

CHAPTER 15
GROUP SELF-INSURANCE

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:49A-1 et seq., 34:15-77 et seq., 18A:18B-1 et seq., and 40A:10-36 et seq.

Source and Effective Date

R.1999 d.350, effective September 14, 1999.
See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 15, Group Self-Insurance, expires on March 13, 2005. See: 36 N.J.R. 4625(a).

Chapter Historical Note

Chapter 15, Group Self-Insurance, was adopted as R.1984 d.172, effective May 21, 1984. See: 16 N.J.R. 340(a), 16 N.J.R. 1273(a).

Subchapter 2, Joint Insurance Funds for Local Governmental Units, was adopted as R.1984 d.540, effective December 3, 1984. See: 16 N.J.R. 1164(a), 16 N.J.R. 3310(b).

Pursuant to Executive Order No. 66(1978), Chapter 15, Group Self-Insurance, was readopted as R.1989 d.585, effective October 26, 1989. See: 21 N.J.R. 1817(a), 21 N.J.R. 3668(a).

Subchapter 3, Joint Insurance Funds for Local Governmental Units Providing Group Health and Term Life Benefits, was adopted as R.1993 d.354, effective July 19, 1993. See: 25 N.J.R. 436(a), 25 N.J.R. 3220(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Group Self-Insurance, was readopted as R.1994 d.551, effective October 17, 1994. See: 26 N.J.R. 2518(a), 26 N.J.R. 3356(a), 26 N.J.R. 4407(b).

Subchapter 4, Joint Insurance Funds for School Boards Providing Property and Liability Coverages, was adopted as R.1996 d.277, effective June 17, 1996. See: 28 N.J.R. 765(a), 28 N.J.R. 3135(a).

Subchapter 5, Joint Insurance Funds for School Boards Providing Group Health and Term Life Benefits, was adopted as R.1996 d.278, effective June 17, 1996. See: 28 N.J.R. 779(a), 28 N.J.R. 3156(a).

Subchapter 6, Joint Insurance Funds for Nonprofit Corporations and Keys Amendment Facilities, was adopted as R.1997 d.151, effective April 7, 1997. See: 28 N.J.R. 4708(a), 29 N.J.R. 1326(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Group Self-Insurance, was readopted as R.1999 d.350, effective September 14, 1999. See: Source and Effective Date. See, also, section annotations.

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APPENDIX. CERTIFICATION OF JOINT INSURANCE FUND PROFESSIONALS

SUBCHAPTER 1. HOSPITAL WORKERS' COMPENSATION GROUP SELF-INSURANCE

Law Reviews and Journal Commentaries

An Insurer's Duty to Act In Good Faith. Jeffrey A. Cohen, 192 N.J.L.J. 21 (1998).

11:15-1.1 Purpose

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

11:15-1.2 Definitions

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

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

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

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

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

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance or an employee of the Department designated by him or her to act on his or her behalf.

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

“Department” means the New Jersey Department of Banking and Insurance.

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

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

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

“Indemnity and trust agreement” means a written contract signed by the members of the group under which each

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

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

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

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

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

Amended by R.1999 d.350, effective October 18, 1999.

See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

Rewrote “Commissioner”; and inserted “Department”.

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

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

1. Proof of compliance with the provisions of subsection (b) below;
2. A copy of the articles of association, if any;

3. A copy of agreements with the administrator and with any service organizations maintained by the group for the prevention of injuries, underwriting, and claims administration services;

4. A copy of the group's operating rules, including, but not limited to, by-laws, if any;

5. A copy of the indemnity and trust agreement between the group and each member of the group;

6. The address in New Jersey where the books and records of the group will be maintained at all times and the designation and appointment of a person in New Jersey upon whom service of process for the group might be made;

7. A pro forma financial statement, on a form acceptable to the Commissioner, providing him satisfactory proof of its financial ability to pay such compensation for the members of the group;

8. A statement from an actuary that the proposed group plan of operation is actuarially sound;

9. A listing of the estimated annual contributions to be paid by each member of the group;

10. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual contributions.

