

CHAPTER 15

GROUP SELF-INSURANCE

Authority

N.J.S.A. 17:1C-6(e), 17:1-8.1, 34:15-77 et seq., and 40A:10-36 et seq.

Source and Effective Date

R.1994 d.551, effective October 17, 1994.
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Chapter Historical Note

Chapter 15, Group Self-Insurance, was originally adopted as R.1984 d.172, effective May 21, 1984. See: 16 N.J.R. 340(a), 16 N.J.R. 1273(a). Subchapter 2, Joint Insurance Funds for Local Governmental Units, was originally adopted as R.1984 d.540, effective December 3, 1984. See: 16 N.J.R. 1164(a), 16 N.J.R. 3310(b). Pursuant to Executive Order No. 66(1978), Chapter 15 was readopted as R.1989 d.585, effective October 26, 1989. See: 21 N.J.R. 1817(a), 21 N.J.R. 3668(a). Subchapter 3, Joint Insurance Funds for Local Governmental Units Providing Group Health and Term Life Benefits, was adopted as R.1993 d.354, effective July 19, 1993. See: 25 N.J.R. 436(a), 25 N.J.R. 3220(a).

Pursuant to Executive Order No. 66(1978), Chapter 15 was readopted as R.1994 d.551. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HOSPITAL WORKERS' COMPENSATION GROUP SELF-INSURANCE

- 11:15-1.1 Purpose
- 11:15-1.2 Definitions
- 11:15-1.3 Qualifications for initial approval and continued authority to act as a group
- 11:15-1.4 Issuance of certificate of approval
- 11:15-1.5 Financial statement and other reports
- 11:15-1.6 Examinations
- 11:15-1.7 Trustees: qualifications, powers, duties, and prohibitions
- 11:15-1.8 Group membership; termination; liability
- 11:15-1.9 Voluntary dissolution of group
- 11:15-1.10 Service organizations
- 11:15-1.11 Misrepresentation or unfair acts or practices prohibited
- 11:15-1.12 Investments
- 11:15-1.13 Rates and reporting of rates
- 11:15-1.14 Refunds
- 11:15-1.15 Contribution payment; reserves
- 11:15-1.16 Deficits
- 11:15-1.17 Revocation of certificate of approval
- 11:15-1.18 Public record

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS

- 11:15-2.1 Scope
- 11:15-2.2 Definitions
- 11:15-2.3 Agreement to join joint insurance fund; duration
- 11:15-2.4 General requirements
- 11:15-2.5 Bylaws and plan of risk management; filing requirements
- 11:15-2.6 Bylaws and plan of risk management; contents
- 11:15-2.7 Disapproval of bylaws and plan of risk management
- 11:15-2.8 Revocation of approval

- 11:15-2.9 Approval of non-member local units
- 11:15-2.10 Termination and/or withdrawal of fund members
- 11:15-2.11 Insolvency and/or bankruptcy of fund members
- 11:15-2.12 Voluntary dissolution of a fund
- 11:15-2.13 Establishment of trust fund accounts; transfers or withdrawals prohibited
- 11:15-2.14 Administrative account
- 11:15-2.15 Assessments
- 11:15-2.16 Supplemental assessments
- 11:15-2.17 Failure or refusal to provide required assessments
- 11:15-2.18 Individual loss reserve funds
- 11:15-2.19 Certification of funds
- 11:15-2.20 Investments; application of investment income
- 11:15-2.21 Refunds; interyear fund transfers
- 11:15-2.22 Disbursements and/or payment of claims
- 11:15-2.23 Excess insurance and/or reinsurance
- 11:15-2.24 Financial statement and reports
- 11:15-2.25 Examination of funds possibly in financial condition detrimental to the public
- 11:15-2.26 Servicing organizations; administrator
- 11:15-2.27 Conflict of interest
- 11:15-2.28 Notice and hearings
- 11:15-2.29 Orders
- 11:15-2.30 Severability

SUBCHAPTER 3. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS PROVIDING GROUP HEALTH AND TERM LIFE BENEFITS

- 11:15-3.1 Purpose and scope
- 11:15-3.2 Definitions
- 11:15-3.3 Agreement to join joint insurance fund; duration
- 11:15-3.4 General requirements
- 11:15-3.5 Bylaws and plan of risk management; filing requirements
- 11:15-3.6 Bylaws and plan of risk management; contents
- 11:15-3.7 Disapproval of bylaws and plan of risk management
- 11:15-3.8 Suspension, termination, assumption of control, or other action by Commissioner
- 11:15-3.9 Approval of non-member local units
- 11:15-3.10 Termination and/or withdrawal of fund members
- 11:15-3.11 Insolvency and/or bankruptcy of fund members
- 11:15-3.12 Voluntary dissolution of a fund
- 11:15-3.13 Establishment of trust fund accounts; transfers or withdrawals prohibited
- 11:15-3.14 Administrative account
- 11:15-3.15 Assessments
- 11:15-3.16 Supplemental assessments
- 11:15-3.17 Failure or refusal to provide required assessments
- 11:15-3.18 Certification of funds
- 11:15-3.19 Investments; application of investment income
- 11:15-3.20 Refunds
- 11:15-3.21 Disbursements and/or payment of claims
- 11:15-3.22 Confidentiality of claims
- 11:15-3.23 Stop-loss insurance and/or reinsurance
- 11:15-3.24 Financial statement and reports
- 11:15-3.25 Examination of funds possibly in financial condition detrimental to the public
- 11:15-3.26 Servicing organizations; administrator
- 11:15-3.27 Conflict of interest
- 11:15-3.28 Notice and hearings
- 11:15-3.29 Orders
- 11:15-3.30 Severability

**SUBCHAPTER 1. HOSPITAL WORKERS'
COMPENSATION GROUP SELF-
INSURANCE**

11:15-1.1 Purpose

P.L. 1983, c.376, approved November 10, 1983, authorizes 10 or more employers licensed by the state as hospitals under the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., to apply to the Commissioner of Insurance, pursuant to rules and regulations established by him, for his permission to enter into agreements to pool their liabilities under the New Jersey Workers' Compensation Law for the purpose of qualifying as self-insurers. The general purpose of this chapter is to promulgate such rules and regulations as are deemed by the Commissioner to be necessary to implement, supplement, and effectuate the minimum conditions and provisions of P.L. 1983, c.376.

11:15-1.2 Definitions

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

"Act" means the provisions of the New Jersey Workers' Compensation Law regarding self-insurance as contained in N.J.S.A. 34:15-77, as amended and supplemented by P.L. 1983, c.376.

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Administrator" means an individual, partnership, or corporation engaged by a group to carry out the policies established by the group and to provide day-to-day management of the group.

"Bona fide hospital association" means any association of more than 10 hospitals which has been in existence for more than five years.

"Commissioner" means the Commissioner of Insurance of the State of New Jersey or an employee of the New Jersey Department of Insurance designated by him to act on his behalf.

"Contribution" means the amount contributed by each member of a group.

"Excess insurance" means insurance, purchased from an insurance company appropriately licensed in the State of New Jersey or qualified by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance or indemnity agreement on a specific per occurrence or per accident or annual aggregate basis.

"Group" means a self-insurance group organized by 10 or more hospitals which enter into agreements to pool their liabilities for worker's compensation benefits and employer's liability obligations in a manner approved by the Commissioner under the authority of the Act and these regulations.

"Hospital" means a health care facility licensed as a hospital by the New Jersey Department of Health pursuant to N.J.S.A. 26:2H-1 et seq.

"Indemnity and trust agreement" means a written contract signed by the members of the group under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement for workers' compensation benefits, which agreement shall also create a trust and govern the operation thereof under which monies shall be held by one or more trustees as fiduciaries for the benefit of persons qualifying to receive workers' compensation awards or payments from employers participating in the group.

"Insolvent" or "Insolvency" means the inability of a hospital workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all its outstanding liabilities after paying all accrued claims owed by it.

"Service organization" means a person, partnership, corporation or other legal entity which provides services to a group not provided by the administrator, including but not limited to:

1. Claims adjustment,
2. Safety engineering,
3. Compilation of statistics and the preparation of contribution, loss expense and tax reports,
4. Preparation of other required self-insurance reports, and
5. Development of any member's contribution and fees.

"Workers' compensation", when used as a modifier of "benefits", "liabilities", or "obligations", means both workers' compensation and employer's liability.

11:15-1.3 Qualifications for initial approval and continued authority to act as a group

(a) A proposed group shall file its application with the Commissioner for his approval on a form prescribed by him and accompanied by a nonrefundable processing fee in the amount of \$1,000. The application shall include the group's name, location of its principal office, date of organization, name and address of each of its trustees and its administrator or general manager, and service organizations, the name and address of each member hospital, and such other information as the Commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of subsection (b) below;
2. A copy of the articles of association, if any;
3. A copy of agreements with the administrator and with any service organizations maintained by the group for the prevention of injuries, underwriting, and claims administration services;
4. A copy of the group's operating rules, including, but not limited to, by-laws, if any;
5. A copy of the indemnity and trust agreement between the group and each member of the group;
6. The address in New Jersey where the books and records of the group will be maintained at all times and the designation and appointment of a person in New Jersey upon whom service of process for the group might be made;
7. A pro forma financial statement, on a form acceptable to the Commissioner, providing him satisfactory proof of its financial ability to pay such compensation for the members of the group;
8. A statement from an actuary that the proposed group plan of operation is actuarially sound;
9. A listing of the estimated annual contributions to be paid by each member of the group;
10. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual contributions.

