

(e) If a claimant is actively negotiating with an insurer for settlement of a claim, and the claimant's rights may be affected by a statute of limitations or a policy time limit, the insurer shall provide the claimant with written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to claimants 60 calendar days before the date on which such time limit may expire. This rule shall only apply if the insurer is negotiating a claims settlement with a person who is neither an attorney nor represented by an attorney.

(f) No insurer shall make statements which indicate that the rights of a claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the claimant of any applicable law or policy provision.

(g) Unless otherwise provided by law, in any case where there is no dispute as to one or more elements of a claim, payment for such element(s) shall be made notwithstanding the existence of disputes as to other elements of the claim where such payment can be made without prejudice to either party.

(h) An insurer shall not compel claimants to institute litigation to recover amounts due under an insurance policy by offering substantially less than amounts recovered in actions brought by such claimants.

(i) No insurer shall deny payment of a claim when it is reasonably clear that either full or partial benefits are payable.

(j) No claim shall be denied or compromised based on an exclusion, reduction or limitation in a policy unless documentation of facts rendering the exclusion, reduction or limitation operative can be obtained. If such documentation is not made a part of the claim file, the insurer shall place in the claim file a written notation explaining how documentation may be obtained.

(k) With respect to first party claims, insurers shall make claim payments by check or draft with a statement setting forth the coverage under which payment is made and in sufficient detail so that first party claimants can reasonably understand the benefits included within the claim payment. The details should include an explanation of how the benefit payment was calculated. This subsection shall not apply to claims in which the claim payment figure was arrived at through negotiations between the insurer and the first party claimant.

(l) If a first party claimant or a third party claimant not represented by an attorney does not submit sufficient information to establish his or her entitlement to the benefits claimed, then the insurer shall provide the claimant with a general description of the information and documentation needed to establish such entitlement.

#### Law Reviews and Journal Commentaries

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

#### Case Notes

Deviation by insurer from standards imposed by unfair claim settlement practices statute and regulations; evidence of bad faith. *Miglioc v. HCM Claim Management Corp.*, 288 N.J. Super. 331, 672 A.2d 266 (L.1995).

#### 11:2-17.9 Rules for fair and equitable settlements applicable to life and health insurance

(a) No insurer shall indicate on a payment draft, check or in any accompanying cover letter that said payment is "final" if additional benefits relating to the claim for which benefits are being paid are payable under the policy.

(b) When it is apparent to the insurer that additional benefits would be payable under a policy upon receipt of additional proofs of loss from the claimant, the insurer shall explain to the claimant in writing or by telephone the additional proofs or information needed to establish entitlement to additional benefits.

(c) No insurer shall undertake any activity that has the effect of coercing the insured to settle a disability claim on a lump sum basis.

(d) No insurer shall pay a claim involving both a covered and noncovered condition on a percentage basis of contributing loss, unless said percentage is reasonable.

(e) Settlement of claims for a fraction of an indemnity period shall be on a pro rata basis unless the policy specifically excludes pro-rata payments.

(f) If it is found that an insured's age is overstated on an individual life or health policy or understated on an annuity, benefits shall be adjusted upward under a policy which contains a misstatement of age provision specified in N.J.S.A. 17B:25-6 and N.J.S.A. 17B:26-18.

(g) No insurer shall request a claimant to sign an agreement which releases the insurer from all future claims under an insurance policy unless no other benefits are payable under it.

(h) Unless otherwise provided by the policy, no insurer may terminate disability benefits based solely on lack of regular medical attendance when the disability has been verified by a physician and can reasonably be expected to continue beyond the date through which benefits have been paid.

(i) No policy shall be rescinded and claim denied for loss incurred during the contestable period based on material misrepresentation by the applicant unless the application is a part of the contract.

(j) No policy shall be rescinded and claim denied for loss incurred during the contestable period based on omission of material information when such information is not specifically requested on the application.

(k) When an application for a life/health policy contains only one medical question or declaration as to general status of the insured's health, such as, "Are you now in good health?", an insurer shall not rescind a policy or deny a claim for loss incurred during the contestable period on the basis of material misrepresentation, if based on the totality of circumstances, the insured responded to the best of his/her knowledge and belief that the general status of his/her health was satisfactory.

Petition for Rulemaking.  
See: 25 N.J.R. 6065(a).

