

(b) Employees excluded from a private plan shall be covered under the State plan and the employer shall be liable for the deduction and payment of workers' contributions and employer's contributions, as required by N.J.S.A. 43:21-7.

(c) All proposed private plans shall be submitted for review and approval by the Division. An employer failing to secure the approval of a private plan shall be deemed to be covered under the State plan and the employer shall be liable for the deduction of workers' contributions and payments of workers' and employer's contributions to the Fund as required by N.J.S.A. 43:21-7 until such date as a private plan is effective.

(d) An employee who ceases to be covered by a private plan, whether by termination of the plan, changing employers or for any other reason, shall, if otherwise eligible, become entitled to disability benefits from the Fund.

Case Notes

Employer must participate in either state plan or qualified private plan of disability benefits. *O'Boyle v. Prudential Ins. Co. of America*, 241 N.J.Super. 503, 575 A.2d 515 (A.D.1990).

12:18-2.2 Benefits

(a) An employee shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) An employee shall not be paid any benefits for disability during unemployment (N.J.S.A. 43:21-3, 4) for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) The benefits provided by a private plan shall be set forth in the plan both as to eligibility requirements and amounts payable.

(d) If application for benefits is made under the State plan or Disability During Unemployment and it is determined that the claim should have been made under a private plan, an employee shall not be deprived of benefits under the private plan for failure to give timely notice and proof of disability provided that:

1. The application to the State plan would have been timely notice to the private plan if it had been then made; and
2. Proof of disability is furnished under such private plan within the period required therein or within 30 days after the employee has notice that the claim should have been made thereunder.

(e) If an employee is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under the State plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant, for a subsequent period of disability. If an employee is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under a private plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant for a subsequent period of disability.

(f) If the benefits claimed by an employee or his or her authorized representative under a private plan are denied, such denial shall be by a written notice to the employee or his or her authorized representative, giving the reason therefor and stating the employee's rights to a hearing in accordance with the Act. Upon the issuance of such notice, the Division shall be immediately furnished with a copy of the claim and the notice of denial, or facsimiles thereof.

(g) The private plan shall provide for payment of benefits to employees weekly, biweekly, or at such intervals as the employee is customarily paid wages, unless otherwise approved by the Director.

(h) No reduction in the amount or duration of benefits or increase in the rate of employee contributions shall be made without prior approval of the Division. Approval shall be given if the Division finds that the plan, after such modification, continues to meet the requirements of the Act and this Chapter and, if the employees are to contribute toward the cost of such modified plan, that a majority of the employees covered by the plan have agreed to the modification by written election (by ballot or otherwise) in accordance with this Chapter. The Division shall be given prompt notice of any modification of a private plan, which modification does not require approval under this Section.

Amended by R.1994 d.741, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Case Notes

Under no fault insurance law, carrier was entitled to deduct amount equal to benefits collectible under private temporary disability benefit plan, in making income continuation payments. *Puzio v. New Jersey Manufacturers Insurance Co.*, 165 N.J.Super. 585, 398 A.2d 934 (Civ. Ct.1979).

12:18-2.3 Proof of coverage

Notice, in a form approved by the Director, of the benefits provided by the private plan shall be furnished to the covered employees either by individual certificates or other direct notification at the time of coverage, or by conspicuous and continuing posting at the place of employment.

12:18-2.4 Choice of doctor

An employee covered under a private plan shall have the right to choose his or her own attending licensed physician, dentist, chiropractor, podiatrist, practicing psychologist or optometrist, but he or she may be required to submit, not more often than once a week, to an examination by a licensed physician, dentist, chiropractor, podiatrist, practicing psychologist or optometrist designated by the employer, insurer or organization paying benefits.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-2.5 Nonprofit provision

No employer, union or association representing employees and no person acting in behalf of any of the foregoing shall so administer or apply the provisions of a private plan as to derive any profit therefrom.

12:18-2.6 Appeals

(a) If the claim of any employee under a private plan is denied, in whole or in part, by an employer, insurer or organization paying benefits or, if he or she shall be unable to agree with the employer, insurer or organization paying benefits as to benefits thereunder, such claimant may appeal from such determination or denial.

(b) A complaint, which shall constitute an appeal, shall be filed by the claimant, in person or by mail, with the Division, within one year after the beginning of the period for which benefits are claimed. Upon receipt thereof, the Division shall conduct an investigation and such informal hearings as it may deem necessary to determine the facts and settle the issues.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1994 d.407, effective August 1, 1994.
See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).

