

CHAPTER 13

COMMERCIAL LINES INSURANCE

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, and 17:29AA-1 et seq.

Source and Effective Date

R.2008 d.74, effective February 29, 2008.
See: 39 N.J.R. 5176(a), 40 N.J.R. 1888(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 13, Commercial Lines Insurance, expires on August 27, 2015. See: 47 N.J.R. 600(a).

Chapter Historical Note

Chapter 13, Commercial Lines Insurance, was adopted as R.1982 d.423, effective December 6, 1982. See: 14 N.J.R. 1045(a), 14 N.J.R. 1398(c).

Pursuant to Executive Order No. 66(1978), Chapter 13, Commercial Lines Insurance, was readopted as R.1987 d.512, effective November 12, 1987. See: 19 N.J.R. 1783(a), 19 N.J.R. 2302(b). Subchapter 6, Commercial Insurance Rating Plans, was adopted as R.1990 d.594, effective December 3, 1990. See: 21 N.J.R. 3430(a), 22 N.J.R. 3625(b). Subchapter 7, Commercial Lines Insurance: Policy Form Standards, was adopted as R.1991 d.411, effective August 5, 1991. See: 23 N.J.R. 159(a), 23 N.J.R. 2340(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Commercial Lines Insurance, was readopted as R.1992 d.492, effective November 10, 1992. See: 24 N.J.R. 2830(a), 24 N.J.R. 4408(a). Subchapter 8, Commercial Lines Insurance: Prospective Loss Costs Filing Procedures, was adopted as R.1993 d.411, effective August 16, 1993. See: 25 N.J.R. 1047(a), 25 N.J.R. 3829(b).

Pursuant to Executive Order No. 66(1978), Chapter 13, Commercial Lines Insurance, was readopted as R.1997 d.521, effective November 10, 1997. See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Chapter 13, Commercial Lines Insurance, was readopted as R.2003 d.21, effective December 12, 2002. See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Chapter 13, Commercial Lines Insurance, was readopted as R.2008 d.74, effective February 29, 2008. As a part of R.2008 d.74, Subchapter 3, Expense Experience, was repealed, effective April 7, 2008. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 13, Commercial Lines Insurance, was scheduled to expire on February 28, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

11:13-1.1 Purpose

The Commercial Insurance Deregulation Act of 1982 (N.J.S.A. 17:29AA-1 et seq.) establishes a separate rating law for commercial lines insurance and exempts such lines from the provisions of N.J.S.A. 17:29AA-1 et seq. except as provided by the Act. This chapter provides rules for the implementation of the Act.

11:13-1.2 Scope

(a) This chapter applies to all policies or contracts of insurance issued by a licensed insurer pursuant to Title 17 of the Revised Statutes except:

1. Ocean marine, title, mortgage guaranty, workers' compensation and employers' liability, and policy or contract of reinsurance, other than joint reinsurance, as pro-

vided for in section 22 of the Commercial Insurance De-regulation Act of 1982, insurance written through the New Jersey Medical Malpractice Reinsurance Association, insurance written through the New Jersey Insurance Underwriting Association, and the insurance issued by hospital service or medical service corporations;

2. Insurance issued for personal, family or household purposes;

i. Examples of policies of insurance issued 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 that are individually owned and used for personal or family needs;

(3) Policies of personal inland marine, personal theft, residence glass, personal liability insurance and personal excess; and

(4) Policies of self-storage personal property insurance as defined at N.J.A.C. 11:17-1.2.

ii. Insurance issued for personal, family or household purposes does not include insurance used to cover business, professional or other commercial risks, such as farmowners, businessowners and commercial multi-peril policies.

Amended by R.1989 d.621, effective December 18, 1989.
See: 21 N.J.R. 1641(b), 21 N.J.R. 3926(a).

“Farmowners insurance” added as example of policies issued for personal, family or household purposes.

Amended by R.1997 d.278, effective July 7, 1997.

See: 28 N.J.R. 4707(a), 29 N.J.R. 2853(a).

Added (a)2i(5).

Amended by R.2002 d.104, effective April 1, 2002.

See: 33 N.J.R. 4056(a), 34 N.J.R. 1454(a).