(b) To obtain and to maintain its certificate of approval, a group shall comply with the following requirements, as well as any other requirements established by law or regulation:

1. A combined net worth of all members of the group of at least \$1,000,000;
2. To provide assurance that such benefits as are payable by the group will continue to be paid and that the group will meet its statutory obligations, security in a form and amount prescribed by the Commissioner shall be posted by either a surety bond, security deposit, letter of credit, or financial security endorsement, or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this State. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposit in a federally insured savings and loan association or credit union, or any bond or security issued by a State of the United States of America and backed by the full faith and credit of the State. If a letter of credit is used, it shall be issued

by a banking association authorized to transact business in New Jersey and in a form acceptable to the Commissioner. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, letter of credit, or financial security endorsement shall be:

- i. For the benefit of the State solely to pay claims and associated expenses; and
- ii. Payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay. The Commissioner may establish requirements for the amount of security based on differences among groups in their size, years in existence, and other relevant factors; however, the Commissioner may not require an amount lower than \$100,000 for any group during its first year of operation and may subsequently increase such amount as he deems necessary;

3. Confirmation of the availability of specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the Commissioner. The Commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on difference among groups in their size, years in existence, and other relevant factors and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in paragraph 2 of this subsection;

4. Estimated annual standard contributions of at least \$250,000 during the group's first year of operation. Thereafter, the annual standard contributions shall be at least \$500,000;

5. An indemnity and trust agreement, in a form satisfactory to the Commissioner, jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member, and establishing a trust for the benefit of persons qualifying to receive workers' compensation awards or payments from employers participating in the group;

6. A fidelity bond for the administrator in a form and amount prescribed by the Commissioner;

7. A listing of any underwriting, claim, loss prevention, or other service organization used by the group.

(c) A group shall notify the Commissioner of any change in the information required to be filed under subsection (a) above or in the manner of its compliance with subsection (b) above no later than 30 days after such change.

11:15-1.4 Issuance of certificate of approval

(a) The Commissioner shall issue a certificate of approval to the group upon finding that the group:

1. Guarantees benefit levels equal to those required by the Workers' Compensation Law;

2. Demonstrates sufficient aggregate financial strength and liquidity to assure that all obligations under the Workers' Compensation Law will be promptly met;

3. Proposes a plan for the prompt payment of such benefits; and

4. Has satisfactorily met all requirements of the Act and these regulations.

(b) Such certificate shall remain in effect until terminated at the request of the group or revoked by the Commissioner.

(c) If the Commissioner determines that an application does not satisfactorily meet all requirements, he shall notify the group of the reasons for rejection and requirements to be met for approval to be granted.

(d) No person or entity shall act as a group except as so authorized by the Commissioner.

11:15-1.5 Financial statement and other reports

(a) Annually (or more frequently if the Commissioner deems it necessary), each group shall submit to the Commissioner, on or before the last day of the sixth month following the end of the group's fiscal year, a sworn statement of financial condition audited by an independent certified public accountant in accordance with generally accepted accounting principles. The financial statement shall be on a form prescribed by the Commissioner and shall include, but not be limited to, actuarially appropriate reserves for:

1. Known claims and expenses associated therewith;
2. Claims incurred but not reported and expenses associated therewith;
3. Unearned contributions; and
4. Bad debts, which reserves shall be shown as liabilities.

(b) The opinion of an actuary regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be submitted with the audited financial statement. The opinion shall comply with the provisions of Rule 9 (other than paragraph (1) thereof) for completing the fire and casualty annual statement blank as promulgated for this State.

(c) The Commissioner may prescribe a uniform accounting system for all groups to ensure the accurate and complete reporting of groups' financial information.

(d) The Commissioner may prescribe the format and frequency of other reports, which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

(e) An annual filing fee of \$100.00 times the number of members of the group.

11:15-1.6 Examinations

The Commissioner shall examine the affairs, method of conducting business, transactions, account, records, and assets of each group as often as the Commissioner deems advisable, but not less often than once every three years. The expense of such examinations shall be assessed against the group and paid by it in the same manner that insurers are assessed for examinations.

11:15-1.7 Trustees: qualifications, powers, duties, and prohibitions

(a) Each group shall be operated by not fewer than five trustees whom the members of a group shall elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, directors, or trustees of members of the group. Except in the case of bona fide hospital associations, or organization affiliated therewith, as determined by the Commissioner, the group's administrator, service company, or any owner, officer, or employee of, or any other person affiliated with, such administrator or service company shall not serve as trustees of the group. In the case of bona fide hospital associations, the preceding sentence shall apply only to any compensated employee of such association, or organization affiliated therewith, who is not also an officer, director, or trustee of a hospital. All trustees shall be residents of this State or officers of corporations authorized to do business in this State. The trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

1. The trustees shall:
 - i. Maintain responsibility for all monies collected or disbursed from the group and allocate all monies to a claims fund account and an administrative fund account. At least 70% of the net contributions shall be allocated on the books of the group for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net contributions shall be allocated on the books of the group for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The Commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the Commissioner's satisfaction that:
 - (1) More than 30% is needed for an effective safety and loss control program; or
 - (2) The group's aggregate excess insurance attaches at less than 70%. The Commissioner may require that the accounts be segregated.

ii. Maintain minutes of their meetings and make such minutes available to the Commissioner;

iii. Designate an administrator to carry out the provisions of the indemnity or trust agreement and the operating rules of the group. The authority of the administrator shall be set forth in such indemnity or trust agreement or operating rules or in the minutes of the trustees;

iv. Retain an independent certified public accountant and an independent actuary to prepare the required statements of financial condition.

2. The trustees shall not:

i. Extend credit to individual members for payment of a contribution, except pursuant to payment plans approved by the Commissioner;

ii. Borrow any monies from the group or in the name of the group, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

11:15-1.8 Group membership; termination; liability

(a) An employer joining a group after the group has been issued a certificate of approval shall:

1. Submit an application for membership to the trustees or the administrator; and

2. Enter into the indemnity and trust agreement. Membership shall take effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the group and copies shall be filed with the Commissioner.

(b) Individual members of a group shall be subject to cancellation by the group pursuant to the provisions of the indemnity and trust agreement or operating rules of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the terminating member, all other members, and the Commissioner, by registered or certified mail, of the termination or cancellation of a member at least 10 days prior to the effective date and shall maintain coverage of each cancelled or terminated member for 30 days after such notice, unless, after such notice, the group is notified sooner that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another approved group.

(c) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the

cancelled or terminated member's period of membership and shall be subject to and liable for supplemental assessments appropriate to its period of membership.

(d) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment of required workers' compensation benefits by the group or the member.

(e) The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

11:15-1.9 Voluntary dissolution of group

(a) A group may not voluntarily dissolve, or otherwise cease to do business, and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the group's members must have voted in favor of a resolution to dissolve the group pursuant to a written plan of dissolution at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred expenses and losses of the group and its members, including all incurred but not reported losses and associated expenses, before any assets of the group may be used for any other purposes;

3. Such plan of dissolution shall contain a statement of the group's current financial condition computed according to generally accepted accounting principles as attested to by an independent certified public accountant;

4. The plan of dissolution, and such other information as may be required by the Commissioner, shall be filed with and approved by the Commissioner.

(b) If such a group self-insurance plan is terminated, the securities or surety bond on deposit with the Commissioner shall remain in the custody of the Commissioner for a period of at least 26 months. At the expiration of such time or such further period as the Commissioner may deem proper and necessary, he may accept, in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers which warrant awards for additional compensation, a policy of insurance furnished by the group self-insurer, its successor, assigns, or others carrying on or liquidating such self-insurance group.

11:15-1.10 Service organizations

(a) Except with the approval of the Commissioner, no service organization or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator, and no administrator or its employees, officers, or directors shall

be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(b) The service contract shall include a clause that, "unless the Commissioner otherwise permits, the service organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

11:15-1.11 Misrepresentation or unfair acts or practices prohibited

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership in a group or engage, with respect to membership in or the business and affairs of a group, in any activities of the type prohibited by N.J.S.A. 17:29B-4 and the regulations of the Department of Insurance promulgated thereunder when engaged in by persons engaged in the business of insurance.

11:15-1.12 Investments

Funds not needed for current obligations may be invested by the trustees in accordance with N.J.S.A. 17:24-1 et seq.

11:15-1.13 Rates and reporting of rates

(a) For the first five years of its existence, except as otherwise approved by the Commissioner, each group shall maintain information in accord with the uniform classification system, uniform experience rating plan, and manual rules filed with the Commissioner.

(b) Contributions to the group shall be determined by applying its rates and rules to each member.

11:15-1.14 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year.

(b) Each applicant for membership in the group shall be given a written description of the refund plan at the time of application for membership. Each member shall be given a written description of any changes in the refund plan prior to its being put into effect. A refund for any fund year shall be paid only in proportion to participation in the group for the fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

11:15-1.15 Contribution payment; reserves

(a) The group shall establish to the satisfaction of the Commissioner a contribution payment plan.

(b) The group shall establish and maintain actuarially appropriate loss reserves, which shall include reserves for:
(1) known claims and expenses associated therewith; and
(2) claims incurred but not reported and expenses associated therewith.

(c) The group shall establish and maintain bad debt reserves based on the historical experience of the group.

11:15-1.16 Deficits

(a) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under the Act and these regulations, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any fund year, such deficiency shall be made up immediately.

(c) If the group fails to assess its members or to otherwise make up such deficit within 30 days, the Commissioner shall order it to do so.

(d) If the group fails to make the required assessment of its members within 30 days after the Commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the Commissioner, the group shall be deemed to fall within the condition in N.J.S.A. 34:15-77.1c.

Amended by R.1989 d.585, effective November 20, 1989.
See: 21 N.J.R. 1817(a), 21 N.J.R. 3668(a).
Correction to N.J.S.A. cite in (d).

11:15-1.17 Revocation of certificate of approval

(a) After notice and opportunity for a hearing as in a contested case (N.J.S.A. 52:14B-9), the Commissioner may revoke a group's certificate of approval if it is found that:

1. There has been deterioration of the financial condition of the group to such an extent that such deterioration would have an adverse affect on the ability of the group to pay expected losses;
2. The group has failed to pay any regulatory fee or assessment, or special fund contribution imposed upon it;
3. The group has failed to comply with any of the provisions of the Act, any regulations promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed;
4. Any certificate of approval that was issued to the group was obtained by fraud;
5. There was a material misrepresentation in the application for the certificate of approval; or

6. The group or its administrator has misappropriated, converted, illegally withheld or refused to pay over, upon proper demand, any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator.