12:18-2.7 Review

(a) All approved private plans shall be reviewed by the Division during their continuance to insure compliance with the law and regulations thereunder.

(b) Where a decision to accept or deny a claim is not made within 45 days of filing of claim, the insurer shall notify the Division of such fact giving the reasons therefor.

12:18-2.8 Application for approval

(a) An employer desiring to establish a private plan for the payment of benefits to employees, shall file an application on a form and in a manner prescribed by the Director. In requesting the form, the employer shall inform the Division whether the benefits will be provided by a contract of insurance, or by an agreement between the employer and a union or association representing the employees or by the employer as a self-insurer.

(b) If two or more employers desire to have their private plans insured by a single policy of insurance, either by mutual agreement or by agreement as set forth in (a) above, each shall file an application for approval on a form and in a manner prescribed by the Director, designating a nominee, designee, trustee or one of them as the duly authorized agent for the purposes of this Act.

12:18-2.9 Minimum plan requirements

(a) Each private plan, in order to secure Division approval, shall provide to the employees covered thereby rights equal at least to those set forth in N.J.S.A. 43:21-37 to 43:21-42 inclusive, by assuring that:

1. All employees of the employer, except as provided elsewhere in these chapters, shall be covered by the private plan with respect to any disability commencing while the plan is in effect.

2. The private plan does not impose restrictions on, or provide exclusion from eligibility for benefits in respect to any employee covered thereunder, in such manner as to deny benefits which would be payable to the employee under the State plan, but for his or her inclusion in the private plan.

3. Except as provided for in N.J.A.C. 12:18-2.10 (Concurrent coverage) of this chapter, the benefits payable to each employee covered thereunder shall be at least equal, in both weekly amount and duration, to those which would be payable to the employee under the State plan, but for his or her inclusion in the private plan.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-2.10 Concurrent coverage

(a) A private plan shall not preclude simultaneous or concurrent coverage by reason of an individual's employment with two or more employers. Such employee shall receive not less than the benefits payable under the State plan both as to benefit amount and duration.

(b) For the purposes of this section with respect to periods of disability commencing on or after January 1, 1953, a covered individual is deemed to be in "concurrent employment" if he or she is in employment with two or more employers during some part of the last calendar day he or she was in employment preceding the commencement of a period of disability. The term "concurrent employers" is deemed to mean the covered employers with whom such individual was in employment on such last day of employment.

(c) If an employee is in concurrent employment with two or more employers of whom only one has a private plan, under which such employee is covered, then the employee shall be eligible to receive, under such private plan, benefits not less than he or she would be eligible to receive if covered only under the State plan with respect to all employment, and no benefits shall be payable under the State plan for disability commencing while he or she is covered under such private plan.

12:18-2.43 (Reserved)

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Repealed by R.1994 d.407, effective August 1, 1994.
 See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
 Section was "Conduct of hearings."

12:18-2.44 (Reserved)

Amended by R.1994 d.407, effective August 1, 1994.
 See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
 Section was "Dismissal of complaint."

12:18-2.45 (Reserved)

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Repealed by R.1994 d.407, effective August 1, 1994.
 See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
 Section was "Rendition of decision."

12:18-2.46 (Reserved)

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Repealed by R.1994 d.407, effective August 1, 1994.
 See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
 Section was "Correction of determination."

12:18-2.47 (Reserved)

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Repealed by R.1994 d.407, effective August 1, 1994.
 See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
 Section was "Inspection of records."

12:18-2.48 (Reserved)

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Repealed by R.1994 d.407, effective August 1, 1994.
 See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).
 Section was "Issuance of subpoenas."

SUBCHAPTER 3. STATE PLAN**12:18-3.1 Extent of coverage**

(a) A claimant shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) A claimant shall not be paid any benefits under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) An individual who is covered by a private plan or is separated from his or her employment for a period of two weeks or more immediately prior to disability shall not be entitled to any benefits under the State plan.

(d) If application for benefits is made under a private plan or for disability during unemployment (N.J.S.A. 43:21-3, 4) and it is determined that the claim should have been made under the State plan, a claimant shall not be deprived of benefits under the State plan for failure to give timely notice and proof of disability provided that:

1. The application to the private plan or for disability during unemployment (N.J.S.A. 43:21-3, 4) would have been timely notice to the State plan if it had been then made; and

2. Proof of disability is made under the State plan not later than the time prescribed by the Act.

(e) If a claimant is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21-3, 4). If a claimant is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21-3, 4).

