

CHAPTER 3

AUTOMOBILE INSURANCE

Authority

N.J.S.A. 17:1C-6(e) and 17:1-8.1.

Source and Effective Date

R.2001 d.44, effective January 4, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Automobile Insurance, expires on January 4, 2006.

Chapter Historical Note

Chapter 3, New Jersey Automobile Insurance Plan, was adopted as R.1972 d.20, effective January 31, 1972. See: 3 N.J.R. 223(d), 4 N.J.R. 49(d).

Subchapter 7, Automobile Repair Reform Act, was adopted as R.1972 d.244, effective December 4, 1972. See: 4 N.J.R. 270(a), 5 N.J.R. 13(c).

Subchapter 10, Auto Physical Damage Claims, was adopted as R.1972 d.46 and R.1976 d.47, effective May 1, 1976. See: 8 N.J.R. 38(b), 8 N.J.R. 136(b).

Pursuant to Executive Order No. 66(1978), Subchapter 8, Nonrenewal of Automobile Insurance Policies, was readopted as R.1983 d.190, effective June 6, 1983. See: 15 N.J.R. 231(a), 15 N.J.R. 927(a).

Subchapter 12, Automobile Rate Filers: Flattening of Premium Taxes and Assessments Made for the Unsatisfied Claim and Judgment Fund, was adopted as R.1983 d.424, effective October 3, 1983. See: 15 N.J.R. 1170(a), 15 N.J.R. 1666(a).

Subchapter 13, Automobile Rate Filers: Deductibles for Private Passenger Automobile Collision and Comprehensive Coverage, was adopted as R.1983 d.467, effective October 17, 1983. See: 15 N.J.R. 1342(a), 15 N.J.R. 1769(b).

Pursuant to Executive Order No. 66(1978), Subchapter 6, Insurance Identification Card, was readopted as R.1983 d.648, effective December 29, 1983. See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Public Notice: Automobile Insurance Written Notice/Buyer's Guide Coverage Selection Form. See: 16 N.J.R. 254(d).

Subchapter 15, Standards for Written Notice: Buyer's Guide and Coverage Selection Form, was adopted as R.1984 d.114, effective April 2, 1984. See: 15 N.J.R. 2142(a), 16 N.J.R. 733(a).

Subchapter 14, Personal Injury Protection Options, was adopted as R.1984 d.116, effective April 2, 1984. See: 15 N.J.R. 2139(a), 16 N.J.R. 730(b).

The Executive Order No. 66(1978) expiration date of Subchapter 7, Automobile Repair Reform Act, was extended by gubernatorial directive from August 17, 1984 to November 15, 1984, and was further extended by gubernatorial directive from November 15, 1984 to February 13, 1985. See: 17 N.J.R. 43(a).

Pursuant to Executive Order No. 66(1978), Subchapter 7, Automobile Repair Reform Act, was readopted as R.1985 d., effective February 13, 1985. See: 17 N.J.R. 43(a), 17 N.J.R. 707(b).

Subchapter 17, Rating Organizations, was adopted as R.1985 d.609, effective October 6, 1985. See: 16 N.J.R. 2936(a), 17 N.J.R. 2905(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Automobile Insurance, was readopted as R.1985 d.654, effective January 6, 1986, operative May 6, 1986. See: 16 N.J.R. 3286(a), 17 N.J.R. 89(b).

Subchapter 20, Reporting Financial Disclosure and Excess Profit Reports, was adopted as R.1986 d.111, effective April 7, 1986. See: 17 N.J.R. 2597(a), 18 N.J.R. 692(a).

Subchapter 17, Rating Organizations, was repealed and Subchapter 17, Rating Organizations, was adopted as new rules by R.1986 d.419, effective October 6, 1986. See: 18 N.J.R. 1171(b), 18 N.J.R. 2045(a).

Subchapter 22, Coverage Option Survey: Personal Injury Protection and Tort Threshold Options, was adopted as R.1986 d.463, effective November 17, 1986. See: 18 N.J.R. 1344(b), 18 N.J.R. 2329(a).

Subchapter 23, Dangerous Drivers or Drivers with Excessive Claims, was adopted as R.1987 d.527, effective December 21, 1987. See: 19 N.J.R. 1880(a), 19 N.J.R. 2403(b).

Public Notice: Rescission of Circular Letter #75. See: 19 N.J.R. 570(e).

Subchapter 26, Accident Claims, Subchapter 27, Unsatisfied Claim and Judgment Fund Board, and Subchapter 28, Unsatisfied Claim and Judgment Fund's Reimbursement of Excess Medical Expense Benefits Paid by Insurers, were adopted as R.1989 d.268, effective May 15, 1989. See: 21 N.J.R. 688(a), 21 N.J.R. 1363(a).

Subchapter 20, Reporting Financial Disclosure and Excess Profit Reports, was repealed and Subchapter 20, Reporting Financial Disclosure and Excess Profit Reports, was adopted as new rules by R.1989 d.277, effective May 15, 1989. See: 21 N.J.R. 667(b), 21 N.J.R. 1335(a), 21 N.J.R. 1517(b).

Subchapter 24, Policy Constants, and Subchapter 25, Residual Market Equalization Charges (RMECs), were adopted as R.1989 d.278, effective May 15, 1989. See: 20 N.J.R. 3104(a), 21 N.J.R. 1358(b).

Subchapter 20A, Standard Limiting Effect of Negative Excess Investment Income in the Computation of Excess Profits, was adopted as R.1989 d.306, effective June 5, 1989. See: 21 N.J.R. 842(a), 21 N.J.R. 1517(c).

Subchapter 17, Rating Organizations, was repealed by R.1989 d.328, effective June 19, 1989. See: 21 N.J.R. 973(a), 21 N.J.R. 1708(a).

Subchapter 30, Motor Vehicle Self-Insurance, was adopted as R.1989 d.584, effective November 20, 1989. See: 21 N.J.R. 2876(a), 21 N.J.R. 3666(b).

Subchapter 31, Examination of the Financial Experience of Private Passenger Automobile Insurers, was adopted as R.1990 d.108, effective February 5, 1990. See: 21 N.J.R. 3726(a), 22 N.J.R. 425(a).

Subchapter 18, Private Passenger Automobile Insurance: Rate Filing Review Procedures, was adopted as R.1990 d.109, effective February 5, 1990. See: 21 N.J.R. 3422(b), 22 N.J.R. 421(a).

Subchapter 16, Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance, was adopted as R.1990 d.116, effective February 5, 1990. See: 21 N.J.R. 2182(a), 22 N.J.R. 399(a).

Subchapter 1, Provisions and Operations, was repealed and Subchapter 1, Commercial Automobile Insurance Plan, was adopted as new rules by R.1990 d.118, effective February 5, 1990. See: 21 N.J.R. 3613(a), 22 N.J.R. 392(b).

Subchapter 16A, Flex Rate Percentage Calculations for Private Passenger Automobile Insurance, was adopted as R.1990 d.161, effective March 19, 1990. See: 21 N.J.R. 3719(a), 22 N.J.R. 963(a).

Subchapter 34, Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule, was adopted as emergency new rules by R.1990 d.620, effective November 26, 1990, operative April 1, 1991, to expire January 25, 1991. See: 22 N.J.R. 3847(a). The provisions of R.1990 d.620 were readopted as R.1991 d.93, effective January 25,

1991, operative April 1, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3847(a), 23 N.J.R. 572(a)

Subchapter 36, Automobile Physical Damage Insurance Inspection Procedures, was adopted as emergency new rules by R.1990 d.622, effective November 26, 1990, operative March 1, 1991, to expire January 25, 1991. See: 22 N.J.R. 3861(a). The provisions of R.1990 d.622 were readopted as R.1991 d.95, effective January 25, 1991, operative October 1, 1992, with changes effective February 19, 1991. See: 22 N.J.R. 3861(a), 23 N.J.R. 579(a), 23 N.J.R. 1132(c).

Subchapter 38, Towing and Storage Fee Schedule, was adopted as emergency new rules by R.1990 d.623, effective November 26, 1990, operative January 1, 1991, to expire January 25, 1991. See: 22 N.J.R. 3874(a). The provisions of R.1990 d.623 were readopted as R.1991 d.97, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3874(a), 23 N.J.R. 592(a).

Subchapter 29, Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage, was adopted as emergency new rules by R.1990 d.624, effective November 26, 1990, operative January 1, 1991, to expire January 25, 1991. See: 22 N.J.R. 3809(a). The provisions of R.1990 d.624 were readopted as R.1991 d.96, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3809(a), 23 N.J.R. 536(a).

Subchapter 37, Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance, was adopted as emergency new rules by R.1990 d.625, effective November 26, 1990, to expire January 25, 1991. See: 22 N.J.R. 3777(a). The provisions of R.1990 d.625 were readopted as R.1991 d.90, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3777(a), 23 N.J.R. 597(a).

Subchapter 35, Private Passenger Automobile Insurance Underwriting Rules, was adopted as emergency new rules by R.1990 d.627, effective November 26, 1990, to expire January 25, 1991. See: 22 N.J.R. 3856(a). The provisions of R.1990 d.627 were readopted as R.1991 d.94, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3856(a), 23 N.J.R. 577(a).

Subchapter 19, Standard/Non-Standard Rating Plans, was adopted as emergency new rules by R.1990 d.628, effective November 26, 1990, to expire January 25, 1991. See: 22 N.J.R. 3804(a). The provisions of R.1990 d.628 were readopted as R.1991 d.92, effective January 25, 1991, with changes effective February 19, 1991. See: 22 N.J.R. 3804(a), 23 N.J.R. 532(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Automobile Insurance, was readopted as R.1991 d.45, effective January 4, 1991, and Subchapters 2 through 5, concerning the Automobile Insurance Plan (AIP), were repealed by R.1991 d.45, effective February 4, 1991. See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Subchapter 24, Policy Constants, was repealed by R.1991 d.216, effective April 15, 1991. See: 22 N.J.R. 3441(a), 23 N.J.R. 1132(a).

Subchapter 25, Residual Market Equalization Charges (RMECs), was repealed by R.1991 d.217, effective April 15, 1991. See: 22 N.J.R. 3442(a), 23 N.J.R. 1132(b).

Subchapter 39, Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft, Vehicle Recovery and Safety Features, was adopted as R.1991 d.363, effective July 15, 1991, operative September 1, 1991. See: 23 N.J.R. 384(a), 23 N.J.R. 2144(a).

Subchapter 33, Appeals from Denial of Automobile Insurance, was adopted as R.1992 d.192, effective April 30, 1992. See: 24 N.J.R. 546(a), 24 N.J.R. 1510(a).

Subchapter 40, Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons, was adopted as R.1992 d.207, effective May 4, 1992. See: 23 N.J.R. 3736(a), 24 N.J.R. 336(a), 24 N.J.R. 1796(b).

Subchapter 2, New Jersey Personal Automobile Insurance Plan, was adopted as new rules by R.1992 d.370, effective September 21, 1992. See: 24 N.J.R. 331(a), 24 N.J.R. 3400(a).

Subchapter 3, Limited Assignment Distribution Servicing Carriers, was adopted as new rules by R.1992 d.371, effective September 21, 1992. See: 24 N.J.R. 519(a), 24 N.J.R. 3414(a).

Subchapter 42, Producer Assignment Program, was adopted as emergency new rules by R.1992 d.381, effective September 4, 1992, to expire November 3, 1992. See: 24 N.J.R. 3421(a). The provisions of R.1992 d.381 were readopted as R.1992 d.482, effective November 2, 1992, with changes effective December 7, 1992. See: 24 N.J.R. 3421(a), 24 N.J.R. 4397(a).

Subchapter 44, Special Rules for Effecting Coverage for Private Passenger Automobile Insurance, was adopted as emergency new rules by R.1993 d.135, effective March 1, 1993, operative March 8, 1993, to expire April 30, 1993. See: 25 N.J.R. 1290(a). The provisions of R.1993 d.135 were readopted as R.1993 d.238, effective April 30, 1993. See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Subchapter 2B, Market Transition Facility of New Jersey Suspension of Claims, was adopted as emergency new rules by R.1994 d.164, effective March 1, 1994, to expire April 30, 1994. See: 26 N.J.R. 1393(a). The provisions of R.1994 d.164 were readopted as R.1994 d.261, effective April 29, 1994. See: 26 N.J.R. 1393(a), 26 N.J.R. 2288(a).

Subchapter 32, Certification of Compliance: Mandatory Liability Coverages, was adopted as R.1994 d.477, effective September 19, 1994. See: 26 N.J.R. 1939(a), 26 N.J.R. 3866(a).

Subchapter 31, Examination of the Financial Experience of Private Passenger Automobile Insurers, was repealed by R.1995 d.171, effective March 20, 1995. See: 27 N.J.R. 41(a), 27 N.J.R. 1190(b).

Subchapter 45, Insurers Required to Provide Survey Information, was adopted as R.1995 d.235, effective May 1, 1995. See: 27 N.J.R. 289(a), 27 N.J.R. 1803(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Automobile Insurance, was readopted as R.1996 d.58, effective January 4, 1996, and Subchapter 2A, New Jersey Automobile Full Insurance Underwriting Association Claims Payment Deferral, Subchapter 3, Limited Assignment Distribution Servicing Carriers, and Subchapter 23, Dangerous Drivers or Drivers with Excessive Claims, were repealed by R.1996 d.58, effective February 5, 1996. See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Subchapter 20A, Standard Limited Effect of Negative Excess Investment Income in the Computation of Excess Profits, was repealed by R.1996 d.312, effective July 15, 1996. See: 28 N.J.R. 1616(a), 28 N.J.R. 3627(b).

Subchapter 25, Private Passenger Automobile Insurance: Notification by Treating Health Care Providers, was adopted as new rules by R.1997 d.14, effective January 6, 1997. See: 28 N.J.R. 3876(a), 29 N.J.R. 132(a).

Subchapter 24, Defensive Driving Rate Reductions, was adopted as new rules by R.1997 d.522, effective December 15, 1997. See: 28 N.J.R. 4854(a), 29 N.J.R. 5305(a).

Subchapter 28A, Unsatisfied Claim and Judgment Fund Assessments, was adopted as R.1997 d.535, effective December 15, 1997. See: 29 N.J.R. 4246(a), 29 N.J.R. 5309(a).