11:15-1.18 Public record

Any document filed with the Commissioner pursuant to the Act or these regulations shall be deemed a public record and available for inspection at the New Jersey Department of Insurance during usual business hours.

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS

11:15-2.1 Scope

(a) P.L. 1983, c.372 entitled "An Act concerning joint insurance funds for local units of government, and supplementing Chapter 10 of Title 40A of the New Jersey Statutes", authorizes two or more local units of government to join together to establish a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation. This subchapter provides rules for the establishment, operation, oversight, modification and dissolution of such funds.

(b) No local unit of government shall join together with any other local unit or units to act as a joint insurance fund except as authorized by the Commissioner in accordance with the provisions of P.L. 1983, c.372 and this subchapter.

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Amended definition of "actuary".

11:15-2.2 Definitions

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

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of a fund participant or an independent contractor.

"Automobile and equipment liability" means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the local unit or owned by or under the control of any subdivisions thereof including its departments, boards, agencies, commissions or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

"Commissioner" means the Commissioner of Insurance.

"Department" means the Department of Insurance.

"Employers' liability" means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his employment by the public employer, which is not covered by a workers' compensation law.

"Excess insurance" means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, or per accident, or annual aggregate basis.

"Executive committee" means the committee of insurance fund commissioners, as provided in P.L. 1983, c.372.

"Fiscal year" or "fund year" means the calendar year January 1 through December 31.

"General liability" means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers' compensation and employers' liability.

"Indemnity and trust agreement" means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

1. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

2. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in i through iv below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each such risk or liability:

- i. Workers' compensation and employers' liability;
- ii. Liability, other than motor vehicle;
- iii. Property damage, including automobile physical damage;
- iv. Automobile liability.

"Insolvent fund" means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

"Intertrust fund transfer" means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

"Interyear fund transfer" means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

"Joint insurance fund" or "Fund" means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against property damage, general liability, vehicular and equipment liability, workers' compensation liability and employers' liability, approved by the Department pursuant to the authority of P.L. 1983, c.372 and this subchapter.

"Joint insurance fund commissioners" means local unit representatives chosen to represent those units in the fund, as provided in P.L. 1983, c.372.

"Lead agency" means a member of the joint insurance fund responsible for performing or providing administrative or other services as may be designated by the joint insurance fund commissioners.

"Local unit of government" or "local unit" means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A:64A-25.40 and 40A:10-51) or any contracting unit as defined in N.J.S.A. 40A:11-2.

"Net current surplus" or "surplus" means that amount of monies in a trust account that is in excess of all costs, earned investment income, returned surplus, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Property damage" means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the local unit or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

"Servicing organization" means an individual, partnership or corporation which provides services to the fund not provided by the administrator, including, but not limited to:

1. Claims adjustment;
2. Safety engineering;
3. Compilation of statistics and the preparation of assessment, loss and expense reports;
4. Preparation of reports required pursuant to P.L. 1983 c.372 or this subchapter;
5. Development of members assessments and fees; or
6. Claim administration.

"Unpaid claims" means case reserves and reserves for incurred but not reported claims attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Workers' compensation law" means the provisions of N.J.S.A. 34:15-7 et seq.

Amended by R.1989 d.507, effective September 18, 1989.
See: 21 N.J.R. 3051(b), 21 N.J.R. 3017(a).

Definitions for "Fiscal year", "Intertrust fund transfer", "Interyear fund transfer", "Net current surplus", and "Unpaid claims" added.
Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Amended definitions of "actuary", "indemnity and trust agreement", "local unit of government" and "property damage"; added "automobile and equipment liability" and deleted "motor vehicular and equipment liability".

11:15-2.3 Agreement to join joint insurance fund; duration

Pursuant to Section 1 of P.L. 1983, c.372, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined herein. The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the fund's bylaws as approved and adopted pursuant to section 4 of the Act. The agreement shall specify the extent of the local unit's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). The agreement shall also specify that the fund members have never defaulted on claims if self-insured and have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement.

Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Changes reflect current practice and changes in applicable statutes.

11:15-2.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.), the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:30-14 et seq.), and the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:9-4.1.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall utilize as its fiscal year, the calendar year, January 1 through December 31.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian shall periodically report to the fund commissioners on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare in November of each year the proposed budget for the fund's subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year, and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a cash basis.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than December 31 of each year the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for fiscal year.

3. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

4. A copy of each adopted budget and any amendment thereto shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption.

(g) Except as provided at N.J.A.C. 11:15-2.22(e), all books, records, files and other documents of the joint insurance fund shall be retained by the secretary of the fund or fund administrator as designated by the fund commissioners or executive committee.

(h) Each fund shall maintain minutes of its meetings and shall make such minutes available to the Commissioner upon request.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the executive director's report and a summation of fund activity, including comments on previously reported claims and newly reported claims. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund.

(j) All officers, employees and agents of the joint insurance fund on the final day of their office or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to such office or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund. The lead agency may agree to perform such duties and have such responsibilities as the joint insurance fund commissioners may determine and assign including but not limited to those of the executive director or custodian of funds.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

At (g) added "fund administrator" as retainer of records and at (i) added specifications to reports.

11:15-2.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioners of Insurance and Community Affairs, as provided in P.L. 1983, c.372, its bylaws and plan of risk management and any amendments thereto. The initial filing shall be accompanied by the information and documentation specified at N.J.A.C. 11:15-2.6(c).

1. All filings and accompanying documents shall be submitted to the Department in duplicate.

(b) No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management shall take effect until such amendment is approved by the Commissioner.

(d) Within 10 days following any change in the information or documentation required to accompany the filing of the fund's bylaws or amendments thereto, as provided in (a) above, the fund shall file notice of the change, with the Department and the Department of Community Affairs.

Emergency amendment, R.1984 d.616, effective December 24, 1984 (expires February 22, 1985).

See: 17 N.J.R. 218(a).

(a) substantially amended.

Adopted by R.1985 d.128, effective February 22, 1985.

See: 17 N.J.R. 218(a), 17 N.J.R. 709(a).

11:15-2.6 Bylaws and plan of risk management; contents

(a) The commissioners of a joint insurance fund shall prepare and, after the approval, by resolution, of the governing body of each participating local governmental unit, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and alternates and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency to be responsible for the custody and maintenance of the assets of the fund and such other duties as may be assigned by the commissioners of the fund;

2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;

3. Procedures for the maintenance and administration of appropriate reserves in accordance with sound actuarial principles;

4. Procedures for the purchase of commercial direct insurance or reinsurance if any;

5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-2.16;

6. Procedures governing loss adjustment and legal fees;

7. Procedures for the joining of the fund by a non-member local unit;

8. Procedures for the withdrawal from the fund by a local unit;

9. Procedures for the expulsion of a member local unit;

10. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations.

(b) In addition, the bylaws shall:

1. Include the fund's name, location of its principal office, date of organization, and name and address of each initial member;

2. Specify the insurance coverages to be provided by the fund and the minimum participation required of any member;

3. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

4. Be accompanied by a financial statement on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

5. Where self-insured, provide a plan for specific and aggregate excess insurance or reinsurance and/or for re-entention in accordance with sound actuarial principles and the plan of risk management;

6. Be accompanied by proof of competent personnel and ample facilities within the fund organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or present a contract with a service company for the provision of such services;

7. Establish the claims handling procedure to be utilized by the fund which procedure shall provide for the prompt, fair and equitable settlement of claims;

8. Establish the complaint handling procedure to be utilized by the fund;

9. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-2.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and Department of Community Affairs;

10. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-2.2, and in a form satisfactory to the Commissioner. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner and the Department of Community Affairs;

11. Provide a plan satisfactory to the Department for the establishment and maintenance of reserves for unearned assessments, loss reserves and loss expense reserves and for the determination and distribution of assessment and/or investment refunds which shall include a statement from an actuary that the fund's proposed plan is actuarially sound;

12. With respect to funds providing for self-insurance of workers' compensation liabilities, the bylaws of each fund shall:

i. Guarantee benefit levels equal to those required by the workers' compensation law and other applicable statutes and provide a plan for the prompt payment of such benefits. Information documenting an individual member's financial strength and liquidity shall be made available to the Department upon the Department's written request and in a form specified by the Department;

ii. The bylaws of the fund shall mandate a minimum contribution of at least \$250,000 for the fund's first year of operation and thereafter the minimum contribution shall be at least \$500,000 for each subsequent year of operation unless otherwise approved by the Commissioner;

iii. Unless otherwise approved by the Commissioner, provide for assessments based upon the mandatory merit rating plan on file with the Commissioner;

(c) The bylaws shall be accompanied by the following information and documentation:

1. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

2. Copies of the fund's prospective and executed agreements or contracts with any administrator, servicing organization, attorney, auditor, treasurer or actuary. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization or administrator;

3. A fidelity bond for the administrator in a form and amount acceptable to the Commissioner;

4. A surety bond for the servicing organization in a form and amount acceptable to the Commissioner;

5. Errors and omissions coverage for both the servicing organization and administrator;

6. Contain a designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

7. A list of commissioners, officers and executive committee members, updated annually;

8. Biographical data forms for the senior officers and directors of the administrator and servicing organizations providing services to the fund; and

9. Copies of each commercial insurance policy purchased by the fund.

(d) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided at N.J.A.C. 11:15-2.5(a), file its plan of risk management and any amendments thereto with the Department as provided in P.L. 1983, c.372 as specified in (e) below.

(e) The commissioners shall prepare, or cause to be prepared a plan of risk management for the joint insurance fund. The plan shall include, but not be limited to:

1. The perils or liability to be insured against;

2. Limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier, or reinsurance;

3. The amount of risk to be retained by the fund;

4. The amount of reserves to be established;

5. The proposed method of assessing contributions to be paid by each member of the fund;

6. Procedures governing loss adjustment and legal fees;

7. Coverage to be purchased from a commercial insurer, if any;

8. Reinsurance to be purchased, if any, and the amount of premium therefor.

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he deems it expedient, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of any fund. For the purpose of the examination, the Commissioner may request the fund commissioners or the executive committee, if any, to authorize and employ such person or

persons to conduct the same or to assist therein as he deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the fund examined to the appropriate entity or person upon presentation of a detailed account.

