

TITLE 11

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

CHAPTER 1

ADMINISTRATION

Authority

N.J.S.A. 17:1-8.1 and 17:1-15e.

Source and Effective Date

R.2001 d.75, effective January 31, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a), 33 N.J.R. 1920(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Administration, expires on January 31, 2006.

Chapter Historical Note

Chapter 1, Plan of Organization of the Department of Insurance, was adopted as R.1971 d.11, effective January 20, 1971, and codified at N.J.A.C. 11:1 Subchapter 1. Notice was not published in the New Jersey Register.

Subchapter 3, Cancellation for Nonpayment of Premium Where Producer of Record Has Advanced Premium, was adopted as R.1972 d.168, effective August 25, 1972. See: 4 N.J.R. 128(b), 4 N.J.R. 221(b).

Subchapter 2, Filings; Property-Liability, was adopted as R.1973 d.120, effective May 1, 1973. See: 5 N.J.R. 113(a), 5 N.J.R. 190(b).

Subchapter 5, Administrative Orders and Declarations, was adopted as Emergency New Rule, R.1974 d.237, and the Motor Vehicle Liability Security Fund was declared exhausted, effective August 22, 1974. See: 6 N.J.R. 351(d).

Subchapter 4, Unfair Discrimination, was adopted as R.1975 d.128, effective September 1, 1975. See: 7 N.J.R. 168(a), 7 N.J.R. 276(b).

Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, was adopted as R.1975 d.170, effective July 1, 1975. See: 7 N.J.R. 229(a), 7 N.J.R. 334(b).

Subchapter 10, Insurance Licensing of Financial Institutions, was adopted as R.1976 d.166, effective May 27, 1976. See: 8 N.J.R. 233(a), 8 N.J.R. 300(c).

Subchapter 11, Conduct Constituting Violations by Brokers and Agents, was adopted as R.1976 d.235, effective July 22, 1976. See: 8 N.J.R. 287(e), 8 N.J.R. 398(b).

Subchapter 7, Service and Placement Fees, was adopted as R.1976 d.266, effective August 23, 1976. See: 7 N.J.R. 468(a), 8 N.J.R. 422(b).

Subchapter 8, Property-Casualty Agents, was adopted as R.1976 d.267, effective October 1, 1976. See: 7 N.J.R. 469(a), 8 N.J.R. 423(a).

Subchapter 12, Corporate and Partnership Licensee Requirements, was adopted as R.1976 d.412, effective December 16, 1976, operative March 1, 1977. See: 8 N.J.R. 421(c), 9 N.J.R. 24(b).

Subchapter 13, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, was adopted as R.1982 d.177, effective June 7, 1982, operative August 15, 1982. See: 13 N.J.R. 879(b), 14 N.J.R. 579(a).

Subchapter 14, Insurance Licensees, was adopted as R.1982 d.336, effective October 4, 1982, operative November 19, 1982. See: 14 N.J.R. 748(a), 14 N.J.R. 1099(b).

Subchapter 9, Agents for Life Insurance, Health Insurance and Annuity Contracts-Temporary Licensing, was adopted as R.1983 d.603, effective January 3, 1984. See: 15 N.J.R. 1828(a), 16 N.J.R. 49(c).

The Executive Order No. 66(1978) expiration date of Subchapter 5, Administrative Orders and Declarations, was extended by gubernatorial directive from June 6, 1984 to September 6, 1984. See: 16 N.J.R. 1451(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Administrative Orders and Declarations, was readopted as R.1984 d.426, effective October 1, 1984. See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a), 17 N.J.R. 2566(a).

Subchapter 15, Petitions for Rules, was adopted as R.1984 d.511, effective November 5, 1984. See: 16 N.J.R. 2224(b), 16 N.J.R. 3033(b).

Subchapter 10, Insurance Licensing of Financial Institutions, was repealed by R.1985 d.69, effective February 19, 1985. See: 16 N.J.R. 2919(a), 17 N.J.R. 458(a).

Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was adopted as Emergency New Rule, R.1985 d.507, effective September 17, 1985, to expire November 16, 1985. See: 17 N.J.R. 2460(a). The provisions of R.1985 d.507 were readopted without change as R.1985 d.627 effective November 16, 1985. See: 17 N.J.R. 2978(b). The provisions of R.1985 d.626 were readopted without change as R.1986 d.27, effective January 14, 1986. See: 18 N.J.R. 419(b).