Subchapter 19A, Tier Rating Plans and Underwriting Rules, was adopted as R.1998 d.129, effective March 2, 1998. See: 29 N.J.R. 5253(a), 30 N.J.R. 839(a).

Subchapter 46, Automobile Insurance Urban Enterprise Zone Program, was adopted as R.1998 d.290, effective June 1, 1998. See: 30 N.J.R. 773(a), 30 N.J.R. 2010(a).

Subchapter 3, Basic Automobile Insurance Policy, was adopted as new rules by R.1998 d.592, effective December 21, 1998, operative March 22, 1999. See: 30 N.J.R. 3209(a), 30 N.J.R. 4398(a).

Subchapter 5, Personal Injury Protection Dispute Resolution, was adopted as new rules by R.1998 d.593, effective December 21, 1998. See: 30 N.J.R. 3359(a), 30 N.J.R. 4437(a).

AUTOMOBILE INSURANCE

Subchapter 4, Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests, was adopted as new rules by R.1998 d.597, effective December 21, 1998, operative March 22, 1999. See: 30 N.J.R. 3211(a), 30 N.J.R. 3748(a), 30 N.J.R. 4401(a).

Subchapter 38, Towing and Storage Fee Schedule, was repealed by R.1999 d.1, effective January 4, 1999. See: 30 N.J.R. 2813(a), 31 N.J.R. 54(c).

Pursuant to Executive Order No. 66(1978), Chapter 3, Automobile Insurance, was readopted as R.2001 d.44, effective January 4, 2001, and Subchapter 2B, Market Transition Facility of New Jersey Payment Prioritization and Claims Payment Deferral, Subchapter 16A, Flex Rate Percentage Calculations for Private Passenger Automobile Insurance, Subchapter 19, Standard/Nonstandard Rating Plans, and Subchapter 42, Producer Assignment Program, were repealed by R.2001 d.44, effective February 5, 2001. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN

- 11:3-1.1 Purpose and scope
- 11:3-1.2 Definitions
- 11:3-1.3 Creation of the plan
- 11:3-1.4 Governing committee
- 11:3-1.5 Participation
- 11:3-1.6 Plan of operation
- 11:3-1.7 Coverage
- 11:3-1.8 Qualification
- 11:3-1.9 Rates and policy forms
- 11:3-1.10 Right to petition for appeal to the Commissioner

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

- 11:3-2.1 Purpose and scope
- 11:3-2.2 Definitions
- 11:3-2.3 Creation of the plan
- 11:3-2.4 Exemptions
- 11:3-2.5 Governing committee
- 11:3-2.6 Plan of operation
- 11:3-2.7 Coverage
- 11:3-2.8 Eligibility
- 11:3-2.9 Rates and policy forms
- 11:3-2.10 Installment payment option
- 11:3-2.11 Determination and fulfillment of quotas
- 11:3-2.12 Right to petition for appeal to the Commissioner
- 11:3-2.13 Penalties

SUBCHAPTER 2A. SPECIAL AUTOMOBILE INSURANCE POLICY

- 11:3-2A.1 Purpose and scope
- 11:3-2A.2 Definitions
- 11:3-2A.3 General provisions
- 11:3-2A.4 Eligibility for special automobile insurance policy
- 11:3-2A.5 Coverages
- 11:3-2A.6 Election of special automobile insurance policy

SUBCHAPTER 2B. (RESERVED)

SUBCHAPTER 3. BASIC AUTOMOBILE INSURANCE POLICY

- 11:3-3.1 Purpose and scope
- 11:3-3.2 Definitions
- 11:3-3.3 General provisions
- 11:3-3.4 Coverages; mandatory and optional
- 11:3-3.5 Election of basic automobile insurance policy coverage and reporting
- 11:3-3.6 Filing requirements

SUBCHAPTER 3A. REPORTING REQUIREMENTS AND FILING DEADLINES

- 11:3-3A.1 Purpose and scope

- 11:3-3A.2 Definitions
- 11:3-3A.3 Report requirements
- 11:3-3A.4 Penalties

SUBCHAPTER 4. PERSONAL INJURY PROTECTION BENEFITS; MEDICAL PROTOCOLS; DIAGNOSTIC TESTS

- 11:3-4.1 Scope and purpose
- 11:3-4.2 Definitions
- 11:3-4.3 Personal injury protection benefits applicable to basic and standard policies
- 11:3-4.4 Deductibles and co-pays
- 11:3-4.5 Diagnostic tests
- 11:3-4.6 Medical protocols
- 11:3-4.7 Decision point review
- 11:3-4.8 Precertification
- 11:3-4.9 Assignment of benefits; public information
- 11:3-4.10 Reporting requirements

APPENDIX TREATMENT OF ACCIDENTAL INJURY TO THE SPINE AND BACK CARE PATHS

EXHIBIT 1 GLOSSARY OF TERMS

EXHIBIT 2 TREATMENT OF ACCIDENTAL INJURY TO THE SPINE AND BACK CARE PATH OVERVIEW

EXHIBIT 3 CARE PATH 1

EXHIBIT 4 CARE PATH 2

EXHIBIT 5 CARE PATH 3

EXHIBIT 6 CARE PATH 4

EXHIBIT 7 CARE PATH 5

EXHIBIT 8 CARE PATH 6

EXHIBIT 9 TREATMENT OF ACCIDENTAL INJURY TO THE SPINE AND BACK CARE PATH DIAGNOSIS CODING

EXHIBIT 10 ADDENDUM TO CARE PATHS

EXHIBIT 11 DECISION POINT REVIEW/PRE-CERTIFICATION IMPLEMENTATION REPORT

SUBCHAPTER 5. PERSONAL INJURY PROTECTION DISPUTE RESOLUTION

- 11:3-5.1 Purpose and scope
- 11:3-5.2 Definitions
- 11:3-5.3 Designation of the administrator
- 11:3-5.4 Dispute resolution organizations
- 11:3-5.5 Dispute resolution professionals
- 11:3-5.6 Conduct of PIP dispute resolution proceedings
- 11:3-5.7 Recordkeeping
- 11:3-5.8 Medical review organizations
- 11:3-5.9 Standards for medical review organizations
- 11:3-5.10 Medical review organization certification process
- 11:3-5.11 Fees
- 11:3-5.12 Prohibition of conflicts of interest

SUBCHAPTER 6. INSURANCE IDENTIFICATION CARDS

- 11:3-6.1 Scope
- 11:3-6.2 Permanent identification cards (form IV-1)
- 11:3-6.3 Temporary identification card (form IV-2)
- 11:3-6.4 General provisions
- 11:3-6.5 Commercial motor vehicles; exemption

SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

- 11:3-7.1 Purpose
- 11:3-7.2 General requirements applicable to additional personal injury protection benefits
- 11:3-7.3 Personal injury protection policy forms or endorsements
- 11:3-7.4 Minimum schedule of additional personal injury protection coverage benefits
- 11:3-7.5 Notice Requirement

11:3-7.6 Cancellation of automobile coverage for nonpayment of premium

SUBCHAPTER 8. RENEWAL AND NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

- 11:3-8.1 Scope
- 11:3-8.2 Definitions
- 11:3-8.3 General provisions
- 11:3-8.4 Standards of nonrenewal —ineligible persons
- 11:3-8.5 Other nonrenewals—standards
- 11:3-8.6 Limitations on nonrenewal
- 11:3-8.7 Suspension of nonrenewals
- 11:3-8.8 Records
- 11:3-8.9 Separability
- 11:3-8.10 Penalties

APPENDIX

EXHIBIT A NEW JERSEY AUTO CONSUMERS' RIGHTS Q&A

EXHIBIT B (RESERVED)

EXHIBIT C (RESERVED)

SUBCHAPTER 9. RATING INFORMATION: AUTOMOBILE INSURANCE ON PRIVATE PASSENGER CARS

- 11:3-9.1 Rating information; private passenger cars; automobile insurance
- 11:3-9.2 (Reserved)

SUBCHAPTER 10. AUTO PHYSICAL DAMAGE CLAIMS

- 11:3-10.1 Scope
- 11:3-10.2 Definitions
- 11:3-10.3 Adjustment of partial losses
- 11:3-10.4 Adjustment of total losses
- 11:3-10.5 Unreasonable delay
- 11:3-10.6 Loss of use
- 11:3-10.7 Subrogation agreements
- 11:3-10.8 Repair estimates
- 11:3-10.9 Referral of insured to the at-fault party
- 11:3-10.10 Examinations by the New Jersey Department of Banking and Insurance

SUBCHAPTER 11. MOPED INSURANCE

- 11:3-11.1 Required coverage for mopeds

SUBCHAPTER 12. AUTOMOBILE RATE FILERS: FLATTENING OF PREMIUM TAXES AND ASSESSMENTS MADE FOR THE UNSATISFIED CLAIM AND JUDGMENT FUND

- 11:3-12.1 Purpose
- 11:3-12.2 Scope
- 11:3-12.3 Definitions
- 11:3-12.4 Tax and assessment fees; general provisions
- 11:3-12.5 Filing and reporting requirements

SUBCHAPTER 13. COLLISION AND COMPREHENSIVE COVERAGE DEDUCTIBLES AND OPTIONS

- 11:3-13.1 Purpose
- 11:3-13.2 Scope
- 11:3-13.3 Deductibles for private passenger automobile collision and comprehensive coverages
- 11:3-13.4 Filing and reporting requirements
- 11:3-13.5 Named excluded driver

APPENDIX

SUBCHAPTER 14. PERSONAL INJURY PROTECTION OPTIONS FOR STANDARD POLICIES

- 11:3-14.1 Purpose
- 11:3-14.2 Scope
- 11:3-14.3 Optional medical expense benefits for standard policies
- 11:3-14.4 Optional exclusion of income continuation benefits, essential services benefits, death benefits and funeral expense benefits
- 11:3-14.5 Option to choose health care insurance coverage as primary coverage

- 11:3-14.6 Refund or credit of unearned premium
- 11:3-14.7 Filing requirements
- 11:3-14.8 Application of the option to choose health care insurance coverage as the primary insurer

SUBCHAPTER 15. BUYER'S GUIDE, COVERAGE SELECTION FORM, AND AUTOMOBILE INSURANCE CONSUMER BILL OF RIGHTS FOR STANDARD AND BASIC POLICIES

- 11:3-15.1 Purpose
- 11:3-15.2 Scope
- 11:3-15.3 Definitions
- 11:3-15.4 Compliance
- 11:3-15.5 New Jersey Auto Insurance Buyer's Guide
- 11:3-15.6 Minimum standards for Coverage Selection Forms
- 11:3-15.7 Use of Coverage Selection Form; Availability
- 11:3-15.8 New Jersey Automobile Insurance Consumer Bill of Rights
- 11:3-15.9 Penalties
- 11:3-15.10 through 11:3-15.11 (Reserved)

APPENDIX

EXHIBIT 1 STANDARD POLICY COVERAGE SELECTION FORM

EXHIBIT 2 BASIC POLICY COVERAGE SELECTION FORM

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

- 11:3-16.1 Purpose and scope
- 11:3-16.2 Definitions
- 11:3-16.3 General requirements and filing format
- 11:3-16.4 Insurer informational filings due July 1 of each year
- 11:3-16.5 (Reserved)
- 11:3-16.6 Insurer filings for rates requiring prior approval
- 11:3-16.7 (Reserved)
- 11:3-16.8 Premiums, loss costs, loss and loss adjustment expense data
- 11:3-16.9 Data requirements for expense and profit provisions
- 11:3-16.10 Rate calculation using standard ratemaking methodology
- 11:3-16.11 Rate filings reflecting assessments and surtaxes
- 11:3-16.12 (Reserved)
- 11:3-16.13 Incomplete filings and further proceedings
- 11:3-16.14 Rate adjustments upon repayment of assessments
- 11:3-16.15 Voluntary written exposure and primary classification data
- 11:3-16.16 Prospective loss cost filing requirements for insurers

APPENDIX

EXHIBIT AI (RESERVED)

EXHIBIT AII (RESERVED)

EXHIBIT A PRIOR APPROVAL FILINGS

EXHIBIT B CAUSE OF LOSS REPORT

EXHIBIT C WORKSHEET TO DETERMINE ZERO THRESHOLD PREMIUM

EXHIBIT D INSURER RATE FILING

EXHIBIT E DEVIATION APPLICATION FORM

EXHIBIT F REPRESENTATIONS REGARDING RATE FILING DOCUMENTS

EXHIBIT G KEY PERFORMANCE INDICATORS

EXHIBIT H MARKETING METHODS FOR THE LARGEST PRIVATE PASSENGER AUTO INSURER GROUPS IN NEW JERSEY

EXHIBIT I (RESERVED)

EXHIBIT J RATE PURSUIT SURVEY QUESTIONNAIRE

SUBCHAPTER 16A. (RESERVED)

SUBCHAPTER 16B. RATE PROCESS FOR LIMITED RATE CHANGES; CALCULATIONS FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE RATE CHANGES

- 11:3-16B.1 Purpose and scope

AUTOMOBILE INSURANCE

- 11:3-16B.2 Definitions
- 11:3-16B.3 Rate process for limited rate changes; insurers and rating organizations
- 11:3-16B.4 Rate process for limited rate changes; calculation for private passenger automobile insurance
- 11:3-16B.5 Limitation on filer's rate request
- 11:3-16B.6 Review; general principles; action

APPENDIX

SUBCHAPTER 17. RATE INTERVENOR RULES

- 11:3-17.1 Purpose and scope
- 11:3-17.2 Definitions
- 11:3-17.3 Intervenor registration requirements
- 11:3-17.4 Penalties for intervenors or filers
- 11:3-17.5 Notification of rate increase
- 11:3-17.6 Procedures for intervening in a rate filing
- 11:3-17.7 Awarding of fees and expenses

APPENDIX A. RATE INTERVENOR REGISTRATION

SUBCHAPTER 18. PRIVATE PASSENGER AUTOMOBILE INSURANCE: RATE FILING REVIEW PROCEDURES

- 11:3-18.1 Purpose and scope
- 11:3-18.2 Definitions
- 11:3-18.3 General provisions applicable to all filings
- 11:3-18.4 Procedures for review of prior approval filings
- 11:3-18.5 through 11:3-18.6 (Reserved)
- 11:3-18.7 Other remedies preserved

SUBCHAPTER 19. (RESERVED)

SUBCHAPTER 19A. TIER RATING PLANS AND UNDERWRITING RULES

- 11:3-19A.1 Purpose and scope
- 11:3-19A.2 Definitions
- 11:3-19A.3 General provisions
- 11:3-19A.4 Filing requirements for tier rating plans
- 11:3-19A.5 Standards of approval, disapproval or modification of underwriting rules and tier rating plans
- 11:3-19A.6 Policy renewals and notice to insureds
- 11:3-19A.7 Underwriting rules for eligible persons
- 11:3-19A.8 Penalties
- 11:3-19A.9 (Reserved)

APPENDIX

SUBCHAPTER 20. REPORTING FINANCIAL DISCLOSURE AND EXCESS PROFITS

- 11:3-20.1 Purpose
- 11:3-20.2 Scope
- 11:3-20.3 Definitions
- 11:3-20.4 General reporting requirements
- 11:3-20.5 Excess profit report
- 11:3-20.6 Reporting requirements for insurance holding company systems
- 11:3-20.7 Determination of an excess profit
- 11:3-20.8 Refund or credit of an excess profit
- 11:3-20.9 Excess profit, extraordinary loss, carry forwards
- 11:3-20.10 Order for further information
- 11:3-20.11 Supplemental filings
- 11:3-20.12 (Reserved)
- 11:3-20.13 Penalties

APPENDIX EXCESS PROFIT EXHIBITS— INSTRUCTIONS

SUBCHAPTER 20A. (RESERVED)

SUBCHAPTER 21. PERSONAL INJURY PROTECTION COVERAGE: REDUCED PIP PREMIUM CHARGE FOR ADDITIONAL AUTOS IN ONE-DRIVER HOUSEHOLDS

- 11:3-21.1 Purpose

- 11:3-21.2 Reduction of PIP premium
- 11:3-21.3 Automobiles eligible for premium reduction
- 11:3-21.4 Filing and statistical requirements

SUBCHAPTER 22. COVERAGE OPTION SURVEY PERSONAL INJURY PROTECTION AND TORT THRESHOLD OPTIONS

- 11:3-22.1 Purpose
- 11:3-22.2 Scope
- 11:3-22.3 Coverage option survey requirements

SUBCHAPTER 23. (RESERVED)

SUBCHAPTER 24. DEFENSIVE DRIVING RATE REDUCTIONS

- 11:3-24.1 Purpose and scope
- 11:3-24.2 Definitions
- 11:3-24.3 Rate reduction filing requirements
- 11:3-24.4 Application of defensive driving rate reduction
- 11:3-24.5 Procedure to obtain rate reduction
- 11:3-24.6 Penalties

SUBCHAPTER 25. PRIVATE PASSENGER AUTOMOBILE INSURANCE: NOTIFICATION BY TREATING HEALTH CARE PROVIDERS

- 11:3-25.1 Purpose and scope
- 11:3-25.2 Definitions
- 11:3-25.3 Notification of commencement of treatment
- 11:3-25.4 Content of notice and proof of receipt
- 11:3-25.5 Late notification
- 11:3-25.6 Standards for adjustment of reduction
- 11:3-25.7 Responsibility for payment
- 11:3-25.8 Procedure for appeals
- 11:3-25.9 Reporting requirement
- 11:3-25.10 Compliance

APPENDIX A NOTIFICATION OF COMMENCEMENT OF MEDICAL TREATMENT

APPENDIX B ADDRESS FOR NOTIFICATION OF COMMENCEMENT OF MEDICAL TREATMENT

SUBCHAPTER 26. UNSATISFIED CLAIM AND JUDGMENT FUND: NOTICE OF INTENT

- 11:3-26.1 Claim information
- 11:3-26.2 Claim filing; form

APPENDIX A

SUBCHAPTER 27. UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

- 11:3-27.1 Uninsured's current financial status

SUBCHAPTER 28. UNSATISFIED CLAIM AND JUDGMENT FUND'S REIMBURSEMENT OF EXCESS MEDICAL EXPENSE BENEFITS PAID BY INSURERS

- 11:3-28.1 Purpose and scope
- 11:3-28.2 Definitions
- 11:3-28.3 Report of claims when the carrier has paid at least \$50,000 for medical expense benefits
- 11:3-28.4 Notice of change in the amount of reserves
- 11:3-28.5 Supplemental forms to be submitted to the Fund
- 11:3-28.6 Insurer's continuing obligation to investigate claims
- 11:3-28.7 Reimbursement of excess medical expense benefits paid by insurers
- 11:3-28.8 Audits
- 11:3-28.9 Reporting of losses for personal injury protection payments in excess of \$75,000
- 11:3-28.10 Insurers' obligations to investigate and audit bills for medical benefits

- 11:3-28.11 Modifications to vehicles
- 11:3-28.12 Modifications to a claimant's residence
- 11:3-28.13 Insurer's obligation to obtain recovery of payments for paid medical expense benefit claims
- 11:3-28.14 Insurer's responsibility upon assignment of an uninsured motorist claim
- 11:3-28.15 Procedures for handling an assigned uninsured motorist claim
- 11:3-28.16 (Reserved)
- 11:3-28.17 Penalties

APPENDIX A FORMS; PAYMENT RECORD; QUESTIONNAIRE

APPENDIX B AMORTIZATION FORMULA

APPENDIX C UNSATISFIED CLAIM AND JUDGMENT FUND RECOVERY CERTIFICATION

SUBCHAPTER 28A. (RESERVED)

SUBCHAPTER 29. MEDICAL FEE SCHEDULES: AUTOMOBILE INSURANCE PERSONAL INJURY PROTECTION AND MOTOR BUS MEDICAL EXPENSE INSURANCE COVERAGE

- 11:3-29.1 Purpose and scope
- 11:3-29.2 Definitions
- 11:3-29.3 Regions
- 11:3-29.4 Application of Medical Fee Schedules
- 11:3-29.5 Balance billing prohibited
- 11:3-29.6 (Reserved)

APPENDIX

SUBCHAPTER 30. MOTOR VEHICLE SELF-INSURANCE

- 11:3-30.1 Purpose
- 11:3-30.2 Scope
- 11:3-30.3 Definitions
- 11:3-30.4 General requirements
- 11:3-30.5 Certificate of self-insurance
- 11:3-30.6 Renewals
- 11:3-30.7 Surety bond requirement
- 11:3-30.8 Audits and examinations
- 11:3-30.9 Public entities
- 11:3-30.10 Cancellation of certificate of self-insurance

SUBCHAPTER 31. (RESERVED)

SUBCHAPTER 32. CERTIFICATION OF COMPLIANCE: MANDATORY LIABILITY COVERAGES

- 11:3-32.1 Purpose and scope
- 11:3-32.2 Definitions
- 11:3-32.3 Certification compliance requirements
- 11:3-32.4 Requests for copies of certifications

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

- 11:3-33.1 Purpose; scope
- 11:3-33.2 Definitions
- 11:3-33.3 Right to appeal
- 11:3-33.4 Duties of insurer or insurance agent
- 11:3-33.5 Procedure for filing an appeal
- 11:3-33.6 Processing appeals
- 11:3-33.7 Contested case hearings; pleadings
- 11:3-33.8 Penalties
- 11:3-33.9 Compliance

APPENDIX A

APPENDIX B

SUBCHAPTER 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

- 11:3-34.1 Purpose
- 11:3-34.2 Scope
- 11:3-34.3 Definitions
- 11:3-34.4 Eligible person qualifications
- 11:3-34.5 Automobile insurance eligibility points

APPENDIX SCHEDULE OF AUTOMOBILE INSURANCE ELIGIBILITY POINTS

SUBCHAPTER 35. PRIVATE PASSENGER AUTOMOBILE INSURANCE UNDERWRITING RULES

- 11:3-35.1 Purpose and scope
- 11:3-35.2 Definitions
- 11:3-35.3 General requirements and filing format
- 11:3-35.4 Underwriting rules for eligible persons
- 11:3-35.5 Underwriting rules for rating plans
- 11:3-35.6 Penalties

SUBCHAPTER 36. AUTOMOBILE PHYSICAL DAMAGE INSURANCE INSPECTION PROCEDURES

- 11:3-36.1 Purpose and scope
- 11:3-36.2 Definitions
- 11:3-36.3 Mandatory inspection requirements
- 11:3-36.4 Waivers of mandatory inspection
- 11:3-36.5 Deferral of inspections
- 11:3-36.6 Standards and procedures for inspection
- 11:3-36.7 Suspension of physical damage coverages
- 11:3-36.8 Enforcement
- 11:3-36.9 Results and audits
- 11:3-36.10 Severability
- 11:3-36.11 Required amendatory endorsements
- 11:3-36.12 (Reserved)

APPENDIX A ACKNOWLEDGMENT OF REQUIREMENT FOR INSURANCE INSPECTION

APPENDIX B NOTICE OF INSURANCE INSPECTION

APPENDIX C(1)

APPENDIX C(2)

APPENDIX D NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

SUBCHAPTER 37. ORDER OF BENEFIT DETERMINATION BETWEEN AUTOMOBILE PERSONAL INJURY PROTECTION AND HEALTH INSURANCE

- 11:3-37.1 Purpose and scope
- 11:3-37.2 Definitions
- 11:3-37.3 Health benefits providers
- 11:3-37.4 Application of the PIP-as-secondary coverage option
- 11:3-37.5 Health benefit plan standards and the PIP premium reduction
- 11:3-37.6 Order of benefits determination when PIP is secondary coverage
- 11:3-37.7 Determination of PIP medical benefits payable when PIP is secondary coverage
- 11:3-37.8 Health benefits plan coverage ineligibility
- 11:3-37.9 Determination of benefits when PIP is primary coverage
- 11:3-37.10 Explanation of benefits
- 11:3-37.11 Dispute as to primacy of coverage
- 11:3-37.12 Eligibility under two or more automobile policies
- 11:3-37.13 Penalties
- 11:3-37.14 Severability

SUBCHAPTER 38. (RESERVED)

SUBCHAPTER 39. REDUCTIONS IN PREMIUM CHARGES FOR PRIVATE PASSENGER AUTOMOBILES EQUIPPED WITH ANTI-THEFT, VEHICLE RECOVERY AND SAFETY FEATURES

- 11:3-39.1 Purpose
- 11:3-39.2 Scope
- 11:3-39.3 Definitions
- 11:3-39.4 Reductions in rates for anti-theft and vehicle recovery devices
- 11:3-39.5 Categories of anti-theft and vehicle recovery devices
- 11:3-39.6 Reductions in rates for safety features
- 11:3-39.7 Penalties
- 11:3-39.8 Severability

SUBCHAPTER 40. INSURERS REQUIRED TO PROVIDE AUTOMOBILE INSURANCE COVERAGE TO ELIGIBLE PERSONS

- 11:3-40.1 Purpose and scope
- 11:3-40.2 Definitions
- 11:3-40.3 Insurers required to provide automobile insurance coverage to eligible persons
- 11:3-40.4 Penalties

SUBCHAPTERS 41 THROUGH 43. (RESERVED)

SUBCHAPTER 44. SPECIAL RULES FOR EFFECTING COVERAGE FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

- 11:3-44.1 Purpose and scope
- 11:3-44.2 Definitions
- 11:3-44.3 Duty to provide coverage upon receipt of a completed written application
- 11:3-44.4 New applicants previously insured in another state by the insurer or an affiliate
- 11:3-44.5 Underwriting rules
- 11:3-44.6 Penalties

SUBCHAPTER 45. INSURERS REQUIRED TO PROVIDE SURVEY INFORMATION

- 11:3-45.1 Purpose and scope
- 11:3-45.2 Definitions
- 11:3-45.3 Annual premium survey filing
- 11:3-45.4 Penalties

APPENDIX NEW JERSEY AUTOMOBILE INSURANCE PREMIUM COMPARISON SURVEY

SUBCHAPTER 46. AUTOMOBILE INSURANCE URBAN ENTERPRISE ZONE PROGRAM

- 11:3-46.1 Purpose and scope
- 11:3-46.2 Definitions
- 11:3-46.3 Designation of UEZ and UEZ share
- 11:3-46.4 Qualified insurers
- 11:3-46.5 UEZ agents
- 11:3-46.6 PAIP voluntary rating tier
- 11:3-46.7 Qualified producers
- 11:3-46.8 Review of applications
- 11:3-46.9 Disapproval standards
- 11:3-46.10 Commissions
- 11:3-46.11 Coverage application procedure
- 11:3-46.12 PAIP Plan of Operation
- 11:3-46.13 Reporting requirements
- 11:3-46.14 Penalties

SUBCHAPTER 47. INSURANCE SCENARIOS

- 11:3-47.1 Purpose and scope
- 11:3-47.2 Definitions
- 11:3-47.3 Insurance scenarios
- 11:3-47.4 Penalties

APPENDIX

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN

11:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Personal Automobile Insurance Plan and any other private passenger vehicle that is owned by or driven by a person who meets the definition of an eligible person pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34;
2. To provide for the apportionment of insurance coverage for qualified applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market; and
3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks qualified for coverage under the provisions of this subchapter.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Amended by R.2003 d.415, effective October 20, 2003.

See: 35 N.J.R. 2391(a), 35 N.J.R. 4900(a).

In (a), inserted "other" preceding "private passenger vehicle" in 1, substituted "qualified" for "eligible" preceding "applicants" in 2 and substituted "qualified" for "eligible" preceding "for coverage" in 3.

11:3-1.2 Definitions

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

"CAIP" or "Plan" means the Commercial Automobile Insurance Plan pursuant to this subchapter.

"CAIP manager" means the entity employed by the Governing Committee to manage and conduct the administrative affairs of the CAIP on a daily basis.

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

"Emergency type vehicle" means any land vehicle, used to respond to distress calls, fires, or rescue, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars and ambulances.

“Gross participation” means a participant’s Voluntary All Other Automobile Direct Written Premiums derived from information contained in the annual statement times a fraction, the numerator of which is the sum of the plan’s total written premiums for that year and the Statewide total Voluntary All Other Automobile Direct Written Premiums which are eligible for depopulation credit for that policy year, and the denominator of which is the Statewide total Voluntary All Other Automobile Net Direct Written Premiums of all participants for that second prior year.

“Light truck” means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

“Motor vehicle” means any land vehicle propelled otherwise than by muscular power including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

“Net participation” means a participant’s gross participation for that policy year less its business eligible for depopulation credit for that policy year.

“Net participation percentage” means a participant’s net participation for that policy year in proportion to the comparable Statewide total net participation for all participants.

“Operating headquarters” means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive offices are, corporate decisions are made and corporate functions are performed.

“Participant” means an insurer licensed and authorized to write motor vehicle liability or physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

“Personal injury protection” means those benefits as set forth at N.J.S.A. 39:6A-4.

“Policy year” means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

“Private passenger automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any voluntary or residual market mechanism created by statute, and is owned by an individual or husband and wife; or owned jointly by two or more relatives other than husband and wife; or owned jointly by two or more resident individuals; or owned by a corporation, partnership or unincorporated association, governmental agency, or registered to a professional designation (that is, T/A, PA or P.C.) where such automobiles are furnished to individuals and are not used for business purposes.

“Private passenger type automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership or any other entity except an individual or husband and wife and used for business purposes.

“Qualified applicant” means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is unable to obtain automobile insurance in New Jersey in the voluntary market and is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute other than the CAIP. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. No applicant shall be deemed qualified if the principal operator of the vehicle to be insured does not hold a driver’s license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

“Voluntary All Other Automobile Direct Written Premiums” means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. CAIP direct written premiums included in the figures which the participant wrote as a service carrier for CAIP;
2. Any direct written premiums included in the figures from insureds who are qualified applicants for any residual market mechanism created by statute other than the CAIP;
3. Any reinsurance premiums assumed from other insurers included in the figures;
4. Any premiums for Death and Disability coverage included in the figures;
5. Private passenger nonfleet automobile bodily injury and property damage liability, medical payments, basic and additional personal injury protection, and uninsured and underinsured motorists voluntary premium;
6. Miscellaneous nonfleet specialty personal automobile bodily injury and property damage liability voluntary premiums for any class approved by the Department as specified in the plan of operation; and
7. Taxi bodily injury, property damage liability, uninsured and underinsured motorists and physical damage premiums.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Deleted definition of NJAFIUA and references to it; added text to definitions for “Private passenger automobile” and “Voluntary All Other Automobile Direct Written Premiums.”

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Amended by R.1998 d.591, effective December 21, 1998 (operative March 22, 1999).

See: 30 N.J.R. 3202(a), 30 N.J.R. 4390(b).

Inserted “Personal injury protection”.

Amended by R.2003 d.415, effective October 20, 2003.

See: 35 N.J.R. 2391(a), 35 N.J.R. 4900(a).

v. Any vehicle which is operated under a registration plate not issued for a specific vehicle.

3. Comprehensive and collision coverage shall be provided on an actual cash value basis, less deductible, subject to a maximum loss payable of such amount at which physical damage coverage may be exported in accordance with the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43. CAIP shall also offer optional higher deductibles as specified in the plan of operation.

4. Physical damage coverage shall be offered only in connection with a policy written by the plan affording bodily injury and property damage coverage.

5. Upon request, CAIP shall issue a loss payable clause for the benefit of a lienholder.

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Amended by R.1998 d.591, effective December 21, 1998 (operative March 22, 1999).

See: 30 N.J.R. 3202(a), 30 N.J.R. 4390(b).

In (c), substituted "standard" for "basic" following "applicants," in the introductory paragraph, and inserted N.J.S.A. reference and deleted "basic" following "provide" in 1.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (d)1vi, inserted "persons" preceding "without charge" and deleted "the elderly or handicapped".

Amended by R.2003 d.415, effective October 20, 2003.

See: 35 N.J.R. 2391(a), 35 N.J.R. 4900(a).

Substituted "qualified" for "eligible" throughout; rewrote (d)2 main paragraph.

11:3-1.8 Qualification

(a) As a prerequisite for insurance from CAIP, a prospective insured must attempt, within 60 days prior to the date of application, to obtain automobile insurance in New Jersey, and be unable to obtain such insurance. The prospective insured must certify, in the application form prescribed by CAIP, that the applicant has attempted, but has been unable, to obtain automobile insurance in New Jersey through ordinary methods. An applicant so certifying shall be considered for assignment upon making application in good faith to the CAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements of a material nature in the prescribed application form approved by the Commissioner.

(b) For any risk consisting of 10 or more vehicles, the applicant must also provide:

1. A copy of the notice of cancellation or nonrenewal from the applicant's previous insurer, or an explanation concerning why the applicant was not insured; and

2. A certification that the applicant has been refused insurance within 60 days of the date of application from at least three named insurers licensed to transact automobile business in New Jersey. Such certification shall list the three insurers.

(c) No producer shall bind a risk for CAIP or submit an application for insurance to CAIP if such producer knows that the risk currently has or has been offered coverage from the voluntary market.

(d) A qualified applicant shall not be afforded coverage until it:

1. Submits an application as prescribed in the plan of operation;

2. Pays the premium, or portion thereof, required in the plan of operation;

3. Is accepted for coverage by CAIP as provided for in the plan of operation; and

4. Completes such other requirements as set forth in the plan of operation.

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Amended by R.2003 d.415, effective October 20, 2003.

See: 35 N.J.R. 2391(a), 35 N.J.R. 4900(a).

In (d), in the main paragraph substituted "qualified" for "eligible".

Case Notes

Broker who mailed application for automobile insurance after expiration of prior policy was not de facto agent of servicing insurer under assigned risk plan and lacked authority to bind servicing insurer. *Rodriguez v. Hudson County Collision Co.*, 296 N.J.Super. 213, 686 A.2d 776 (A.D.1997).

11:3-1.9 Rates and policy forms

(a) CAIP shall continue to use the rates, rules, surcharges, minimum premiums, classifications and policy forms approved for the Commercial Automobile Insurance Plan until modified or changed pursuant to this subchapter.

(b) The governing committee shall file all rates, rules, surcharges, minimum premiums, classifications and policy forms to be used by CAIP for the prior approval of the Commissioner. Proceedings to review these filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall consider the experience of risks insured by the plan and shall not be excessive, inadequate or unfairly discriminatory. Every rate filing shall include an analysis of the adequacy of the rating plans.

(c) Premiums for risks shall be subject to the rating plan established in the plan of operation.

(d) Any risk with five or more vehicles not including trailers and semi-trailers shall be considered as a fleet. CAIP shall file base rates for fleets with the Commissioner for his or her prior approval which are different than the rates for non-fleet risks if CAIP determines that the loss expectancy of fleet risks insured by CAIP is different than the loss expectancy of non-fleet risks insured by CAIP.

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Amended by R.2003 d.415, effective October 20, 2003.

See: 35 N.J.R. 2391(a), 35 N.J.R. 4900(a).

Moved "Every rate filing shall include an analysis of the adequacy of the rating plans." from end of (c) to end of (b); in (c), substituted "Premiums for risks shall be subject to the" for "For any risk with less than 10 vehicles, the premium shall be subject to a merit"; substituted "five" for "10" preceding "or more vehicles"; deleted (e) and (f).

11:3-1.10 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, servicing carrier or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.
2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.
3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

11:3-2.1 Purpose and scope

(a) This subchapter establishes a plan pursuant to N.J.S.A. 17:29D-1 for the providing and apportionment of personal private passenger automobile insurance coverage for automobiles which are owned or operated by qualified applicants.

(b) The purposes of this subchapter are:

1. To provide the coverages described herein, subject to the conditions stated;
2. To establish a procedure for the equitable distribution of risks assigned to insurance companies; and
3. To preserve to the public the benefits of price competition by encouraging maximum use of the voluntary private insurance system.

(c) The provisions of this subchapter shall apply to all insurers admitted to transact private passenger automobile insurance in this State and all qualified applicants for automobile insurance through the PAIP, except as otherwise provided in this subchapter.

11:3-2.2 Definitions

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

An "affiliate" of, or a person "affiliated" with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or camper type vehicle used for recreational purposes, owned by an individual or jointly by individuals who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching; and solely for the purpose of this plan, a motorcycle as defined in N.J.S.A. 39:1-1. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets this definition, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of automobiles, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorist insurance.

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

"Department" means the New Jersey Department of Banking and Insurance.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity authorized to transact the business of private passenger automobile insurance in this State, except any residual market mechanism created by or pursuant to statute.

"LAD carrier" means a limited assignment distribution carrier which is a participating insurer which agrees to accept the assignments of another insurer pursuant to this subchapter and procedures set forth in the plan of operation.

“PAIP” means the Personal Automobile Insurance Plan established pursuant to this subchapter.

“Personal private passenger automobile insurance” means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

Amended by R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).
Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

11:3-2.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of personal private passenger automobile insurance for qualified applicants to be known as the New Jersey Personal Automobile Insurance Plan, hereafter referred to as “PAIP.”

(b) The PAIP shall be administered by a governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the PAIP shall be located within the State of New Jersey.

11:3-2.4 Exemptions

(a) Every insurer shall participate in the PAIP to the extent required by this subchapter and the plan of operation.

(b) The requirements of this subchapter shall not apply to the following:

1. Insurers that have not issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983;

2. Insurers that have issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983, but only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq.

3. Insurers transacting private passenger automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent that waiver of participation in the PAIP is explicitly provided by the terms of the approved plan of orderly withdrawal; or

4. Insurers transacting private passenger automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-23 and 24, but only to the extent provided by the terms of the order.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of automobiles (for example, motor homes, recreational vehicles, antique automobiles or motorcycles) shall participate in the PAIP but only for the particular types of automobiles currently being insured.

(d) Insurers claiming to be excluded from participation pursuant to the provisions of (b) or (c) above shall comply with the following:

1. Such insurers shall file with the PAIP no later than 60 days from the effective date of this rule a certified statement containing the following information:

i. The insurer’s name, including the NAIC group number;

ii. A statement that the insurer is not required to participate in the PAIP or receive assignments through the PAIP;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with this subchapter;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer’s information, knowledge and belief based upon the officer’s personal review of all relevant records.

2. The certified statement shall be sent to the PAIP at the following address:

PAIP Exemptions
New Jersey Personal Automobile Insurance Plan
2000 Midlantic Drive
Laurel Corporate Center
Suite 450
Mt. Laurel, NJ 08054

3. A copy of the information filed pursuant to (c)1 and 2 above shall be filed with the Department at the following address:

ARM Unit
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

New Rule, R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).
Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

11:3-2.5 Governing committee

(a) The PAIP shall be administered by a governing committee of 14 members.

1. Eight members shall be salaried employees of an insurer which is a participant in PAIP.
2. Three members shall be licensed producers.
3. One member shall be a public representative who is knowledgeable about automobile insurance matters but who is not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.
4. One member shall be a salaried employee of an approved LAD carrier for the PAIP, provided that neither the LAD carrier nor any affiliate of the LAD carrier otherwise serves as a member of the governing committee.
5. The Commissioner shall be an ex-officio, non-voting member of the committee. The Commissioner may designate an alternate.

(b) The following organizations shall each nominate two members to represent insurer participants of PAIP:

1. The Alliance of American Insurers;
2. The American Insurance Association; and
3. The National Association of Independent Insurers.

(c) Insurers which are not members of the organizations in (b) above shall nominate two members to represent insurer participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;
2. Insurance Brokers Association of New Jersey; and
3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner. The members of the initial governing committee appointed pursuant to this subchapter shall serve for two years or until a successor is appointed. Thereafter, all members shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(g) The governing committee shall have the power and duty to:

1. Develop and submit for approval to the Commissioner:
 - i. A plan of operation;
 - ii. A rating system, including rates, rules and forms; and
 - iii. A plan for a producer certification program, which may not exclude those producers with no affiliation with an insurer.
2. Appoint, conditionally appoint or terminate:
 - i. A PAIP manager, subject to approval by the Commissioner, which shall be located in this State, to be responsible for the conduct and administrative affairs of the PAIP; and
 - ii. Other employees, professionals, and contractors required to administer the PAIP.
3. Enter into contracts as are necessary or proper to carry out the provisions of this subchapter;
4. Sue or be sued in the name of the PAIP, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members. A judgment against the PAIP shall not create any direct liability against the governing committee or its individual members, or the individual participating members of the PAIP. The PAIP shall not be liable for claims made on or pursuant to individual policies issued through the PAIP;
5. Budget expenses, levy assessments, and disburse funds;
6. Investigate complaints and hear appeals from applicants, insureds, producers, LAD carriers, or insurers about any matter pertaining to the proper administration of the PAIP;
7. Arrange for the independent audit of the PAIP each year;
8. Furnish all insurers with:
 - i. An annual written operations report;
 - ii. The approved annual budget upon request;
 - iii. A copy of the annual audit upon request;
 - iv. A copy of the plan of operation, and all amendments;
 - v. A copy of all policy forms, rates, rules and manuals upon request; and
 - vi. A copy of the minutes from all meetings upon request;

9. Audit the records of any insurer relating to the subject matter of PAIP and establish such policies, records, books of account, documents and related material which shall be maintained for the proper administration of PAIP;

10. Indemnify each member of the governing committee and PAIP employees for any and all claims, suits, costs of investigations, cost of defense, and settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. The PAIP shall refuse to indemnify if it is determined that the act or failure to act was due to actual fraud, willful misconduct or actual malice;

11. Appoint from among its members or from qualified nonmembers appropriate legal, actuarial, claims, and other committees as necessary to provide technical assistance in the operation of the PAIP, policy and other contract design, and any other function within the authority of the PAIP;

i. The Commissioner may serve as an ex-officio, non-voting member of any committee established pursuant to this section. The Commissioner may designate an alternate; and

12. Perform such other functions as may be necessary and proper to administer PAIP in accordance with this subchapter and the approved plan of operation.