In (a), substituted “that” for “which” in 2i(2), deleted 2i(4) and recodified former 2i(5) as 2i(4), and inserted “farmowners,” in 2ii.

11:13-1.3 Definitions

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

“Advisory organizations” means any group, association or other organization of insurers, whether located within or outside this State, that assists insurers or rating organizations in ratemaking, by the collection and furnishing of loss or expense statistics.

“Commissioner” means the Commissioner of Banking and Insurance.

“Department” means Department of Banking and Insurance.

“Farmowners insurance” means a policy of insurance issued to the owner(s) of property used for agricultural purposes, which may include property coverages on dwellings, farm buildings and personal property including household property, farm equipment, livestock, farm produce and supplies; and farmers comprehensive personal liability coverages against liabilities as the owner of the farm property and operator of the farming enterprise. As defined herein, farmowners insurance is reported on the statutory Annual Statement as “Farmowners Multi Peril”.

“Insurer” means any person, corporation, company, association, joint underwriting association, partnership, or any other legal entity licensed under the laws of this State to transact the business of insurance in this State.

“Policy” means any contract of insurance subject to this chapter and includes, but is not limited to, all policies, contracts, certificates and endorsements.

“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.

“Special Risks” means:

1. Commercial lines insurance risks as specified on a list promulgated by the Commissioner, which are of an unusual nature or high loss hazard or are difficult to place or rate or which are excess or umbrella or which are eligible for export;

2. Inland marine insurance, other than personal lines (The 1976 Revision of the Nation-wide Marine Definition, adopted by the National Association of Insurance Commissioners, has been adopted by the State of New Jersey. This instrument describes, although not exclusively, the kinds of risks which may be classified or identified as inland marine insurance.);

3. Fidelity, surety or forgery bonds; or

4. Commercial lines insurance risks which produce minimum annual premium in excess of \$10,000 as specified in N.J.A.C. 11:13-4.

“Supplementary rate information” includes any manual or plan of rates, statistical plan, classification, rating schedule, rating rule and any other rule used by an insurer in making rates.

Amended by R.1989 d.621, effective December 18, 1989.

See: 21 N.J.R. 1641(b), 21 N.J.R. 3926(a).

Added definition for “farmowners insurance”.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner”, “Department”, and “Special Risks”.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Added “Advisory organization”.

11:13-1.4 Rate and policy form requirements

(a) Pursuant to N.J.S.A. 17:29AA-10, rates shall not be made or used which are excessive, inadequate or unfairly discriminatory.

(b) Pursuant to N.J.S.A. 17:29AA-11 policy forms shall not be unfair, inequitable, misleading or contrary to law, nor shall they produce rates, which are excessive, inadequate or unfairly discriminatory.

11:13-1.5 Separability

If any provision of this chapter, or its application to any person or circumstances is held to be invalid, the remainder of this chapter and its application to the other persons or circumstances shall not be affected.

SUBCHAPTER 2. COMMERCIAL LINES FILINGS**11:13-2.1 Filing of rates, supplementary rate information, and policies**

(a) This subchapter sets forth procedures and requirements for the filing of commercial lines rates, supplementary rate information and policies. The requirements of this subchapter shall not be applicable to:

1. Policy forms exempted by order of the Commissioner; or

2. Rates, supplementary rate information or policy forms used in connection with any special risk provided, however, that policy forms which are used in connection with commercial lines risks producing a minimum annual premium in excess of \$10,000 as described under N.J.A.C. 11:13-4.1(a)4 and which are not otherwise described as special risks shall be subject to the requirements and filing procedures found in this subchapter.

(b) Pursuant to N.J.S.A. 17:29AA-5, every insurer and rating organization or advisory organization shall file with the Commissioner all rates and supplementary rate information and all changes and amendments thereof no later than 30 days after becoming effective.

(c) Pursuant to N.J.S.A. 17:29AA-6 insurers shall file copies of all policy forms for approval with the Commissioner at least 30 days prior to becoming effective.

(d) Filings submitted to the Commissioner must be explicit and self-contained, must be supported by statistics, where applicable, and must set forth the information upon which the filer relied in making the filing.

