

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

Unfair Claims Settlement Practices

Rules for Fair and Equitable Settlements and Reasonable Explanations Applicable to All Insurance; Rules for Fair and Equitable Settlements Applicable to Property and Liability Insurance

Reproposed Amendment: N.J.A.C. 11:2-17.8

Proposed Amendment: N.J.A.C. 11:2-17.10

Authorized By: Richard J. Badolato, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:29B-1 et seq.

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

Proposal Number: PRN 2016-048.

Submit comments by June 3, 2016, to:

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The agency proposal follows:

Summary

N.J.A.C. 11:2-17.8(k) requires that, with respect to first party claims, insurers make claim payments by check or draft, with a statement setting forth the coverage under which payment is made and in sufficient detail so that first party claimants can reasonably understand the benefits included within the claim payment. The Department of Banking and Insurance (Department) had received requests from interested parties to revise these rules to permit payments through the use of electronic transfers, prepaid debit cards, or other comparable methods to reflect current methods for the payment of claims and transfer of monies. Prepaid debit cards would include debit cards, bank cards, or other similar cards procured by arrangement between the insurer and a financial institution whereby the claim payment to the consumer is transferred from the insurer to the financial institution and held in an account at the financial institution, or the claim payment is otherwise provided directly from the insurer to the insured in a manner other than a lump-sum payment via check or draft or electronic transfer. The Department proposed amendments to N.J.A.C. 11:2-17.8 to permit first party and third party claim payments through such means in order to reflect current payment methods and to provide more options and flexibility for both insurers and insureds with respect to claims payments. See 46 N.J.R. 672(a). The Department received numerous comments on the proposal. Upon review of those comments, the Department has determined that it necessary to repropose the amendments to N.J.A.C. 11:2-17.8 and propose new amendments to N.J.A.C. 11:2-17.10 to address the concerns raised by the commenters and clarify the Department's intent.

When the amendments were originally proposed the Department timely received written comments from:

1. The Medical Society of New Jersey;
2. The Property Casualty Insurers Association of America;
3. Horizon Blue Cross Blue Shield of New Jersey;
4. The New Jersey Dental Association;
5. The National Association of Insurance and Financial Advisors-NJ; and
6. New Jersey Manufacturers Insurance Group.

A summary of the comments received and the Department's responses thereto follows:

COMMENT: All of the commenters generally supported the goal of the proposal to provide additional flexibility and the means of claims payment to claimants, but expressed different concerns as set forth below.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter had concerns with the growing number of payers who offer single-use credit cards, gift cards, or virtual credit cards to pay for physician fees. The commenter stated that these cards often include high transactional costs that have shifted from the payer to the physician. For example, the commenter stated that some virtual credit card payments carry fees as high as five percent of the payment amount for a "card not present" transaction.

RESPONSE: The Department agrees that the amendments should not apply in the case of health coverage, life insurance, or annuities. Payments to in-network providers are governed by the contract between the provider and the insurer, and this notice of reproposal and proposal is not intended to affect the agreements with regard to those payments. Payments to in-network providers are usually made via electronic funds transfers. The use of single-use credit cards, debit cards, etc., generally apply in the case of property damage claims and are used to pay claimants for alternative housing. Also, payments for life insurance through alternative mechanisms are currently addressed in N.J.A.C. 11:4-61, which regulates “retained asset accounts,” which are mechanisms whereby proceeds of life insurance may be deposited in an account with check or draft writing privileges, or through other alternative means as set forth therein. Further, annuities usually provide for periodic payments, whereas payments by use of debit/credit cards, etc., are more suited to one-time payments related to payments for claims for property/casualty coverage. Accordingly, the proposed amendments will apply only to property/casualty claims through amendments to N.J.A.C. 11:2-17.10, which applies solely to such claims. N.J.A.C. 11:2-17.8(k) will be re-proposed to be amended to reference the proposed amendments to N.J.A.C. 11:2-17.10 and also to recognize that electronic funds transfers will be considered the equivalent of payments by check or draft. Fees on the use of cards will continue to be prohibited, except for the fees incurred by the claimant due to the terms of service with their bank.