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

1. A combined net worth of all members of the group of at least \$1,000,000;

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

all or part of the security requirement. The bond, security deposit, letter of credit, or financial security endorsement shall be:

i. For the benefit of the State solely to pay claims and associated expenses; and

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

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

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

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

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

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

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

11:15-1.4 Issuance of certificate of approval

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

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

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

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

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

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

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

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

11:15-1.5 Financial statement and other reports

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

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

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

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

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

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

11:15-1.6 Examinations

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

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

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

1. The trustees shall:

i. Maintain responsibility for all monies collected or disbursed from the group and allocate all monies to a claims fund account and an administrative fund account. At least 70% of the net contributions shall be allocated on the books of the group for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net contributions shall be allocated on the books of the group for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The Commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the Commissioner's satisfaction that:

(1) More than 30% is needed for an effective safety and loss control program; or

(2) The group's aggregate excess insurance attaches at less than 70%. The Commissioner may require that the accounts be segregated.

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

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

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

2. The trustees shall not:

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

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

11:15-1.8 Group membership; termination; liability

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

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

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

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

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

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

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

11:15-1.9 Voluntary dissolution of group

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

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

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

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

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

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

11:15-1.10 Service organizations

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

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

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

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

11:15-1.12 Investments

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

11:15-1.13 Rates and reporting of rates

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

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

11:15-1.14 Refunds

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

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

11:15-1.15 Contribution payment; reserves

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

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

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

11:15-1.16 Deficits

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

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

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

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

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

11:15-1.17 Revocation of certificate of approval

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

1. There has been deterioration of the financial condition of the group to such an extent that such deterioration would have an adverse affect on the ability of the group to pay expected losses;
2. The group has failed to pay any regulatory fee or assessment, or special fund contribution imposed upon it;
3. The group has failed to comply with any of the provisions of the Act, any regulations promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed;
4. Any certificate of approval that was issued to the group was obtained by fraud;
5. There was a material misrepresentation in the application for the certificate of approval; or
6. The group or its administrator has misappropriated, converted, illegally withheld or refused to pay over, upon proper demand, any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator.

11:15-1.18 Public record

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

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**SUBCHAPTER 2. JOINT INSURANCE FUNDS
FOR LOCAL GOVERNMENTAL UNITS
PROVIDING PROPERTY AND LIABILITY
COVERAGES**

11:15-2.1 Purpose and scope

(a) N.J.S.A. 40A:10-36 et seq. authorizes two or more local units of government to join together to establish a joint insurance fund for the purpose of insuring against liability, property damage, workers' compensation, and loss or theft of money or securities, providing blanket bond coverage, and for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverages approved by the Commissioner. A fund may also provide its members with safety and loss control programs and may jointly purchase, on behalf of its membership, safety and loss control services, training equipment and apparatus, in connection with the provision of the coverages set forth above. This subchapter provides rules for the establishment, operation, oversight, modification and dissolution of such funds.

(b) No local unit of government shall join together with any local unit or units to act as a joint insurance fund except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) Except as otherwise specifically provided, all of the requirements of this subchapter shall apply to any joint insurance fund formed to insure against liability, property damage, loss or theft of money or securities, providing blanket bond coverage, or workers' compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor.

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

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

Amended definition of "actuary".

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Amended (a) to allow funds to provide members with safety and loss control programs and services; Added (c) regarding applicability of this subchapter.

Amended by R.1999 d.350, effective October 18, 1999.

See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

In (a) and (c), inserted references to insuring against loss or theft of money securities and providing blanket bond coverage.

11:15-2.2 Definitions

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

"Actuary" means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving; an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years recent experience in loss reserving.

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

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

"Blanket bond coverage" means coverage of certain county or municipal officers and employees for faithful performance and discharge of their duties as provided under N.J.S.A. 40A:5-34.1.

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

"Commissioner" means the Commissioner of Banking and Insurance.

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

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

"Environmental impairment liability fund" means a joint insurance fund formed for the sole purpose of insuring against bodily injury and property damage claims arising from environmental liability and legal representation there-

for to the extent and for coverages set forth in this subchapter.