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Added new (c)8 and 9; made more specific various provisions throughout.

11:15-2.7 Disapproval of bylaws and plan of risk management

If the Commissioner determines that the bylaws or plan of risk management of the fund or any subsequent amendments thereto do not meet the requirements of P.L. 1983, c.372 or this subchapter, the Commissioner shall issue a written order containing the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved by the Commissioner within 30 working days of receipt of the bylaws and plan of risk management, the bylaws and plan shall be deemed approved.

11:15-2.8 Revocation of approval

(a) After notice and opportunity for a hearing, the Commissioner may revoke his approval of a fund's bylaws or plan of risk management if a fund:

1. Is found to be insolvent or in a financial condition hazardous to the public;
2. Fails to pay any fee or assessment; or
3. Fails to comply with any of the provisions of P.L. 1983, c.372 or this subchapter, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may revoke approval if, after notice and opportunity for hearing, he finds that:

1. There was a material misrepresentation in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs;
2. The fund, or any of its commissioners or its administrator, has otherwise shown itself to be untrustworthy or incompetent; or
3. The fund, its commissioners or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the fund, its commissioners, or its administrator in their fiduciary capacities.

11:15-2.9 Approval of non-member local units

(a) Prospective new members of the fund shall submit an application for membership to the fund's commission, or executive committee, as applicable, on a form approved by the Commissioner. Such application shall include the indemnity and trust agreement executed herein. The commission or executive committee may approve or disapprove the application for additional members, pursuant to the bylaws of the fund.

(b) The application approved by the fund shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by a revised budget with assessment detail, the name of the new member's insurance fund commissioner, an actuarial statement regarding the adequacy of the member's assessment to cover anticipated losses and such amendments to the fund's bylaws and plan of risk management as may be necessary. Where a fund purchases commercial insurance, or where an actuary has determined a "per capita" rate for the member's assessment to cover anticipated losses which has been previously filed with the Department, actuarial certification of the adequacy of these same rates for each new member is not required. The Commissioner may nevertheless require actuarial certification of a per capita rate for the new member's assessment to cover anticipated losses if, in his or her opinion, the new member will impose an extraordinary impact on the exposure of the fund.

(c) No new membership in the fund shall become effective until the application and accompanying amendments to the fund's bylaws and plan of risk management are approved by the Commissioners of Insurance and Community Affairs.

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Specified in (b) those documents which must accompany an application.

11:15-2.10 Termination and/or withdrawal of fund members

(a) A member of the fund must remain a member for the full term of membership, as provided in the fund's bylaws, unless earlier terminated by the fund for nonpayment of assessments, noncompliance with risk management or underwriting standards or other reasons subject to the prior approval by the Commissioner of Insurance as causes for expulsion. However, such member shall not be deemed terminated for any reason until:

1. At least 10 days notice in writing of the intention to terminate such member is given by registered mail by the fund to the member; and
2. Until like notice shall be filed with the Department and the Department of Community Affairs, together with a certified statement that the notice provided for by (a)1 above has been given; and

3. Until 10 days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the fund that does not desire to continue as a member after the expiration of its membership term, as provided in the fund's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period. The fund shall immediately notify the Department and the Department of Community Affairs of all members that have given notice of withdrawal from the fund.

(c) A member that has been terminated by or does not continue as a member of the fund shall nevertheless remain jointly and severally liable for claims incurred by the fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(d) The fund shall immediately notify the Department, and the Department of Community Affairs, if termination or withdrawal of a member causes the fund to fail to meet any of the requirements of P.L. 1983, c.372 or this subchapter. Within 15 days of such notice, the fund shall advise the Department and the Department of Community Affairs, of its plan to bring the fund into compliance.

(e) A fund member is not relieved of the claims incurred during its period of membership except through payment by the fund or member of those claims.

Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Additional reasons for membership termination.

11:15-2.11 Insolvency and/or bankruptcy of fund members

The insolvency or bankruptcy of a member does not relieve the fund or any other member of joint and several liability for the payment of any claims incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

11:15-2.12 Voluntary dissolution of a fund

(a) A fund may not voluntarily dissolve, or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the fund's members must have voted in favor of a resolution to dissolve the fund, pursuant to a written plan of operation, provided for in the fund's bylaws, at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred losses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the fund or the trust fund accounts may be used for any other purpose.

3. Such plan of dissolution shall contain a statement of the fund's current financial condition computed accord-

ing to generally accepted accounting principles as attested to by an independent certified public accountant;

4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-2.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each type of liability or risk retained jointly on a self-insured basis. Such accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be affected for a claim or loss retention fund without prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within a fund's fiscal year, may be conducted by the fund at any time, by providing 30 days prior written notification to the Commissioner and the Department of Community Affairs. If the Commissioner does not disapprove of the transfer, in writing, within 30 days after receiving such written notification, the request for intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation. Intertrust fund transfers may be conducted only where each member municipality participates in each and every claim or loss retention fund account during that fund year.

Amended by R.1989 d.507, effective September 18, 1989.
See: 21 N.J.R. 3051(b), 21 N.J.R. 3017(a).

Provisions added to (a) to allow intertrust fund transfer upon notification of Commissioner.

11:15-2.14 Administrative account

Each fund shall establish an administrative account which shall be utilized for payment of the fund's general operating expenses, loss prevention activities, data processing services and general legal expenses.

11:15-2.15 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. During the first year of operation of a joint insurance fund these contributions shall be paid in two equal installments, the first installment payable no later than January 15 and the second installment payable no later than May 15 or in any other manner that the Commissioner in his discretion may direct. Subsequent years' assessments may be paid in such installments as shall

be provided in the fund's bylaws, provided, however, that the full assessment shall be paid by each member no later than August 1.

(b) Each member's annual assessment shall consist of an amount allocated for the administrative account, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which such member participates.

(c) The total amount of each member's annual assessments to the joint insurance fund shall be certified by the joint insurance fund commissioners to the governing body of each participant at least one month prior to the beginning of the next fiscal year. As a condition of continued participation in the joint insurance fund each member shall pay the amount certified at such time and in such manner provided in the fund's bylaws.

(d) Unless otherwise approved by the Commissioner, the annual assessment of each fund member funds providing for the self-insurance of workers' compensation and employers' liability coverages shall be based upon the mandatory merit rating plan on file with the Commissioner. The Commissioner of Insurance may withdraw his approval of any assessment not based upon the mandatory plan if he shall find that such assessment is unreasonable or inadequate for the members of the fund to which it applies. In taking any action under this section, the Commissioner may seek assistance from the fund commissioners, the executive committee or the administrator.

(e) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-2.16.

Emergency amendment, R.1984 d.616, effective December 24, 1984 (expires February 22, 1985).

See: 17 N.J.R. 218(a).

(a) substantially amended.

Adopted by R.1985 d.128, effective February 22, 1985.

See: 17 N.J.R. 218(a), 17 N.J.R. 709(a).

11:15-2.16 Supplemental assessments

(a) Each fund shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the fund's claim or loss retention or administrative accounts to assure payment of the fund's obligations, including payment of benefits under the workers' compensation law.

1. The fund shall assess each participating member an additional proportionate amount, as provided in the fund's bylaws and plan of risk management or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The joint insurance fund commissioners shall submit to the Commissioner of Insurance and the Commissioner of the Department of Community Affairs a report of the causes of the fund's or account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The participants shall provide such additional assessments in accordance with the provisions of the Local Budget Law (N.J.S.A. 40A:4-1 et seq.).

11:15-2.17 Failure or refusal to provide required assessments

Should any member of a joint insurance fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the joint insurance fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the joint insurance fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-2.18 Individual loss reserve funds

(a) Whenever the risk management plan of a joint insurance fund requires the fund's members to individually retain a specified amount of risk, potential liability, or incurred losses, the participant shall provide for such liability, or incurred losses:

1. As a deductible to be charged to the operating expenses of the incurring department or agency;
2. Through a separate item of appropriation for the loss year in its annual budget; or,
3. Through establishment of an insurance fund pursuant to N.J.S.A. 40A:10-1 et seq.

11:15-2.19 Certification of funds

Prior to any commitment or agreement requiring the expenditure of funds by the joint insurance fund, the custodian of the fund's assets shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted.

11:15-2.20 Investments; application of investment income

(a) The free balance of any account maintained by a joint insurance fund, whether for administrative or claims or loss purposes, shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be credited to each such account.

(c) The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

11:15-2.21 Refunds; interyear fund transfers

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the fund not sooner than 24 months after the end of the fiscal year.

(b) The fund may seek approval from the Commissioner to make initial refund payments from a claims or loss retention fund account remaining from any year which has been completed at least 24 months by submitting a written request to the Department of Insurance and Department of Community Affairs with appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that the fund has an overall surplus for that fiscal year; and such other information that the Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus must exceed 35 percent of unpaid claims for that fiscal year. Claims must be undiscounted, and the IBNR reserve must be certified by an actuary. The fund may seek approval as above for subsequent refund payments at any time from a claims or loss retention fund account remaining from any year which has been completed for at least 36 months. A full and final refund of net current surplus will not be allowed until all case reserves and all IBNR reserves are closed. If a joint insurance fund subject to this subchapter prior to September 18, 1989 made an initial refund prior to September 18, 1989, such joint insurance fund may seek approval to make an additional initial refund subject to the requirements contained in this subsection as amended.

(c) A refund for any fiscal year shall be paid only in proportion to the member's participation in the fund for such year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the fund after that year.

(d) At the option of the member the refund may be retained by the fund and applied towards the member's next annual assessment.

(e) The fund may seek approval from the Commissioner to make interyear fund transfers at any time from a claims or loss retention trust account from any year which has been completed for at least 12 months by submitting a written request to the Department of Insurance and Department of Community Affairs with appropriate documentation as set

forth in (b) above. The interyear fund transfer may be in any amount subject to the limitation that after the transfer, the remaining net current surplus must exceed 35 percent of unpaid claims for that fiscal year. Claims must be undiscounted, the IBNR reserve must be certified by an actuary and the membership for each fiscal year involving interyear fund transfers must be identical between fiscal years.