COMMENT: One commenter noted that in the Economic Impact in the rule proposal, the Department indicated that it is optional for insurers to offer alternative payment methods for claims. The commenter suggested that the rules clarify that under the Health Insurance

Portability and Accountability Act, Pub. L. No. 104-191 (1996) (HIPAA), health plans are mandated to use automated clearing house electronic fund transfers (ACH EFT), which limit costs to a per-transaction processing fee instead of a percentage of the payment amount, if requested by the health care provider. The commenter suggested that to ensure that health care providers are aware of this option when insurers are seeking permission to use alternative payment methods, N.J.A.C. 11:2-17.8(k)3 should be revised to read as follows (suggested additional language set forth in **boldface**):

No claim shall be paid other than by a check or draft unless the use of the payment method has first been voluntarily agreed to **in writing** by the claimant after the insurer has fully explained to the claimant in writing all aspects of the program, including the disclosure of any potential fees. **For claimants who are healthcare providers the insurer shall inform of the right to elect to be paid via automated clearing house electronic funds transfer (ACH EFT). For all claimants the insurer shall give notice of the potential bank fees set forth in N.J.A.C. 11:2-17.8(k)5i and merchant service fees.** Failure of the claimant to select an electronic or alternative payment method shall not be construed as consent to use such method.

The commenter also suggested that N.J.A.C. 11:2-17.8(k) be revised as follows to make clear the right of healthcare providers to opt for payment via ACH EFT (suggested additional language in **boldface**; suggested deletions in [brackets]):

With respect to first party claims, insurers shall make claim payments by check or draft [with], **direct deposit, wire transfer, or other electronic means (including ACH EFT), or an alternative payment method such as a prepaid debit card or other comparable method.**

RESPONSE: As noted above, the reposed amendments and new amendments will not apply to health coverage, other than to recognize that payments by electronic funds transfers will be considered the same as payment by check or draft. Payments to in-network providers are usually governed by the contract between the provider and the insurer, and this proposal and reproposal are not intended to affect contractual terms governing payment by electronic fund transfers. Accordingly, many of the concerns raised by the commenter are rendered moot by these proposed amendments.

COMMENT: One commenter suggested that the rules be revised to allow claimants to revoke their agreement to receive payments via an alternative payment method and select payment by check or ACH EFT at any time. The commenter also suggested that any revocation of permission to pay via an alternative payment method be effective immediately upon receipt of such revocation by the insurer.

RESPONSE: Payments made by electronic means are usually handled through third-parties. Accordingly, it may take some time to effectuate necessary changes to systems to effectuate the requested change. Accordingly, the Department agrees that provision should be made for the

claimant to affirmatively revoke the agreement effective as soon as practicable, but no later than 30 days after such notice to the claimant, and an amendment is proposed to address this issue.

COMMENT: One commenter suggested that the increased use of alternate payment models may improperly skew characterization of portions of a payment as either administrative or medical and how such is reported under Federal and state medical loss ratio laws, and, therefore, requested the Department to conduct a study of same. The commenter stated that it has also urged the Centers for Medicare and Medicaid Services to study this trend. The commenter stated that to the extent that physicians must pay transactional costs to receive money due and owing to them for medical services already rendered, the amount paid to the insurers is actually less than the amount for which the insurer gets credit toward the payment of medical claims. The commenter concluded that it is unfair that physicians receiving virtual credit cards must pay additional processing costs in order to receive payments while insurers may receive cash-back incentives from credit card companies for such transactions. The commenter stated that the American Medical Association believes that credit card companies may offer health plans up to 1.75 percent in rebates for paying with virtual credit cards. The commenter believed that this would further obscure the accuracy of “administrative” versus “medical payments” for purposes of medical loss ratio requirements.

RESPONSE: As noted above, the repropoed amendments and new amendments will not apply to health insurance, other than to recognize that payments by electronic funds transfers will be considered the same as payment by check or draft. Payments to in-network providers are usually

governed by the contract between the provider and the insurer. Accordingly, the issues raised by the commenter are rendered moot by the amendments proposed herein.

COMMENT: One commenter stated that N.J.A.C. 11:2-17.8(k)3i provides that if there is an unused balance on a card, the insurer would have to advise the payee of the unpaid balance remaining and that the balance could be subject to unclaimed property laws. The commenter also noted that the rule requires insurers to provide a means to have the remaining balance converted into cash. The commenter expressed the following concerns with this provision:

1. It is not clear if the third-party card issuer used by the insurer can fulfill this requirement on the insurer's behalf.
2. "Stopping" any unpaid balance with the card issuer and then sending additional "funds" to the payee would be problematic because the insurer would, in essence, have to monitor the card until the funds are exhausted and then would have to pay a second time while they wait for a refund of the unused portion of the funds. The commenter also stated that there is a risk to insurers that an unscrupulous payee could put them in a poor timing situation between when they "stop" draws on the alternative payment balance and issue the remaining balance to them by other means if the payee actually uses the remaining balance in the interim. The commenter stated that this requirement alone would discourage the use of these types of payments.
3. It is not clear that a payment through a company like PayPal would meet this requirement as long as the insurer treated it like some form of electronic payment. If the customer then chose to have the funds converted to a payment card, it would appear that since insurers did not issue or request the card that the insurer would not

be subject to the requirement stated in the paragraph above and would be covered by the ability to deposit the funds at no charge. The commenter wanted to ensure that its interpretation is correct and is made clear in the rules.