Amended by R.2003 d.21, effective January 6, 2003.
See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

In (b), inserted "or advisory organization" following "rating organization".

11:13-2.2 Filing of changes

(a) Filings containing changes in rates, supplementary rate information, including any manual rules or plans, or in policy forms or endorsement required to be filed with the Department shall be presented in the following fashion:

1. A copy of the page or pages containing the passage for which a change is proposed shall be filed in such form that the text is self-contained without need to refer to material not included in the filing. Matter to be changed or omitted by the filing shall be identified, preferably by marking the passages to be changed with a marking pencil; where matter is to be added, a mark () shall so indicate.

2. A memorandum shall be filed reciting the rule or section of form to be changed, properly referenced as to the manual or form, with newly added matter underlined and matter to be eliminated in brackets [].

(b) An explanatory note shall state the reason or purpose for the proposed change including any statistical support, and a calculation or estimate of the effect of the change on premiums and/or losses shall be submitted:

1. Filings of proposed rate changes must contain all information upon which the rate filer relied. Due consideration must be given to: past and prospective loss experience, including where pertinent, the conflagration and catastrophe hazards, if any, both within and without the State; all factors reasonably related to the kind of insurance involved; a reasonable profit for the insurer; and, in the case of participating insurer, policyholder's dividends.

11:13-2.3 Adoption of rates, supplementary rate information or policies of other filers

(a) If a filer adopts rates or supplementary rate information used by other filers or proposes to adopt policy forms or endorsements previously approved (or deemed approved) for other filers in New Jersey, the filing shall clearly identify such reference including the name of the filer and, if applicable, the date such filings were approved in this State, including any amendments thereof. The Department staff will give reasonable assistance to a filer in obtaining such information to the extent that it is a public record:

1. If the proponent only wishes to adopt the filing with a different effective date, the filing shall clearly identify the rating organization's or advisory organization's file number but shall not include a copy of the material referred to.

i. If the proponent wishes to adopt such filing material with some exceptions, he shall clearly identify such reference and shall submit copies of only those pages containing such exceptions.

2. If the proponent wishes to delay the effective date or non-adopt either of the following: rate or supplementary rate information, or policies and endorsements approved for rating organizations or accepted for reference purposes

on behalf of advisory organizations in New Jersey, the filing shall clearly identify such reference but shall not include a copy of the referred material. Pursuant to N.J.S.A. 17:29AA-5, every insurer shall file with the Commissioner all changes and amendments thereof not later than 30 days after becoming effective.

3. If the proponent wishes to adopt filings approved in New Jersey for other filers acting independently of rating organizations or advisory organizations, the material made reference to must be filed with any modifications identified as outlined under N.J.A.C. 11:13-2.2.

Amended by R.2003 d.21, effective January 6, 2003.
See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).
Rewrote the section.

11:13-2.4 New filings

Policy forms and supplementary rate information such as manual rules or rating plans are rarely entirely new. Most such filings are built upon something previously or currently in use. Any required action with respect to such filings will be expedited if they are identified as to their foundation. Filings shall not be identified as new filings if they properly fall under the categories discussed under N.J.A.C. 11:13-2.2 and 2.3.

11:13-2.5 (Reserved)

Amended by R.2002 d.101, effective April 1, 2002.
See: 33 N.J.R. 1875(a), 34 N.J.R. 1431(b).
Rewrote the section.

Amended by R.2003 d.21, effective January 6, 2003.
See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

In (a) and (b), added "or advisory organizations" following "rating organizations".

Amended by R.2007 d.91, effective April 2, 2007.
See: 38 N.J.R. 4976(b), 39 N.J.R. 1313(a).

Section was "Filing Source Documents". Rewrote (a); in (b), substituted "NAIC Uniform Property and Casualty Transmittal Document and the final printed pages of the document(s) in the filing and Filing Source Document" for "Filing Source Documents, MARS001 and"; in (c), substituted "NAIC Uniform Property and Casualty Transmittal Document and the final printed pages of the document(s) in the filing and Filing Source Document" for "Filing Source Documents MARS001 and"; and added (d) and (e).