“Excess carrier” means an insurer that provides excess insurance or reinsurance to a fund.

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

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

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

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

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

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

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

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

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

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

“Joint insurance fund” or “Fund” means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against liability, property damage, and workers’ compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor, to the extent and for coverages approved by the Commissioner pursuant to the authority of N.J.S.A. 40A:10-36 et seq. and this subchapter.

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

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

“Local unit of government” or “local unit” means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A:64A-25.40 and 40A:10-51), any contracting unit as defined in N.J.S.A. 40A:11-2 or boards of education of certain school districts, to the extent permitted pursuant to N.J.S.A. 40A:10-52 through 57.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-2.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-2.21, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

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

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

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

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

“Workers’ compensation law” means the provisions of N.J.S.A. 34:15-7 et seq.

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

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

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

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Added definitions for “Chairman”, “Environmental impairment liability fund”, “Producer” and “Secretary” and amend “Administrator”, “Excess insurance”, “Executive committee”, “Indemnity and trust agreement”, “Joint insurance fund”, “Joint insurance fund commissioners”, “Lead agency”, “Local unit of government”, “Net current surplus”, “Servicing organization”, “Unpaid claims” and “Workers’ compensation law”.

Amended by R.1996 d.534, effective November 18, 1996.
See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

Amended by R.1999 d.350, effective October 18, 1999.
See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

Inserted “Blanket bond coverage”.

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

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution shall provide for execution of a written agreement specifically providing for acceptance of the fund’s bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-39. The agreement shall specify the extent of the local unit’s

participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). The agreement shall also specify that the fund members have never defaulted on claims if self-insured and have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement. In lieu of filing with the Department and Department of Community Affairs copies of the new ordinance or resolution and new indemnity and trust agreement referred to in N.J.A.C. 11:15-2.6(b)10 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined the fund.

(c) For purposes of N.J.S.A. 40A:10-52, the governing body of any municipality and the board of education of the local school district operating within that municipality may, subject to N.J.S.A. 40A:10-52, by ordinance or resolution, as the case may be, agree to join together for purposes of insuring coverages as set forth in that statute, provided that the district is not part of a limited purpose regional school district, an all purpose regional school district, or a consolidated school district. All purpose regional school districts, consolidated school districts, limited purpose regional school districts, the board of education of local school districts which are part of a limited purpose regional school district as described above, and county vocational school districts and the board of education of local school districts within a county vocational school district, may otherwise agree to join together with one or more constituent municipalities for the purposes of insuring coverages as described in and in accordance with N.J.S.A. 40A:10-53 to 57, as applicable. The board of education of a local or regional school district, consolidated school district or county vocational school district may not otherwise join with any municipality to form a fund pursuant to N.J.S.A. 40A:10-36 et seq. for the purpose of insuring coverages of the kinds set forth in N.J.S.A. 40A:10-52 to 57, except pursuant to this subsection. Notwithstanding any other provision to the contrary, no board of education, except the board of education of county vocational school districts, may join together with a municipality or other local unit for the purpose of providing contributory or non-contributory group health insurance or

term life insurance, or both, to employees or their dependents, or both, as otherwise permitted pursuant to N.J.S.A. 40A:10-36 et seq.

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

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

Changes reflect current practice and changes in applicable statutes.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Amended existing text and redesignated section as (a) and (b); and added (c).

Amended by R.1999 d.350, effective October 18, 1999.

See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

In (a), deleted references to ordinances throughout.

11:15-2.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.), the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.), regulations (including, but not limited to, N.J.A.C. 5:34), the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 40A:10-38, 17:12B-241 and 17:16I-1 et seq., and in the case of a joint insurance fund providing environmental impairment liability coverage, the "Local Bond Law" (N.J.S.A. 40A:2-1 et seq.), but shall not be subject to the debt limitation set forth in N.J.S.A. 40A:2-6.