RESPONSE: The Department did not intend that the insurer would be required to independently monitor the balances on the card. The procedure used by the card issuer to access balances (for example, a phone number and/or website with balance information maintained by the card issuer) should provide a sufficient process by which claimants may be apprised of the balance remaining on the card. Also, the Department did not intend that the insurer must provide a means to convert the remaining balances into cash. The Department intended that the insured should be able to take the card to an ATM or other location and convert the balance into cash. The proposed amendments address this issue.

COMMENT: One commenter expressed concerns with the timing of notices that have to be provided. While many of the alternative payment methods will be arranged for in advance, some may not, and the notices may not be practical in the aftermath of a catastrophic event like Superstorm Sandy. The commenter suggested that the rules provide a carve-out for those types of situations.

RESPONSE: Upon review, the Department does not believe that the timing provision should pose any burden. The rule merely requires that the insured must agree to electronic payments prior to the time of payment, which could be immediately prior to the time of payment, if the insurer's adjuster can provide information describing the terms of the card.

COMMENT: One commenter suggested that the Department clarify N.J.A.C. 11:2-17.8(k)3. The commenter believed that the requirement set forth therein appears to conflict with the language of N.J.A.C. 11:2-17.8(k). Specifically, the commenter stated that N.J.A.C. 11:2-17.8(k)3 requires a voluntary agreement of a claimant or provider prior to a claim being paid electronically. As currently proposed, N.J.A.C. 11:2-17.8(k)3 states that: “No claim shall be paid other than by a check or draft unless the payment method has first been voluntarily agreed to by the claimant...” (emphasis provided by the commenter). The commenter stated that the proposal Summary states that the Department proposed to amend N.J.A.C. 11:2-17.8(k) “to provide that any payment method other than a check, draft, or electronic transfer shall first be affirmatively agreed to by the claimant.” Conversely, the commenter stated that proposed subsection (k) permits several methods to be used, including electronic, without any prior agreement. The commenter stated that the proposal Summary also provides that “with respect to first party claims, insurers shall make claim payments by check or draft, electronic transfer, or an alternative payment method...” (emphasis supplied by the commenter). The commenter thus recommended that the Department consider treating claim payments by electronic fund transfer (EFT) or direct deposit as analogous with those made by check or draft. The commenter stated that there are no additional fees or charges associated with direct deposit or EFTs, unlike those found in some of the alternative payment methods set forth in the proposal, such as prepaid debit cards. The commenter stated that this clarification would allow carriers to avoid the time and expense of obtaining a voluntary agreement with the claimant before proceeding with the EFT or direct deposit option.

RESPONSE: The Department agrees that EFT is the same as a check or draft. The Department has proposed an amendment to N.J.A.C. 11:2-17.8(k) to reflect this.

COMMENT: A health carrier commenter recommended that the Department clarify the phrase “negotiations between the insurer and the first party claimant” as set forth in N.J.A.C. 11:2-17.8(k)1. The commenter believed that as presently written, it is difficult to determine whether the provision applies to negotiated provider rates, negotiated rates with providers not under contract, negotiated settlements with claimants, or legal settlements.

RESPONSE: As noted previously, the rules will apply only to property/casualty claims, other than recognizing EFT as an acceptable means for payment for health claims subject to the contract between an in-network provider and a health carrier.

COMMENT: One commenter suggested that the definition of “first party claims” indicate that they include claims for which the insured authorizes direct payment to healthcare practitioners. The commenter also suggested that N.J.A.C. 11:2-17.8(k)3 be revised to clarify that alternative methods of payment must be voluntarily agreed to by the payee, rather than the claimant, when payment is being made directly to healthcare practitioners.

RESPONSE: As noted above, the repropoed amendments and new amendments will not apply to health insurance, other than to recognize that payments by electronic funds transfers will be considered the same as payment by check or draft. Thus, this commenter’s concern is rendered moot by the repropoed and propoed amendments.