Repealed by R.2009 d.190, effective June 15, 2009.
See: 41 N.J.R. 365(a), 41 N.J.R. 2486(a).
Section was "Transmittal Documents".

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. SPECIAL RISKS

11:13-4.1 Special risks

(a) This subchapter sets forth procedures and requirements which are applicable to various categories of commercial lines risks herein designated as special risks pursuant to section 3.k of Commercial Insurance Deregulation Act of 1982. Such special risks are:

1. Commercial lines insurance risks as specified on a list promulgated by the Commissioner which are of an unusual nature or high loss hazard or are difficult to place or rate or which are excess or umbrella, or which are eligible for export;
2. Inland marine insurance, other than personal inland marine;
3. Fidelity, surety or forgery bonds; or
4. Commercial lines insurance risks which produce minimum annual premium in excess of \$10,000. Only premiums generated by coverages subject to the Commercial Insurance Deregulation Act of 1982 shall be used in determining whether a risk generates a premium sufficient to qualify under this paragraph. Risks producing a minimum annual premium in excess of \$10,000 shall be:
 - i. A single risk which generates annual premium in excess of \$10,000 written under a single policy.
 - ii. A single risk which generates annual premium in excess of \$10,000 written under more than one policy if all are written by the same insurer or group.

iii. A risk written under a single policy covering more than one risk which policy generates an annual premium in excess of \$10,000.

(b) Except as otherwise required by the provisions of this chapter or as may be ordered by the Commissioner, the requirements and procedures found in N.J.A.C. 11:13-2 shall not apply to special risks.

Amended by R.2008 d.74, effective April 7, 2008.

See: 39 N.J.R. 5176(a), 40 N.J.R. 1888(a).

In (b), substituted "N.J.A.C. 11:13-2" for "subchapters 2 and 3 above".

11:13-4.2 Reporting requirements

The Commissioner may require the filing of such additional reports, including expense statistics with respect to special risks written by insurers, as he deems necessary to implement the provisions of the Commercial Insurance De-regulation Act of 1982 and this chapter.

Amended by R.2008 d.74, effective April 7, 2008.

See: 39 N.J.R. 5176(a), 40 N.J.R. 1888(a).

Deleted (a); deleted designation (b); and inserted ", including expense statistics with respect to special risks written by insurers,".

11:13-4.3 Examination

The underwriting files, premium, loss and expense statistics, financial and other records with respect to special risks written by an insurer shall be maintained in such detail as may be required by the Commissioner and shall be subject to examination by the Commissioner or his designee in the State as often as deemed necessary by the Commissioner.

SUBCHAPTER 5. PROCEDURE FOR THE REGULATION OF CONSENT TO HIGHER RATE FILINGS

11:13-5.1 Higher rate filings

(a) N.J.A.C. 11:4-7 including all subsequent amendments and supplements is hereby adopted as a rule with the modification indicated in (b) below.

1. This document is available for review at or may be purchased from the New Jersey Department of Banking and Insurance, 20 West State Street, PO Box 325, Trenton, New Jersey 08625.

(b) The following are modifications to the rule referenced in (a) above:

1. Reference to N.J.S.A. 17:29AA-22 contained in N.J.A.C. 11:4-7.1(b) 11 is deleted and replaced with N.J.S.A. 17:29AA-26.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended by R.2002 d.101, effective April 1, 2002.

See: 33 N.J.R. 1875(a), 34 N.J.R. 1431(b).

In (b)1, deleted exhibits.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Rewrote (a)1.

SUBCHAPTER 6. COMMERCIAL INSURANCE RATING PLANS

11:13-6.1 Purpose and scope

(a) This subchapter establishes standards for commercial insurance rating plans to modify rates in the development of premiums for specific risks.

(b) These standards are intended to:

1. Recognize expected loss differentials based on factors applied using sound underwriting principles;
2. Promote competition among insurers in the rating of individual commercial risks;
3. Promote fair and equitable treatment of insureds; and
4. Encourage loss control and safety measures.

(c) This subchapter applies to all insurers and rating organizations or advisory organizations that file rates for commercial lines insurance.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

In (c), inserted "or advisory organizations" following "rating organizations".

