

ADMINISTRATION

Subchapter 46, Stock Workers' Compensation Security Fund, was renamed Workers' Compensation Security Fund by R.2007 d.365, effective December 3, 2007. See: 39 N.J.R. 3275(a), 39 N.J.R. 5083(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, Administration, was scheduled to expire on July 30, 2013. See: 43 N.J.R. 1203(a).

Chapter 1, Administration, was readopted as R.2011 d.284, effective October 24, 2011. See: Source and Effective Date. See, also, section annotations.

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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.

3. All insurance companies writing fire insurance on property located in New Jersey shall require their agents to designate the Firemen's Relief Association by code on each Policy Declaration Sheet and disclose the complete address at which the property is located including the legal name of the municipality.

4. Each insurance company shall use the Firemen's Relief Association code as promulgated by the Insurance Services Office in making its annual report pursuant to N.J.S.A. 54:18-1 to the respective treasurers of the duly incorporated Firemen's Relief Association in which any property on which the company has taken a fire insurance risk is located.

New Rule, R.1979 d.356, effective September 10, 1979.
See: 11 N.J.R. 347(b), 11 N.J.R. 520(c).
Amended by R.1984 d.426, effective October 1, 1984.
See: 16 N.J.R. 1689(a), 16 N.J.R. 2677(a).
Recodified from 11:1-5.8.

11:1-5.5 Notice regarding flood damage coverage

(a) All fire and casualty insurers, including the New Jersey Insurance Underwriting Association (FAIR Plan), that write homeowners insurance, as defined in N.J.A.C. 11:2-41.2, shall provide their policyholders at least annually with a notice that includes the following information:

1. A homeowners insurance policy does not cover property damage from floods.

2. Flood means a general and temporary condition of partial or complete inundation of normally dry land area from:

- i. The overflow of inland or tidal waters;
- ii. The unusual and rapid accumulation or runoff of surface waters from any source;

iii. Mudslides (that is, mudflows) that are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current;

3. Flood also includes the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding cyclical levels, which results in the partial or complete inundation of normally dry land area;

4. A separate policy of flood insurance may be available to cover flood damage at an additional premium;

5. The insurer or insurance agent should be consulted to obtain further information about how to secure flood insurance, including the availability, terms and coverage;

6. Standard homeowners insurance policies do not cover damage to property, contents and structure resulting

from floods; however, flood insurance may be available through the National Flood Insurance Program which exists in participating communities; and

7. The National Flood Insurance Program coverage contains separate content and structure coverage. A policyholder should consult with the National Flood Insurance Program or his insurer or insurance producer as to whether the coverage selected is appropriate to the policyholder's needs.

(b) The notice shall be provided at new business inception and at least annually thereafter. For the purpose of this subsection, new business inception means when the application is taken; when the coverage is bound; or when the policy is presented to the insured. The notice may be included with other materials sent to the policyholder.

New Rule, R.1997 d.194, effective May 19, 1997.
See: 28 N.J.R. 5137(a), 29 N.J.R. 2462(b).
Amended by R.2001 d.75, effective March 5, 2001.
See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).
Added (a)6 and 7.

11:1-5.6 FAIR plan retention level

The retention level for the FAIR plan established pursuant to N.J.S.A. 17:37A-18 shall be \$35 million.

New Rule, R.1997 d.471, effective November 3, 1997.
See: 29 N.J.R. 1009(a), 29 N.J.R. 4688(a).

SUBCHAPTER 6. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION ASSESSMENT PREMIUM SURCHARGE

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 38 N.J.R. 4254(b).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 39 N.J.R. 4004(a).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 40 N.J.R. 6490(a).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 41 N.J.R. 3971(b).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 42 N.J.R. 2995(b).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 43 N.J.R. 2375(b).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 44 N.J.R. 2313(a).

Public Notice: Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment. See: 45 N.J.R. 2274(c).

11:1-6.1 Purpose and scope

(a) This subchapter provides for the recoupment by member insurers of the Association of assessments paid pursuant to N.J.S.A. 17:30A-8a(3).

(b) This subchapter applies to all assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8a(3) and which have not been recouped as of September 3, 1991. This subchapter does not apply to any assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8a(9).

Case Notes

When Medical Malpractice Reinsurance Association makes assessment against insurers, insurers are entitled to recoup that assessment through surcharges on insureds. In re New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge, Adopted New Rules, N.J.A.C. 11:18, 246 N.J.Super. 109, 586 A.2d 1317 (A.D.1991), certification denied 126 N.J. 328, 598 A.2d 886.