Pursuant to Executive Order No. 66(1978), Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was readopted as R.1985 d.627, effective November 16, 1985. See: 17 N.J.R. 2978(b).

Subchapter 21, Loss Reserve Opinions, was adopted as R.1985 d.711, effective January 21, 1986. See: 17 N.J.R. 2596(a), 18 N.J.R. 196(b).

Subchapter 18, Approval of Business Names, was adopted as R.1986 d.10, effective February 3, 1986. See: 17 N.J.R. 41(a), 18 N.J.R. 278(a).

Subchapter 19, Branch Offices, was adopted as R.1986 d.11, effective February 3, 1986. See: 17 N.J.R. 42(a), 18 N.J.R. 280(a).

Subchapter 20, Cancellation and Nonrenewal of Property and Casualty/Liability Insurance Policies, was repealed, and Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, was adopted as new rules, effective July 7, 1986, with portions operative July 28, 1986, and Subchapter 22, Prohibition of Certain Cancellation and Nonrenewal Activity, was adopted as R.1986 d.272, effective July 7, 1986. See: 18 N.J.R. 457(b), 18 N.J.R. 1388(a).

Subchapter 16, Requirements for Filing a Downward Deviation in Currently Approved Rates, was adopted as R.1986 d.478, effective December 15, 1986. See: 18 N.J.R. 1998(a), 18 N.J.R. 2458(a).

Subchapter 25, Official Department Mailing List: Address Information, was adopted as R.1988 d.64, effective February 1, 1988. See: 19 N.J.R. 2236(a), 20 N.J.R. 294(b).

Subchapter 9, Agents for Life Insurance, Health Insurance and Annuity Contracts-Temporary Licensing, Subchapter 14, Insurance Licensees, Subchapter 18, Approval of Business Names, and Subchapter 19, Branch Offices, were repealed by R.1988 d.186, effective April 18, 1988. See: 20 N.J.R. 225(c), 20 N.J.R. 904(b).

Pursuant to Executive Order No. 66(1978), Subchapter 20, Cancellation and Nonrenewal of Commercial and Homeowners' Insurance Policies, and Subchapter 22, Prohibition of Certain Cancellation and

Nonrenewal Activity, were readopted as R.1988 d.341, effective June 24, 1988. See: 20 N.J.R. 1061(a), 20 N.J.R. 1720(a).

Subchapter 10, Admission Requirements for Foreign and Alien Property and Casualty Insurers, was adopted as new rules by R.1989 d.329, effective June 19, 1989. See: 21 N.J.R. 426(a), 21 N.J.R. 1702(a).

Subchapter 26, Annual Publication of Insurer Profitability Information, was adopted as R.1989 d.538, effective October 16, 1989. See: 21 N.J.R. 2181(a), 21 N.J.R. 3297(c).

Subchapter 3, Cancellation for Nonpayment of Premium Where Producer of Record Has Advanced Premium, Subchapter 7, Service and Placement Fees, Subchapter 8, Property-Casualty Agents, and Subchapter 13, Disclosure Agreements for Motor Club Service Contracts Sold in Connection with Automobile Insurance Policies, were repealed by R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Subchapter 28, Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange, was adopted as R.1990 d.162, effective March 19, 1990. See: 21 N.J.R. 3607(a), 22 N.J.R. 954(b), 22 N.J.R. 1266(a).

Subchapter 29, Temporary Certificate of Authority, was adopted as R.1991 d.15, effective January 7, 1991. See: 22 N.J.R. 2453(a), 23 N.J.R. 100(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.1991 d.101, effective January 31, 1991. See: 22 N.J.R. 3686(a), 23 N.J.R. 690(b).

Subchapter 32, Fees was adopted as new rules by R.1991 d.303, effective June 17, 1991, operative July 1, 1991. See: 23 N.J.R. 825(a), 23 N.J.R. 1948(a).

Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association, was repealed, and a new Subchapter 6, New Jersey Property-Liability Insurance Guaranty Association Assessment Premium Surcharge was adopted as new rules by R.1991 d.461, effective September 3, 1991. See: 23 N.J.R. 823(b), 23 N.J.R. 2638(a).

Subchapter 33, Public Advocate Reimbursement Disputes, was adopted as new rules by R.1993 d.179, effective April 19, 1993. See: 24 N.J.R. 2706(a), 25 N.J.R. 1764(c).