COMMENT: One commenter suggested that the Department apply the standards set forth in the proposed amendments to third party administrators (TPAs) that are licensed and regulated in New Jersey. The commenter indicated that it has had several reports of TPAs paying claims by credit card, where dentists were required to absorb the fees associated with these transactions.

RESPONSE: This comment appears to apply to claims under self-funded plans. Although the comments did not state it as such, that is the area in which the Department has received numerous inquiries. The Department does not have the authority to regulate such plans under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 18.

COMMENT: One commenter questioned whether a carrier would be allowed to offer a consumer more than one option for each claim. For example, if a homeowner's home is destroyed in a fire, the commenter questioned whether the insurer could offer a debit card as well as a settlement check. In this example, the commenter stated that the debit card would be utilized to find temporary housing until the final settlement takes place.

RESPONSE: The Department agrees with the commenter. This was the intent of the proposal.

COMMENT: One commenter stated that while the Summary of the proposal indicates that electronic payments are optional, the language in N.J.A.C. 11:2-17.8(k)3i suggests that electronic methods of payment may be mandatory. In order to clarify this, the commenter

recommended that N.J.A.C. 11:2-17.8(k) be revised to provide that “with respect to first party claims, insurers shall **at their option** make claim payments by check or draft, direct deposit, wire transfer, or other electronic means, or an alternative payment method such as a prepaid debit card or other comparable method” (suggested additional language in **boldface**).

RESPONSE: Under the repropoed and newly proposed amendments, payments through ACH and EFT will be considered the equivalent of payment by check or draft, and may be made at the option of the insurer. Payments of property/liability claims through an alternative payment method will be optional.

COMMENT: One commenter stated that the requirement in N.J.A.C. 11:2-17.8(k)3i, that carriers notify claimants who receive prepaid debit cards or other comparable payment methods at the time of payment and annually thereafter for as long as a balance remains on the card that they may convert any remaining balance into cash, is problematic. The commenter stated that providing this advice at the time of distribution would be appropriate. However, requiring insurers to keep track of the balance on each card issued and to send notices annually regardless of how long a balance of whatever size remains would pose a great administrative burden and would serve as a disincentive for carriers to use this option. The commenter stated that its systems are not designed to track such data, a third party vendor would be necessary to comply with such a requirement, adding additional costs to the claims handling process. The commenter believed that prepaid cards contain a phone number on the back that a recipient can call to obtain balance and other information. The commenter thus believed that the ongoing notice requirement may not be necessary.

RESPONSE: The Department agrees and has revised the proposed amendments as set forth in a response to a previous comment.

N.J.A.C. 11:2-17.8(k) currently provides that, with respect to first party claims, insurers shall make claims payments by check or draft. The Department proposes to amend the subsection to add that payment by direct deposit, wire transfer, or other electronic means where the claim payment is deposited directly into the claimant's bank account shall be considered the equivalent of payment by check or draft.

N.J.A.C. 11:2-17.8(k) is also proposed to be amended to provide that the statement setting forth the coverage detail may be provided via e-mail or regular mail at the time payment is made through electronic means. In addition, N.J.A.C. 11:2-17.8(k) is proposed to be amended to provide that the requirement to include a statement explaining the benefit payment and specifying the coverage under which it is made shall not apply to claims in which the claim payment figure was arrived at through negotiations between the insurer and first party claimant. These proposed changes clarify the application of the subsection.

The Department proposes to amend N.J.A.C. 11:2-17.10 to include a proposed new subsection (b) to provide for claims payments for first party claims under property and liability insurance policies through other alternative payment methods, such as pre-paid and/or reloadable debit cards or credit cards. As originally proposed, these alternative means were recognized for payments of any claim, including for health, life, and annuities. As noted above, payment of health insurance is addressed via the network provider agreement and usually made via EFT. Payment of life insurance benefits is addressed in N.J.A.C. 11:4-61. The use of alternative

payment methods is the most appropriate for property and liability claims payments, such as the provision of funds for emergency shelter in connection with property damage claims.

