

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Insurance Producer Standards of Conduct: Commissions and Fees

Proposed Amendments: N.J.A.C. 11:17B-1.3, 3.1 and 3.2

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15(e) and 17:22A-26 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003 - 496

Submit comments by February 13, 2004 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:17B, Insurance Producer Standards of Conduct: Commissions and Fees, was adopted as R. 1990 d.11, effective January 2, 1990. See 22 N.J.R. 30(b). Effective November 4, 2002, minor changes were adopted to conform the chapter to the Producer Licensing Act of 2001. During the comment period preceding the November adoption, numerous comments were received requesting that the Department adopt new rules allowing producers acting as agents to receive reimbursement for out-of-pocket expenses incurred in processing new applications for automobile insurance coverage. Under the current rules, only insurance producers acting as

insurance brokers or insurance consultants, as opposed to those acting as agents of a company, may charge a fee to a policyholder or insured for services rendered as an insurance producer. Among the fees those producers may charge, subject to certain limitations, are service fees. Service fees are fees charged an insured or prospective insured by a non-agent insurance producer for the placement of insurance or financing, credit reporting, obtaining a vehicle operator's driving records, claim or accident reporting, adjustment of claims, inspection fees and referral fees.

Upon further consideration, the Department has decided to amend these rules to provide that all producers, including those acting as agents, may charge a service fee to prospective insureds for new applications for automobile insurance, subject to specific limitations. The fee will be subject to a \$20.00 per policy limit and may only be charged for reimbursement for the actual cost incurred in acquiring documents and other materials related to the underwriting of the policy for all operators listed on the application. That limit will apply regardless of the costs in excess of \$20.00 that may be incurred by the producer in acquiring such information. In addition, the producer must retain verifiable proof of the costs incurred and provide copies of all documents or materials obtained to the applicant, regardless of whether the costs incurred by the producer exceeded the \$20.00 amount. Further, producers will be prohibited from charging such fees where an applicant supplies a copy of the document or other item related to the underwriting of the policy which the producer would have otherwise procured, so long as the document or item is dated within the previous 90 days. Specific amendments to the chapter are as follows:

The definitions of "fee" and "service fee" contained in N.J.A.C. 11:17B-1.3 are amended to include insurance producers acting as agents.

N.J.A.C. 11:17B-3.1(a) is deleted and subsections (b) through (h) are recodified as (a) through (g).

N.J.A.C. 11:17B-3.1(b) (recodified as (a)) is amended to allow producers acting as agents to charge fees for reimbursement of actual out-of-pocket expenses incurred obtaining documents and other material related to the underwriting for new automobile applications and subject to the limitations in N.J.A.C. 11:17B-3.2(a)9.

N.J.A.C. 11:17B-3.1(c) (recodified as (b)) is amended to require insurance producers, regardless of the capacity in which they are operating, to obtain a written agreement from the insured or prospective insured before charging fees. The written agreement must include a clear statement of the amount of the fee to be charged and the service to be provided; a statement that the fees are not part of the premium charged by the insurance company and that such fees can be charged only if the insured or prospective insured so consents in writing; a clear statement as to whether a commission will be received from the purchase of insurance; and the signatures of the insured or prospective insured and the licensed producer with the date of execution of the agreement.

N.J.A.C. 11:17B-3.1(d) (recodified as (c)) is amended to require that any fee charged by a producer acting in any capacity shall bear a reasonable relationship to the services provided and not be discriminatory.

N.J.A.C. 11:17B-3.1(f) (recodified as (e)) is amended to provide that insurance producers acting in any capacity shall not pay or return fees, or offer to return or pay fees as inducements.

N.J.A.C. 11:17B-3.1(g) (recodified as (f)) is amended to prohibit an insurance producer acting in any capacity from charging a fee for services not actually performed.

N.J.A.C. 11:17B-3.1(h) (is recodified as (g)) is amended to prohibit any insurance producer except a duly authorized producer employed by and acting on behalf of his employer from executing a written fee agreement on behalf of another.