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

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

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

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2, or to the extent the fund is comprised of entities other than municipalities, possess the appropriate professional credentials required by the Department of Community Affairs pursuant to the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.). The custodian shall report to the fund commissioners at least quarterly on investment and interest income.

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

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

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

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

4. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

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

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

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund, except as provided at N.J.A.C. 11:15-2.22(e), and shall be retained by the secretary of the fund or fund administrator at the discretion of the fund commissioners or executive committee.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

(d) The fund commissioners shall notify the Department and the Department of Community Affairs within 10 days of any determination to terminate or nonrenew any agreement with a servicing organization. The notification shall include a detailed statement that sets forth the manner and method

by which claims handling and other obligations performed by the servicing organization will be provided or a statement that sets forth the reasons why the fund commissioners believe that the particular service is no longer necessary.

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

(f) Any employee, officer or director of an administrator, servicing organization or insurance producer that may be appointed pursuant to N.J.A.C. 11:15-2.6(c)10 shall disclose to the fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

In (a) and (b) deleted Commissioner's prior approval in favor of notification of the Commissioner; renumbered former (d) as (e); and added new (d) and (f).

11:15-2.27 Conflict of interest

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

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Rewrote section.

11:15-2.28 Notice and hearings

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

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

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

At (b) provided for hearings in accordance with the Administrative Procedure Act.

11:15-2.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-2.28, the Commissioner may issue an order revoking or suspending a fund's authority or requiring a person or fund to cease and desist from engaging in an act or practice to be in violation of any provision of N.J.S.A. 40A:10-36 et seq. or this subchapter.

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

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

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

Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Substituted "fund" for "joint insurance fund" and added references to "servicing organizations" throughout.

11:15-2.30 Severability

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

APPENDIX

(RESERVED)

New Rule, R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).
Repealed by R.1996 d.534, effective November 18, 1996.
See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

Appendix was "Exhibit A: New Jersey Department of Insurance Certification of Joint Insurance Fund Professionals" and "Exhibit B: New Jersey Department of Insurance Fund Professionals".

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

11:15-3.1 Purpose and scope

(a) This subchapter sets forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more local units for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents, and to any other person eligible for coverage by a member local unit pursuant to N.J.S.A. 40A:10-36 et seq.

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

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

(d) The authority of a joint insurance fund formed for the purpose of providing contributory and non-contributory group health insurance or group term life insurance, or both, shall be limited solely to those coverages.

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.2 Definitions

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

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

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

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

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

“Department” means the New Jersey Department of Banking and Insurance.

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

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

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

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

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

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

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

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

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

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

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

“Member” means a local unit which is a member of a local unit joint insurance fund formed pursuant to this subchapter.

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

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Run-in liability” means liability for claims incurred but not reported by a prospective member in connection with the provision of health benefits during the period prior to joining the fund.

“Run-out liability” means liability for claims incurred but not reported by a former fund member during the period it was a member.

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

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

“Stop-loss insurance” or “reinsurance” means insurance, purchased from an insurer authorized or admitted in the State of New Jersey to transact life or health insurance, as

applicable, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per individual or annual aggregate basis.

Amended by R.1996 d.535, effective November 18, 1996.

See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

Amended by R.1999 d.350, effective October 18, 1999.

See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

In “Life insurance”, changed N.J.S.A. reference.

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

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

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance prior to the execution of the new membership agreement. In lieu of filing copies of the new agreement and new indemnity and trust agreement referred to in N.J.A.C. 11:15-3.6(b)6 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

Amended by R.1996 d.535, effective November 18, 1996.

See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the “Local Fiscal Affairs Law” (N.J.S.A. 40A:5-1 et seq.), the “Local

Public Contracts Law” (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:34), and the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:16I-1 et seq.

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

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

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

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

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

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

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

3. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

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

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

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

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

(h) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. The reports shall be made at least quarterly and may be made more frequently at the discretion of the trustees and shall include, but not be limited to, the minutes, the administrator’s report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that the reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. The reports shall also be made available to the Department for review during any examination of the joint insurance fund. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the “Right-to-Know” law, N.J.S.A. 47:1A-1 et seq.