Amended by R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

11:3-2.6 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient provision of personal private passenger automobile insurance to qualified applicants. The plan of operation shall provide for, among other matters:

1. The internal organization and proceedings of the governing committee;

2. Standards and procedures for:

i. The appointment, compensation, and termination of producers, the PAIP manager, and other employees, professionals and contractors required to administer the PAIP;

ii. The appointment, compensation, and termination by insurers of LAD carriers (consistent with any requirements established by regulation by the Commissioner);

3. Performance standards for insurers, producers, LAD carriers, the PAIP manager, and other employees, professionals and contractors required to administer the PAIP;

4. A producer certification program, which may not exclude producers with no affiliation with a voluntary market insurer;

5. The extent of coverage to be offered by PAIP to qualified applicants;

6. Procedures to apply for coverage;

7. Commissions to be paid producers;

8. Procedures for cancellation or the nonrenewal of policies;

9. Methods and means for the collection, investment and disbursement of funds;

10. Development and maintenance of a statistical plan and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation; and

11. Such other provisions as are deemed necessary by the governing committee for the operation of the PAIP.

(b) The governing committee shall, by May 1, 1992, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. The governing committee may propose an amendment to the plan of operation at any time.

(c) The proposed plan and any amendments shall be submitted to the Commissioner for his or her review and approval. If approved, the Commissioner shall certify approval to the governing committee.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment, he or she shall return same to the governing committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation by May 1, 1992, or a new plan which is acceptable to the Commissioner within 30 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee.

3. The Commissioner may review the plan of operation at any time and may propose amendments to the governing committee. If the governing committee does not adopt amendments acceptable to the Commissioner within 30 days, the Commissioner may certify amendments and their effective date to the governing committee. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposal are provided to the governing committee.

Amended by R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

11:3-2.7 Coverage

(a) PAIP shall provide to qualified applicants bodily injury liability, property damage liability, personal injury protection, uninsured/underinsured motorists and physical

damage coverages at the minimum levels required by law, including all options related thereto.

(b) PAIP shall provide a variety of increased limits for the above coverages up to the following:

1. \$250,000 per person/\$500,000 per accident for bodily injury liability coverage, and \$100,000 for property damage liability coverage, or a combined single limit of \$500,000 for bodily injury liability and property damage liability coverage;

2. \$250,000 per person/\$500,000 per accident for uninsured/underinsured motorists bodily injury liability coverage and \$100,000 for uninsured/underinsured motorists property damage liability coverage, or a combined single limit of \$500,000 for uninsured/underinsured bodily injury liability and property damage liability coverages.

(c) The PAIP shall provide additional personal injury protection coverages as set forth in N.J.S.A. 39:6A-10.

(d) The PAIP shall provide physical damage coverages with no less than the minimum deductibles required pursuant to N.J.S.A. 17:29A-39. PAIP shall offer higher deductibles as provided by N.J.A.C. 11:3-13.3.

1. All physical damage coverages shall be on an "actual cash value" basis, less deductible, subject to a maximum loss payable of \$30,000, or such amount at which physical damage coverage may be placed in the surplus lines market as set forth on the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43.

2. For purposes of this section, "actual cash value" means the replacement cost of the automobile, less physical depreciation.

Case Notes

Motorcycle insurer, which provided only the statutory minimum third-party coverages was not obligated to offer insured opportunity to purchase underinsured motorist (UIM) coverage up to combined statutory limit, since insureds could not purchase UIM coverage above their liability limits. *Selective Ins. Co. of America v. Hojnoski*, 317 N.J.Super. 331, 722 A.2d 118 (A.D.1998).

11:3-2.8 Eligibility

(a) The PAIP shall not provide coverage to an eligible person as defined in N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.

(b) PAIP shall provide coverage to all qualified applicants. For purposes of this subchapter, a "qualified applicant" means:

1. A person who is not an "eligible person" as defined in N.J.A.C. 11:3-34.2; and

2. A person domiciled in New Jersey, who is an owner of an automobile registered and principally garaged in this State or will be registered and principally garaged in this State within 60 days.

(c) "Qualified applicant" shall also include military personnel with respect to an automobile if, at the time application is made, the applicant is a nonresident who is stationed in this State, whose automobile is registered in another State and garaged in this State.

(d) No person shall, however, be deemed a qualified applicant, if the principal operator of the automobile to be insured does not hold a driver's license which is valid in this State; or if a regular operator of the automobile other than the principal operator does not hold such a license; or if timely payment of premium is not tendered; or if the principal operator of the automobile does not furnish the information necessary to effect insurance; or if such person rents or leases automobiles to others which are used for commercial purposes.

(e) As a prerequisite to consideration for assignment under the PAIP, the applicant must certify, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in (b), (c) and (d) above. An applicant so certifying shall be considered for assignment upon making application in good faith to the PAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form approved by the Commissioner.

(f) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant and producer showing the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination;
3. Claim history for the preceding three years;
4. Driving history for each operator; and
5. Copies of vehicle registration(s).

(g) The governing committee shall establish procedures for the cancellation or nonrenewal of policies to persons who are not or are no longer qualified applicants.

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

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

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

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

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

11:3-2.9 Rates and policy forms

(a) The governing committee shall file for prior approval by the Commissioner, a rating system including rates, rules and forms which shall be used by insurers writing risks

through the PAIP. Proceedings to review rate filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall reflect the experience of the risks insured by the PAIP and shall not be excessive, inadequate or unfairly discriminatory.

1. Rates established for liability insurance coverages with limits in excess of \$50,000 per person and \$100,000 per accident for bodily injury or death and \$25,000 for property damage, or in lieu thereof, \$100,000 for a combined single limit of liability, shall be experience rated with respect to the rate applicable to the coverage in excess of those limits;

2. Rates established for collision and comprehensive coverages on automobiles with a value of \$25,000 or more at the time those coverages are issued or renewed shall be experience rated, and for automobiles with a value of more than \$15,000, but less than \$25,000 at the time those coverages are issued or renewed, that part of the rate applicable to the value between \$15,000 and \$25,000 shall be experience rated.

(b) For purposes of this subchapter, "experience rated" means that rates for liability coverages with limits in excess of the amount specified in (a)1 above, or for collision and comprehensive coverages for automobiles with a value over the amount specified in (a)2 above, shall reflect the experience of those risks insured by the PAIP with liability coverages with limits, and collision and comprehensive coverages on automobiles valued over, the amounts specified in (a)1 and (a)2 above. "Experience rated" shall not be construed to mean retrospectively rated.

11:3-2.10 Installment payment option

(a) The PAIP shall provide for an installment premium payment option in accordance with procedures established by the governing committee in the plan of operation. With respect to the installment premium payment option, the plan of operation shall specify:

1. The minimum initial deposit required, which shall be no more than 30 percent of the estimated total premium;
2. The schedule for the payment of premiums on an installment basis which shall provide for installment payments over a period of not less than nine months;
3. Installment charges;
4. The minimum "per installment" amounts; and
5. Any other procedures deemed necessary by the governing committee.

(b) Additional premium in excess of an amount set by the governing committee in the plan of operation resulting from changes to the policy shall be spread over the remaining installments, if any, or may be billed immediately as a separate transaction.

(c) Return premium resulting from changes to the policy shall be used to reduce the outstanding balance. If the outstanding balance is eliminated, any amount remaining in excess of an amount set by the governing committee in the plan of operation shall be returned within 30 days. If an

outstanding balance remains, the number and amounts of the remaining installments shall be adjusted accordingly, except when the return amount is less than \$20.00, in which event it may be treated as a separate transaction.

11:3-2.11 Determination and fulfillment of quotas

(a) The governing committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private automobile insurance (including the insurer's apportionment share for the depopulation of the Market Transition Facility pursuant to N.J.S.A. 17:33B-11c(5)) relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. The PAIP shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

2. The PAIP shall cease acceptance of applications for new policies upon certification by the Commissioner that the Plan has reached or exceeded 10 percent of the private passenger automobile non-fleet exposures.

3. The PAIP shall resume acceptance of applications for new policies upon certification by the Commissioner that the PAIP is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile market in the State.

4. Each insurer shall receive credit against its respective portion of assigned risks for private passenger automobile risks written voluntarily in the State that are garaged in those urban territories designated by the Commissioner. Such credit shall be given in the amount of one assigned risk credit for every two voluntary risks written in those designated territories. Each insurer shall also receive one assigned risk credit for each risk which is not an eligible person written in accordance with the insurer's approved rating system, regardless of the territory in which the risk is located.

5. No insurer whose surplus as regards policyholders is less than \$1,500,000, as reported on page three of the most recent statutory annual statement, shall be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10 or in excess of a combined single limit of \$100,000.

(b) An insurer that issues only policies that provide physical damage coverage shall not be subject to assignments from the PAIP, but shall be entitled or obligated, as the case may be, to receive or pay a cash settlement of its obligation, in lieu of receiving assignments, for the current year, in accordance with procedures established by the governing committee in the plan of operation.

(c) Each insurer or statistical agencies designated by such insurers shall report to the PAIP manager all data necessary to comply with the distribution procedures. Each insurer shall permit its statistical agent to release such data to the PAIP manager and shall permit its statistical agent to furnish the PAIP manager with statements of its PAIP experience.

(d) There shall be no exceptions to the type or class of risks assigned to an insurer other than as provided in this subchapter nor shall there be any agreement with an insurer to refrain from assigning risks in any territory or area of the State.

(e) The PAIP shall not suspend assignments to an insurer for any period of time, for any reason, other than a suspension of insurer obligations granted by the Commissioner pursuant to N.J.S.A. 17:33B-23, 17:33B-24 and N.J.A.C. 11:2-35. The PAIP shall promptly notify all insurers of such action.

(f) If an insurer is ordered or permitted to discontinue writing automobile insurance in this State in accordance with a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29, or other Order of the Commissioner, or Order by a court of competent jurisdiction, the insurer's obligations to pay assessments, receive assignments and run-off existing business shall be pursuant to such Order of the Commissioner or Order of a court of competent jurisdiction.

(g) In the event an insurer is merged with another insurer, there is a consolidation of insurers, or an insurer acquires another insurer's book of business, the continuing insurer shall receive the assignments and assessments of the insurer merged, consolidated, or acquired until the quota of such merged, consolidated, or acquired insurer, as established by its writings prior to such merger, consolidation, or acquisition has been filled; provided, however, the continuing insurer may be relieved from such obligations if another insurer has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(h) Groups of insurers under the same ownership and management shall be treated as a single insurer. Groups of insurers under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(i) The governing committee shall establish procedures in the plan of operation permitting an insurer by mutual agreement to transfer its obligations to accept assignments to another insurer (to be known as a LAD carrier). The basic contract to be entered into between insurers and LAD carriers, including the minimum duration of such agreement, shall be approved by the governing committee and the Commissioner. Any substantive modifications to the approved contract shall be submitted to the governing committee and Commissioner for approval prior to its use. With respect to the transfer of an insurer's obligations to accept assignments to a LAD carrier, the plan shall address the following:

1. Eligibility criteria for an insurer to act as a LAD carrier and accept additional assignments;
2. The maximum number of additional assignments a LAD carrier may assume;
3. Minimum provisions for contracts between insurers and LAD carriers, including the minimum time duration for such contracts;
4. The parameters for fees to be paid to LAD carriers by the participating insurer for the assumption of the insurer's assigned risk quota;
5. Procedures by which the allocation of assignments to LAD carriers are adjusted to reflect additional assignments as a result of entering into a contract to assume additional assigned risks; and
6. Any other procedures deemed necessary to provide for a LAD carrier distribution system.

Amended by R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

11:3-2.12 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, LAD carrier, person applying to act as a LAD carrier, or insurer may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.
2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.
3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of 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.

Amended by R.1993 d.548, effective November 15, 1993.
See: 25 N.J.R. 2212(a), 25 N.J.R. 5215(a).

11:3-2.13 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

11:3-5.8 Medical review organizations

(a) Medical review organizations shall be authorized to determine in connection with the PIP dispute resolution process set forth in this subchapter:

1. Whether the medical treatment or diagnostic test is medically necessary;
2. Whether the treatment is in accordance with medically recognized standard protocols including those protocols approved by the Commissioner and set forth in N.J.A.C. 11:3-4;
3. Whether the treatment is consistent with symptoms or diagnosis of the injury;
4. Whether the injury is causally related to the accident ;
5. Whether the treatment is of a palliative rather than a restorative nature; and
6. Whether medical procedures and tests that have been repeated are medically necessary.

(b) The findings of a medical review organization shall be presumed to be correct, but may be rebutted by a preponderance of the evidence submitted to the dispute resolution professional.

11:3-5.9 Standards for medical review organizations

(a) Medical review organizations shall be capable of performing medical reviews for all primary specialties and disciplines.

(b) Medical review organizations shall employ a medical director to actively participate in the review of cases to assure quality and consistency.

(c) Medical review organizations shall utilize health care providers in the same discipline as the treating provider to perform the reviews who meet the following standards:

1. Reviewing health care providers shall be active practitioners who obtain a minimum of one-half of their income from practice in their area of specialty;
2. Reviewing health care providers shall be licensed in New Jersey and board certified in their specialty;
3. Reviewing health care providers shall have at least two years' experience in medical review, or be certified as a medical review physician; and
4. Reviewing health care providers shall have completed an orientation with the MRO, including medical review instruction and report writing.

(d) A medical review organization shall have adequate procedures in place to assure confidentiality of patient records.

1. All MRO files shall be indexed and referred to by reference number rather than patient name.

2. Medical files shall be maintained in a secure area of the MRO's offices.

3. Only the MRO shall request additional documents relating to the injured person's medical condition, or direct that the injured person be physically examined.

(e) A medical review organization shall utilize procedures to provide for the fair and open exchange of information and records related to the review between the treating health care provider, any provider that has reviewed the case on behalf of the insurer, and the MRO's reviewing health care provider.

(f) A medical review organization shall complete its review and submit its report to the dispute resolution professional in accordance with the medical exigencies of the case, but in no event in excess of 20 business days from receipt of medical records from the treating health care provider.

(g) A medical review organization shall have a procedure for obtaining mental or physical examinations of injured persons that may be required in the course of its review.

(h) A medical review organization shall utilize written review procedures. In reaching its determinations, the MRO shall consider all information submitted by the parties and information deemed appropriate by the MRO, including: pertinent medical records, consulting physician reports and other documents submitted by the parties; applicable commonly accepted protocols, professional standards and practices by national standard setting organizations, and protocols and diagnostic tests approved by the Commissioner and set forth in N.J.A.C. 11:3-4.

(i) A medical review organization shall utilize audit procedures to ensure compliance with statutory and regulatory requirements.

(j) A medical review organization shall retain records of its determinations for five years.