11:13-6.2 Definitions

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

"Base rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium, which rate is filed with the Commissioner pursuant to N.J.S.A. 17:29AA-5.

"Commercial insurance rating plan" includes any plan of rates and rules for the adjustment of premiums from base rates for commercial lines insurance coverages.

"Commercial lines insurance" includes all insurance policies so defined in N.J.S.A. 17:29AA-3a.

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

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

"Filer" means a rating organization or advisory organization or any insurer making its own rates and proposing to establish a new rate, a rate change, or a rating rule.

“Policy” means any contract of commercial lines insurance including, but not limited to, all policies, contracts, certificates and endorsements.

“Supplementary rate information” includes any manual or plan of rates, statistical plan, classification, rating schedule, rating rule and any other rule used by an insurer in making rates.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner” and “Department”.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

In “Filer”, inserted “or advisory organizations” following “rating organization”.

11:13-6.3 Commercial insurance rating plans

(a) Filers may submit commercial insurance rating plans that provide for modification of rates in the development of premiums for specific risks.

(b) A commercial insurance rating plan shall be filed with the Commissioner in accordance with N.J.S.A. 17:29AA-5 and this subchapter.

(c) No insurer shall charge or collect from any insured a premium for any commercial lines insurance policy that deviates from the base rates filed with the Commissioner, except in accordance with a commercial insurance rating plan filed with the Commissioner in accordance with this subchapter.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Deleted (c) and recodified (d) as (c).

11:13-6.4 Elements of plan

(a) A commercial insurance rating plan shall consist of rating rules that set forth the following:

1. The criteria for an insured’s eligibility for premium modification as described in the plan;
2. A list or lists of underwriting factors and such descriptive statements or explanations as may be necessary to understand the application or use of each factor;
3. The maximum debit for each factor;
4. The maximum credit for each factor; and
5. The total maximum debits and credits for all factors combined.

11:13-6.5 Standards for commercial insurance rating plans

(a) Underwriting factors described in the plan shall be reasonably related to an increase or decrease in the risk expected.

(b) Maximum debits for each underwriting factor in the plan shall equal maximum credits for each underwriting

factor in the plan on a percentage basis except when equal maximum credits and debits are clearly not appropriate and the filer of the plan provides a written explanation.

(c) An individual risk premium modification plan shall provide for a maximum 25 percent debit or credit from base rates for any single policy. This limitation shall not apply to experience and retrospective rating plans or expense modifications.

Amended by R.1992 d.492, effective December 7, 1992.

See: 24 N.J.R. 2830(a), 24 N.J.R. 4408(a).

Text at (a) regarding premium modification deleted.

11:13-6.6 Application or use of commercial insurance rating plans

(a) Commercial insurance rating plans shall not be used in a manner that results in excessive, inadequate or unfairly discriminatory rates.

(b) Commercial insurance rating plans shall be applied uniformly to all insureds who qualify for debits or credits in accordance with the plan as filed.

(c) No individual policy premium shall be modified until the debits and credits applicable to both risk and expense modification in accordance with the commercial insurance rating plan are determined by an inspection of the property.

(d) Insurers shall develop and retain information in their underwriting file about the application of a commercial insurance rating plan to any modification of an individual policy premium. This shall include any information used to determine the eligibility for debit or credit in accordance with the filed plan, such as inspection reports, photographs, results of engineering or professional evaluations, claim history, etc.

(e) Insurers shall make this information available for examination by the Department, or supply it to the Department within 10 days of receipt of a written request.

SUBCHAPTER 7. COMMERCIAL LINES INSURANCE: POLICY FORM STANDARDS

11:13-7.1 Purpose and scope

(a) These rules interpret provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq. and set standards for the acceptance or disapproval of policy forms submitted pursuant to N.J.S.A. 17:29AA-6. These standards are established pursuant to N.J.S.A. 17:29AA-11, which prohibits forms which are unfair, inequitable, misleading or contrary to law, or which produce rates that are excessive, inadequate or unfairly discriminatory.

(b) These rules do not apply to policy forms not required to be submitted by N.J.S.A. 17:29AA-6, which with some exceptions does not require the filing of policy forms insuring

“special risks” as defined in N.J.S.A. 17:29AA-3k. These rules do not apply to policy forms issued by eligible surplus lines insurers in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq. Nothing in these rules shall, however, authorize the acceptance or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by another law or rule.