Amended by R.1989 d.507, effective September 18, 1989.

See: 21 N.J.R. 3051(b), 21 N.J.R. 3017(a).

Requirement at (a) changed from 12 months to 24 months; subsequent refund amounts and time period provisions added, interyear transfer provisions added at (e), surplus requirement tied to claims data at (b).

11:15-2.22 Disbursements and/or payment of claims

(a) All disbursements, payment of claims settlements or other expenditure of funds of the joint insurance fund whether for administrative expenses or for claims purposes must be approved by a majority of the joint insurance fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the joint insurance fund commissioners may designate the fund's administrator or servicing organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the joint insurance fund commissioners to approve for payment of any or specified types of claims in an amount not to exceed \$5,000 per claim or payment. The designation of the certifying and approving officer may be conditioned or restricted by the joint insurance fund commissioners to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or such other procedures or restrictions as the joint insurance fund commissioners may deem appropriate.

1. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the official having custody of the fund's assets, directing that a check for payment be prepared.

2. The certifying and approving officer shall prepare a report of all claims approved by him or her since the last such report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the joint insurance fund commissioners at their next scheduled meeting. The joint insurance fund commissioners shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the joint insurance fund commissioners, they shall direct appropriate action to be taken.

(c) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the

certification of some officer or duly designated agent or employee of the joint insurance fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the joint insurance fund's claims administrator, if there be one, shall certify as to the claim's correctness and validity.

(d) All claims shall be paid by check. The check shall be signed by two persons so designated by the joint insurance fund commissioners.

(e) All claims and other disbursements approved for payment by the joint insurance fund commissioners or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

11:15-2.23 Excess insurance and/or reinsurance

(a) Each fund providing primary or underlying coverage on a self-insured or commercially insured basis shall secure excess insurance or reinsurance in a form, in an amount and by an insurance company acceptable to the Commissioner, if commercially available and not unreasonably priced, as determined by the fund's executive committee, and as approved by the Department of Insurance and the Department of Community Affairs.

(b) The policy of excess insurance and/or reinsurance issued by an insurance carrier to a fund shall include provisions for aggregate excess insurance in addition to single accident (single occurrence) excess insurance.

(c) Certificates of excess insurance and/or reinsurance showing policy limits and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(d) Losses in excess of the established self-insurance retention shall be borne by the excess carrier(s) according to the terms and conditions of the excess contract(s).

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Added references to "commercially insured" at (a).

11:15-2.24 Financial statement and reports

(a) A sworn annual report in a form prescribed by the Commissioner shall be prepared by each fund, filed concurrently with the Department and Department of Community Affairs and made available to each fund member on or before June 30 of each year. The report shall be accompanied by:

1. An annual audited statement of the financial condition of the fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and section 11 of P.L. 1983, c.372.

2. Reports of outstanding liabilities showing the number of claims, amounts paid to date and current reserves for losses, claims and unearned assessments as certified by an actuary.

3. Such other information, as may be required by the Department.

11:15-2.25 Examination of funds possibly in financial condition detrimental to the public

(a) The Commissioner shall examine any fund which the Commissioner has reasonable cause to believe may be insolvent or in a financial condition detrimental to its members or to the public. It shall be the duty of the fund members, upon majority vote, to notify the Commissioner of any information indicating that any fund may be insolvent or in a financial condition detrimental to the fund's members or the public.

(b) The members may, upon majority vote, request that the Commissioner order an examination of any fund member which the fund, commissioners or executive committee, if any, in good faith believes may be in a financial condition detrimental to other fund members or to the public.

(c) Any examination made pursuant to P.L. 1983, c.372 and this subchapter shall be conducted in a manner satisfactory to the Commissioner and by such persons as the Commissioner designates. The cost of any examination shall be borne by the fund.

11:15-2.26 Servicing organizations; administrator

(a) Except with the approval of the Commissioner, no servicing organization or its employees, officers or directors shall have either a direct or indirect financial interest in an administrator or be an employee, officer or director of an administrator.

(b) Except with the approval of the Commissioner, no administrator, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization.

(c) Each service contract shall include a clause stating, "Unless the Commissioner otherwise permits, the service organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

(d) The fund commissioners or the executive committee, if any, shall designate an administrator to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee, if any, meetings shall detail the areas of authority delegated to the administrator.

11:15-2.27 Conflict of interest

(a) No official or employee of a participating local unit or any members of the family of such officials or employees, or any businesses in which such officials, employees or family members have a beneficial interest shall seek to obtain or participate in any contract to be entered into by the joint insurance fund for administration, loss control, investment or depository services, insurance coverage or any other service, commodity or material without first fully disclosing in writing the nature and extent of such interest, financial or otherwise, to the joint insurance fund commissioners. It shall be the responsibility of the joint insurance fund commissioners to determine if the interest so disclosed is such as to constitute an actual or potential conflict of such degree as to impair the ability of the officer, employee, family member or business from fully and impartially performing the duties required by the joint insurance fund. If so, the officer, employee, family member or business shall be prohibited from entering into such contract until the cause of such conflict is removed.

(b) Any contract entered into between the joint insurance fund and any individual, firm corporation or agency which fails to disclose an actual or potential conflict situation shall be void.

(c) There shall be no collusion or evidence or appearance of collusion, between any official or employee of the members or employees of the joint insurance fund and any official or employee of any contractor, vendor, insurance company, bank, consultant, brokerage firm or any other profit making or non-profit firm attempting to solicit a contract with the joint insurance fund or awarded a contract by the joint insurance fund.

11:15-2.28 Notice and hearings

(a) The Commissioner shall give prior written notice of any proposed suspension, revocation, cease and desist order, assessment or other enforcement action to the fund commissioners, its executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the fund or the person of its right to request a hearing on the proposed enforcement action. A copy of such written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The fund involved shall have 20 days from mailing of the notice to request a hearing, which may be formal or informal, on the proposed enforcement action. Failure to mail a request for hearing within the time prescribed shall result in the revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled. If,

after complying with the requirements of this section, the Commissioner orders the revocation of a fund's authority, such revocation shall become effective 30 days after issuance of the Commissioner's order. The Commissioner, in his discretion, may for good cause shown, provide for a reasonable extension of such 30 day period.

11:15-2.29 Orders

(a) After notice and opportunity for a hearing, as provided in 11:15-2.28, the Commissioner may issue an order requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of P.L. 1983, c.372 or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, that a fund has violated any cease and desist order, the Commissioner may revoke his approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-2.28, the Commissioner may issue an order requiring the joint insurance fund commissioners, or the executive committee, if any, to dismiss an administrator or terminate the service contract of a servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by such administrator or servicing organization, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

11:15-2.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

**SUBCHAPTER 3. JOINT INSURANCE FUNDS
FOR LOCAL GOVERNMENTAL UNITS
PROVIDING GROUP HEALTH AND TERM
LIFE BENEFITS**

11:15-3.1 Purpose and scope

(a) This subchapter sets forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more local units for the purpose of providing contributory or non-contributory group health insurance or group term life

insurance, or both, to employees or their dependents, and to any other person eligible for coverage by a member local unit pursuant to N.J.S.A. 40A:10-36 et seq.

(b) This subchapter shall apply to all local units seeking to form a joint insurance fund for the purpose of providing contributory and non-contributory group health or group term life insurance and all joint insurance funds formed for such purpose pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) No local unit of government shall join together with any other local unit or units to act as a joint insurance fund for the purpose of providing contributory or non-contributory group health or group term life insurance except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

11:15-3.2 Definitions

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

“Actuary” in the case of health insurance means a fellow in good standing of the Society of Actuaries or the Casualty Actuarial Society with at least three years recent experience in health insurance pricing and reserving; “actuary” in the case of life insurance means a fellow in good standing of the Society of Actuaries with at least three years recent experience in life insurance pricing and reserving.

“Administrator” means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of a fund member or an independent contractor.

“Chairman” means the chairman of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

“Commissioner” means the Commissioner of the Department of Insurance.

“Department” means the Department of Insurance.

“Dependent” means dependent as defined pursuant to N.J.S.A. 40A:10-16.

“Executive committee” means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq.

“Fiscal year” or “fund year” means either the calendar year January 1 through December 31, or the fiscal year July 1 through June 30, as designated in the fund’s bylaws.

“Health insurance” means health insurance as defined pursuant to N.J.S.A. 17B:17-4; service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State, including basic health care services and/or supplemental health care services provided by health maintenance organizations; or dental care services provided by dental plan organizations and dental service corporations.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to the agreement arising from their participation in the fund.

“Insolvent fund” means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after July 19, 1993.

“Joint insurance fund” or “fund” means a group established by two or more local units of government to create an insurance fund for the purposes of providing contributory or non-contributory group health insurance or group term life insurance to their employees or dependants and to any other person eligible for coverage by a member local unit pursuant to law, approved by the Department pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

“Joint insurance fund commissioners” means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36 et seq.

“Lead agency” means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

“Life insurance” means life insurance as defined pursuant to N.J.S.A. 17B:17-3.

“Local unit of government,” “local unit” or “member” means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A-25.40 and 40A:10-51) or any contracting unit as defined in N.J.S.A. 40A:11-2.

“Net current surplus” or “surplus” means the excess of the fund’s unencumbered assets over its reserves and liabilities.

“Secretary” means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

“Servicing organization” or “program manager” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any functions as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of plan documents, employee booklets and other documents, risk selection and pricing, stop-loss or reinsurance producer services which include producer negotiations on behalf of the fund for stop-loss or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. or this subchapter, and such other duties as designated by the fund.

“Stop-loss insurance” or “reinsurance” means insurance, purchased from an insurer authorized or admitted in the State of New Jersey, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per individual or annual aggregate basis.

11:15-3.3 Agreement to join joint insurance fund; duration

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution or ordinance shall provide for execution of a written agreement specifically conditioning membership on acceptance of the fund’s bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-36 et seq. The agreement shall specify the extent of the local unit’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6) and subject to N.J.A.C. 11:15-3.10. The agreement shall also specify that the fund members have never defaulted on claims if self-insured, and, if not self-insured, have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolu-

tion, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement.