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

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.29 Orders

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

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

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

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

Amended by R.1996 d.535, effective November 18, 1996.
See: 28 N.J.R. 4036(a), 28 N.J.R. 4885(a).

11:15-3.30 Severability

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

SUBCHAPTER 4. JOINT INSURANCE FUNDS FOR SCHOOL BOARDS PROVIDING PROPERTY AND LIABILITY COVERAGES

11:15-4.1 Purpose and scope

(a) The subchapter sets forth the filing requirements and approval procedures for school board joint insurance funds pursuant to N.J.S.A. 18A:18B-1 et seq.

(b) This subchapter applies to all school board joint insurance funds formed pursuant to N.J.S.A. 18A:18B-1 et seq.

11:15-4.2 Definitions

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

“Actuary” means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an Associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

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

“Automobile and equipment liability” means liability resulting from the use of or operation of motor vehicles, equipment or apparatus owned by or controlled by the member.

“Chairman” means the chairman of the board of trustees as may be elected or designated by the trustees.

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

“Department” means the Department of the New Jersey Department of Banking and Insurance.

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

“Excess carrier” means an insurer that provides excess insurance or reinsurance to a fund.

“Excess insurance” means insurance, purchased from an insurance company authorized or admitted in the State of

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

“Fiscal year” or “fund year” means the fiscal year July 1 through June 30.

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

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial conditions, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

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

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

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

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

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

“Joint insurance fund” or “fund” means a joint self-insurance fund established by a school board insurance group pursuant to N.J.S.A. 18A:18B-1 et seq. The joint self-insurance fund is a fund of public moneys from contributions made by members of a school board insurance group for the purpose of securing insurance protection, risk management programs, or related services as authorized by N.J.S.A. 18A:18B-1 et seq.

“Member” means a school board which is a member of a school board joint insurance fund.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-4.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-4.21 incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Producer” means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Property damage” means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the member.

“Risk management program” means a plan and activities carried out under the plan, by a joint insurance fund to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.A. 18A:18B-1 et seq., including safety engineering and other loss prevention and control techniques. Risk management program also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the fund.

“Secretary” means the secretary of the board of trustees as may be designated by the trustees.

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the trustees including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter, and such other duties as designated by the fund.

“Trustees” means the board of trustees established pursuant to the bylaws of the joint insurance fund to govern or manage the risk management programs, joint self-insurance fund or funds and related services of the group.

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

“Workers’ compensation law” means the provisions of N.J.S.A. 34:15-7 et seq.

Amended by R.1999 d.350, effective October 18, 1999.
See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

11:15-4.3 Agreement to join joint insurance fund; duration

(a) Any two or more boards of education may form and become members of a school board joint insurance fund. A school board may take this action by resolution of the board.

(b) The resolution shall provide for execution of a written agreement specifically conditioning membership on acceptance and adoption of the fund’s bylaws. The agreement shall specify the extent of the member’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership if applicable, and shall specify that the fund members have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the joint insurance fund. In lieu of filing copies of the new agreement and indemnity and trust agreement referred to in N.J.A.C. 11:15-4.6(c)10 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

(c) A joint insurance fund formed pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter shall have the power to insure, contract or provide for any insurable interest of the member solely for the following:

1. Any loss or damage to its property, real or personal, motor vehicles, equipment or apparatus;
2. Any loss or damage from liability resulting from the use or operation of motor vehicles, equipment or apparatus owned or controlled by it;

3. Any loss or damage from liability for its own acts or omissions and for acts or omissions of its officers, employees or servants arising out of and in the course of the performance of their duties, including, but not limited to, any liability established by the “New Jersey Tort Claims Act”, N.J.S.A. 59:1-1 et seq., or by any Federal or other law;

4. Loss or damage from liability as established by N.J.S.A. 34:15-1 et seq.; or

5. Expenses of defending any claim against the school board or county college, officer, employee or servant arising out of and in the course of performance of their duties, whether or not liability exists on the claim.