Proposed N.J.A.C. 11:2-17.10(b) provides that, with respect to first party claims, in addition to claim payments by check or draft, direct deposit, wire transfer, or other electronic means where the payment is deposited directly into the claimant's bank account, insurers may make claim payments by an alternative payment method such as a prepaid and/or reloadable debit or credit card, or other comparable method. Where payment is made by prepaid and/or reloadable debit card or other comparable method, the statement required to be provided by N.J.A.C. 11:2-17.8(k) shall be provided at the time of delivery of the card or comparable method of payment. No claim shall be paid pursuant to this proposed amendment unless the use of the payment method has first been voluntarily and affirmatively agreed to by the claimant after the insurer has fully explained to the claimant in writing all aspects of the program, including the disclosure of any potential fees. Failure of the claimant to select an alternative payment method shall not be construed as consent to the use of such method, and the claimant can revoke the consent to receive claim payments via alternative methods through affirmative notice to the insurer. All notices shall be in writing in easy-to-understand language.

The proposed amendment also provides that when using any electronic or alternative payment method, insurers shall not use an institution or issuer to pay claims that imposes charges and/or fees upon the claimant that reduce the claim payment amount in any way, nor shall the insurer itself impose any such charges or fees upon the claimant. Examples of such prohibited charges and/or fees include those for: using or accessing the claim payment, converting the claim payment to cash, or card inactivity and/or maintenance. Fees that may be incurred due to the claimant's election of certain means to access the funds, such as fees charged by the claimant's

bank to accept a wire transfer, or fees for multiple ATM withdrawals charged by the claimant's bank under the terms of the claimant's account, or fees charged by the financial institution used by the claimant to access monies (such as ATM fees charged by banks other than the bank in which the claimant has an account) shall not be considered a prohibited fee that reduces the claim payment amount. In addition, any such payment method utilized by an insurer shall comply with all applicable State and Federal laws and rules.

The Department also proposes a new subsection (c) to provide that the alternative payment methods in proposed subsection (b), as summarized above, may be used for the payment of third-party property/casualty claims, subject to the requirements set forth in N.J.A.C. 11:2-17.

The proposed amendments generally track the previous proposed amendments to N.J.A.C. 11:2-17.8(k), but are codified to confirm that payments by alternative payment methods apply only to property/casualty claims.

The repropoed and proposed amendments will afford to insurers the ability to offer to property/casualty insureds the option to accept claim payments made other than by check or draft, with appropriate safeguards to ensure that insureds are properly informed of the terms and conditions related to such alternative payment methods and that fees are not charged to insureds that will reduce the actual claim payment amount. When using an alternative payment method, the claimant shall be provided an opportunity to deposit or convert the full amount of the payment to cash with no fee. Other fees that may be incurred due to the claimant's election of certain means to access the funds, such as fees for multiple ATM withdrawals or fees charged by financial institutions used by the claimant to access monies (such as ATM fees charged by banks

other than the bank in which the insured has an account) shall not be considered a prohibited fee that reduces the claim payment amount.

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

Social Impact

The repropose and propose amendments set forth procedures for additional payment options for first party and third party property/casualty claims. The propose amendments, therefore, will have a positive social impact by providing insurers and insureds additional flexibility to utilize methods for the payment of claims tailored to an insured's needs, for example, insureds who do not maintain checking accounts.

Economic Impact

The repropose and propose amendments will have no negative economic impact on insurers or insureds. The repropose and propose amendments, as set forth above, afford to property/casualty insurers the ability to offer, and to insureds the option to accept, claim payments via methods other than by check or draft, including electronic transfers and prepaid debit cards, to reflect current methods for the transfer of monies. As noted above, the repropose and propose amendments provide additional flexibility for such insurers and insureds with respect to the payment of claims. Professional services required to comply with the repropose and propose amendments include accounting, legal, and information technology. The Department believes that insurers already possess or have contracted for the required expertise

and services in the normal course of business. Consequently, no new professional services should be required to be retained in order to comply with the repropoed and proposed amendments. Insurers offering alternative payment methods will be required to bear any costs associated therewith, including contracting with financial institutions that do not charge fees to insureds and mailing required notices. The Department believes that any such costs will be minimal. In addition, the decision to incur any such costs rests with the insurer, as the decision to offer alternative payment methods for property/casualty insurance claims is optional. The Department believes that the benefits of providing to insurers and insureds the flexibility to offer and accept claim payments through alternative methods outweigh any minimal additional costs that may be incurred.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the repropoed and proposed amendments.