11:15-3.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the “Local Fiscal Affairs Law” (N.J.S.A. 40A:5-1 et seq.), the “Local Public Contracts Law” (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:34), and the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:16I-1 et seq.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the “Local Public Contracts Law” (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating its fiscal year period.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2. The custodian shall periodically report to the fund commissioners on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare, not later than 60 days prior to the beginning of the fund’s subsequent fiscal year, the proposed budget for that subsequent year. The budget shall identify the proposed items and amounts of expenditure for its operations; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund’s proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held in accordance with N.J.S.A. 40A:4-1 et seq.

giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than the end of the fund's current fiscal year, the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption.

4. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-3.21(e), shall be retained by the fund administrator or program manager at the discretion of the fund commissioners. All books, records, files and documents of the fund shall be retained for not less than five years.

(h) Each fund shall maintain written minutes of its meetings and shall make the minutes available to the Commissioner upon request.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. The reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners. The Department may require that the reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. The reports shall also be made available to the Department for review during any examination of the joint insurance fund.

(j) All officers, employees and agents, including the administrator, servicing organization and program manager of the joint insurance fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

(l) Each fund shall cover a minimum of 1,000 employees in a self-funded health care plan providing hospital, surgical and medical benefits. A fund may cover less than 1,000 employees with the approval of the Commissioner if he or she determines that the proposed risk retention is actuarially sound in relationship to the projected employee participation.

11:15-3.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioners of Insurance and Community Affairs, as provided in N.J.S.A. 40A:10-41, its bylaws and plan of risk management and any subsequent amendments thereto. In addition, the initial filing shall be accompanied by the information and documentation specified at N.J.A.C. 11:15-3.6(c) and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-3.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit seven copies of a filing in the format set forth herein. All information shall be submitted completely and accurately.

1. All filings and accompanying documents shall be submitted to the Department and the Department of Community Affairs.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-3.6 shall constitute the fund's bylaws and plan of risk management for purposes of N.J.S.A. 40A:10-41. In order to facilitate the filing and review process, the review of a filing shall be separated into two stages. The information set forth in N.J.A.C. 11:15-3.6(a) through (d) constitutes the initial stage. Within 90 days of the Commissioner's acceptance of the initial information filed, the fund shall complete the filing process by submitting the information set forth in N.J.A.C. 11:15-3.6(e). Failure to file the required subsequent information within 90 days may result in the disapproval of the fund's filing. No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management and other information required pursuant to N.J.A.C. 11:15-3.6 have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management, or change in the information or documentation required to accompany the filing of the fund's bylaws or plan of risk management as provided in (a) above, shall take effect until the amendment or change is approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(d) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(e) In addition to the information set forth in N.J.A.C. 11:15-3.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(f) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Insurance
Division of Financial Examinations
Attn. Municipal Health JIF Admissions
20 West State Street
CN-325
Trenton, NJ 08625

11:15-3.6 Bylaws and plan of risk management; contents

(a) The prospective commissioners of a joint insurance fund shall prepare and, after the approval by resolution of the governing body of each participating local governmental unit, adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and alternate commissioners and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency;
2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;

3. Procedures for the establishment, maintenance and administration of appropriate reserves in accordance with sound actuarial principles, including the assumptions and methodology to be used for the calculation of policy and claim reserves;

4. Procedures for the purchase of direct insurance, or reinsurance, if any;

5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-3.16;

6. Procedures governing loss adjustment and legal fees;

7. Procedures and admissions criteria for the joining of the fund by a non-member local unit;

8. Procedures in compliance with N.J.A.C. 11:15-3.10 for the withdrawal from the fund by a local unit;

9. Procedures for the expulsion of a member local unit;

10. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations; and

11. Procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments.

(b) In addition, the bylaws shall:

1. Include the fund's name;

2. Provide that upon each fiscal year renewal of the fund, coverages and benefit levels as may be determined and specified by the fund and its members; provided the affected persons receive written notice of any changes in coverage or benefit levels at least 30 days prior to taking effect and that a copy of the written notice and the relevant rate changes shall be filed with the Department 30 days prior to taking effect;

3. Specify the subrogation rights of the fund;

4. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

5. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-3.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and the Department of Community Affairs;

6. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-3.2, and in a form satisfactory to the Commissioner.

- i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by

the fund commissioners as fiduciaries for the benefit of fund claimants.

ii. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts for each of the following from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums for each risk or liability:

- (1) Employer contributions to group health insurance;
- (2) Employee contributions to contributory group health insurance;
- (3) Employer contributions to group term life insurance;
- (4) Employee contributions to contributory group term life insurance;
- (5) Employer contributions to contingency accounts;
- (6) Employee contributions to contingency accounts; and
- (7) Other trust accounts as required by the Commissioner.

iii. Notwithstanding (b)6ii above to the contrary, a fund shall not be required to establish separate trust accounts for employee contributions, provided the fund provides a plan in its bylaws as required by (b)7 below which provides for the recording and accounting of the employee contributions of each member.

iv. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner and the Department of Community Affairs;

7. If applicable pursuant to (b)6iii above, be accompanied by a plan which provides for the recording and accounting of the employee contributions of each member, including, but not limited to, the collection and distribution of such employee contributions;

8. Be accompanied by a copy of a resolution or ordinance of intent to form the fund from at least two local units;

9. Be accompanied by a feasibility study which shall include, but not be limited to:

- i. The proposed date that the fund intends to begin providing coverage;
- ii. The proposed location of the fund's principal office;
- iii. The name and address of the fund's prospective charter members;

iv. The pro forma budget and assessments for the fund's first fiscal year;

v. A certification by an actuary that the pro forma budget is actuarially sound; and

vi. The minimum number of employees to be covered before the fund begins to provide coverage. Funds providing health or life insurance on a self-insured basis shall have membership resolutions from local units representing at least 1,000 covered employees before beginning to provide coverage; and

10. Be accompanied by a non-refundable filing fee in the amount of \$1,500.

(c) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided in (a) above, file its plan of risk management and any amendments thereto with the Department as provided in N.J.S.A. 40A:10-41 containing the information as specified in (d) below.

(d) The commissioners shall prepare, or cause to be prepared, a plan of risk management for the joint insurance fund. The plan description shall include, but not be limited to:

1. The lines of coverage to be provided and the minimum participation required of any member which, for the initial fiscal year of the fund, shall be the coverages and benefit levels of the member local units immediately prior to joining the fund unless changes in the coverages or benefit levels are approved by the Commissioner pursuant to N.J.A.C. 11:15-3.7;

2. The limits of coverage, whether self-insurance, insurance purchased from an insurer, or reinsurance;

3. The amount of risk to be retained by the fund on a self insured basis, which for group term life insurance shall not exceed a face amount of \$5,000 per covered employee;

4. The assumptions and methodology to be used to calculate the policy and claims reserves;

5. The proposed method of assessing contributions to be paid by each member of the fund;

6. Coverage to be purchased from an insurer if any;

7. Reinsurance to be purchased, if any, and the amount of premium therefor;

8. The initial and renewal assessment methodologies, including rating methodologies, for the plan and individual members including actuarial principles, assumptions and methods of calculations in sufficient detail to enable the Commissioner to determine that the charges are not excessive, inadequate or unfairly discriminatory;

9. The rating periods for initial members and for members joining the fund during the fund's fiscal year;

10. The adjusted assessments and the underlying factors considered in the development of the adjusted rates, if the rates for members joining the fund during the fund's fiscal year are to be adjusted;

11. Provision of preferred provider, managed care and health maintenance organization networks and copies of any proposed and executed contracts or agreements for such services;

12. Procedures for open enrollment for all covered individuals not later than the first month of the fund's initial fiscal year, and annually thereafter for each subsequent fiscal year;

13. Options for the conversion of benefits, if any, and a detailed description of procedures for continuation of coverage for former employees of a member which terminates its membership in the fund;

14. The disclosure of all benefit limits for all covered benefits in plan booklets, certificates or other documents made available to covered participants;

15. The participation rules when all or part of the premium is to be derived from funds contributed by covered employees;

16. Retirees coverage including the assessment and rating plan for such coverage;

17. The limits of coverage for newborn or adopted children, which shall be automatic from birth or adoption for 31 days and which may include an additional assessment for coverage beyond 31 days;

18. Provision for plan documents, benefit plan booklets and specimens of such which must contain at least the following information and be provided to all fund participants within 30 days of membership or renewal:

i. General information, including the following:

- (1) Enrollment procedures and eligibility;
- (2) Dependent eligibility;
- (3) The time coverage begins;
- (4) Timeframes within which coverage may be changed;
- (5) The time coverage ends;
- (6) Provisions for continuation of coverage;
- (7) Conversion privileges; and
- (8) The forms and instructions for enrollment;

ii. A description of benefits, including the following:

- (1) Definitions;
- (2) A description of each benefit, including the following:
 - (A) Eligible services and supplies;

(B) Deductibles and co-payments; and

(C) Examples of the above as needed; and

(3) Exclusions;

iii. Claim procedures, including the following:

(1) Submission of claims;

(2) Proof of loss;

(3) Complaint and appeal procedures; and

iv. Cost containment programs, including the following:

(1) Pre-admission programs;

(2) Second surgical opinion programs;

(3) Other cost containment programs; and

(4) Application and level of employee penalties (if any);

19. A summary statement which describes the benefits currently provided to covered employees by each prospective member of the fund, and the benefits proposed to be provided by the fund;

20. The procedures for the closure of fund years including the maintenance of all relevant accounting records; and

21. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-3.21.