11:15-4.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the Public Schools Contracts Law (N.J.S.A. 18A:18A-1 et seq.) and the applicable regulations of the State Investment Council governing the investment of surplus public monies of the State.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of trustees.

(c) A joint insurance fund shall be governed by the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.), and all other applicable laws in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the trustees at least quarterly on investment and interest income.

(e) The trustees shall annually prepare not later than the time required by law for the preparation of the budget for school boards, the proposed budget for the fund’s subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

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

2. Not later than June 30 of each year, the trustees shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership or majority vote of a quorum of the board of trustees of the joint insurance fund.

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

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

(f) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-4.22(e), shall be retained by the fund administrator or fund secretary, if any, at the discretion of the board of trustees.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

i. For financial information, seven years from the date of their creation; for claims information, seven years after all claims for that year have been fully paid; or

ii. Until the completion and filing of the next financial condition examination of the fund by the Commissioner.

(g) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(h) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the trustees and shall include, but not be limited to, the minutes, the trustee's or fund administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the trustees, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.

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

11:15-4.5 Bylaws and risk management program; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioner, as provided in N.J.S.A. 18A:18B-4, its bylaws and risk management program and any amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified at N.J.A.C. 11:15-4.6, and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-4.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth in this section. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-4.6 shall constitute the fund's bylaws and risk management program pursuant to N.J.S.A. 18A:18B-4. No joint insurance fund shall begin providing insurance coverage to its members until its bylaws and risk management program, including all of the information required pursuant to N.J.A.C. 11:15-4.6, have been approved by the Commissioner.

“Chairman” means the chairman of the board of trustees as may be elected or designated by the trustees.

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

“Department” means the New Jersey Department of Banking and Insurance.

“Dependent” means dependent as defined pursuant to N.J.S.A. 18A:18B-2.

“Fiscal year” or “fund year” means the fiscal year July 1 through June 30.

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

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

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

“Joint insurance fund” or “fund” means a group established by two or more school boards to create a self-insurance fund for the sole purposes of providing contributory or non-contributory group health insurance or group term life insurance to their employees or dependents and to any other person eligible for coverage by a member school board pursuant to law, approved by the Department pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter.

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

“Member” means a school board which is a member of a school board joint insurance fund formed pursuant to this subchapter.

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

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Risk management program” means a plan and activities carried out under that plan, by a joint insurance fund to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.A. 18A:18B-1 et seq. Risk management program also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the fund.

“Run-in liability” means liability for claims incurred but not reported by a prospective member in connection with the provision of health benefits during the period prior to joining the fund.

“Run-out liability” means liability for claims incurred but not reported by a former fund member during the period it was a member.

“Secretary” means the secretary of the board of trustees as may be designated by the trustees.

“Servicing organization” or “program manager” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any functions as designated by the fund trustees including, but not limited to, actuarial services, claims administration, cost containment services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of plan documents, employee booklets and other documents, risk selection and pricing, stop-loss or reinsurance producer services which include producer negotiations on behalf of the fund for stop-loss or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 18A:18B-1 et seq. or this subchapter, and such other duties as designated by the fund.

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

“Trustees” means the board of trustees established pursuant to the bylaws of the joint insurance fund to govern or manage the risk management programs, joint self-insurance fund or funds and related services of the group.

Amended by R.1999 d.350, effective October 18, 1999.
See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

11:15-5.3 Agreement to join joint insurance fund; duration

(a) Any two or more boards of education may form and become members of a school board joint insurance fund formed for the sole purpose of providing contributory or non-contributory group health and term life benefits to the members' employees and their dependents. A school board may take this action by resolution of the board.

(b) The resolution shall provide for execution of a written agreement specifically conditioning membership on acceptance of the fund's bylaws as approved and adopted pursuant to N.J.S.A. 18A:18B-1 et seq. The agreement shall specify the extent of the member's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, if applicable. The agreement shall also specify that the fund members have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. In lieu of filing copies of the new agreement and new indemnity and trust agreement referred to in N.J.A.C. 11:15-5.6(c)6 for each member's renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

11:15-5.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Public Schools Contracts Law" (N.J.S.A. 18A:18A-1 et seq.), and the applicable regulations of the State Investment Council governing the investment of surplus public monies of the State.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of trustees.