(c) These rules apply to all insurers which file policy forms pursuant to N.J.S.A. 17:29AA-6.

11:13-7.2 Definitions

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

“Commercial lines insurance” includes all property-casualty insurance policies except those excluded by N.J.S.A. 17:29AA-3a and N.J.A.C. 11:18-1.1.

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

“Cost of legal defense” or “defense costs” means allocated attorney and all other litigation expenses that can be separately identified as arising from the defense of a specific claim.

“Day” means calendar day.

“Insurer” means any person, corporation, association, joint underwriting association subject to N.J.S.A. 17:29AA-22, partnership or company licensed under the laws of this State to transact the business of insurance and rating organizations that file policy forms on behalf of their members and subscribers.

“Liability insurance policy” means any insurance policy that provides coverage for legal liability, even if it contains other types of coverage.

“Policy” or “insurance policy” includes all endorsements.

Amended by R.1997 d.521, effective December 15, 1997.

See: 29 N.J.R. 4248(a), 29 N.J.R. 5310(a).

Amended “Commissioner”.

11:13-7.3 Defense costs within policy limits

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-1 et seq. which contains a provision that includes defense costs within policy limits, except as provided in this section.

1. Regardless of whether the policy form provides defense costs within or outside of policy limits, no defense costs shall be charged against any deductible amount.

(b) Lawyers and medical malpractice professional liability insurance policies may contain a provision that includes

defense costs within policy limits provided it conforms to the standards set forth in (c) below or, in the case of medical malpractice liability insurance, to the standards set forth in (d) below.

(c) Lawyers and medical malpractice professional liability insurance policy forms that include defense costs within policy limits shall contain policy provisions, which may be in the form of a mandatory endorsement, so as to incorporate the standards set forth below into the terms of each policy.

1. The policy form shall provide a minimum limit of liability of \$1,000,000.

2. Defense costs shall not reduce the portion of the limit of liability that remains available to pay claims until defense costs have been incurred in an amount that equals or exceeds 50 percent of the policy limit of liability. The portion of the limit of liability that remains available to pay claims may be reduced only by the portion of incurred defense costs greater than 50 percent of the policy limit of liability.

3. The portion of the limit of liability available to pay claims shall not be reduced to an amount less than 50 percent of the policy limit of liability, regardless of the amount of defense costs incurred.

(d) Notwithstanding that they do not conform with (c) above, medical malpractice professional liability insurance policy forms that include defense costs within policy limits may be offered if:

1. The policy form provides a minimum limit of liability of \$1,000,000;

2. The insurer at a minimum also offers the applicant a policy with identical limits providing defense costs outside the limit of liability;

3. The insurer secures a certification on a policyholder notice signed by the applicant confirming that a policy providing defense costs outside the limit of liability was offered to the applicant and the applicant declined such coverage, and further confirming that the applicant is aware that the amount of coverage available for payment of a liability claim will be commensurately reduced based on defense costs. The notice shall be required with respect to initial applications. It shall not be required on renewals of existing policies unless a change is made upon renewal to include defense costs within limits. The form of the policyholder notice shall be filed with the Department with the filing of the policy form providing defense costs within limits, and the signed certifications shall be maintained by the insurer for a period of five years from the expiration of the policy; and

4. The insurer shall file rates for medical malpractice liability insurance policies that contain a provision that includes defense costs within policy limits which shall be commensurately reduced to reflect the coverage provided.

(e) Regardless of whether they include defense costs within policy limits, all medical malpractice professional liability insurance policies covering physicians issued by carriers authorized to write such policies in this State shall comply with the provisions of N.J.S.A. 45:9-19.17.1.a and any applicable rules of the State Board of Medical Examiners at N.J.A.C. 13:35.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Added (a)1; inserted "and medical malpractice" following "Lawyers" in (b) and (c); deleted (c)4.

Amended by R.2005 d.59, effective February 7, 2005.

See: 36 N.J.R. 4873(a), 37 N.J.R. 530(a).

