs; *and*
3. Policies of personal inland marine, personal theft, residence glass, and personal liability insurance.

(b) Coverage for personal, family or household purposes does not include policies or contracts of commercial lines insurance subject to N.J.S.A. 17:29AA-1 et seq. and N.J.A.C. 11:13.

(c) This subchapter does not supersede any other law, regulation or filing procedure.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Substantially amended (b).

11:2-18.3 Definitions

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

"Buyer's Guide" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides a brief description of all available policy coverages and benefit limits, identifies which coverages are optional and mandatory, and identifies all options offered by the insurer.

"Commissioner" means the Commissioner of Insurance.

"Coverage Selection Form" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides information required by the Commissioner pursuant to N.J.A.C. 11:3-15.7.

"Insurer" means any person, corporation, company, association, partnership, title insurance company, eligible authorized surplus lines insurer, or any other legal entity issuing a contract of insurance subject to this subchapter. In this subchapter, "insurer" also includes rating organizations.

ii. The receiver of a ceding insurer shall give or arrange to give to the reinsurer, written notice of the pendency of a claim against the ceding insurer, within a reasonable period of time after the initiation of the receivership. Failure to give such notice shall not excuse the obligation of the reinsurer unless it is substantially prejudiced thereby. The reinsurer may interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding company or its receiver. The reasonable expense thus incurred by the reinsurer shall be payable, subject to court approval, out of the estate of the insolvent ceding insurer as part of the expense of the receivership to the extent of a proportionate share of the benefit which may accrue to the ceding insurer in receivership, solely as a result of the defense undertaken by the reinsurer; and

iii. Payments by the reinsurer shall be made directly to the receiver of the ceding insurer except where the contract of insurance or reinsurance specifically provides another payee for such reinsurance in the event of the insolvency of the ceding insurer.

Amended by R.1993 d.557, effective November 15, 1993.
 See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).
 Amended by R.1996 d.3, effective January 2, 1996.
 See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-28.13 Contracts affected

All new and renewal reinsurance transactions entered into after February 5, 1994 shall meet the standards set forth in this chapter if credit is to be given to the ceding insurer for such reinsurance.

APPENDIX

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____ of _____
 (name of officer) (title of officer) (name of assuming insurer)
 the assuming insurer under a reinsurance agreement(s) with one or more insurers domiciled in _____, hereby
 (name of state)
 certify that _____ ("Assuming Insurer"):
 (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____ for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to given such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph

is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of _____
 (ceding insurer's state of domicile)
 _____ as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____
 (ceding insurer's state of domicile)
 records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____ reinsured by Assuming
 (ceding insurer's state of domicile)
 Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

 (name of assuming insurer)
 BY: _____
 (name of officer)

 (title of officer)

REG11228.A/LRWPC

Amended by R.1993 d.557, effective November 15, 1993.
 See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS

11:2-29.1 Purpose and scope

(a) The purpose of this subchapter is to establish the requirements and procedures by which insurers may undertake an orderly withdrawal from the business of insurance in this State, thereby minimizing the adverse effects upon policyholders of eliminating coverage; preventing or minimizing the disruption in the marketplace and harm to the public that would otherwise occur in the absence of regulation; and permitting insurers to wind down their business in an orderly fashion as is consistent with N.J.S.A. 17:17-10 and 17:33B-30.

(b) This subchapter applies to all insurers that seek to withdraw from the business of insurance as defined herein.

Case Notes

Commissioner, in setting insurer's price for withdrawing from automobile insurance industry, was not arbitrary or capricious. Matter of Plan for Orderly Withdrawal From New Jersey of Twin City Fire Ins. Co., 248 N.J.Super. 616, 591 A.2d 1005 (A.D.1991), certification granted 127 N.J. 548, 606 A.2d 362, affirmed 129 N.J. 389, 609 A.2d 1248, certiorari denied 113 S.Ct. 1066, 122 L.Ed.2d 370.

11:2-29.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer that initiates a withdrawal, as defined in N.J.S.A. 17:27A-1.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means the insurer seeking approval to withdraw from the business of insurance in this State.

"Assumption agreement" means a contract between insurers whereby one insurer transfers all or substantially all its rights, duties and obligations arising from certain policies to another insurer.

"Authority" means the power granted by the Commissioner which enables an insurer to transact the business of insurance.

"Automobile" and "automobile insurance" are as defined in N.J.S.A. 17:30E-3.

"Business of insurance" or "insurance" means any kind, line, subline, or a portion thereof authorized by Chapters 17 or 32 of Title 17 of the Revised Statutes.

"Commencement date" of withdrawal means the date which the applicant may begin withdrawing from this State pursuant to the approved plan of orderly withdrawal.

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

"Control" is as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Insurance.

"Effective date" of withdrawal means the date at which the applicant has complied with any and all conditions contained in the approved plan of orderly withdrawal.

"Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer as defined in N.J.S.A. 17:27A-1.

"Insurance producer" or "producer" means any person engaged in the business of an insurance agent, broker or consultant, as those terms are defined in N.J.S.A. 17:22A-2.

"Insurer" means an insurer or eligible surplus lines insurer, and any insurance affiliates thereof, authorized or admitted pursuant to Chapters 17 or 32 of Title 17 of the Revised Statutes to transact in this State the business of insurance as defined herein.

"Multi-state account" means a single contract or policy of commercial lines insurance as defined in N.J.S.A. 17:29AA-3 which covers risks or locations in both New Jersey and at least one other state; any group policy in which covered members of the group reside in New Jersey and at least one other state; and any plan approved for the mass marketing of insurance pursuant to N.J.A.C. 11:2-12 in which policyholders of the plan reside in New Jersey and at least one other state.

"Plan" means a plan of orderly withdrawal from insurance business in New Jersey.

"Portfolio reinsurance agreement" means a contract between insurers whereby one insurer transfers its entire liability for in-force policies or outstanding losses, or both, to another insurer regarding a described segment of insurance business.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates, rules and forms used by any insurer or by any rating organization in determining or ascertaining a rate.

"Reinsurance agreement" means a contract between insurers whereby one insurer agrees to insure part or all of an insurance risk of an originating, or ceding, insurer.

"Residual market mechanism" means any program authorized or created by the New Jersey State Legislature which is designed to provide an insurance market for insureds who are unable to obtain insurance in the voluntary market.

"State" means the State of New Jersey.

"Withdraw" or "withdrawal" means the nonrenewal, cancellation, or termination of policies, or surrender of authority to transact the business of insurance in this State, or any insurer action that is equivalent to a withdrawal from the business of insurance in this State which may include, but is not limited to, the elimination of a rating system, termination of agency contracts, reduction in agency commissions, restrictions on agency solicitation or binding authority, insurer refusal of applications or declaration of a dividend to an affiliate, when such action or actions exceed those occurring in the ordinary course of business. Whether the above activities are equivalent to a withdrawal shall be determined by the Commissioner on a case-by-case basis.