Statutory workers' compensation lien for benefits paid to injured employee by workers' compensation insurer was not enforceable against Property-Liability Insurance Guaranty Association. *Sussman v. Ostroff*, 232 N.J.Super. 306, 556 A.2d 1301 (A.D.1989), certification denied 117 N.J. 143, 564 A.2d 865.

Surplus lines insurers held excluded from operation of Property-Liability Insurance Guaranty Association Act, even prior to statutory amendment specifically excluding them from Act. *Railroad Roofing & Building Supply Co., Inc. v. Financial Fire & Casualty Co.*, 85 N.J. 384, 427 A.2d 66 (1981).

11:1-6.2 Definitions

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

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

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

"Department" means the New Jersey Department of Insurance.

"Member insurer" is as defined in N.J.S.A. 17:30A-5f.

11:1-6.3 Establishment of Association assessment premium surcharge

(a) Upon a determination by the Commissioner that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3), he or she shall order within 30 days of the due date of an assessment that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies. The essential terms of the Order shall be published in the New Jersey Register.

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8a(3);

2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) over a reasonable time which shall not be less than one year, except in the case of excess medical benefits assessments which shall be recouped as provided at N.J.S.A. 17:30A-16 within not more than two years of the date they are paid; and

3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(c) A surcharge imposed pursuant to this subchapter shall apply to all policies for all kinds of insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

(d) A surcharge imposed pursuant to this subchapter and by applicable Orders of the Commissioner shall be identified to the insured as "New Jersey Property-Liability Insurance Guaranty Association Surcharge" and the amount of the surcharge shall be shown as a separate item on the premium bill rounded to the nearest dollar. The surcharge amount shall not be treated as premium for accounting purposes or for commissions, but must be coded and reported in accordance with instructions issued by the statistical agents under the direction of the Commissioner.

(e) Any change in premium by endorsement subsequent to the effective date of the policy shall reflect the appropriate change in the surcharge. In the case of flat cancellations, the entire surcharge amount shall be returned to the policyholder.

(f) All assessments imposed on member insurers by the Association pursuant to N.J.S.A. 17:30A-8a(3) shall be considered a receivable by the insurer for accounting purposes. The receivable shall also be considered an admitted asset for statutory accounting purposes. Any surcharges on policies established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an insurer ceases to write all lines of business to which N.J.S.A. 17:30A-1 et seq. applies for any reason, the receivable shall be cancelled to the extent it has not been offset by any surcharges collected and the assessment shall be treated as an expense by the insurer for accounting purposes.

(g) Surcharges on premiums for multi-year policies, including perpetual insurance policies, shall be billed annually

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the Department shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days.

Amended by R.2003 d.139, effective April 7, 2003.
See: 34 N.J.R. 4041(a), 35 N.J.R. 1546(a).
Rewrote the section.

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/legsregs.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 30 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).
Amended by R.2014 d.052, effective April 7, 2014.
See: 45 N.J.R. 2380(a), 46 N.J.R. 625(c).

In the introductory paragraph of (b), substituted "30" for "60".

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 15 days of receipt of a filing of such a proposed decrease in rates, the Commissioner will notify the insurer of any finding as to 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".
Amended by R.2006 d.307, effective September 5, 2006.
See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

In (a)1, substituted "15 days of receipt of a" for "a 15-day period following the", and inserted "any finding as to".

SUBCHAPTERS 17 THROUGH 19. (RESERVED)**SUBCHAPTER 20. RENEWAL, 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

As a surplus lines carrier was exempt under N.J.A.C. 11:1-20.1(a) from N.J.A.C. 11:1-20.2(j)'s automatic-renewal penalty provision, and its use of a required, standard form commercial lines policy, which contained a nonrenewal provision, did not demonstrate its intent to submit voluntarily to the automatic-renewal penalty regulation, its failure to notify an insured of non-renewal did not entitle the insured to continued coverage. *Piermount Iron Works, Inc. v. Evanston Ins. Co.*, 197 N.J. 432, 963 A.2d 818, 2009 N.J. LEXIS 13 (2009).

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 Renewal, nonrenewal and cancellation notice requirements

(a) No policy shall be nonrenewed upon its expiration date unless a valid written notice or 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) Except as provided in N.J.A.C. 11:1-20.2(m) with respect to medical malpractice liability insurance policies, 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) Except as provided in N.J.A.C. 11:1-20.2(m) with respect to medical malpractice liability insurance policies, 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 com-

plaint 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.

(m) Each notice of renewal or nonrenewal by an insurer authorized to transact medical malpractice liability insurance

in this State for a medical malpractice liability policy shall comply with the requirements applicable to such notices set forth in (a) through (l) above, except that such notices shall be mailed or delivered by the insurer to the insured not less than 60 days prior to the expiration of the policy.