N.J.A.C. 11:17B-3.2(a) is amended to clarify the maximum service fees that may be charged by insurance producers acting in any capacity.

N.J.A.C. 11:17B-3.2(a)2 is amended to require that no insurance producer in any capacity may charge for completing accident or claim report forms or for providing forms required by an insurer for servicing a policy.

N.J.A.C. 11:17B-3.2(a)5 allows insurance producers to charge a service fee of up to \$15.00 upon placement of a renewal under certain limitations and only when acting as an insurance broker or consultant.

N.J.A.C. 11:17B-3.2(a)9 is added to allow insurance producers acting in any capacity to charge, subject to the \$20.00 per policy limit imposed by N.J.A.C. 11:17B-3.2(a)1, a service fee as reimbursement for out-of-pocket expenses incurred obtaining documents or other items necessary for underwriting. The service fee may be charged if: the producer retains verifiable proof of the costs incurred; copies of all documents obtained are provided to the applicant regardless of whether the costs incurred by the producer in procuring the documents exceed the \$20.00 limit; and no previously obtained copy of the same document or item dated within ninety days has been presented to the producer.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

These proposed amendments should have a favorable impact on consumers and insurance producers. The substantial majority of producers operate as agents, rather than as brokers or consultants. The proposed amendments eliminate a disincentive for producers who operate as agents to promptly obtain underwriting information about all prospective insureds. Removing this disincentive will help to encourage prompt service to applicants and combat application fraud. A reduction in the volume of fraudulent auto insurance applications should result in savings for insurers and facilitate the stabilization of auto insurance rates.

Economic Impact

The proposed amendments should have a favorable economic impact on insurance producers and the consumers who are served by them. The amendments allow producers to charge a service fee to recoup all, or a portion of an administrative cost expended to acquire documents or other materials related to the underwriting of the policy, up to a \$20.00 per policy limit. While applicants for new coverage may incur an additional expense with respect to such service fees, enhancing the promptness, thoroughness and integrity of the application process should improve service and reduce instances of application fraud, thereby fostering a climate in which auto insurance rates can be stabilized and service improved.

Requiring producers who charge a service fee to recoup up to \$20.00 of the actual costs they incur in acquiring underwriting documents to provide copies of all such documents to applicants for new auto policies will have a beneficial economic impact upon such consumers.

Once they are in receipt of copies of those documents, consumers will be better equipped to shop for coverage.

Consumers further will benefit because they will not have to pay duplicative fees. These proposed amendments would prohibit producers from charging consumers for certain underwriting materials so long as the consumer supplies copies of the materials that are dated within the previous 90 days.

The Department will continue to incur the costs involved in implementing and enforcing the amended rules. These are not anticipated to have a substantial impact upon the Department's budget.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that the proposed amendments will result in the generation or loss of jobs with respect to insurance producers. The charging of the service fee, retention of proof of costs and the production of copies of abstracts should have no effect on the number of jobs involved. Agents will not have to seek professional services to comply with the amendments. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the proposed amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because producers to whom the proposed amended rules will apply employ fewer than 100 full-time employees, and therefore are “small businesses” as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The intent of the amendments is to allow all producers to recoup part of the costs they incur in assessing the risks posed by new applications for automobile insurance while requiring some confirming paperwork in order to protect consumers. Therefore no differentiation in compliance, recording or recordkeeping requirements based on business size has been proposed. The Department does not believe any additional professional services will be needed to comply with the amendments as stated in the Jobs Impact above. Additional compliance costs for copying documents, maintaining records of the costs incurred in their acquisition, and for making the disclosures required under N.J.A.C. 11:17B-3.1(c) are estimated to be minimal and will vary based on each producer’s volume of new automobile insurance business.

Smart Growth Impact

The proposed amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:17B-1.3 Definitions

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

...

