

13. Where the insurer specifies the use of after market parts, the insurer shall disclose to the claimant, in writing, either on the estimate or on a separate document attached to the estimate, the following information, which shall appear in print no smaller than 10 point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO REPLACEMENT PARTS AVAILABLE FROM THE ORIGINAL MANUFACTURER.

The insurer shall clearly identify on the estimate of such repair all after market parts installed on the vehicle.

14. If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, it shall have 10 working days following receipt of notification of claim to inspect the claimant's damaged property at a place and time reasonably convenient to the claimant, provided that the claimant has not refused to make the property available for inspection. For third-party property damage claims, this paragraph shall apply once the insured's liability is reasonably clear. This paragraph does not apply to losses caused by a catastrophe.

15. If any loss other than a motor vehicle loss subject to N.J.A.C. 11:3-10 is to be settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply to the claimant before beginning negotiations a copy of the estimate upon which the settlement is to be based.

i. Such estimate prepared by or for the insurer shall be reasonable, and of an amount which will allow for repairs to be made in accordance with generally accepted standards for safe and proper repairs, subject to policy conditions, such as limits, deductible, depreciation, and prior damage.

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).

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Rewrote (a)8.

Petition for Rulemaking.
See: 43 N.J.R. 3204(a).

11:2-17.11 Written notice by insurers of payment of 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) Upon payment of \$5,000 or more in settlement of any first-party property claim, the insurer or its representative (including the insurer's attorney) shall mail to the first-party claimant written notice of payment at the same time payment is made to the first-party claimant's public adjuster or other representative.

(c) The written notice referred to in (a) or (b) 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.

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

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Added a new (b); and recodified a former (b) and (c) as (c) and (d).

Case Notes

Lawyer concentrating in debt collections may, at request of institutional client-creditor, use power of attorney in endorsing client-creditor's name to drafts from debtors without violating ethical rule that lawyer property separate until there is accounting and severance of interests. Matter of Advisory Committee on Professional Ethics Docket No. 22-95, 144 N.J. 590, 677 A.2d 1100 (1996).

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. 17:23-20 et seq., 17:29B-5, and 17B:30-16.

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

Amended by R.2005 d.350, effective October 17, 2005.

See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

In (a), substituted "N.J.S.A. 17:23-20 et seq." for "N.J.S.A. 17:23-4" and deleted "17B:21-3".

11:2-17.13 Special claims reports

(a) If the Department 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).

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

In (a), deleted "of Insurance" in reference to the Department.

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