Subchapter 35, Insurance Holding Company Systems, was adopted as emergency new rules by R.1993 d.445, effective August 16, 1993, to expire October 15, 1993. See: 25 N.J.R. 4275(a). The provisions of R.1993 d.445 were readopted without change as R.1993 d.554, effective October 15, 1993. See: 25 N.J.R. 4275(a), 25 N.J.R. 5170(b).

Subchapter 36, Examination of Insurers, was adopted as emergency new rules by R.1993 d.446, effective August 16, 1993, to expire October 15, 1993. See: 25 N.J.R. 4284(a). The provisions of R.1993 d.446 were readopted as R.1993 d.555, effective October 15, 1993. See: 25 N.J.R. 4284(a), 25 N.J.R. 5180(a).

Subchapter 3, Disability Discrimination Grievance Procedure, was adopted as new rules by R.1993 d.618, effective December 6, 1993. See: 25 N.J.R. 1327(a), 25 N.J.R. 5666(b). Subchapter 3 is exempt from expiration under 28 C.F.R. Part 35.

Subchapter 34, Surplus Lines: Exportable List, was adopted as new rules by R.1994 d.7, effective January 3, 1994. See: 24 N.J.R. 4331(a), 26 N.J.R. 236(b).

Subchapter 31, Surplus Lines Insurer Eligibility, was adopted as new rules by R.1994 d.102, effective February 22, 1994. See: 25 N.J.R. 1819(a), 26 N.J.R. 1096(a).

Subchapter 37, Licensing of Public Adjusters, was adopted as new rules by R.1994 d.207, effective April 18, 1994. See: 25 N.J.R. 5432(a), 26 N.J.R. 327(a), 26 N.J.R. 1711(a).

Subchapter 7, Medical Malpractice Reporting Requirements, was adopted as new rules by R.1994 d.493, effective September 19, 1994. See: 26 N.J.R. 1433(a), 26 N.J.R. 3864(a).

Subchapter 39, Disclosure of Material Transactions, was adopted as new rules by R.1995 d.234, effective May 1, 1995. See: 27 N.J.R. 816(a), 27 N.J.R. 1802(a).

Subchapter 21A, Actuarial Opinion and Memorandum for Life/Health Insurers, was adopted as new rules by R.1995 d.605, effective November 20, 1995. See: 27 N.J.R. 2998(a), 27 N.J.R. 4720(a).

Subchapter 26, Annual Publication of Insurer Profitability Information, Subchapter 29, Temporary Certificate of Authority, and Subchapter 33, Public Advocate Reimbursement Disputes, were repealed by R.1996 d.116, effective March 4, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Subchapter 38, Oversight of Fireman's Relief Associations, was adopted as new rules by R.1996 d.125, effective March 4, 1996, operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which shall be operative January 1, 1997. See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.1996 d.116, effective January 31, 1996. See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Petition for Rulemaking. See: 29 N.J.R. 707(c), 29 N.J.R. 948(b).

Subchapter 41, Surety Bonds for Contracts Involving the State, Local Contracting Units, Boards of Education, State Colleges and County Colleges, was adopted as R.1996 d.496, effective October 21, 1996. See: 28 N.J.R. 3505(a), 28 N.J.R. 4582(a).

Subchapter 38, Oversight of Firemen's Relief Associations, was adopted as R.1996 d.125, effective March 4, 1996, operative March 4, 1996, except for N.J.A.C. 11:1-38.4 which became operative July 1, 1997. See: 27 N.J.R. 634(a), 28 N.J.R. 1384(a), 29 N.J.R. 425(a).

Subchapter 43, Unusual Hardship For Covered Claims Under The New Jersey Property-Liability Insurance Guaranty Association and New Jersey Surplus Lines Insurance Guaranty Fund, was adopted as R.1997 d.512, effective December 1, 1997. See: 29 N.J.R. 3765(a), 29 N.J.R. 5065(b).