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).

Amended by R.2005 d.169, effective June 6, 2005.

See: 37 N.J.R. 4871(a), 37 N.J.R. 2040(a).

Inserted reference to Subject to N.J.A.C. 11:1-20.2(m) for medical malpractice liability insurance policies in (b) and (c); added (m).

Amended by R.2006 d.307, effective September 5, 2006.

See: 37 N.J.R. 4156(a), 38 N.J.R. 3586(a).

In (a), inserted "written".

Amended by R.2011 d.284, effective November 21, 2011.

See: 43 N.J.R. 1566(a), 43 N.J.R. 3094(a).

In (b) and (c), substituted "Except as provided in" for "Subject to", and "with respect to" for "for".

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.*

As a surplus lines carrier was exempt under N.J.A.C. 11:1-20.1(a) from N.J.A.C. 11:1-20.2(j)'s automatic-renewal penalty provision, and its use of a required, standard form commercial lines policy, which contained a nonrenewal provision, did not demonstrate its intent to submit voluntarily to the automatic-renewal penalty regulation, its failure to notify an insured of non-renewal did not entitle the insured to continued coverage. *Piermount Iron Works, Inc. v. Evanston Ins. Co., 197 N.J. 432, 963 A.2d 818, 2009 N.J. LEXIS 13 (2009).*

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 guide-

line 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

Amended by R.2006 d.146, effective April 17, 2006.
See: 38 N.J.R. 101(a), 38 N.J.R. 1737(a).

SUBCHAPTER 22. PROHIBITION OF CERTAIN CANCELLATION AND NONRENEWAL ACTIVITY

11:1-22.1 Scope; definitions

(a) This subchapter shall apply to all commercial insurance policies which are in force, issued or renewed on or after the effective date of this subchapter by companies licensed to do business in this State except workers' compensation insurance and forgery bonds, ocean marine and aviation insurance and accident and health insurance and any policy written by a surplus lines insurer. This subchapter shall not be applicable to multi-state location risks.

(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.

(d) For the purposes of this subchapter, the terms "block" and "class" shall mean any group of insureds, however defined or designated, to which a common plan or program of cancellation or nonrenewal applies. A class may include one or more blocks.

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).

11:1-22.2 Prohibitions

(a) The following acts or practices are specifically prohibited with respect to those policies subject to the provisions of this subchapter:

1. Effecting or attempting to effect a mid-term premium increase and/or a reduction in the amount or type of coverage provided under the policy unless prior written approval therefor has been obtained from the Commissioner.
2. Block nonrenewing entire lines or classes of insurance, except pursuant to a plan which: complies with (b) below; is submitted to the Commissioner at least 30 days prior to the issuance of any notice of nonrenewal; and is not disapproved within 30 days after its filing with the Commissioner. For the purpose of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block nonrenewal of entire lines or entire classes of insurance shall be deemed a nonrenewal

subject to this paragraph. In addition, nonrenewals pursuant to a change in an insurer's underwriting guidelines shall be subject to this subchapter.

3. Block cancelling entire lines of insurance or classes of business except pursuant to a plan which: complies with (c) below; is submitted to the Commissioner at least 30 days prior to the issuance of any notice of cancellation; and is not disapproved within 30 days after its filing with the Commissioner. For the purposes of this paragraph, the termination or attempted termination of an appointed agent solely to achieve the block cancellation of entire lines of insurance or entire classes of business shall be deemed a cancellation subject to this paragraph. In addition, cancellations pursuant to a change in an insurer's underwriting guidelines shall be subject to this subchapter.

(b) A plan filed pursuant to (a)2 above shall contain the following information:

1. The reason(s) for the block nonrenewal;
2. The name of all companies involved in the block nonrenewal;
3. The line or class of insurance or the program affected by the block nonrenewal;
4. The number of policies and exposures for each line or class being nonrenewed;
5. The total market share of the nonrenewing company or companies by line of insurance. For homeowners' policies, this shall include the number of exposures by WindMAP zip codes and, separately, any additional zip codes that fall within a company's definition of a coastal area;
6. A copy of the proposed nonrenewal notice. The notices shall not include the statements otherwise required pursuant to N.J.A.C. 11:1-20.2(h) and 11:3-8.3(e)2i, as applicable, related to filing complaints with the Department concerning the non-renewal. A sample of such notice shall be posted on the Department's web site at <http://www.state.nj.us/dobi/>, and may be modified by the Department from time to time;

7. The criteria being utilized for the block nonrenewal (such as coastal underwriting guidelines, etc.);

8. A provision for a minimum of 60 days notice to be provided to the insured prior to nonrenewal; and

9. The proposed duration of the nonrenewal plan, which the nonrenewing company or companies may specify as being longer than three years, notwithstanding that, pursuant to N.J.A.C. 11:1-22.4(a), the maximum time period by which the Commissioner may extend the duration of a nonrenewal plan is three years.