(c) A joint insurance fund shall be governed by the "Public School Contracts Law" (N.J.S.A. 18A:18A-1 et seq.), and all other applicable laws in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies. The resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall periodically report to the fund commissioners on investment and interest income.

(e) The board of trustees shall annually prepare, not later than the time required by law for the preparation of the budget for school boards, the proposed budget for the fund's subsequent year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

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

2. Not later than June 30 of each year, the trustees shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership or majority vote of a quorum of the board of trustees of the joint insurance fund.

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

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

(f) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-5.21(e), shall be retained by the fund administrator or program manager at the discretion of the board of trustees. All books, records, files and documents of the fund shall be retained for not less than five years.

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

11:15-5.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-5.28, the Commissioner may issue an order revoking or suspending a fund's authority or requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 18A:18B-1 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-5.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-5.28, the Commissioner may issue an order requiring the trustees to dismiss an administrator, servicing organization or program manager or terminate the contract of an administrator, servicing organization or program manager because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by the administrator, servicing organization or program manager, or any of the employees, officers or directors thereof.

11:15-5.30 Severability

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

SUBCHAPTER 6. JOINT INSURANCE FUNDS FOR NONPROFIT CORPORATIONS AND KEYS AMENDMENT FACILITIES

11:15-6.1 Purpose and scope

(a) The subchapter sets forth the filing requirements and approval procedures for nonprofit corporation and Keys amendment facility joint insurance funds pursuant to N.J.S.A. 17:49A-1 et seq.

(b) This subchapter applies to all joint insurance funds formed pursuant to N.J.S.A. 17:49A-1 et seq.

11:15-6.2 Definitions

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

“Actuary” means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving; an Associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an Associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years experience in loss reserving.

“Administrator” means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners, as defined in this section, to act as executive director to carry out the policies established by the joint insurance fund commissioners and to otherwise administer

and provide day-to-day management of the joint insurance fund. The administrator may also be an employee of the fund, a fund member, or an independent contractor.

“Automobile and equipment liability” means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the member.

“Board” means the board of trustees or the group of persons vested with management of the business and affairs of a nonprofit corporation regardless of the name by which the group or persons is designated.

“Chairman” means the chairman of the insurance fund commission as may be elected or designated by the fund commissioners.

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

“Department” means the New Jersey Department of Banking and Insurance.

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

“Excess carrier” means an insurer that provides excess insurance or reinsurance to a fund.

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

“Executive committee” means the committee of the insurance fund commissioners, as provided in N.J.S.A. 17:49A-5.

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

“General liability” means any and all liability which may be insured under the laws of the State of New Jersey, excluding automobile liability, workers’ compensation and employers’ liability.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

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

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

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

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

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

“Joint insurance fund” or “Fund” means a group organized by two or more nonprofit corporations or two or more Keys amendment facilities to establish an insurance fund for the purposes of insuring and/or self-insuring against liability, property damage, and workers’ compensation.

“Joint insurance fund commissioners” means the representatives chosen to represent those members in the fund, as provided in N.J.S.A. 17:49A-1 et seq.

“Keys amendment facility” means a medical or non-medical residential setting designated by the State as a facility that meets the requirements of the “Social Security Act”, 42 U.S.C. § 1382e, as implemented by 45 C.F.R. 1397.1 et seq.

“Member” means a nonprofit corporation or Keys amendment facility which is a member of an insurance fund.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-6.6(b)10, including earned investment income, that is in excess of all costs, refunds made pursuant to N.J.A.C. 11:15-6.20 incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

“Nonprofit corporation” means any corporation organized under the “New Jersey Nonprofit Corporation Act”, N.J.S.A. 15A:1-1 et seq., any corporation as defined by N.J.S.A. 15A:1-2e or any corporation organized pursuant to Title 16 of the Revised Statutes.

“Owner” means the person or group vested with ownership and management of a Keys amendment facility, regardless of the name by which the person or group is designated.