Subchapter 24, Use of Credit Cards, Charge Cards, Debit Cards Or Direct Account Deduction (Alternative Payment Method) To Pay Insurance Premiums, was adopted as R.1998 d.276, effective June 1, 1998. See: 29 N.J.R. 3588(a), 30 N.J.R. 2003(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, was readopted as R.2001 d.75, effective January 31, 2001. See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

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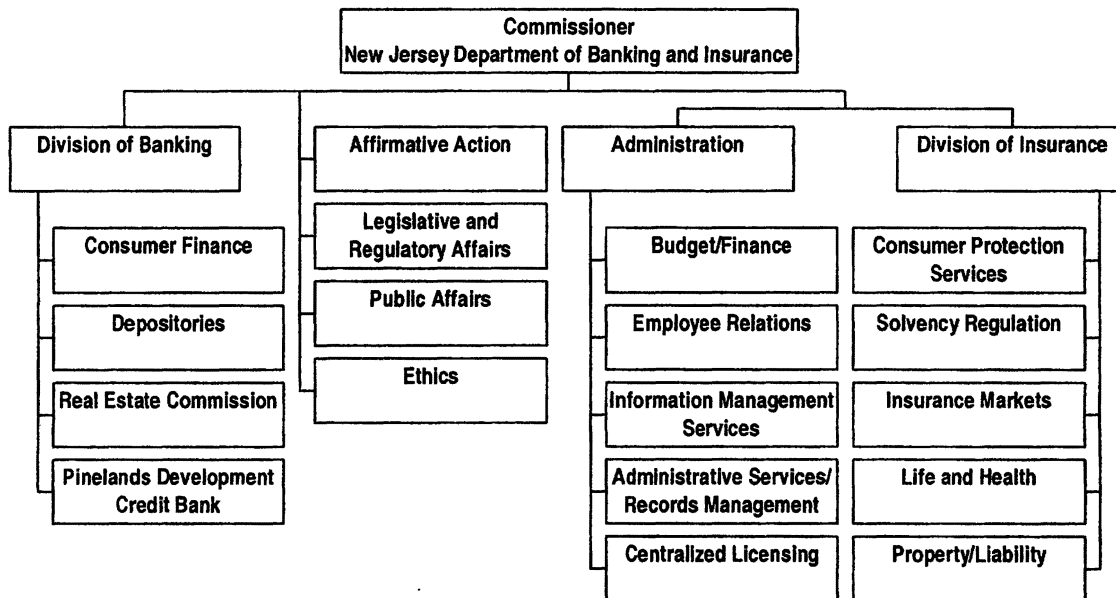
SUBCHAPTER 1. ORGANIZATION

11:1-1.1 Organization

(a) The organization of the Department of Banking and Insurance appears below.

(b) The mission of the Department of Banking and Insurance is to regulate the banking, insurance and real estate industries in a professional and timely manner that protects and educates consumers and promotes the growth, financial stability and efficiency of those industries.

DEPARTMENT OF BANKING AND INSURANCE
December 2004



Amended by R.1973 d.195, effective July 24, 1973.

See: 5 N.J.R. 282(c).

Amended by R.1974 d.89, effective April 9, 1974.

See: 6 N.J.R. 199(a).

Amended by R.1988 d.1, effective December 1, 1987.

See: 20 N.J.R. 99(a).

New organizational chart.

Amended by R.1988 d.454, effective August 26, 1988.

See: 20 N.J.R. 2377(a).

New organizational chart.

Amended by R.1991 d.476, effective August 23, 1991.

See: 23 N.J.R. 2862(c).

New organizational chart.

Amended by R.1994 d.557, effective October 17, 1994.

See: 26 N.J.R. 4405(a).

Amended by R.1996 d.124, effective February 8, 1996.

See: 28 N.J.R. 1382(b).

Amended by R.1996 d.385, effective July 15, 1996.

See: 28 N.J.R. 3797(a).

Amended by R.1997 d.395, effective August 25, 1997.

See: 29 N.J.R. 4137(b).

Replaced existing organizational chart with new chart.

Amended by R.2000 d.54, effective January 11, 2000.

See: 32 N.J.R. 475(a).

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Replaced existing organizational chart with new chart.

Amended by R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

Added (b).

Amended by R.2005 d.30, effective December 14, 2004.

See: 37 N.J.R. 255(a).

Amended organizational chart.

11:1-1.2 Sharing of information with other insurance departments

(a) The Commissioner may share any information regarding the financial condition of insurers, including information that is not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., with the National Association of Insurance Commissioners or any insurance regulatory of another state or U.S. territory, provided that such agency is authorized and irrevocably agrees to hold such information confidential to the same extent as is provided under the laws of this State.

(b) The Commissioner may enter into an agreement with the National Association of Insurance Commissioners or any insurance regulator of any state or U.S. territory by which the Commissioner shall hold any information received from such agency as confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., to the same extent such information is required to be held confidential pursuant to that agency's laws or other requirements.

New Rule, R.1995 d.367, effective July 3, 1995.

See: 27 N.J.R. 1736(a), 27 N.J.R. 2582(a).

Recodified from N.J.A.C. 11:1-1.3 by R.2003 d.139, effective April 7, 2003.

See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

11:1-15.4 Rulemaking activity

(a) The Department shall provide notice of new rules, amendments, repeals or adoptions by posting these rules on its website at <http://www.state.nj.us/dobi/legregs.htm> and to the news media maintaining a press office in the State House Complex.

(b) The Department shall post its proposals in the Department's Library, which is located on the 1st Floor, 20 West State Street, Trenton, NJ 08625. The Department shall also distribute its proposals to the Department's list of "interested persons" by e-mail or hard copy. Interested persons are those who have informed the Department in writing that they wish to receive notice of its proposed regulations.

New Rule, R.2003 d.139, effective April 7, 2003.
See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

11:1-15.5 Sufficient public interest for the purposes of extending the comment period or granting a public hearing

(a) In determining whether sufficient public interest has been demonstrated for the purposes of extending the comment period pursuant to N.J.A.C. 1:30-5.4, the Commissioner shall consider the following criteria:

1. Whether comments received indicated a previously unrecognized impact on regulated entities or persons; or
2. Whether comments received raise unanticipated issues related to the notice of proposal.

(b) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the Commissioner shall consider the application of an interested person that has been submitted on a form prescribed by the Commissioner. Such application shall be submitted within 60 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in having a public hearing held on a notice of proposal shall submit an application on a form prescribed by the Commissioner, to Legislative and Regulatory Affairs, Department of Banking and Insurance, 20 West State Street, PO Box 325, Trenton, NJ 08625-0896. The application shall contain the following information:

- i. The person's name, address, telephone number, agency or association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (c) below.

(c) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if upon reviewing the application the Commissioner determines that additional data, findings and/or analysis regarding the notice of proposal are necessary for the Department to review prior to adoption of the proposal in order to ensure that the notice of proposal does not violate the intent of the statutory authority.

(d) A public hearing on a notice of proposal shall be conducted in accordance with the provisions of N.J.A.C. 1:30-5.5.

(e) The recommendations of the hearing officer, and the Commissioner's decision to accept, reject or modify any recommendations shall be summarized and published in the New Jersey Register pursuant to N.J.A.C. 1:30-5.5(g).

New Rule, R.2003 d.139, effective April 7, 2003.
See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).

**SUBCHAPTER 16. REQUIREMENTS FOR FILING
A DOWNWARD DEVIATION IN
CURRENTLY APPROVED RATES**

11:1-16.1 Purpose and scope

(a) The purpose of this subchapter is to promote competition among insurers for the benefit of the insurance consuming public by permitting insurers subject to N.J.S.A. 17:29A-1 et seq. to effect expeditiously certain decreases in rates currently approved by the Department when, in an insurer's judgment, economic or competitive reasons or conditions warrant such a decrease.

(b) A further purpose is to enable an insurer to return to its previously approved rate level without delay or regulatory review when, in its judgment, the conditions or reasons for the decrease no longer pertain.

(c) This subchapter shall apply to every property and liability insurer which makes its own rates and to every member or subscriber of a rating organization on whose behalf rate filings are made pursuant to the provisions of N.J.S.A. 17:29A-1 et seq. For the purpose of this subchapter, the term "insurer" shall include all such independent insurers and rating organization members or subscribers who are subject to the provisions of N.J.S.A. 17:29A-1 et seq.

11:1-16.2 Filing requirements

(a) Any insurer, subject to the provisions of N.J.S.A. 17:29A-1 et seq., to effect a decrease in rates currently approved by the Commissioner, shall comply with the following filing requirements:

1. The insurer by a rate filing shall notify the Commissioner of Banking and Insurance at least 30 days prior to the date it wants to put into effect a decrease in rates currently approved for it by the Commissioner. In such rate filing, the insurer shall state the basis for the decrease in rates and its agreement that the decrease in rates shall remain in effect for at least six months from the effective date. Within a 15-day period following the filing of such a proposed decrease in rates, the Commissioner will notify the insurer of the unacceptability of the filing for a decrease in rates. The Commissioner will only find unacceptable a decrease rate filing if, in his or her opinion, the decrease in rates may have a tendency or capacity to imperil the financial condition of the filing insurer.

2. The decrease in rates may be up to 20 percent from the rates currently approved for use by the insurers and must apply to all policyholders either by coverage or line of insurance.

3. After a filing has been in effect for six months or more, an insurer may automatically withdraw its decrease or any portion thereof by so notifying the Commissioner of Banking and Insurance at least 30 days prior to the withdrawal date.

Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

In (a)1, inserted "or her" preceding "opinion".

SUBCHAPTERS 17 THROUGH 19. (RESERVED)

SUBCHAPTER 20. CANCELLATION AND NONRENEWAL OF COMMERCIAL AND HOMEOWNERS' INSURANCE POLICIES

11:1-20.1 Scope

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after November 7, 1986 by companies licensed to do business in this state except workers' compensation insurance,

employers liability, fidelity, surety, performance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. With the exception of N.J.A.C. 11:1-20.3 and 11:1-20.4(d), this subchapter shall not be applicable to multi-state location risks or policies subject to retrospective rating plans.

(b) This subchapter shall also apply to all policies of homeowners' insurance as defined at N.J.A.C. 11:2-41.2 which are in force, issued or renewed on or after January 17, 1995.

(c) These rules are not exclusive, and the Commissioner may also consider other provisions of statutes and regulations to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to and do not prejudice any other rights policyholders may have at common law, or under statutes and regulations.

(d) In addition to these rules, the Commissioner may implement a market assistance plan providing for a voluntary group of insurers in order to aid insureds in obtaining commercial insurance coverages specified therein.

Amended by R.1987 d.114, effective February 17, 1987.

See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Amended by R.1995 d.52, effective January 17, 1995.

See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).

Amended by R.1996 d.116, effective March 4, 1996.

See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Case Notes

Cancellation of homeowners' policy was governed by statute and regulation on notice of cancellation and nonrenewal of fire and casualty coverage. *DiGiacomo v. Saladino*, 279 N.J.Super. 96, 652 A.2d 223 (A.D.1995).

Rules upheld as properly adopted on an emergency basis and in compliance with authorizing statutes; constitutional challenges of vagueness, deprivation of private property and impairment of contract denied. In the Matter of N.J.A.C. 11:1-20, 208 N.J.Super. 182, 505 A.2d 177 (App.Div.1986).

11:1-20.2 Nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a valid notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. For the purpose of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(c) With respect to payment of the renewal premium, notice of the amount of the renewal premium and any change in contract terms shall be given to the insured in writing not more than 120 days nor less than 30 days prior to the due date of the premium and shall clearly state the effect of nonpayment of the premium by the due date.

(d) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in (f) below, shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than 30 days prior to the effective date of such cancellation except, however, that failure to send such notice to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

(e) A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

(f) A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the following definitions of moral hazard:

1. The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a "moral hazard"; and

2. The substantial risk, danger or probability that the character, circumstances or personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an individual, corporate, partnership or other insured that will increase the probability of such a loss or liability may be considered a "moral hazard."

(g) No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.

(h) All notices of nonrenewal and cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention

advising the insured that the insured may file a written complaint about the cancellation or nonrenewal with the New Jersey Department of Banking and Insurance, Division of Enforcement and Consumer Protection, PO Box 325, Trenton, New Jersey 08625-0325. The statement also shall advise the insured to contact the Department of Banking and Insurance immediately, in the event he or she wishes to file a complaint.

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent;

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice.

(j) For the purposes of this subchapter, if an insurer fails to send a notice of nonrenewal as required by this subchapter or fails to issue and deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the insurer, or fails to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, or fails to provide notice of renewal as specified at (c) above, the insured shall be entitled to continue the expiring policy at the same terms and premium until such time as the insurer shall send appropriate notice of termination or renewal under this subchapter. Nothing in this subchapter shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control, provided the insurer obtains its policyholder's consent to do so and maintains records of such actions.

(k) An insurer shall not be required to provide notice of nonrenewal or cancellation as specified in this subchapter if the insured has replaced coverage elsewhere or has otherwise specifically requested termination. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured. Where the termination request is submitted by the insured's authorized representative, the insurer's file must contain documentation that the authorized representative has been specifically authorized by the insured to convey the termination request to the insurer.

(l) An insurer may in writing delegate to its appointed agent or to another person or legal entity the performance of any or all of the notice functions set forth in this section. However, delegation of these functions by the insurer to any person or entity shall not relieve the insurer of its responsibilities hereunder. No notice, whether provided by the insurer directly or through a person or entity authorized to act on the insurer's behalf, shall be deemed effective unless provided in conformance with the requirements of this section.

Administrative Correction to (i)2.

See: 21 N.J.R. 3919(a).

Amended by R.1987 d.114, effective February 17, 1987.

See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Amended by R.1996 d.116, effective March 4, 1996.

See: 27 N.J.R. 4121(a), 28 N.J.R. 1382(a).

Administrative correction.

See: 29 N.J.R. 1324(a).

In (j), inserted “or renewal” following “... insurer shall send appropriate notice of termination”.

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Case Notes

Addition of regulatory exclusion to directors and officers liability policy did not constitute constructive nonrenewal of policy and did not trigger association's right to purchase discovery period. *American Cas. Co. of Reading, Pennsylvania v. Continisio*, C.A.3 (N.J.)1994, 17 F.3d 62.

Insurer, through subsequent actions or conduct, could waive right to cancel coverage for non-payment of premiums. *Iafelice ex rel. Wright v. Arpino*, 319 N.J.Super. 581, 726 A.2d 275 (N.J.Super.A.D. 1999).

Insurer could not claim indemnification against broker in failing to notify insured of lapse in coverage. *Meric Trucking & Leasing Co. v. Philip Lehman Co., Ltd.*, 247 N.J.Super. 261, 588 A.2d 1285 (A.D. 1991).

Thirty day notice requirement was satisfied by notice sent 89 days before expiration. *Meric Trucking & Leasing Co. v. Philip Lehman Co., Ltd.*, 247 N.J.Super. 261, 588 A.2d 1285 (A.D.1991).

11:1–20.3 Policy provisions relating to cancellation or nonrenewal

(a) All commercial insurance policy forms issued or renewed on or after January 6, 1987, and all homeowners' insurance policy forms issued on or after March 18, 1995 must contain a provision setting forth the following statement:

Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

1. The policy provision language set forth at (a) above is mandatory and, notwithstanding any other law to the contrary, need not be submitted to the Department for approval.

Amended by R.1987 d.114, effective February 17, 1987.

See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Amended by R.1995 d.52, effective January 17, 1995.

See: 26 N.J.R. 4303(a), 27 N.J.R. 363(a).

11:1–20.4 Cancellation and nonrenewal underwriting guidelines

(a) No insurer may cancel or nonrenew a policy based upon underwriting guidelines which are arbitrary, capricious or unfairly discriminatory.

(b) The following guidelines are approved for use by insurers:

1. Nonpayment of premium;
2. Moral hazard, as defined at N.J.A.C. 11:1–20.2(f);
3. Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
4. Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
5. Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
6. Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
7. Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured;
8. Loss of or reduction in available insurance capacity. For the purposes of this paragraph, loss of or reduction in available insurance capacity shall exist if:
 - i. An insurance department or court of competent jurisdiction has declared the insurer to be financially impaired or unsound, which shall include such actions as suspension, conservatorship, rehabilitation or liquidation; or
 - ii. Based upon information set forth in the insurer's annual statements, the insurer has experienced a significant deterioration in its financial condition during the most recent annual statement period resulting in its designation by the National Association of Insurance Commissioners as being in need of “immediate attention”, and the insurer's:
 - (1) Ratio of net premium to surplus to policyholders has gone above four to one and its surplus to policyholders has fallen below 25 percent of net loss and loss expense reserves; or
 - (2) Ratio of net premium to surplus to policyholders has increased to at least six to one; or
 - (3) Ratio of net losses and loss reserves to surplus to policyholders has increased to at least six to one.
9. Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or any subsequent renewal thereof;

10. Loss of or substantial changes in applicable reinsurance. For the purposes of this paragraph, loss of or substantial changes in applicable reinsurance shall be deemed to exist if any of the following have occurred;

i. Termination by the reinsurer of treaty or facultative reinsurance affecting the individual risk or line, class or subclass of insurance, as applicable, proposed for cancellation and/or nonrenewal; or

ii. Substantial reductions in the amount of available reinsurance or other changes to such contracts which effectively prohibit the insurer from providing coverage at the same limits and terms as the existing policy; or

iii. Changes in the financial condition of the reinsurer which adversely affect its ability to honor its obligations. A change in the financial condition of the reinsurer shall be evidenced by an order issued by an insurance department or court of competent jurisdiction declaring the insurer to be financially impaired or unsound, which shall include such actions as suspension, conservatorship, rehabilitation or liquidation.