"Fee" means any money or other consideration, except commissions, paid to or received from any person for service or advice in connection with a policy, contract or certificate of insurance, including, but not limited to, any service fee, motor club fee, consultant fee, brokerage fee or other charge by an insurance producer [acting as an insurance broker or an insurance consultant].

...

"Service fee" means a fee charged an insured or prospective insured by an insurance [broker or insurance consultant] **producer** for the placement of insurance or financing, credit reporting, obtaining auto operator's driving records, claim or accident reporting, adjustment of claims, inspection fees, and referral fees.

11:17B-3.1 Fees

[(a) Only an insurance producer acting as an insurance broker or insurance consultant may charge a fee to a policyholder or insured for services rendered as an insurance producer.]

[(b)]**(a)** Insurance producers acting as agents for an insurance company shall not charge or receive any fee on a policy to or from a policyholder or insured for services rendered as an insurance producer **except for reimbursement of actual out-of-pocket expenses incurred obtaining documents and other materials related to the underwriting process for new automobile applications and subject to the limitations of N.J.A.C. 11:17B-3.2(a)9.**

[(c)] **(b)** Any insurance producer [acting as an insurance broker or insurance consultant] charging a fee to an insured **or prospective insured** shall first obtain from the insured **or prospective insured** a written agreement, which shall be separate and apart from all other agreements and applications, and shall contain the following provisions and no other provisions:

1. A clear statement of the amount of the fee to be charged and the nature of the service to be provided therefor;
2. A statement that such fees are not a part of the premium charged by the insurance company and that such fees can be charged only if the insured **or prospective insured** so consents in writing;
3. A clear statement as to whether a commission will be received from the purchase of insurance; and
4. The signature of the insured **or prospective insured** and the licensed insurance [broker or insurance consultant] **producer** and the date of execution of the agreement.

[(d)] **(c)** Any fee charged by an insurance producer [acting as an insurance broker or insurance consultant] shall bear a reasonable relationship to the services provided and shall not be discriminatory.

[(e)] **(d)** (No change in text)

[(f)] **(e)** No insurance producer [acting as an insurance broker or insurance consultant] may pay or return, or offer to pay or return, all or part of a fee charged as an inducement to purchase a specific policy, or coverage within a policy, or coverage from a particular insurer.

[(g)] **(f)** No insurance producer [acting as an insurance broker or insurance consultant] may charge a fee for services not actually performed.

[(h)] **(g)** No insurance producer [acting as an insurance broker or insurance consultant], except a duly authorized [employed] producer **employed by and acting** on behalf of his or her employer, may execute a written fee agreement on behalf of any other insurance producer or premium finance company.

11:17B-3.2 Service fees

(a) An insurance producer [acting as an insurance broker or insurance consultant] may charge a fee for services rendered in the sale or service of personal lines property/casualty or personal lines surplus lines insurance subject to the following conditions:

1. (No change.)

2. No insurance producer [acting as an insurance broker or insurance consultant] may charge a fee for completing accident or claim report forms, nor shall a fee be charged for providing forms required by an insurer for servicing a policy.

3. - 4. (No change.)

5. A maximum service fee of \$15.00 may be **charged by an insurance producer acting as an insurance broker or an insurance consultant** upon placement of a renewal, except than an inspection fee may be charged in accordance with (a)3 above if no inspection of the property has occurred during the three years prior to issuance of the renewal policy.

6. - 8. (No change.)

9. Insurance producers may charge a service fee for new automobile insurance applications, subject to the \$20.00 per policy limit and the other conditions referenced in (a)1 through 8 above, as reimbursement for out-of-pocket costs in obtaining documents or other materials related to the underwriting process, if:

- 1. The producer retains verifiable proof of the costs incurred;**
- 2. The producer provides copies of all such documents or other materials to the applicant, regardless of whether the costs incurred by the producer in procuring the documents or materials exceeded the \$20.00 limit; and**
- 3. The applicant does not provide the producer with a copy of the underwriting document dated within the previous 90 days.**

(b) – (c) (No change.)