“Plan of risk management” means a plan and activities carried out under the plan, binding upon the participants in a joint insurance fund, to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.A. 17:49A-1 et seq. Plan of risk management also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the fund.

“Producer” means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

“Property damage” means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the member.

“Recoverable” insurance or reinsurance means the sum of:

1. All monies due from insurance or reinsurance contracts and not yet received for losses paid in excess of the attachment point of such insurance or reinsurance;
2. All monies that would be expected to be recoverable from insurance or reinsurance contracts for unpaid losses in excess of the attachment point of such insurance or reinsurance should those losses be settled at the values set in the reported reserves;
3. That portion of the incurred but not reported reserves that is expected to be recoverable from insurance or reinsurance contracts; and
4. All monies that would be recoverable from aggregate excess insurance or reinsurance should all losses be as reserved for including IBNR reserves.

“Secretary” means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 17:49A-5.

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the trustees including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 17:49A-1 et seq., and this subchapter, and such other duties as designated by the fund.

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

“Workers’ compensation law” means the provisions of N.J.S.A. 34:15-7 et seq.

11:15-6.3 Agreement to join joint insurance fund; duration

(a) The board or owner, as appropriate, of any nonprofit corporation or Keys amendment facility may by resolution or otherwise in writing agree to join together with any other such corporation(s) or facility(ies) to establish a joint insurance fund as defined in this subchapter.

(b) The resolution shall provide for execution of a written agreement specifically conditioning membership on acceptance and adoption of the fund’s bylaws. The agreement shall specify the extent of the member’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership if applicable, and shall specify that the fund members have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the joint insurance fund. In lieu of filing copies of the new agreement and indemnity and trust agreement referred to in N.J.A.C. 11:15-6.6(c)10 for each member’s renewal of membership, the fund shall annually file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined.

11:15-6.4 General requirements

(a) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its insurance fund commission.

(b) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by this subchapter. The custodian shall report to the fund commissioners at least quarterly on investment and interest income.

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

1. A copy of the fund’s proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted except in accordance with the procedures for such action set forth in the fund’s bylaws as approved by the Commissioner, which procedures shall provide all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than December 31 of each year, the fund commissioners shall adopt by majority vote the budget for the fund’s operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the board or owner, as appropriate, of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership of the joint insurance fund.

5. A copy of any amendment to a fund budget shall be filed quarterly with the board or owner of each participating member.

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

(d) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and,

except as provided at N.J.A.C. 11:15-6.21(e), shall be retained by the fund administrator or fund secretary, if any, at the discretion of the fund commissioners.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

i. Seven years from the date of their creation; or

ii. Until the completion and filing of the next financial condition examination of the fund by the Commissioner following the closing of all reported claims.

(e) Each fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

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

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

11:15-6.5 Bylaws and risk management program; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioner its bylaws and plan of risk management and any amendments thereto. In addition, the initial filing shall contain and be accompanied by the information and documentation specified at N.J.A.C. 11:15-6.6, and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-6.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit five copies of a filing in the format set forth in this section. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-6.6 shall constitute the fund's bylaws and plan of risk management pursuant to N.J.S.A. 17:49A-6 and 17:49A-7. No joint insurance fund shall begin providing insurance coverage to its members until its bylaws and plan of risk management, including all of the information required pursuant to N.J.A.C. 11:15-6.6, have been approved by the Commissioner.

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

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

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

(f) In addition to the information set forth in N.J.A.C. 11:15-6.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

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

New Jersey Department of Banking and Insurance
Division of Financial Examinations
Attn: Nonprofit Corporation (Keys Amendment
Facility) JIF Admissions
20 West State Street
PO Box 325
Trenton, NJ 08625-0325.

Amended by R.1999 d.350, effective October 18, 1999.
See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

In (a), changed N.J.A.C. reference in the second sentence.

11:15-6.6 Bylaws and plan of risk management; contents

(a) The commissioners shall prepare and, after the approval by resolution of the board or owner of each partici-

pating member, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to: