

CHAPTER 17A

INSURANCE PRODUCER AND LIMITED INSURANCE REPRESENTATIVE STANDARDS OF CONDUCT: MARKETING

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-1 et seq., 17:29B-7 and 17B:30-13 and 15.

Source and Effective Date

R.2000 d.44, effective December 30, 1999.
See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, expires on June 28, 2005. See: 37 N.J.R. 413(a).

Chapter Historical Note

Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, was adopted as R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Petition for Rulemaking. See: 23 N.J.R. 3659(a).

Pursuant to Executive Order No. 66(1978), Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, was readopted as R.1995 d.60, effective December 30, 1994. See: 26 N.J.R. 4307, 27 N.J.R. 562(a).

Pursuant to Executive Order No. 66(1978), Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, was readopted as R.2000 d.44, effective December 30, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER OR REGISTERED AS A LIMITED INSURANCE REPRESENTATIVE

11:17A-1.1 Purpose; scope

(a) The purpose of this subchapter is to implement the provisions of N.J.S.A. 17:22A-26 et seq. generally, and 17:22A-29 in particular, by identifying the insurance-related activities that require licensure as an insurance producer.

(b) This subchapter applies to all persons performing the functions of licensed insurance producers.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), amended the N.J.S.A. references and deleted "or registration as a limited insurance representative" following "insurance producer".

11:17A-1.2 Definitions

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

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a

farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Clerical duties” means the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer’s or producer’s normal procedures and systems, including, but not limited to, the following:

1. Receiving requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;
2. Mailing billings;
3. Scheduling appointments with insurance producers;
4. Office filing;
5. Marketing research or prospecting so long as no attempt is made to solicit or to discuss a specific insurance product or to encourage replacement of an existing policy;
6. Receiving and recording information from an applicant or policyholder and preparing for an insurance producer’s review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer;
7. Receiving and recording information from an applicant or policyholder and preparing an application for insurance pursuant to instructions from and for the review of an insurance producer;
8. Receiving and recording information from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or transmitting information to a policyholder or prospective policyholder under the supervision of an insurance producer;

Example: An unlicensed sales representative in a car dealership collects information from a car buyer that is given to a licensee to complete a credit insurance transaction.

9. Receiving and recording an insured’s request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer and notifying the insurance producer of the endorsements or changes;

Example: An unlicensed person may receive and process a request from an insured to delete an automobile on an existing policy and to add a replacement automobile, or may receive and process a request to delete physical damage coverage on a particular automobile, or receive and process a request for similar routine policy changes initiated by an insured. An unlicensed person may not, however, initiate a change by, for example, telephoning a life insurance policyholder and suggesting that the insured increase the face amount of the policy.

10. Opening mail;

11. Receiving premiums at the recorded place of business where the payment is being made on a binder, endorsement or existing policy;

12. Taking factual information relative to a claim;

13. Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review;

Example: An unlicensed person may call an applicant to request the submission of additional documents.

14. Informing the insured as to his or her coverages as indicated in policy records;

15. Communicating with a prospective or existing insured for the purpose of auditing records or providing loss control on underwriting verifications and inspections;

16. Disseminating buyer’s guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders;

Example: An unlicensed person may receive a request for an application and respond by mailing or giving an application for insurance and other related literature. The unlicensed person may not, however, initiate the conversation.

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates;

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks of a particular coverage, deductible, limit, etc., in the course of disseminating this information;

18. As an underwriter employed by an insurer or by a licensed insurance producer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information under paragraph 15 above, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer’s underwriting criteria, and mailing the policy to the policyholder or the producer.

Example: An unlicensed full-time salaried underwriter not compensated based on sales receives a non-bound life insurance application from a licensed producer. The underwriter requests that the applicant take a physical examination. Pursuant to authorizations in the application, the underwriter requests medical records from the applicant's physicians. The underwriter reviews the application, results of the physical examination and the medical records, and decides to issue the life insurance policy applied for. The underwriter mails the policy with a printed explanatory brochure to the applicant. All of these activities are permissible activities for the unlicensed underwriter; and

19. Providing information to and receiving and recording information from an applicant for ticket insurance for processing by a licensee where the unlicensed person is an employee of the licensee.

Example: An unlicensed counter person in a car rental agency may receive and record an applicant's request for personal effects coverage. The car rental company must be a licensee and the counter person must provide the customer with written information about the coverage.

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

"Completed written application" means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration for the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

"Declination," "denied" or "denial" means:

1. Refusal by an insurance producer to submit an application on behalf of an applicant to any of the insurers represented by the producer;
2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;
3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by a person, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer, or the offer to insure at a rate applicable to other than an eligible person;
4. The refusal by an insurer or producer to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage;

5. The refusal by an insurer to renew a policy of automobile insurance based on the eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5;

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium; or

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if requested to notify the applicant whether coverage will be provided or denied, within five business days from the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.

"Department" means the Department of Banking and Insurance.

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.4.

"Financial institution" means any State or Federal banking institution, bank holding company, credit union, savings and loan association, finance company, mortgage loan company, or any other institution, association, partnership, company corporation, individual or individuals whose principal business is the lending of money or the extension of credit.

"Inducement" means money or any favor, advantage, object, valuable consideration or anything other than money which has an intrinsic value or a redeemable value greater than \$20.00.

"Insurance contract" means a contract, policy, application, binder or commitment, where applicable, of life insurance, health insurance, indemnity, property and casualty, fidelity, surety, guaranty, title insurance, a commitment for title insurance or an annuity.

"Insurance producer" means any person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.

"Insurer" means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined at N.J.S.A. 17:44A-1 et seq., risk retention groups and purchasing groups as defined at 15 U.S.C.

3901 and limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-2.2.

“Negotiate” or “negotiation” means the act of conferring directly with, or offering advice directly to a purchaser or prospective purchaser of a particular contract or policy of insurance concerning any of the substantive benefits, terms or conditions of the contract or policy, provided the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers, but does not include clerical duties carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

“Person” means any individual, corporation, partnership or legal entity.

“Personal private passenger automobile insurance” or “automobile insurance” means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

“Professional employer organization (PEO)” means a sole proprietorship, partnership, corporation or other business entity, which would constitute a PEO or employee leasing company as defined in N.J.S.A. 34:8-67.

“Rebate” means the return or promise to return of any monetary sum, or discount, abatement, credit or reduction in premium other than that plainly expressed in the insurance contract.

“Solicit” or “solicitation” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer, but does not include clerical duties carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

“Transmission” means any form of mailing including, but not limited to, third class mail, certified mail, any overnight delivery or express delivery, hand delivery and any wire transmission including, but not limited to, facsimile transmission or computer modem.

Amended by R.1992 d.192, effective April 20, 1992.
See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

Definitions added for automobile, declination, eligible person and personal private passenger automobile insurance.
Emergency Amendment R.1993 d.135, effective March 1, 1993 (operative March 8, 1993) (expired April 30, 1993.)
See: 25 N.J.R. 1290(a).

Definition for completed written application added; item 7 added to definition of declination; definition for transmission added.
Amended by R.1993 d.199, effective May 3, 1993.
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Added definition of clerical duties, and exceptions of such duties to definitions of effectuate, negotiate and solicit; definition of insurance contract and insurer amended.

Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.

See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Petition for Rulemaking.

See: 25 N.J.R. 4523(b).

Amended by R.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Substituted a reference to this chapter for a reference to this subchapter in the introductory paragraph; and inserted “Department”, “Financial institution”, “Inducement” and “Rebate”.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In “Declination,” “denied” or “denial”, substituted “producer” for “agent” throughout; deleted “Effectuate” or “effectuation” and “Limited insurance representative”; rewrote “Insurance producer”, “Negotiate” or “negotiation” and “Solicit” or “solicitation”.

Amended by R.2004 d.14, effective January 5, 2004.

See: 35 N.J.R. 4169(a), 36 N.J.R. 195(b).

In “Clerical duties”, amended 8 and added 19.

Amended by R.2004 d.184, effective May 3, 2004.

See: 35 N.J.R. 4170(a), 36 N.J.R. 2198(a).

Added “Professional employer organization (PEO)”.

11:17A-1.3 Who must be licensed; exceptions

(a) Except as provided in N.J.A.C. 11:17B-2.1(b) or (e), no person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner granting authority for the kind of insurance transacted.

(b) Unless otherwise specifically provided by N.J.S.A. 17:22A-26 et seq., any person who solicits, negotiates or sells contracts of insurance in New Jersey shall be considered to be transacting the business of insurance in New Jersey so as to require licensure as an insurance producer.

(c) Engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or an insurance producer as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer as to require licensure pursuant to N.J.S.A. 17:22A-26 et seq.

(d) No licensed insurance producer shall permit or allow any unlicensed person to transact the business of an insurance producer.

(e) Officers or employees of insurers authorized to do business in this State and officers or employees of licensed insurance producers, who solicit, negotiate or sell insurance by communicating directly with the public whether in person or by mail, fax, computer or telephone, in the name of and on behalf of the insurer or the licensed insurance producer, for compensation of any type, shall be licensed as an insurance producer. The requirements of this subsection shall not apply to officers or employees whose participation in the solicitation, negotiation or sale of insurance contracts is in a manner not requiring a license as an insurance producer as described in N.J.S.A. 17:22A-30(b).

5. Where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days from the date of denial, provide the applicant with a written explanation of the declination within 10 working days of the request. Such communication shall, when applicable, include the reasons why the coverage offered is with less favorable terms or conditions than those requested; and

6. Not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer when the insurer requires such inspection pursuant to the provisions of N.J.A.C. 11:3-36.

(b) For the purpose of this section, the Commissioner may impose a civil penalty in an amount of up to \$2,000 for the first violation and up to \$5,000 for the second and each subsequent violation and any other penalty provided by law.

New Rule, R.1992 d.189, effective April 20, 1992.

See: 23 N.J.R. 3199(a), 24 N.J.R. 1510(a).

Section was "Penalties."

Emergency Amendment R.1993 d.135, effective March 1, 1993. (operative March 8, 1993) (expires April 30, 1993.)

See: 25 N.J.R. 1290(a).

Binder requirements added to (a)3.

Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.

See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Amended by R.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

11:17A-1.8 Penalties

(a) The Commissioner shall impose penalties for violations of this subchapter in accordance with the provisions of N.J.S.A. 17:22A-26 et seq. and any other applicable law.