(c) A plan filed pursuant to (a)3 above shall contain the following information:

1. The reason(s) for the block cancellation;
2. The name of all companies involved in the block cancellation;
3. The line or class of insurance or the program affected by the block cancellation;
4. The number of policies and exposures for each line or class being cancelled;
5. The total market share of the nonrenewing company or companies by line of insurance. For homeowners' policies, this shall include the number of exposures by WindMAP zip codes and, separately, any additional zip codes that fall within a company's definition of a coastal area;
6. A copy of the proposed cancellation notice. The notices shall not include the statements otherwise required pursuant to N.J.A.C. 11:1-20.2(h) and 11:3-8.3(e)2i, as applicable, related to filing complaints with the Department concerning the cancellation. A sample of such a notice shall be posted on the Department's web site at <http://www.state.nj.us/dobi/>, and may be modified by the Department from time to time;
7. The criteria being utilized for the block cancellation (such as coastal underwriting guidelines, etc.);
8. A provision for a minimum of 60 days notice to be provided to the insured prior to cancellation; and
9. The proposed duration of the block cancellation plan, which the cancelling company or companies may specify as being longer than three years notwithstanding that, pursuant to N.J.A.C. 11:1-22.4(a), the maximum time period by which the Commissioner may extend the duration of a cancellation plan is three years.

(d) Notwithstanding (a)2 and 3 above, an insurer may cancel or nonrenew a line or class of business where such cancellation or nonrenewal is necessary because of loss or substantial changes in applicable reinsurance by filing a plan with the Commissioner that contains the information set forth in (b) or (c) above, as applicable, and pursuant to the requirements of this subsection. The insurer's plan shall be filed with the Commissioner at least 20 days prior to the issuance of any notice of cancellation or nonrenewal. The plan shall be deemed to become effective unless disapproved by the Commissioner within 20 days after such plan has been filed with the Department.

1. Any such plan shall contain a certification by an elected officer of the company:
 - i. That the loss or substantial change in applicable reinsurance or the financial condition of the reinsurer necessitates the cancellation or nonrenewal action;
 - ii. That the insurer has made a good faith effort to obtain replacement reinsurance but was unable to do so

due to either the unavailability or unaffordability of replacement reinsurance;

- iii. Identifying the category of risks, the total number of risks written by the company in that category, and the number of risks intended to be cancelled or nonrenewed;
- iv. Identifying the total amount of the insurer's net retention for the risks intended to be cancelled or nonrenewed;
- v. Identifying the total amount of risk ceded to each reinsurer and the portion of that total that is no longer available;
- vi. Explaining how the loss of or reduction in reinsurance affects the company's risks throughout the entire line or category or insurance proposed for cancellation and/or nonrenewal;
- vii. Explaining why cancellation and/or nonrenewal is necessary to cure the loss of or reduction in available reinsurance; and
- viii. Explaining how the cancellations or nonrenewals, if approved, will be implemented with respect to individual risks and the steps that will be taken to ensure that the cancellation/nonrenewal decisions will not be applied in an arbitrary, capricious or unfairly discriminatory manner.

2. Any plan for cancellation or nonrenewal due to loss of or substantial changes in applicable reinsurance may be submitted to the Department as provided at (d) above only if the guideline meets the standards set forth at N.J.A.C. 11:1-20.4(b)10. A plan for termination based on any other guideline for loss of or substantial changes in available reinsurance must be submitted to the Department for approval as specified at (a)2 or 3 above, as applicable.

(e) Notwithstanding (a)2 and 3 above, an insurer may cancel or nonrenew a line or class of insurance based upon a material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or loss of or reduction in available insurance capacity by filing a plan with the Commissioner pursuant to the requirements of this subsection. The insurer's plan shall be filed with the Commissioner at least 20 days prior to the issuance of any notice of cancellation or nonrenewal. The plan shall be deemed to become effective unless disapproved by the Commissioner within 20 days after such plan has been filed with the Department.

1. Any plan for cancellation or nonrenewal due to loss of or reduction in available insurance capacity may be submitted to the Department as provided at (e) above, only if the guideline meets the standards set forth at N.J.A.C. 11:1-20.4(b)8. A plan for termination based on any other guideline for loss of or reduction in available insurance capacity must be submitted to the Department for approval as specified at (a)2 or 3 above, as applicable.