(f) If a claimant shall refuse to submit to a physical examination by a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist, public health nurse or optometrist designated by the Commissioner of Labor or his or her designee, the claimant shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid.

(g) If a physical examination of a claimant is required, the Commissioner of Labor or his or her designee shall authorize such examination to be made by a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist, public health nurse or optometrist. Upon submission of a written report of the examination to the Department of Labor, a fee not exceeding \$75.00 for each such examination shall be paid to the examining physician, dentist, podiatrist, chiropractor, practicing psychologist, public health nurse or optometrist, which fee shall be charged to the administration account. Upon recommendation of the Director and upon a finding that an increase or decrease in this fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the fee pursuant to a schedule issued by the Commissioner on a Statewide or county basis for one or more of these groups of examiners. In cases requiring the services of a specialist, or in cases requiring clinical tests supporting a diagnosis, the Commissioner or his or her designee shall, in his or her discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

As amended, R.1974 d.284, effective October 17, 1974.
 See: 6 N.J.R. 68(e), 6 N.J.R. 437(b).
 Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.2 Notice and proof of disability

(a) A written notice of disability on which claim for benefits under the State plan is based, shall, within 30 days after the commencement of the period of disability, be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state claimant's full name, address and social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) accompanied by the certification of the attending licensed physician, dentist, podiatrist, chiropractor, practicing psychologist or optometrist as required hereinafter, shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the State plan is based shall be furnished by any claimant who expects to be or has been totally unable to perform the duties of his or her employment for a period of eight or more consecutive days and is under the care of a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. A claimant's authorized representative may furnish the proof of disability and file a claim for benefits on behalf of the claimant. The proof and claim accompanied by a certification of the attending licensed physician, dentist, podiatrist, chiropractor, practicing psychologist, or optometrist, shall be furnished to the Division, on Form DS-1 (Proof and Claim for Disability Benefits) not later than 30 days after the commencement of the period of disability for which benefits are claimed. A "Supplemental Proof and Claim for Disability Benefits" form shall be filed as proof of continued disability, when requested by the Division.

(c) The failure to furnish a written notice of or proof of disability within the time or manner required by the Act and this Subchapter shall not invalidate or reduce any claim, if it shall be shown to the satisfaction of the Division not to have been reasonably possible to furnish notice or proof and that such notice or proof was furnished as soon as reasonably possible. If such notice or proof is not furnished, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt of the notice or proof of disability, the first seven days of which period shall not be compensable, unless disability benefits shall be payable for the three consecutive weeks immediately following the seven day waiting period.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.3 Filing of claims for benefits

(a) All claims and other required documents relating thereto may be filed by mail except in those cases where the claimant is notified by the Division that a personal appearance or examination will be required. Filing by mail shall be deemed complete at the time of deposit in the mail, in a sealed envelope, with postage paid, addressed to the Division.

(b) Disability benefits shall be payable to any claimant while outside of this State, provided he or she complies with the Act and this Subchapter. In such case, the attending physician, dentist, chiropractor, podiatrist, practicing psychologist or optometrist shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.4 Reduction of benefits

(a) The amount of benefits otherwise payable to a claimant under the State plan for any week of disability, or part thereof, shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his or her most recent employing unit contributed on his or her behalf. If such latter benefits are being paid on a monthly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/30 of such monthly amount, multiplied by seven, and the amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate. If such latter benefits are being paid on a weekly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/7 of the weekly amount multiplied by the number of days of disability during that week and that amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate.

(b) The amount of benefits payable to a claimant under the State plan for any week of disability, or part thereof, shall not be reduced by the amount of benefits payable under any program as mentioned above, unless one or more payments thereunder have been received by the claimant prior to the date on which the check in payment of benefits under the State plan is issued.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.5 Concurrent coverage

(a) For the purposes of this subchapter with respect to periods of disability commencing on or after January 1, 1953, a covered individual is deemed to be in "concurrent employment" if he or she is in employment with two or more employers during some part of the last calendar day he or she was in employment preceding the commencement of a period of disability. The term "concurrent employers" is deemed to mean the covered employers with whom such individual was in employment on such last day of employment.