#### **11:2-17.10 Rules for fair and equitable settlements applicable to property and liability insurance**

(a) This section, unless otherwise noted in this subchapter, is applicable to claims arising under all property/liability coverages. This section is organized so that the requirements for all lines of property/liability insurance are found in (a)1 through 6 below; for automobile insurance only, in (a)7 through 13 below; and for other than automobile insurance only, in (a)14 and 15 below. The requirements of this section with respect to motor vehicle claims are in addition to the requirements of N.J.A.C. 11:3-10. In addition to the provisions of this section, the requirements for auto physical damage first party claims found in N.J.A.C. 11:3-10.1 through 10.4 shall also be construed to apply to automobile property damage third party claims from the time that liability becomes reasonably clear. The requirements are as follows:

1. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's policy.
2. When the amount claimed is reduced because of betterment or depreciation, all information and calculations for such deduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amounts and shall be fair and equitable.
3. Unless the question has been specifically negotiated, the insurer remains liable for hidden damage directly related to the loss giving rise to the claim subject to policy terms, conditions and limits.
4. No insurer shall refuse to grant advance payments on a claim primarily because the claimant has retained an attorney for the purpose of facilitating recovery on his/her behalf.
5. No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

6. Unless the insurer is exercising a right under the policy to repair damaged property, it shall not require as a condition to payment of claims that repairs be made by a particular contractor or repair shop.

7. In all automobile physical damage claims, the first party claimant shall be notified at the time of the insurer's acknowledgement of the claim, or sooner if inquiry is made, whether coverage exists for the rental of an automobile subject to policy terms and conditions.

8. When an insurer acknowledges receipt of an automobile property damage liability claim, or sooner if the claimant inquires, it shall inform the claimant whether and to what extent he or she will be entitled, if the insurer's liability later becomes reasonably clear, to payment for the rental of an automobile or other substitute transportation. Such payment will ordinarily be for the rental of a vehicle comparable to the type of the damaged vehicle (for example, sedan, minivan, sport utility vehicle, etc.) at a reasonable price until the damaged vehicle is repaired or, in the event of a total loss, until the claim is settled. Nothing in this section shall be construed to require that the reimbursement cover costs of a rental vehicle of similar value or "status" to that of the damaged vehicle, but only a comparable type. When an insurer uses the doctrine of comparative negligence to determine its responsibility for the cost of substitute transportation, it shall, as soon as is practicable, advise the claimant of the extent of its liability.

9. An insurer shall provide notice to a claimant three working days prior to the termination of payment for automobile storage charges and place a copy of such notice in a claim file.

10. All after market parts manufactured after October 17, 1988 used in the repair of an automobile where insurance proceeds provide the basis of payment therefor shall carry sufficient permanent identification so as to identify the manufacturer thereof. Such identification shall be accessible after installation to the extent possible.

11. No insurer shall require the use of after market parts in the repair of an automobile unless the after market part is warranted by the manufacturer in a reasonable manner as to duration and coverage and at least equal in like kind and quality to replacement parts available from the original manufacturer of the part in terms of fit, quality and performance. Use of after market parts which have been certified by an independent testing laboratory as being of like kind and quality to the original manufactured part will be deemed to be in compliance with the requirements of this paragraph.

12. Insurers specifying the use of after market parts shall pay for any modifications which may become necessary in making the repair.

2. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. 109-290; and

5. Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide to the applicant at the time the application is taken:

i. An explanation of any free-look period with instructions on how to cancel if a policy is issued; and

ii. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first-year cost. A basic illustration that meets the requirements of N.J.A.C. 11:4-11 shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

1. Excluding individually issued annuities, recommending the purchase of any life insurance product, which includes a side fund to a service member in pay grades E-4 and below unless the insurer or producer has reasonable grounds to believe that the life insurance death benefit, standing alone, is suitable;

2. Offering for sale or selling a life insurance product, which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI. Such offering or selling is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

i. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents; and

ii. "Other military survivor benefits" include, but are not limited to, the death gratuity, funeral reimburse-

ment, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, Federal income tax forgiveness, and Social Security survivor benefits;

3. Excluding individually issued annuities, offering for sale or selling any life insurance contract, which includes a side fund:

i. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

ii. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

iii. Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;

4. Excluding individually issued annuities, offering for sale or selling any life insurance contract, which after considering all policy benefits, including, but not limited to, endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance; and

5. Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded.

#### 11:2-23A.7 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or any other application of this subchapter which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

SUBCHAPTERS 24 THROUGH 25. (RESERVED)

## SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

### 11:2-26.1 Purpose

(a) The purpose of this subchapter is to improve the Department's surveillance of the financial position of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers.