The Department invites commenters to submit any data or studies on the potential jobs impact of the repropoed and proposed amendments together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The repropoed and proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The repropoed and proposed amendments will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the repropoed and proposed amendments apply to small businesses, they will apply to insurers domiciled in this State seeking to offer options for the payment of property/casualty claims using alternative payment methods. The economic impact and services required for compliance with the repropoed and proposed amendments are set forth in the Economic Impact above. As noted therein, the Department does not believe that any negative economic impact will result as a consequence of the repropoed and proposed amendments. In addition, compliance with the repropoed and proposed amendments is optional on the part of insurers. To the extent insurers offer alternative payment methods, they will be required to comply with the requirements set forth in the repropoed and proposed amendments related thereto and as outlined in the proposal Summary above. The repropoed and proposed amendments provide no differentiation in compliance requirements based on business size. As set forth previously, the repropoed and proposed amendments provide the means by which insurers may offer and insureds may accept payment methods other than a check or draft for the payment of first party and third party property/casualty claims.

Housing Affordability Impact Analysis

The repropoed and proposed amendments will not have an impact on housing affordability in this State in that the repropoed and proposed amendments relate to options for the payment of insurance claims.

Smart Growth Development Impact Analysis

The repropoed and proposed amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the repropoed and proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the repropoed and proposed amendments relate to options for the payment of insurance claims.

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

11:2-17.8 Rules for fair and equitable settlements and reasonable explanations applicable to all insurance

(a) – (j) (No change.)

(k) With respect to first party claims, insurers shall make claim payments by check or draft. **Payment by direct deposit, wire transfer, or other electronic means where the claim payment is deposited directly into the claimant’s bank account as permitted by N.J.A.C. 11:2-17.10 shall be considered the equivalent payment by check or draft. All payments shall be made contemporaneously with issuance of** a statement setting forth the coverage under which payment is made and in sufficient detail so that first party claimants can reasonably

understand the benefits included within the claim payment. The [details should] **statement shall** include an explanation of how the benefit payment was calculated. **Where payment is made by electronic means, whenever possible the statement shall be provided electronically at the same time that such payment is made. Where electronic notification is not possible, the statement shall be sent via regular mail to the claimant at the time payment is made.** [This subsection] **The requirement to provide the statement set forth in this paragraph** shall not apply to claims in which the claim payment figure was arrived at through negotiations between the insurer and the first party claimant.

- (1) (No change.)

11:2-17.10 Rules for fair and equitable settlements applicable to property and liability insurance

- (a) (No change.)

(b) With respect to first party claims, in addition to claim payments by check or draft, insurers may make claim payments by direct deposit, wire transfer, or other electronic means where the claim payment is deposited directly into the claimant's bank account, or by an alternative payment method such as a prepaid and/or reloadable debit or credit card, or other comparable method.

1. Where payment is made by prepaid debit card or other comparable method, the statement required to be provided by N.J.A.C. 11:2-17.8(k) shall be provided at the time of delivery of the card or comparable method of payment.

2. No claim shall be paid pursuant to this subsection unless the use of the payment method has first been affirmatively and voluntarily agreed to by the claimant

after the insurer has fully explained to the claimant in writing all aspects of the program, including the disclosure of any potential fees. Failure of the claimant to select an alternative payment method shall not be construed as consent to the use of such method.

i. The agreement may be affirmatively revoked by the claimant by notifying the insurer. Such revocation shall be effective as soon as practicable, but no later than 30 days after the receipt by the insurer of such revocation.

3. All notices referenced in this subsection shall be in writing in easy-to-understand language.

4. When using any electronic or alternative payment method, insurers shall not use an institution or issuer to pay claims that imposes charges and/or fees upon the claimant that reduce the claim payment amount in any way, nor shall the insurer itself impose any such charges or fees upon the claimant. Examples of such prohibited charges and/or fees include, but are not limited to, fees/charges for: using or accessing the claim payment, converting the claim payment to cash, or card inactivity and/or maintenance.

i. Fees that may be incurred due to the claimant's election of certain means to access the funds, such as fees charged by the claimant's bank to accept a wire transfer, or fees for multiple ATM withdrawals charged by the claimant's bank under the terms of the claimant's account, or fees charged by the financial institution used by the claimant to access monies (such as ATM fees charged by banks other than the bank in which the claimant has an account), shall not be considered a prohibited fee that reduces the claim payment amount.

ii. Any such payment method utilized by an insurer shall comply with all applicable State and Federal laws and rules.

(c) With the affirmative and voluntary agreement of the claimant, third party property/casualty claims may be paid by alternative payment methods as set forth in (b) above, subject to all of the notice and disclosure and other requirements, and to the prohibitions on the imposition of fees set forth in this subchapter.