Added (d).

Amended by R.2008 d.330, effective November 3, 2008.

See: 40 N.J.R. 1062(a), 40 N.J.R. 6464(c).

In the introductory paragraph of (a), updated the N.J.S.A. reference; in (a)1, substituted "Regardless of whether the policy form provides defense costs within or outside of policy limits, no" for "No"; in (b), inserted "or, in the case of medical malpractice liability insurance, to the standards set forth in (d) below"; in the introductory paragraph of (c), substituted "that include" for "including the" and "terms" for "term", and substituted a period for a colon at the end; added new (d); and recodified former (d) as (e).

11:13-7.4 Exclusions from coverage for lead liability

(a) The Department shall approve policy forms filings that include policy provisions or rating rules as follows:

1. That the lead liability exclusion applies only if the covered premises were constructed prior to 1978; and
2. That the insurer be required to offer liability coverage for lead paint or lead contamination if the premises covered by such policy has been certified as being free of existing lead hazards pursuant to standards to be established by the Department of Community Affairs.

(b) Insurers filing pursuant to (a) above shall provide insureds with written notice at least one year prior to renewal of a policy of the change in coverage resulting from the exclusion, which shall include the following statements:

1. That the exclusion applies only to premises constructed prior to 1978;
2. That the exclusion shall become part of the policy on renewal; and
3. That the insured may purchase liability coverage for lead paint or lead contamination if the premises covered by the policy has been certified as being free of existing lead hazards pursuant to standards to be established by the Department of Community Affairs.

New Rule, R.1998 d.44, effective January 20, 1998.

See: 28 N.J.R. 5137(b), 30 N.J.R. 367(a).

Former N.J.A.C. 11:13-7.4, "Refiling policy forms" recodified to N.J.A.C. 11:13-7.5.

Amended by R.2003 d.21, effective January 6, 2003.

See: 34 N.J.R. 2947(a), 35 N.J.R. 252(a).

Rewrote the section.

Amended by R.2008 d.74, effective April 7, 2008.

See: 39 N.J.R. 5176(a), 40 N.J.R. 1888(a).

Section was "Exclusions from coverage". In (a)1, inserted "lead liability".

11:13-7.5 Refiling policy forms

(a) Insurers with policy forms containing provisions that are inconsistent with the standards set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 as follows:

1. For N.J.A.C. 11:13-7.4, by April 20, 1998, and the forms shall be effective no later than May 20, 1998.

(b) Policy forms refiled as set forth in (a) above shall comply with the standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refiling has been done within the time provided by (a) above.

Recodified from N.J.A.C. 11:13-7.4 and amended by R.1998 d.44, effective January 20, 1998.

See: 28 N.J.R. 5137(b), 30 N.J.R. 367(a).

In (a), substituted "as follows:" for "by February 1, 1992", and added 1.

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Administrative Procedure—Insurance. Steven P. Bann, 134 N.J.L.J. No. 4, 53 (1993).

Case Notes

Insurer's proposed absolute pollution exclusion endorsement would not be deemed approved under statutory automatic approval mechanism. Matter of Disapproval of Commercial Ins. Policy Forms of Ins. Co. of North America, 264 N.J.Super. 228, 624 A.2d 587 (A.D.1993).

Pronouncement by Commissioner of Department of Insurance that asbestos exclusions were not permitted constituted improper rule making. Matter of Disapproval of Commercial Ins. Policy Forms of Ins. Co. of North America, 264 N.J.Super. 228, 624 A.2d 587 (A.D.1993).

SUBCHAPTER 8. COMMERCIAL LINES INSURANCE: PROSPECTIVE LOSS COSTS FILING PROCEDURES

11:13-8.1 Purpose and scope

(a) This subchapter establishes data requirements and procedures for member/subscriber insurers in rating organizations or advisory organizations to adopt or modify a rating organization's or advisory organization's prospective loss cost filing for commercial lines insurance made pursuant to N.J.S.A. 17:29AA-1 et seq.

(b) This subchapter applies to all rating organizations or advisory organizations which filed prospective loss costs and all insurer filings which adopt or modify a rating organization's or advisory organization's prospective loss cost filing