(e) The Commissioner shall notify the fund in writing whether the initial information submitted pursuant to (a) through (d) above meets the requirements of N.J.S.A. 40A:10-36 et seq. and this subchapter and whether the initial information has been accepted. If the Commissioner does not reject the initial information within 30 working days, the initial information shall be deemed accepted. Within 90 calendar days of the Commissioner's acceptance of the information submitted pursuant to (a), (b), (c) and (d) above, the fund shall complete the application process by submitting the following additional information and documentation:

1. The location of the fund's principal office, date of organization, and name and address of each initial member;

2. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

3. Copies of the fund's prospective and executed agreements or contracts, and any renewal or new agreements or contracts with any administrator, servicing organization or program manager. Copies of the above shall be accompanied by a list of all parties having or deriving

any interest, right or benefit in the servicing organization, program manager or administrator;

4. A cash management plan;
5. A fidelity bond for the administrator and all persons handling fund assets in a form and amount acceptable to the Commissioner;
6. A surety bond for the claims administrator or any other servicing organization deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner; and a surety bond for any other servicing organization as deemed appropriate by the fund commissioners in a form and amount acceptable to the fund commissioners;
7. Errors and omissions coverage for the servicing organization, program manager, administrator, and producer who negotiates stop-loss or reinsurance on behalf of the fund;
8. A designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;
9. A list of commissioners, officers, executive committee members, and servicing organizations, updated annually;
10. Data forms incorporating the appropriate and necessary professional qualifications for senior officers and directors of the administrator and servicing organizations providing services to the fund, updated annually;
11. Copies of each insurance and reinsurance policy purchased by the fund;
12. A pro forma financial statement based on the fund's actual membership on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;
13. Where self-insured, a plan for specific and aggregate stop-loss insurance or reinsurance and/or for retention in accordance with sound actuarial principles and the plan of risk management;
14. Proof of competent personnel and ample facilities within the fund organization with respect to claims administration, including a claims processing manual, underwriting matters and loss prevention, or present a contract with a servicing organization(s) for the provision of such services specifying compensation schedules and standards of performance;
15. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the fund. The description shall include, but not be limited to, copies of all producer contracts, which shall include a description of the producers' obligations, responsibilities and compensation; the duration of such contracts; and an indication whether the contracts are subject to renewal.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable;

16. The claims handling procedure to be utilized by the fund which shall provide for the prompt, fair, equitable and confidential settlement of claims and which shall be administered in compliance with N.J.S.A. 17B:30-13.1 and 17B:30-13.2, and N.J.A.C. 11:2-17 and 11:15-3.22; and

17. The complaint handling procedure to be utilized by the fund which shall provide for the confidentiality of the claimant's identity in compliance with N.J.A.C. 11:15-3.22 and including, but not limited to, procedures for the resolution of disputed claims operated and adjudicated by an independent organization or arbitrator.

11:15-3.7 Disapproval of bylaws and plan of risk management

(a) If the Commissioner determines that the bylaws or plan of risk management of the fund and all other information required pursuant to N.J.A.C. 11:15-3.6, or any subsequent amendments or changes thereto, do not meet the requirements of N.J.S.A. 40A:10-36 et seq., or this subchapter, the Commissioner shall disapprove the bylaws or plan of risk management and issue a written order containing the specific reasons for disapproval, and the requirements to be met before approval may be granted. Upon the receipt of the notice of disapproval, the commissioners of the affected joint insurance fund may request an informal Departmental public hearing. The public hearing shall be convened by the Commissioner in a timely manner.

(b) If, after submission of all of the information set forth in N.J.A.C. 11:15-3.6, the bylaws and plan of risk management containing all of the information required by N.J.A.C. 11:15-3.6 are not disapproved by the Commissioner within 30 working days of receipt of the supplemental information set forth in N.J.A.C. 11:15-3.6(e), the bylaws and plan shall be deemed approved, pursuant to N.J.S.A. 40A:10-41c.

11:15-3.8 Suspension, termination, assumption of control, or other action by Commissioner

(a) After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of any joint insurance fund, or direct or take any action deemed necessary for good cause, to enable a fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if a fund:

1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes an adverse effect upon the ability of the fund to pay expected losses;
2. Fails to pay any fee or assessment; or
3. Fails to comply with any of the provisions of N.J.S.A. 40A:10-36 et seq. or this subchapter, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may terminate or suspend a fund's authority if, after notice and opportunity for a hearing, he or she finds that:

1. There was a material misrepresentation or omission in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs;
2. The fund, or any of its commissioners or its administrator, has otherwise shown itself to be untrustworthy or incompetent; or
3. The fund, its commissioners or its administrator have misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member or a person otherwise entitled thereto and that have been entrusted to the fund, its commissioners, or its administrator in their fiduciary capacities.

11:15-3.9 Approval of non-member local units

(a) Prospective new members of the fund shall submit an application for membership to the fund's commission, or executive committee, as applicable, on a form acceptable to the Commissioner. The application shall include a copy of the resolution of participation and executed indemnity and trust agreement. The commission or executive committee may approve or disapprove the application for additional members, pursuant to the admissions criteria and bylaws of the fund.

(b) Any application approved by the fund shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by a revised budget with assessment detail, the name of the new member's insurance fund commissioners and alternates in accordance with N.J.A.C. 11:15-3.6(e), amendments to the fund's bylaws and plan of risk management as may be necessary, and any other information the Commissioner may deem necessary.

(c) No new membership in the fund shall become effective until the application and accompanying amendments to the fund's bylaws and plan of risk management are approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(d) If a non-member local unit is not approved for membership, the fund shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member local unit. The fund shall retain a copy of all disapprovals for five years.

11:15-3.10 Termination and/or withdrawal of fund members

(a) A member of the fund may remain a member for the full term of membership, as provided in the fund's bylaws, unless terminated by the fund for nonpayment of assessments, noncompliance with risk management or underwriting standards, or for other reasons subject to the prior

approval by the Commissioner as reasons for termination. However, a member shall not be deemed terminated for any reason until:

1. After 10 days written notice of the intention to terminate the member has been given by the fund to the member, which notice shall state the reasons for termination and shall be given by registered mail;
2. Like notice shall have been filed with the Department and the Department of Community Affairs, together with a certified statement that the notice provided for by (a)1 above has been given; and
3. Ten days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the fund that does not desire to continue as a member after the expiration of its membership term, as provided in the fund's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period. The fund shall immediately notify the Department and the Department of Community Affairs of all members that have given notice of withdrawal from the fund.

(c) A member of the fund that did not approve any amendment to the fund bylaws approved pursuant to N.J.S.A. 40A:10-43, or that does not otherwise want to continue membership prior to the termination of its membership term pursuant to (b) above shall provide written notice of its intent to withdraw 90 days prior to its withdrawal.

(d) A member that has been terminated by or does not continue as a member of the fund shall nevertheless share in any surplus in the appropriate trust accounts for that fund year and remain jointly and severally liable for claims incurred by the fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(e) Prior to the conclusion of the fund's current fiscal year, the fund shall provide written notification to a member that has been terminated by or withdrawn from the fund, of the estimated surplus or estimated supplemental assessment for which the member may share or be liable pursuant to (d) above.

(f) The fund shall immediately notify the Department and the Department of Community Affairs if termination or withdrawal of a member causes the fund to fail to meet any of the requirements of N.J.S.A. 40A:10-36 et seq. or this subchapter. Within 15 days of the notice, the fund shall advise the Department and the Department of Community Affairs of its plan to bring the fund into compliance.

11:15-3.11 Insolvency and/or bankruptcy of fund members

The insolvency or bankruptcy of a member does not relieve the fund or any other member of joint and several liability for the payment of any liability incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

11:15-3.12 Voluntary dissolution of a fund

(a) A fund may not voluntarily dissolve, or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the fund's members must have voted in favor of a resolution to dissolve the fund, pursuant to the written plan contained in the fund's bylaws, at a meeting duly called for such purposes;
2. The plan of dissolution must provide for the payment of all incurred losses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the fund or the trust fund accounts may be used for any other purpose;
3. The plan of dissolution shall contain a statement of the fund's current financial condition computed on a statutory basis and computed according to generally accepted accounting principles as attested to by an independent certified public accountant; and
4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-3.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account in accordance with N.J.A.C. 11:15-3.6(b)6 from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums retained jointly on a self-insured basis. The accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be affected for a claim or loss retention fund without prior written approval of the Commissioner.

(b) A fund may establish by resolution a separate trust fund account for contingencies and may include as a part of its budget an assessment for this account. The resolution shall provide a formula for the equitable assessment of members for the account, specify the uses of the contingency account consistent with (b)2 below, and provide a formula for the equitable distribution and return of contingency funds to terminated or withdrawing members in accordance with the procedures and time frames of N.J.A.C. 11:15-3.20. Pursuant to N.J.A.C. 11:15-3.6(b)6 and 7, the fund shall maintain a separate contingency account for employer contributions and employee contributions for contributory or non-contributory group health insurance and term life insurance.

1. In any one year an assessment, transfer of surplus or any combination of assessments for and transfers to a contingency account shall not exceed 2.5 percent of the fund's current fiscal year earned income. The contingency accounts of a fund shall not exceed 10 percent of the fund's current fiscal year income. The annual and aggregate limitations on the amount of the contingency account set forth herein may be increased with the prior approval of the Commissioner.

2. By resolution, a fund may transfer funds from a contingency trust fund account to a claims or loss retention trust fund account to pay claims, allocated claim expenses, and reinsurance and stop-loss premiums in a fund year which has an inadequate cash balance. The transaction shall be accounted for as a permanent transfer, and the fund shall notify the Department within 30 days of any such transfers.

3. A fund shall not transfer funds to a claims or loss retention trust fund account from a contingency trust fund account if the transfer would result in a statutory deficit in the contingency trust fund account.

4. If a fund utilizes an amount equal to 2.5 percent or more of its current fiscal year income from a contingency account during a fiscal year, the joint insurance fund commissioners shall, within 10 days of such utilization, submit to the Commissioner and the Commissioner of the Department of Community Affairs a report on the causes of the utilization and the steps taken to prevent a recurrence of such circumstances.

5. The fund shall maintain accounting records on contingency accounts by fund year which shall include:

- i. The sources of contributions to the contingency account;
- ii. Transfers from the account to a claims or loss retention trust fund account by fund year;
- iii. Interest earned, which shall be allocated by the average balance in the contingency account by fund year; and
- iv. The pro-rata share of each participating member local unit allocable to each member.