(b) This subchapter shall not be construed to prohibit, preclude or in any way limit the Commissioner from ordering, conducting or performing examinations of insurers pursuant to law.

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).  
Financial "condition" changed to financial "position".  
Amended by R.1996 d.3, effective January 2, 1996.  
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).  
Added (b).

### 11:2-26.2 Scope

This subchapter shall apply to all insurers transacting business in the State of New Jersey except as provided at N.J.A.C. 11:2-26.14.

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).  
Citation corrected.

### 11:2-26.3 Definitions

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

"Accountant" and "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for alien insurers, it means a chartered or similarly certified accountant.

"Alien insurer" means an insurer formed under the laws of any country other than the United States of America, its states, districts, territories, commonwealths or possessions.

"Audited financial report" means and includes those items specified in N.J.A.C. 11:2-26.5.

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

"Department" means the Department of Banking and Insurance.

"Insurer" means any person, association, partnership or corporation licensed, authorized or eligible to transact the business of insurance in this State pursuant to Subtitle 3 of Title 17 or Subtitle 3 of Title 17B of the Revised Statutes of

the State of New Jersey including, but not limited to, eligible surplus lines insurers, interinsurance exchanges and all risk retention groups as defined in 15 U.S.C. section 3901 doing business in New Jersey. Insurer does not include any statutory mechanism for providing insurance coverage in this State, including, but not limited to municipal joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq.

"Workpapers" means the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her examination of the financial statements of an insurer. Workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her examination of the financial statements of an insurer and which support his or her opinion thereof.

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

Deleted reference to New Jersey Automobile Full Insurance Underwriting Association, in definition of "insurer".  
Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).  
Added "certified" to accountant and "audit planning documentation" to workpapers.  
Amended by R.2001 d.6, effective January 2, 2001.  
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

### 11:2-26.4 Filing of annual audited financial reports; extensions

(a) All insurers (unless exempted pursuant to N.J.A.C. 11:2-26.14) shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 upon 90 days advance written notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Commissioner for 30 day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for an extension must be submitted in writing not less than 10 days prior to the due date of the financial report in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).  
Filing date changed to June 1, or earlier, if 90 day notice is given to the filer.

### 11:2-26.5 Contents of annual audited financial report

(a) The annual audited financial report shall reflect the financial position of the insurer as of the end of the most

recent calendar year and the results of its operations, cash flows and changes in capital and surplus for such calendar year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual audited financial report shall include:

1. A report of an independent certified public accountant;
2. A balance sheet reporting admitted assets, liabilities, capital and surplus;
3. A statement of operations;
4. A statement of cash flows;
5. A statement of changes in capital and surplus; and
6. Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall also include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 with a written description of the nature of these differences.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement filed with the Commissioner:

1. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.)

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

NAIC requirements added to (b)6; rounding and combining provisions at (c)2 and 3 deleted.

Amended by R.2001 d.6, effective January 2, 2001.  
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Rewrote (b)6.

### 11:2-26.6 Qualifications of independent certified public accountants

(a) The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant unless they are in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice or, for alien insurers, that is not a chartered or similarly certified accountant.

(b) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations, Code of Ethics and Rules of Pro-

fessional Conduct of the New Jersey Board of Public Accountancy or similar code.

(c) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

1. The number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. The premium volume of the insurer; or
3. The number of jurisdictions in which the insurer transacts business.

(d) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under Federal or state law, or similar conduct under any foreign law;
2. Has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this rule; or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this subchapter.

(e) Whenever it appears that the certified public accountant or accounting firm retained by the insurer to conduct the annual audit is not a qualified independent certified public accountant as provided under these rules, the Department shall notify the insurer that it does not recognize the certified public accountant or accounting firm as qualified, and the Department will not accept any annual audited Financial Report prepared by that accountant or accounting firm.

1. Upon receipt of such notice from the Department, the insurer may, within 20 days, request an administrative review on the issue of the qualifications of the independent certified public accountant or accounting firm retained by the insurer.

Amended by R.1993 d.68, effective February 1, 1993.  
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

“Qualified” specified at (a) and (b); subsections (c)-(e) added to specify qualifications necessary.

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

**11:2-26.7 Certification by independent certified public accountant**

(a) Each insurer required by this subchapter to file an annual audited financial report shall within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm

retained to conduct the annual audit set forth in this subchapter. Insurers not retaining an independent certified public accountant on the effective date of this rule as amended shall register the name and address of their retained certified public accountant not less than six months before the date when the audited financial report is to be filed.