11. Failure by the insured to comply with any Federal, State or local fire, health, safety, building or construction regulation, law or ordinance with respect to an insured risk which substantially increases any hazard insured against within 60 days of written notification of a violation of any such law, regulation or ordinance;

12. Failure by the insured to provide reasonable and necessary underwriting information to the company upon written request therefor and a reasonable opportunity to respond; and

13. Agency termination, provided:

i. The insurer documents that replacement coverage at comparable rates and terms has been provided to the insured, and the insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer; or

ii. The insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer and the insured has agreed, in writing, to the cancellation or nonrenewal based upon the termination of his or her appointed agent.

(c) Only the specific language of the underwriting guidelines as set forth in (b) above is deemed to be approved by the Commissioner for use in the cancellation and nonrenewal of policies which are subject to the provisions of this subchapter.

(d) In addition to the approved guidelines set forth in (b) above, an insurer may use other guidelines for cancellation or nonrenewal provided such guidelines are not arbitrary, capricious or unfairly discriminatory.

(e) Any underwriting guideline or standard premised on adverse loss experience shall be limited in application to nonrenewals only and shall specifically identify the type of loss experience which supports and justifies the nonrenewal action.

(f) All underwriting guidelines or standards utilized by the insurer for the cancellation or nonrenewal of commercial lines coverages which are subject to the provisions of this subchapter shall be maintained by the insurer in writing and shall indicate the effective date(s) thereof. An insurer's underwriting guidelines shall be made available to the Department upon request.

(g) Only those guidelines which are in effect at the inception date of the original policy or any subsequent renewal of that policy, as applicable, may be utilized by the insurer to cancel or nonrenew during that policy period.

(h) The requirement of (g) above shall not be construed to limit an insurer's ability to modify from time to time its underwriting guidelines; however the modified guidelines only may be applied to policies issued or renewed subsequent to the effective date of such modification.

(i) If the Commissioner finds an underwriting guideline is being utilized by an insurer in an arbitrary, capricious or unfairly discriminatory manner, the Commissioner shall issue a preliminary order prohibiting the use of such a guideline in the proscribed manner and shall require such insurer to rescind any notice of cancellation or nonrenewal based on such application of the underwriting guideline which has not yet become effective pending a hearing. Following the hearing, if the preliminary order is sustained, the Commissioner shall prohibit further application of the guideline in the manner found to be arbitrary, capricious or unfairly discriminatory, except that, if the insurer can demonstrate to the Commissioner that it will be significantly prejudiced by the proscription, the Commissioner shall permit the continued application of that guideline, with respect to policies written prior to the date of preliminary order during a reasonable run-off period to be specified by the Commissioner and not to exceed three years. If the preliminary order is not sustained, coverage which has been extended pending the hearing may be cancelled by the insurer in accordance with the provisions of N.J.A.C. 11:1-20.2.

(j) In the event that the Commissioner shall issue a preliminary order proscribing the manner in which an underwriting guideline is being used by an insurer, pursuant to (i) above, the insurer may request an expedited hearing on the Commissioner's preliminary order.

(k) With respect to retrospectively rated risks and multi-state location risks, insurers shall maintain records of those policies which are either cancelled or nonrenewed and the reasons upon which such termination was based.

(l) Nothing in this section shall prohibit an insurer from cancelling a policy or coverage which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered. Except as may be otherwise provided by statute, such cancellations shall be subject to the remaining provisions of this subchapter.

Amended by R.1987 d.114, effective February 17, 1987.

See: 18 N.J.R. 2301(b), 19 N.J.R. 359(a).

Petition for Rulemaking.

See: 30 N.J.R. 1330(b), 1637(a).

Law Review and Journal Commentaries

Insurance. P.R. Chenoweth, 138 N.J.L.J. No. 14, 56 (1994).

Case Notes

Attorney fees were not permitted in physician's suit challenging medical malpractice policy. *Giri v. Medical Inter-Insurance Exchange of New Jersey*, 251 N.J.Super. 148, 597 A.2d 561 (A.D.1991).