11:15-3.14 Administrative account

Each fund shall establish an administrative account which shall be utilized for payment of the fund's general operating expenses, cost containment activities, data processing services and general legal expenses.

11:15-3.15 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. Assessments for contributory or non-contributory group health insurance and term life insurance may be paid in monthly installments.

(b) Each member's assessment shall consist of an amount allocated for the administrative account, contingency trust fund account when appropriate, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which the member participates.

(c) The total amount of each member's assessments to the joint insurance fund shall be certified by the joint insurance fund commissioners to the governing body of each participant at least one month prior to the next fiscal quarter. As a condition of continued participation in the joint insurance fund, each member shall pay the amount certified at the time and in the manner provided in the fund's bylaws.

(d) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-3.16.

11:15-3.16 Supplemental assessments

(a) Each fund shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the fund's claim or loss retention accounts or administrative accounts to assure payment of the fund's obligations.

1. The fund shall assess each participating member an additional proportionate amount, as provided in the fund's bylaws and plan of risk management or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The joint insurance fund commissioners shall submit to the Commissioner and the Commissioner of the Department of Community Affairs a report of the causes of the fund's or any account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The members shall provide the additional assessments in accordance with the provisions of the Local Budget Law (N.J.S.A. 40A:4-1 et seq.), or Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.), as applicable.

11:15-3.17 Failure or refusal to provide required assessments

Should any member of a joint insurance fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the joint insurance fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the joint insurance fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify in writing the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-3.18 Certification of funds

Prior to any commitment or agreement requiring the expenditures of funds by the joint insurance fund, the custodian of the fund's assets shall certify the availability of sufficient unencumbered funds in the account to fully pay all charges or commitments to be accepted.

11:15-3.19 Investments; application of investment income

(a) The free balance of any account maintained by a joint insurance fund, whether for administrative, contingency or claims or loss purposes, shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be credited to each account by fund year.

(c) The investment and interest income earned by investment of the assets of the administrative and contingency accounts shall be credited to each such account.

(d) With the prior approval of the Commissioner and the Commissioner of the Department of Community Affairs, a joint insurance fund may join together with other joint insurance funds to implement a joint investment and cash management program, as permitted pursuant to N.J.S.A. 40:8A-3.

11:15-3.20 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary or in excess of the limits established for a contingency fund pursuant to N.J.A.C. 11:15-3.13(b) as certified by an actuary shall be declared to be refundable by the fund not later than 180 days after the end of the fiscal year, unless otherwise extended by the Commissioner for good cause shown. A refund of at least 50 percent of the amount declared to be refundable shall be made not later than 210 days after the end of the fiscal year, or 30 days after the end of any period of extension period granted by the Commissioner for the determination of amounts refundable, whichever is later. A refund of any remaining amounts shall not be made later than 270 days after the end of the fiscal year, or 90 days after the end of any extension period granted by the Commissioner for the determination of amounts refundable, whichever is later.

(b) A refund for any fiscal year shall be paid only in proportion to the member's participation in the fund for the fiscal year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the fund after that year.

(c) At the option of the member, the refund may be retained by the fund and applied toward the member's next assessment payment.

(d) The commissioners or executive committee may appropriate a portion of any refund to the appropriate contingency account subject to the provisions of N.J.A.C. 11:15-3.13(b).

11:15-3.21 Disbursements and/or payment of claims

(a) All disbursements, payments of claims settlements or other expenditure of funds of the joint insurance fund whether for administrative expenses or for claims purposes must be approved by a majority of the joint insurance fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the fund commissioners may designate the fund's administrator or servicing organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the fund commissioners to approve for payment any or specified types of claims not to exceed an amount approved by the Commissioner in the plan of risk management. The designation of the certifying and approving officer may be conditioned or restricted by the fund commissioners to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or other procedures or restrictions as the fund commissioners may deem appropriate. The authority of the certifying and approving officer may be revoked at any time by the fund commissioners.

1. Upon approval, the certifying and approving officer shall certify the amount and particulars of the approved claims to the official having custody of the fund's assets, directing that a check for payment be prepared.

2. The certifying and approving officer shall prepare a report of all claims approved by him or her since the last report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the fund commissioners at their next scheduled meeting. The fund commissioners shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the fund commissioners, they shall direct appropriate action to be taken.

(c) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the fund's claims administrator, if there is one, shall certify the claim's correctness and validity.

(d) All claims shall be paid by check. The check shall be signed by two persons so designated by the fund commissioners.

(e) All claims and other disbursements approved for payments by the fund commissioners or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

11:15-3.22 Confidentiality of claims

(a) Employee claims information is privileged and confidential and shall not be included as a part of any open public record.

(b) Fund commissioners and the officials of the member shall not have access to any employee claim information which reveals the identity of any individual plan participant.

(c) All claims are to be filed, and all inquiries are to be handled, directly by the designated claims' administrator. All employees of the administrator shall execute a non-disclosure statement to protect the identity of the plan participants.

(d) Only executive committee members and necessary fund professionals shall participate in any closed session discussion of claims. These claims discussions, whether general or specific to a coverage dispute, shall at all times be confidential and anonymous so that the identity of the municipality and claimant cannot be ascertained. The anonymity of the claimant shall be accomplished by assigning a blind claim number and deleting all references to the individual's name and place of employment. Only the claimant may demand, by written notice, that the matter be handled with disclosure of his identity.

(e) Documents identifying the employee, or from which the employee's identity might be deduced, shall not be accessible to any persons other than the administrator, program manager, fund attorney, or appointed claim auditors when such records are needed to verify the accuracy of claim data as part of an audit.

(f) Any person having access to claim information must sign a written non-disclosure statement.

11:15-3.23 Stop-loss insurance and/or reinsurance

(a) Each fund providing primary or underlying coverage on a self-insured basis shall secure stop-loss insurance or reinsurance in a form and amount acceptable to the Commissioner from an insurer authorized or admitted in the State.

(b) Certificates of stop-loss insurance and/or reinsurance showing policy limits and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(c) Losses in excess of the established self-insurance retention amount shall be borne by the stop-loss carrier(s) according to the terms and conditions of the stop-loss contract(s).

(d) Any proposed change in the terms or limits of stop-loss insurance and/or reinsurance shall be submitted to the Department and the Department of Community Affairs for approval at least 30 days prior to the effective date of the proposed change.

11:15-3.24 Financial statement and reports

(a) A sworn annual report in a form prescribed by the Commissioner shall be prepared by each fund, filed concurrently with the Department and Department of Community Affairs and made available to each fund member not later than 120 days after the end of the immediately preceding fiscal year. The report shall include:

1. An annual audited statement of the financial condition of the fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and N.J.S.A. 40A:10-46, which shall include a statement of the organization of the fund, including its balance sheet and receipts and disbursements for the preceding year;
2. Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for losses, claims and unearned assessments as certified by a qualified actuary;
3. Reports of all incurred but not reported liabilities certified by a qualified actuary;
4. Any material changes in information from that previously submitted;
5. The number of covered individuals by line of coverage; and
6. Such other information, as may be requested by the Department from a particular fund.

(b) In addition to the reports required pursuant to (a) above, for the initial two fiscal years of a fund, a fund shall file quarterly unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner concurrently with the Department and the Department of Community Affairs within 45 calendar days after the end of each calendar quarter. After the initial two years, a fund shall file semiannual unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner, concurrently with the Department and the Department of Community Affairs within 45 calendar days after the end of each six month period. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant, registered municipal accountant or a qualified actuary shall not be required.

11:15-3.25 Examination of funds possibly in financial condition detrimental to the public

(a) The Commissioner may conduct an examination of any fund as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the fund may be insolvent or in a financial condition detrimental to its members or to the public. It shall be the duty of the fund members, commissioners or executive committee to notify the Commissioner of any information indicating that any fund may be insolvent or in a financial condition detrimental to the fund's members or the public.

(b) The fund members, commissioners or executive committee may, upon majority vote, request that the Commissioner order an examination of any fund member which the fund, commissioners or executive committee, if any, in good faith believes may be in a financial condition detrimental to other fund members or to the public.

(c) Any examination made pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter shall be conducted in a manner satisfactory to the Commissioner and by such persons as the Commissioner designates. The cost of any examination shall be borne by the fund.

11:15-3.26 Servicing organizations; administrator

(a) Except with the approval of the Commissioner, no servicing organization or program manager of a fund, or producer appointed by a fund pursuant to N.J.A.C. 11:15-3.6(e)15, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of that fund, or be an employee, officer or director of the administrator.

(b) Except with the approval of the Commissioner, no administrator of a fund, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization or program manager of that fund, or the insurance producer appointed by that fund pursuant to N.J.A.C. 11:15-3.6(e)15.

(c) Each contract with a servicing organization or program manager shall include a clause stating, "Unless the Commissioner otherwise permits, the servicing organization (or program manager, as applicable) shall handle to their conclusion all claims and other obligations incurred during the contract period."

(d) The fund commissioners or the executive committee, if any, may designate an administrator or lead agency to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee meetings, if any, shall detail the areas of authority delegated to the administrator.

(e) Any employee, officer or director of an administrator, servicing organization, program manager or insurance producer appointed pursuant to N.J.A.C. 11:15-3.6(e)15 shall disclose to the fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, program manager or insurance producer.

11:15-3.27 Conflict of interest

All officials or employees of a participating local unit or any members of the family of such officials or employees shall comply with N.J.S.A. 40A:9-22.1 et seq., (the "Local Government Ethics Law").

11:15-3.28 Notice and hearings

(a) The Commissioner shall give prior written notice of any proposed suspension of authority, revocation, cease and desist order, or other enforcement action to the fund commissioners, its executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. The notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the fund or the person of their right to request a hearing on the proposed enforcement action. A copy of the written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The fund involved shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for a hearing within the time prescribed shall result in the revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

11:15-3.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 40A:10-36 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring the joint insurance fund commissioners, or the executive committee, if any to dismiss an administrator, servicing organization or program manager or terminate the contract of an administrator, servicing organization or program manager because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by the administrator, servicing organization or program manager, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

11:15-3.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.