11:3-5.10 Medical review organization certification process

(a) The Commissioner shall certify a medical review organization to provide medical review services in connection with the resolutions of PIP disputes if the Commissioner determines that the MRO complies with the standards set forth in N.J.A.C. 11:3-5.9 to provide an impartial review of the medical necessity or appropriateness of treatments, health care services or items of durable medical equipment for which medical expense benefits may be provided under personal injury protection coverage.

(b) For the purpose of obtaining certification by the Commissioner to act as a medical review organization to perform medical review in connection with the resolution of

PIP disputes, an MRO shall submit two copies of a written application that sets forth the information in (b) below to:

Medical Review Organization Certification
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, NJ 08625-0325

(c) The MRO application shall include the following:

1. A list of the names, addresses and specialties of the individuals health care providers, that will provide the medical review services. If the MRO will be limited in its service area, the application shall provide a map of the service area, including the providers by specialty;

2. A copy of the MRO's certificate of incorporation and by-laws;

3. A diagram of the MRO's organizational structure;

4. The location of the MRO's place of business where it administers its services and maintains its records;

5. A listing and biography of the MRO's officers and directors, or the individuals in the organization responsible for administration of medical reviews, including the medical director;

6. A detailed description of the MRO's experience in the review of medical care;

7. A description of its procedures for review of medical treatments, diagnostic tests and items of durable medical equipment in conjunction with PIP medical expense benefits;

8. A current list identifying all property/casualty insurers, health insurers, health maintenance organizations and health care providers with whom the MRO maintains any health related business arrangement. The list shall include a brief description of the nature of the arrangement, so as to permit the administrator to avoid assignments that may create a conflict of interest;



9. Such other information as the Commissioner may specifically request in connection with the certification of a particular applicant; and

10. A fee in the amount of \$1,000 payable to the Department of Banking and Insurance.

(d) The materials specified in (c) above shall be retained by the Department and may be referred to the Department of Health and Senior Services for consultation as necessary. Any significant changes in the materials filed with the Department shall be reported as an amendment to the materials filed within 30 days of the change.

(e) The Department, in consultation with the Department of Health and Senior Services, shall review the materials and grant or deny certification within 45 days of receipt of a complete filing. The Commissioner may extend the time an additional 30 days for good cause shown, and shall notify the applicant of any extension. A decision to deny certification shall be in writing and include an explanation of the reason for the denial.

(f) Initial certification shall be effective for a period of two years. Certified MROs shall reapply for certification 90 days prior to expiration by submitting the items set forth in (b)1, 6, 7, 8, 9 and 10 above and any changes to items previously submitted in (b)2, 3, 4 and 5 above. Renewal certification may be effective for a period of up to five years.

(g) All data or information in the MRO's application for certification shall be confidential and shall not be disclosed to the public, except as follows:

1. The MRO's certificate of incorporation;
2. The MRO's address;
3. The names of the MRO's officers and directors, or the individuals in the organization responsible for the administration of medical reviews including the medical director; and
4. The date of certification of the MRO and date that certification expires.

(h) Upon certification, the Department shall advise the administrator of the name and address of the MRO, any limitations on its geographical service area and information about persons with whom it maintains health related business arrangements.

(i) The Commissioner may suspend or revoke the certification of an MRO upon finding that the MRO no longer meets the standards set forth in N.J.A.C. 11:3-5.9; that medical review services are not being provided in accordance with the requirements of this subchapter; or that the certification was granted based on false or misleading information.

1. Proceedings to revoke or suspend the certification shall be conducted pursuant to N.J.A.C. 11:17D.
2. Upon request of the MRO for a hearing, the matter shall be transferred to the Office of Administrative Law

for a hearing conducted pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:3-5.11 Fees

(a) (Reserved)

(b) When a mental or physical examination is performed in connection with the medical review organization's services, the health care provider performing the examination shall be paid the fee provided for that service set forth on the Department's medical fee schedule, N.J.A.C. 11:3-29.

11:3-5.12 Prohibition of conflicts of interest

(a) No administrator or employee thereof, dispute resolution professional, medical review organization or reviewing health care provider shall have any personal or financial interest, direct or indirect, or engage in any business or transaction which is in conflict with the proper conduct of his or her duties under this subchapter.

(b) No administrator or employee thereof, dispute resolution professional, medical review organization or reviewing health care provider shall act in such capacity in any matter wherein he or she has a direct or indirect personal or financial interest that might reasonably be expected to impair his or her objectivity or independence of judgment.

(c) No administrator or employee thereof, dispute resolution professional, medical review organization or reviewing health care provider shall accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him or her in the conduct of duties under this subchapter.

(d) No dispute resolution professional shall accept from any person, whether directly or indirectly and whether by him or herself or through a spouse or any family member or through any partner or associate or controlled business, any gift, favor, service, employment or offer of employment or any other thing of value which he or she knows or has reason to believe is offered with the intent to influence the performance of his or her duties as a dispute resolution professional.

(e) No dispute resolution professional shall make any determination in any PIP dispute in which he or she directly or indirectly or through a spouse, family member or by partner or associate or controlled business has any personal or financial interest.

SUBCHAPTER 6. INSURANCE IDENTIFICATION CARDS

11:3-6.1 Scope

In order to properly implement and administer the compulsory insurance law of New Jersey, all insurance compa-

nies are required to issue an insurance identification card to all named insureds.

As amended, R.1983 d.648, effective January 17, 1984.

See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Reference to dates deleted.

Case Notes

Policy provision defining an eligible person as a spouse only if resident in the same household as insured held void; named insured's deletion of estranged wife; reformation of policy ordered. *Matland v. United Services Automobile Ass'n*, 174 N.J.Super. 499, 417 A.2d 46 (Law Div.1980).

11:3-6.2 Permanent identification cards (from IV-1)

(a) Permanent insurance identification cards shall be issued in accordance with the specifications contained in either (b) or (c) below.

(b) A permanent insurance identification card shall conform to the following specifications:

1. The size shall be approximately 3½ inches by 5 inches (tolerance of ¼ inch permitted).
2. The weight shall be minimum 24 pound ledger paper stock.
3. The color shall be white stock, black print.
4. The front of card shall include the following:
 - i. The company name: Group name may be shown instead if it will identify the specific company involved. Insurance company logos are permitted;
 - ii. Named insured: The surname of the insured must agree with surname shown on the motor vehicle registration certificate. The Division of Motor Vehicles will conduct verification on surname basis;
 - iii. Address: The replacement of identification cards when there is a change of address will be optional with the insurance companies;
 - iv. Policy number: The complete policy number will be listed;
 - v. Effective date and expiration date: Month, day and year must be shown;
 - vi. Description of the vehicle: Year, make and vehicle identification number shall be noted on the insurance identification card. The model of the vehicle may be shown as the make. The make of the vehicle may be abbreviated, but the complete vehicle identification number must be shown.
 - vii. In the case of fleets, dealership or leasing companies where the owner insures the vehicles, the make, year and VIN need not be recorded. In lieu of the make, year and VIN, the insurer may insert "ALL OWNED VEHICLES" or "FLEET". If the lessee insures the vehicles, the name of the owner as shown on the motor vehicle registration must be shown on the I.D. card in addition to the name of the insured if the designation "FLEET" is used without the VIN;

viii. Heading: The heading across the top shall read: State of New Jersey Insurance Identification Card;

ix. The insurance company code as established by the New Jersey Division of Motor Vehicles will be printed immediately preceding the insurance company name;

x. The name and address of the office of agency issuing the identification cards must be shown. The cards must contain a signature of an agent or other authorized representative of the named company (facsimile signatures are acceptable);

xi. Assignment of form number IV2A(1/96), to be shown in the upper left corner.

5. The reverse of card shall include the address, and may include a facsimile number and E-mail address, if any, established by the insurer for the filing of notification of the commencement of medical treatment by treating medical providers under N.J.A.C. 11:3-25. This information shall be provided under the following title: "ADDRESS FOR NOTIFICATION OF COMMENCEMENT OF MEDICAL TREATMENT"

6. This notice may be placed on the front or reverse of the identification card and may be printed on the card or affixed on the card by way of a label that contains the required information.

(c) Insurers may, as an alternative to (b) above, utilize the design and format copyrighted by the ACORD 50 (WM 2/95) insurance identification card.

(d) Servicing carriers of any residual market mechanism authorized by statute shall issue an insurance identification card in accordance with (b) and (c) above. The card shall indicate that coverage is being issued by the servicing carrier on behalf of the residual market mechanism.

As amended, R.1973 d.140, eff. May 31, 1973.

See: 5 N.J.R. 150(a), 5 N.J.R. 229(b).

As amended, R.1973 d.247, eff. August 31, 1973.

See: 5 N.J.R. 350(b).

As amended, R.1983 d.648, eff. January 17, 1984.

See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Further specifications for ID cards added and alternative type of card introduced.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

In (d): deleted NJAFIUA reference and added text referring to "residual market mechanism authorized by statute."

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.1997 d.14, effective January 6, 1997 (operative March 7, 1997).

See: 28 N.J.R. 3876(a), 29 N.J.R. 132(a).

Added (b)5 and (b)6.

Case Notes

Policy provision defining an eligible person as a spouse only if resident in the same household as insured held void; named insured's deletion of estranged wife from coverage held void; reformation of policy ordered. *Matland v. United Services Automobile Ass'n*, 174 N.J.Super. 499, 417 A.2d 46 (Law Div.1980).

11:3-6.3 Temporary identification card (form IV-2)

(a) The specifications for temporary insurance identification cards are set forth below:

1. The size shall be the same as the permanent identification card;
2. The weight and color shall be minimum 24 pound white stock;
3. The color shall be the same as the permanent identification card;
4. Number of copies: One original;
5. The content of the temporary card shall be the same as the permanent identification card except as noted below:
 - i. Title: "TEMPORARY" to precede heading on card;
 - ii. Policy number: Indicate policy number if available; otherwise, the application or binder number is acceptable;
 - iii. Effective date: Month, day and year that coverage becomes effective. Expiration date is not required;
 - iv. Expiration: The card shall contain the following statement: "This card expires 60 days after the effective date shown above";
 - v. Assignment of form number IV2T (1/96), to be shown in the upper left corner.

As amended, R.1973 d.35, eff. January 26, 1973.

See: 5 N.J.R. 20(b).

As amended, R.1974 d.208, eff. July 24, 1974.

See: 6 N.J.R. 322(b).

As amended, R.1983 d.648, eff. January 17, 1984.

See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Language changes and clarification.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Deleted subsection (b), describing components of the New Jersey Automobile Insurance Plan.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

11:3-6.4 General provisions

(a) The order of the information to be contained on the identification cards may be rearranged in order to accommodate fixed printout systems already established by a company. No changes shall be made without obtaining approval of the New Jersey Division of Motor Vehicles.

(b) Additional information may be printed on the reverse side of the identification cards, provided the additional information is appropriately captioned and is not at variance with the information required.

(c) One identification card shall be issued for each vehicle insured under the policy. Replacement identification

card or cards will be issued at the request of the insured in the event of loss.

(d) Each identification card shall be effective for no more than 14 months from the effective date indicated on its face. A replacement identification card shall be issued to all insureds each year upon renewal of the policy. A replacement identification card must be issued upon either a change of vehicle or the acquisition of additional vehicles. Upon assignment of a new policy number, a new card must also be issued.

(e) Identification cards will not be required for trailers as the liability burden is on the towing or power unit.

(f) The insurer shall, prior to the expiration of a 60-day temporary identification card, issue to the insured a permanent identification card.

(g) Insurers may continue to use existing supplies of form number IV2A (1/73) and ACORD 50(1/83) until June 30, 1996. Thereafter, insurers shall only be permitted to issue insurance identification cards which comply with this subchapter. Insurance identification cards issued in compliance with this subchapter shall be valid for the term of the policy referenced thereon.

As amended, R.1973 d.35, effective January 26, 1973.

See: 5 N.J.R. 20(b).

As amended, R.1983 d.648, effective January 17, 1984.

See: 15 N.J.R. 1919(a), 16 N.J.R. 145(c).

Dated material at (e) deleted.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

11:3-6.5 Commercial motor vehicles; exemption

Commercial motor vehicles regulated by the Interstate Commerce Commission or the New Jersey Department of Public Utility Commissioners shall be exempted from this regulation.

NOTE: To require an I.C.C. or P.U.C. carrier to carry such an identification card would be an unnecessary duplication. The insurance and filing requirements of the I.C.C. and the P.U.C. present a comparable safeguard to that sought by the newly required identification insurance cards.

R.1973 d.3, effective January 3, 1973.

See: 4 N.J.R. 307(a), 5 N.J.R. 47(d).

SUBCHAPTER 7. AUTOMOBILE REPAIRATION REFORM ACT**11:3-7.1 Purpose**

This subchapter implements certain provisions of the Automobile Repairation Reform Act, N.J.S.A. 39:6A-1 et seq., including the Commissioner's authority to establish the

amounts and terms of additional personal injury protection benefits that must be made available to insureds electing a standard automobile insurance policy pursuant to N.J.S.A. 39:6A-4.

Amended by R.1998 d.591, effective December 21, 1998 (operative March 22, 1999).

See: 30 N.J.R. 3202(a), 30 N.J.R. 4390(b).

Substituted "made available to insureds electing a standard automobile insurance policy pursuant to N.J.S.A. 39:6A-4" for "provided in policies covering automobiles as defined in N.J.S.A. 39:6A-2" at the end.

Case Notes

Additional personal injury protection coverage applied to all persons for whom basic coverage was provided. *Clendaniel v. New Jersey Manufacturers Insurance Co.*, 190 N.J.Super. 286, 463 A.2d 369 (App. Div.1983), affirmed in part, reversed in part 96 N.J. 361, 476 A.2d 263 (1984).

Individual held to be "surviving spouse" until conclusive determination of divorce reached. *Allstate Insurance Co. v. Skolny*, 86 N.J. 112, 429 A.2d 1045 (1981).

11:3-7.2 General requirements applicable to additional personal injury protection benefits

(a) In addition to the personal injury protection benefits that insurers must provide pursuant to N.J.S.A. 39:6A-4 or 39:6A-3.1, insurers shall make available to the named insured, and, at his or her option, to any resident relatives in the name insured's household who are not named insureds on another standard or basic policy, additional income continuation benefits, essential services benefits, death benefits and funeral expense benefits pursuant to N.J.S.A. 39:6A-10 and this subchapter.

(b) The additional benefit indicated in each option that an insurer may offer for income continuation benefits and essential services benefits represents the aggregate of the basic and additional personal injury protection benefits.

(c) Any additional income continuation benefits that an insurer may offer shall be limited to 75 percent of the insured's weekly income.

(d) The limits which are applicable to any additional personal injury protection benefits that an insurer may offer shall apply on a per person, per accident basis.

(e) Each insurer shall make available as an option additional income continuation benefits for as long as the disability persists.

1. Each insurer shall furnish rates for such benefits upon the request of the insured.

(f) Any additional death benefits which an insurer may offer shall be payable without regard to the period of time elapsing between the date of the accident and the date of death provided death occurs within two years of the accident and results from bodily injury from that accident.

1. The requirements of (f) above shall apply to any claim for additional death benefits where death occurs on or after April 21, 1986.

i. With respect to any claim presented on or after the effective date of this subchapter, each insurer shall disclose the availability of additional death benefits in conformance with the applicable provisions of N.J.A.C. 11:2-17.1 et seq.

ii. With respect to any claim initiated prior to the effective date of this subchapter, each insurer shall take appropriate steps to determine whether additional death benefits are payable, pursuant to (f) above. These steps shall include, but need not be limited to, review of claims closed on or after April 21, 1986 for the purpose of ascertaining the applicability of additional death benefits. Upon determining that such benefits are payable, each insurer shall provide written notice to eligible beneficiaries and process the claim in accord with N.J.S.A. 39:6A-5 and the applicable provisions of N.J.A.C. 11:2-17.1 et seq.

(g) In addition to the minimum schedule of additional personal injury protection benefits set forth at N.J.A.C. 11:3-7.4(b), any insurer may provide other additional personal injury protection benefit options subject to review and approval of its filing by the Department of Banking and Insurance. Any additional options offered by the insurer must be in compliance with the standards and requirements set forth in this subchapter.

(h) Insurers may also make available to named insureds covered under N.J.S.A. 39:6A-4, and at their option, to resident relatives in the household of the named insured or to other persons provided medical expense coverage pursuant to this statutory provision, or both, additional first party medical expense benefit coverage pursuant to N.J.S.A. 39:6A-10.

Amended by R.1990 d.580, effective November 19, 1990 (operative January 1, 1991).

See: 22 N.J.R. 1681(a), 22 N.J.R. 3488(b).

New (h) added enabling insurers to make available additional first party medical expense benefit coverage in excess of \$250,000 as per P.L. 1990 c.8.

Amended by R.1998 d.591, effective December 21, 1998 (operative March 22, 1999).

See: 30 N.J.R. 3202(a), 30 N.J.R. 4390(b).

In (a), deleted "basic" preceding "personal" and inserted "who are not named insureds on another standard or basic policy" following "household".

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (a), inserted an N.J.S.A. reference.

Case Notes

Insurer made sufficient offer of basic income continuation benefits for as long as disability exists. *Werts v. New Jersey Mfrs. Ins. Co.*, 250 N.J.Super. 580, 595 A.2d 1110 (A.D.1991), certification denied 127 N.J. 554, 606 A.2d 366.

After death of named insured in accident, maximum scheduled income continuation and essential services benefits held payable to husband of named insured. *Muschette v. The Gateway Insurance Co.*,

149 N.J.Super. 89, 373 A.2d 406 (App.Div.1977) certification denied 75 N.J. 27, 379 A.2d 258, affirmed 76 N.J. 560, 388 A.2d 964 (1978).

(c) In addition to the motor vehicle violation and insurance eligibility points specifically enumerated on Schedule 2 of the Appendix pertaining to the New Jersey Turnpike, Atlantic City Expressway, and the Garden State Parkway, for any other motor vehicle violations that occur on the New Jersey Turnpike (N.J.A.C. 19:9), the Atlantic City Expressway (N.J.A.C. 19:2-2.1), the Garden State Parkway (N.J.A.C. 19:8) or for any other moving violation at any location, Schedules 1 and 2 shall be consulted for identification of the specific misconduct committed and the determination of the appropriate number of insurance eligibility points to be assessed.

Amended by R.2001 d.44, effective February 5, 2001.
Sec: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Added (c).

Amended by R.2002 d.330, effective October 7, 2002.
Sec: 34 N.J.R. 368(a), 34 N.J.R. 3525(a).

Added (f).

Amended by R.2003 d.469, effective December 1, 2003.
Sec: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

Rewrote (b); deleted (c) and recodified former (d) through (f) as (c) through (e).

Case Notes

Police report established five-point at fault accident which, when combined with six-point speeding violations, justified insurer in declining to renew automobile policy. *Fichera v. Liberty Mutual*, 95 N.J.A.R.2d (INS) 41.

Renewal of automobile policy for one period despite accumulation of points did not preclude nonrenewal in next period for same points. *Liberty Mutual v. Lee*, 95 N.J.A.R.2d (INS) 38.

Accident in which insured was at fault, when combined with two other accidents in period of coverage, justified nonrenewal for accumulation of too many points. *New Jersey Manufacturers v. Sandor*, 95 N.J.A.R.2d (INS) 36.

Accumulation of nine or more points by member of insured's household justified nonrenewal of auto policy, *Pandola v. State Farm*, 95 N.J.A.R.2d (INS) 32.

Accident resulting in payment of \$500 or more not recouped from another tort-feasor and not specifically excepted, and driver not excused under proportionate responsibility standard, was "at-fault accident" warranting eligibility points. *Amica Mutual Insurance Co. v. Kern*, 93 N.J.A.R.2d (INS) 55.

Insured at-fault for automobile accident; insured could decline to renew insurance. *AMICA Mutual Insurance Co. v. Farley*, 93 N.J.A.R.2d (INS) 51.

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

N.J.S.A. Section Number If applicable	Event Description	DMV Event Identifier(s) If applicable	Points
39:4-50	Operating a motor vehicle under the influence of alcohol or drugs	0450; 3261	9
39:4-50.4	Refusal to submit to a chemical test	4504	9
2C:11-2	Vehicle homicide	C115	9
39:3-40	Operating a motor vehicle while driving privilege is suspended	0340	9
39:6B-2	Operating a motor vehicle without liability insurance	06B2	9

N.J.S.A. Section Number If applicable	Event Description	DMV Event Identifier(s) If applicable	Points
39:6A-15	Misrepresentation of insurance coverage	6A15	9
	Each at fault accident		5
	* For each full year of a court imposed driver's license suspension within the preceding 3 years		3
	* For each full year within the immediately preceding 3 years that a person has not held a driver's license		1
	Involved in a fatal accident	EFTL; NFTL	4
			2
39:3-37	Obtaining a driver's license or registration through deception	0337; 0312; 05D5; 1312; MSNJ; MSOS	5
39:3-38	Make or use counterfeit plate or plates other than issued	0338	5
39:3-38.1	Make, alter or counterfeit driver's license or registration	3381	5
	Failure to verify insurance involved in an automobile accident	FVIA	2

* Points for failure to hold a driver's license in the previous three years are not cumulative to points for driver's license suspension.

Schedule 2

N.J.S.A. Section Number	Offense	Points
27:23-29	Moving against traffic—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
27:23-29	Improper passing—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
27:23-29	Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
39:3-20	Operating constructor vehicle in excess of 30 mph	3
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bike	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through a safety zone	2
39:4-52 & 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction of officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at intersection	2
39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5

N.J.S.A. Section Number	Offense	Points
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91 & 39:4-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-98 & 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper "U" turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing of railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5
39:4-128.4	Improper passing of a frozen dessert truck	4
39:4-129	Leaving the scene of an accident	
	No personal injury	2
	Personal injury	8
39:4-144	Failure to observe "stop" or "yield" signs	2
39:5D-4	Moving violation out-of-state	2

Amended by R.1996 d.58, effective February 5, 1996.
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

**SUBCHAPTER 35. PRIVATE PASSENGER
AUTOMOBILE INSURANCE
UNDERWRITING RULES**

11:3-35.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46 which requires that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject new or renewal business or to assign risks to the standard or non-standard rate levels. Approval of underwriting rules shall serve to confirm that each insurer's business practices are consistent with law regarding the acceptance of new business, the renewal of current business and the assignment of a risk to an insurer's standard or non-standard rate level.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to affiliated companies which insure risks through different individual insurance companies.

(c) No private passenger automobile insurer shall make any filing pursuant to this subchapter after March 1, 1998.

Amended by R.1998 d.129, effective March 2, 1998.
See: 29 N.J.R. 5253(a), 30 N.J.R. 839(a).
Added a new (c).

11:3-35.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

"Automobile insurance eligibility points" means points accrued as provided in accordance with the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Banking and Insurance.

"Individual insurance company" means an insurance company licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless of whether it is one of a group of affiliated companies.

"Insurer" includes a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

11:3-35.3 General requirements and filing format

(a) All insurers which write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to a tier in a tier rating plan in accordance with N.J.S.A. 17:29A-46.1 and 46.2 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

(b) Underwriting rules shall be submitted on 8½ by 11 inch paper using one side of the page. Each page shall be consecutively numbered. The first page shall show the filer's company name, the filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number. The underwriting rules filing shall clearly identify the rate level to which the underwriting rules will be applied and whether the underwriting rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(c) Underwriting rules shall meet the following standards:

1. No underwriting rule shall be based on the territory in which an insured resides.

2. An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristics of the driver(s) insured and the hazards insured against.

3. An underwriting rule shall be based on specific and verifiable measurements. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

4. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

5. No underwriting rule shall be based on whether the applicant or insured was previously insured as a non-standard or sub-standard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.

6. No underwriting rule shall be based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount.

7. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

8. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not prohibit a rate discount to an insurer's employees or agents.

9. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (a), substituted "a tier in a tier rating plan in accordance with N.J.S.A. 17:29A-46.1 and 46.2" for "the standard or non-standard rating plan, in accordance with N.J.S.A. 17:29A-46".

11:3-35.4 Underwriting rules for eligible persons

(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any of its insureds who is defined as an "eligible person" in N.J.A.C. 11:3-34.

(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse to insure, refuse to renew or limit coverage available to any of its insureds, or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

(d) Underwriting rules for eligible persons applicable on and after April 1, 1992 shall not provide that coverage will be declined based on whether a member of the insured household is not an "eligible person" as defined in N.J.A.C. 11:3-34 unless the member of the insured household accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purposes of this section:

1. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

2. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.

(e) Insurers may file for approval underwriting rules by which it cancels coverage during the policy term under a policy insuring an eligible person pursuant to N.J.S.A. 17:29C-7(A)(b) when the driver's license or motor vehicle registration of another named insured or person insured under the policy who either resides in the same household or customarily operates an automobile insured under the policy has been suspended or revoked. The Department may approve such underwriting rules if they include the following provisions:

1. The underwriting rules provide for the cancellation of the policy when the driver's license or motor vehicle registration is suspended or revoked for one or more of the following reasons:

i. Conviction of operating a motor vehicle under the influence of alcohol or drugs (N.J.S.A. 39:4-50);

ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 39:4-50.4);

iii. Conviction of vehicular homicide (N.J.S.A. 2C:11-2);

iv. Conviction of operating a motor vehicle while driving privilege is suspended (N.J.S.A. 39:3-40);

v. Conviction of operating a motor vehicle without liability insurance (N.J.S.A. 39:6C-2);

vi. Conviction of misrepresentation of insurance coverage (N.J.S.A. 39:6A-15);

vii. Accumulation of motor vehicle penalty points pursuant to N.J.S.A. 39:5-30.5; or

viii. By a court upon conviction of one of the following motor vehicle violations: racing on a highway (N.J.S.A. 39:5C-1); failure to pass to right of vehicle proceeding in opposite direction (N.J.S.A. 39:4-84); tailgating (N.J.S.A. 39:4-89); reckless driving (N.J.S.A. 39:4-96); exceeding a speed limit by 30 MPH or more (N.J.S.A. 39:4-99); improperly passing a school bus (N.J.S.A. 39:4-128.1); or leaving the scene of an accident in which personal injury occurred (N.J.S.A. 39:4-129).

2. The underwriting rules provide for the cancellation of the policy when:

i. A household member is convicted of a violation of N.J.S.A. 39:6B-2 during the policy term; or

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during a period of suspension as outlined in 1 above.

3. The underwriting rules provide that coverage for eligible persons shall not be cancelled when the driver's license or motor vehicle registration of another named insured or any other operator insured under the policy is suspended or revoked for any reason other than those set forth in (e)1 above.

(f) Insurers may file for approval underwriting rules by which it declines coverage for one policy period not to exceed one year to eligible persons who have been non-renewed pursuant to N.J.S.A. 17:29C-7.1(b) and (c) and N.J.A.C. 11:3-8.5(a)2 and 3.

(g) Insurers may file for approval underwriting rules which provide for the cancellation of coverage during the policy term under a policy insuring an eligible person if:

1. The named insured knowingly provided materially false or misleading information in connection with any application for insurance, renewal of insurance, or in connection with the filing of a claim for benefits under an insurance policy; or

2. An insurer determines, within 60 days of issuance of the policy, that the named insured does not meet the approved underwriting rules of the insurer in effect on the date of application.

Amended by R.1996 d. 246, effective June 3, 1996.

See: 27 N.J.R. 2048(a) 28 N.J.R. 3002(b).

Added (e) and (f).

Administrative correction.

See: 28 N.J.R. 3798(a).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

In (f), amended N.J.S.A. and N.J.A.C. references.

Amended by R.2003 d.502, effective December 15, 2003.

See: 35 N.J.R. 3529(a), 35 N.J.R. 5616(a).

Added (g).

Case Notes

Insured who was otherwise eligible for automobile insurance in voluntary market could obtain coverage for vehicles registered to her notwithstanding her husband's license suspension. *Kwok v. First Trenton*, 95 N.J.A.R.2d (INS) 29.

11:3-35.5 Underwriting rules for standard/non-standard rating plans

(a) Insurers shall file underwriting rules applicable to each rate level of a rating plan in accordance with N.J.A.C. 11:3-19A, which filing shall be made in accordance with, and in satisfaction of, the requirements of this subchapter.

(b) Insurers shall file underwriting rules that provide that its insureds and applicants who have accrued no automobile insurance eligibility points shall be assigned to a standard tier.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard tier any person who has accrued one or more automobile insurance eligibility points.

(d) Underwriting rules for tier rating plans shall provide that an automobile insured at a higher than standard tier shall be rated based upon the eligibility points of the principal driver; eligibility points of other household members or customary operators may additionally be used to rate the automobile only if not used to rate any other automobile.

Amended by R.1996 d.58, effective February 5, 1996.

See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Rewrote the section.

Case Notes

Insured who was otherwise eligible for automobile insurance in voluntary market could obtain coverage for vehicles registered to her notwithstanding her husband's license suspension. *Kwok v. First Trenton*, 95 N.J.A.R.2d (INS) 29.

11:3-35.6 Penalties

An insurer which knowingly fails to transact automobile insurance business consistently with its approved underwriting rules shall be subject to a fine of not less than \$500.00 for each violation, pursuant to N.J.S.A. 17:29A-46.1 and 46.2.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Rewrote the section.

**SUBCHAPTER 36. AUTOMOBILE PHYSICAL
DAMAGE INSURANCE INSPECTION
PROCEDURES****11:3-36.1 Purpose and scope**

(a) The purpose of this subchapter is to provide rules for the inspection of automobiles in connection with the issuance of physical damage insurance coverage by insurers pursuant to N.J.S.A. 17:33B-33 through 17:33B-40.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State.

11:3-36.2 Definitions

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

“Authorized representative” means any person which is authorized by the insurer to conduct insurance inspections pursuant to this subchapter; an authorized representative may be an employee of the insurer, a producer or an inspection service other than the insured, whether located inside or outside of this State.

“Automobile physical damage insurance” means a policy providing one or more of the following insurance coverages:

1. Collision;
2. Comprehensive; and
3. Fire and theft.

“Automobile physical damage insurance inspection” means a physical examination of an automobile by an authorized representative of the insurer, in accordance with the standards set forth in N.J.A.C. 11:3-36.6.

“Book of business” means all private passenger automobile insurance written by one producer with one insurer.

“Certificate of mailing” means a receipt from the United States Postal Service that the item was received by it with the proper postage affixed for delivery.

“Commissioner” means the Commissioner of Banking and Insurance of the State of New Jersey.

“Inspection service” means any person or legal entity other than the insurer, established and operated to perform the inspections required by this subchapter.

“Insured” means the named insured (as defined in the policy) or an applicant for automobile physical damage insurance.

“Insurer” means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes a group of affiliated companies.

“New automobile” means an automobile not previously titled with not more than 1,000 miles recorded on the odometer.

“Nonowned automobile” means a private passenger automobile in the possession of the insured or being operated by the insured which is neither owned by nor furnished for the regular use of either the named insured or any relative (as defined in the policy), other than a temporary substitute automobile.

“Private passenger automobile” or “automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

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NAD-52
400 Seventh Street, S.W.
Washington, D.C. 20590

10. A hydraulic brake lock device is qualified if a warning label announces the presence of the device and the device is designed so that:

- i. The device is mounted on the dash;
- ii. When activated and pressurized with the brake pedal, hydraulic pressure is maintained on the brakes at two or more of the automobile's wheels;
- iii. The device has a high security locking system with at least 50,000 combinations; and
- iv. The lock is such that it cannot be pulled using a conventional slide hammer or lock puller equipment.

11. A window etching vehicle identification system is qualified if a warning label announces the presence of the system, and the system is designed so that:

- i. A specific, identifiable set of numbers is permanently etched into all primary window glass areas, either by sandblasting or a chemical process;
- ii. The set of numbers must be traceable to the automobile's registered owner; and
- iii. Immediate telephonic notification or identification of the registrant must be available 24 hours a day, seven days per week.

(d) A device or system qualifies as a Category IV anti-theft or vehicle recovery device if a warning label announces the presence of the device and it meets the following requirements:

1. The device or system is designed to transmit a pulse or signal by which the location of the automobile in which the device or system is installed may be tracked by those receiving the signal;
2. The device or system is activated or initiated when an automobile is stolen or reported stolen to police;
3. The pulse or signal either must be transmittable to the New Jersey State Police or to a private central monitoring station which shall have direct communication with the New Jersey State Police for the purpose of reporting, tracking and monitoring the automobile; and
4. The device or system shall be designed so that upon recovery, information concerning the automobile's location may be provided to the proper authorities and/or the automobile's owner or insurer.

(e) All warning labels announcing the presence of an anti-theft or vehicle recovery device or system shall be located so as to be visible from the automobile's exterior,

preferably on the forward passenger and driver's side door windows.

(f) The lists set forth in (a) through (d) above are not exclusive, and shall not prevent an insurer from considering other devices or systems as anti-theft or vehicle recovery devices eligible for reductions in the base rates of comprehensive and theft and fire coverages, in a manner determined by the insurer.

Public Notice: Notice of receipt of and action on Petition for rulemaking for vehicle anti-theft and recovery device.

See: 23 N.J.R. 2786(c).

Notice of Receipt of Petition for Rulemaking: Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft, Vehicle Recovery and Safety Devices.

See: 24 N.J.R. 305(a).

Notice of Action on Petition for Rulemaking.

See: 24 N.J.R. 658(a).

Amended by R.1999 d.170, effective June 7, 1999.

See: 30 N.J.R. 2332(a), 31 N.J.R. 1493(a).

Inserted (b)5.

11:3-39.6 Reductions in rates for safety features

(a) Except as (d) below may apply, every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its collision damage coverage for all private passenger automobiles equipped with one or more safety features. Reductions in the base rates shall be as follows:

1. At least five percent for a private passenger automobile equipped with one safety feature;
2. An additional 2.5 percent reduction shall be provided for each additional safety feature with which the automobile is equipped; and
3. No insurer shall be required to provide more than a 10 percent total reduction for safety features, (a)2 above notwithstanding.

(b) Insurers shall develop a list of features which will qualify as collision damage safety features. This list may include features which are standard features for some private passenger automobiles, but which are options or not available for other private passenger automobiles. This list shall include:

1. Anti-lock braking systems;
2. Traction control systems; and
3. Five-mile-per-hour bumpers.

(c) An insurer may require reasonable proof that a private passenger automobile is equipped with a safety feature before providing any reduction in the base rates for collision damage coverage for private passenger automobiles. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.

(d) The requirements of (a) through (c) above shall not be applicable to those insurers which utilize make and model rating in pricing collision coverage.

11:3-39.7 Penalties

Any insurer which fails to comply with the terms of this subchapter shall be in violation of this subchapter, and subject to the assessment of any and all penalties in accordance with the laws of this State.

11:3-39.8 Severability

If any provision of this subchapter or application thereof to any person or circumstances is held invalid, the remainder of the subchapter and application of such provisions to other persons or circumstances shall not be affected thereby.

SUBCHAPTER 40. INSURERS REQUIRED TO PROVIDE AUTOMOBILE INSURANCE COVERAGE TO ELIGIBLE PERSONS

11:3-40.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 17:33B-15 by setting forth those insurers required under that statutory provision to provide automobile insurance to eligible persons.

(b) This subchapter applies to all insurers authorized or admitted to transact automobile insurance in this State.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
Rewrote (b).

11:3-40.2 Definitions

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

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes, owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meeting the definition contained in this section shall be considered a private passenger automobile owned by two or more relatives residing in the same household.

“Automobile insurance” means insurance for a private passenger automobile including one or more of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

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

“Department” means the Department of Banking and Insurance.

“Eligible person” means a natural person who meets the qualifications of an “eligible person” as set forth at N.J.A.C. 11:3-34.4.

“Insurer” means an entity authorized or admitted to write private passenger automobile insurance in New Jersey.

“Personal lines automobile insurance” means direct automobile insurance issued by an insurer for personal, family or household purposes, and written in accordance with a rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).
Rewrote “Insurer”.

11:3-40.3 Insurers required to provide automobile insurance coverage to eligible persons

(a) In accordance with N.J.S.A. 17:33B-15, every insurer, except as provided in (b) below, shall provide automobile insurance coverage for eligible persons beginning April 1, 1992. No insurer, except as provided in (b) below, shall refuse to insure, renew, or limit coverage available for automobile insurance to an eligible person meeting the insurer’s underwriting rules as filed with and approved by the Commissioner in accordance with N.J.S.A. 17:29A-46. An insurer shall provide all coverages, including physical damage coverages, in accordance with its rating system filed with the Department and approved pursuant to N.J.S.A. 17:29A-1 et seq.

(b) The requirements set forth in (a) above shall not apply to the following:

1. Insurers that have not issued or renewed policies of automobile insurance in New Jersey since December 31, 1983;
2. Insurers that have issued or renewed policies of automobile insurance in New Jersey since December 31, 1983, only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq.;

3. Insurers with less than 1,000 automobile inforce exposures as of December 31, 1983 and as of September 30, 1988. Insurers newly authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter until such time as the insurer has 1,000 or more automobile inforce exposures;

4. Insurers transacting automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent provided by the terms of the approved plan of orderly withdrawal;

5. Insurers transacting automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-19 or 20, but only to the extent provided by the terms of the order;

6. Insurers transacting automobile insurance business subject to an order of administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., but only to the extent provided by the terms of such order; or

7. Insurers subject to any limitation on premium volume set forth as a condition of authorization or admission pursuant to N.J.A.C. 11:1-10.8(e) and (f) or 11:1-28.10(f) and (g), as applicable, but only to the extent of such limitation set forth in the authorization or admission or as modified thereafter.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of automobiles (for example, motor homes, recreational vehicles or antique automobiles) shall comply with the requirements of (a) above, but only for the particular types of automobiles currently being insured.

(d) Insurers that currently provide, or have provided since December 31, 1983, only limited coverage (for example, physical damage coverage) shall comply with the requirements of (a) above, but only for the limited coverages being written.

(e) Insurers that are required to insure eligible persons, but that do not have a current personal lines automobile insurance rating system on file with the Department, shall file such a system with the Department in accordance with N.J.S.A. 17:29A-1 et seq. within 90 days of the effective date of this rule.

(f) Insurers identified within the provisions of (b), (c) or (d) above, shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the date of adoption of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC number and NAIC group number;

ii. A statement that the insurer is not required to comply fully with N.J.S.A. 17:33B-15;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with N.J.S.A. 17:33B-15;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief, based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the Department at the following address:

Division of Licensing, Enforcement and Consumer Protection
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 328
Trenton, NJ 08625-0328

Amended by R.1995 d.604, effective November 20, 1995.
See: 27 N.J.R. 2854(a), 27 N.J.R. 4717(c).
Administrative Correction.
See: 27 N.J.R. 4894(a).
Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

11:3-40.4 Penalties

(a) The Commissioner may suspend, revoke or otherwise terminate the certificate of authority to transact automobile business in this State of any insurer failing to comply with the provisions of this subchapter requiring that the insurer provide automobile insurance in accordance with N.J.S.A. 17:33B-15.

(b) In addition to or in lieu of the penalty set forth in (a) above, the Commissioner may impose a fine as provided in N.J.S.A. 17:33B-21 for any violation of the provisions of this subchapter.

(c) The Department shall follow the procedures set forth at N.J.A.C. 11:17D-2.1 in imposing the penalties set forth at (a) or (b) above.

SUBCHAPTER 41. (RESERVED)

SUBCHAPTER 42. (RESERVED)

SUBCHAPTER 43. (RESERVED)

SUBCHAPTER 44. SPECIAL RULES FOR
EFFECTING COVERAGE FOR PRIVATE
PASSENGER AUTOMOBILE INSURANCE**11:3-44.1 Purpose and scope**

(a) This subchapter implements the provisions of N.J.S.A. 17:33B-15 and 18 which prohibit insurers, both individually and through their agents, from attempting to channel away eligible persons, with the effect of avoiding an insurer's obligation to provide private passenger automobile insurance coverage to eligible persons.

(b) This subchapter applies to all persons that are licensed and authorized to transact the business of personal private passenger automobile insurance in this State and all producers.

(c) This subchapter also implements the provisions of N.J.S.A. 17:29A-46.1 et seq., to afford insurers the opportunity to acquire and consider all relevant information necessary to rate policies properly and adequately.

Amended by R.2002 d.328, effective October 7, 2002.

See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

Added (c).

11:3-44.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common ownership and management with, another insurer.

"Business days" means all days other than weekends and official New Jersey State and Federal holidays.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Completed written application" means a signed written application that contains:

1. The minimum information necessary to determine if the applicant is an eligible person pursuant to N.J.A.C. 11:3-44.3(a);
2. The minimum information necessary to determine the appropriate rate and underwrite the policy;
3. A signed and completed coverage selection form as required by N.J.A.C. 11:3-15.6;

4. A copy of the motor vehicle registration of all vehicles insured under the policy;

5. A copy of one additional proof of New Jersey residency;

6. An acknowledgement of the requirement for insurance inspection form, where a physical damage inspection is requested; and

7. A copy of the applicant's driver's license, and the name and driver's license numbers of all regular operators of all vehicles insured under the policy, when authorized by the insurer's filed and approved rating plan.

"Days" means calendar days.

"Eligible person" means a person as defined at N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4.

"Insurer" means a person authorized to transact the business of personal private passenger automobile insurance in this State including insurers organized pursuant to N.J.S.A. 17:50-1 et seq.

"Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

"Regular operator" means any person or persons, whether or not a member of the household of the primary insured, whose usage of the vehicle or vehicles may be considered in rating the policy as permitted by the insurer's approved rating plan.

"Transmit" means to mail or deliver by any means including, but not limited to, third class mail, certified mail, overnight delivery or express delivery, hand delivery and any transmission by wire, including, but not limited to, facsimile transmission or computer modem.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Deleted "Market Transition Facility".

Amended by R.2002 d.328, effective October 7, 2002.

See: 34 N.J.R. 371(a), 34 N.J.R. 3525(b).

Rewrote "Completed written application"; added "Regular operator".

11:3-44.3 Duty to provide coverage upon receipt of a completed written application

(a) The minimum information necessary to determine whether an applicant is an eligible person and to rate and underwrite the policy is as follows:

1. The desired effective date of policy;