

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

Insurance Producer Standards of Conduct: Commissions and Fees

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

Proposed: December 15, 2003 at 35 N.J.R. 5478(a)

Adopted: May 14, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: May 14, 2004 as R. 2004 d. 213, without change.

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

Effective Date: June 7, 2004

Expiration Date: December 30, 2004

Summary of Public Comments and Agency Responses:

The Department received comments from the Independent Insurance Agents of New Jersey, The Professional Insurance Agents of New Jersey and the New Jersey Land Title Association.

COMMENT: Two commenters praised the Department for recognizing the increased costs associated with writing automobile insurance coverage, including the considerable sums expended by insurance producers in obtaining motor vehicle records for prospective insureds, and for helping to alleviate those costs. One commenter also pointed out that the changes in the regulations also benefit the consumer by ensuring market access and stability.

RESPONSE: The Department thanks the commenters for their support.

COMMENT: One commenter requested confirmation that their reading of the proposed regulation's intent was correct. The commenter believed the rule stated that the insurance producer may obtain the prospective insured's signature authorizing the fee, along with the payment of the fee, prior to ordering the documents. The insurance producer would then provide a copy of the documents to the prospective insured as required. The consumer would then be able to continue shopping if they are not satisfied with the quotation they received from the insurance producer.

The commenter expressed its concern that if the fee is not allowed to be collected until the insured sits down to complete the application, the motor vehicle abstracts and other documents would not be ordered until that time. The commenter believed that might result in the prospective insureds not having the proper down payment and may preclude them from taking the documents to shop for further insurance quotations.

RESPONSE: The rule requires the producer to obtain a separate written agreement from the insured or the prospective insured prior to charging or collecting the fee. No other time constraints on the collection of the fee are imposed by the rule.

COMMENT: One commenter agreed with the requirement that an insurance producer charging a fee for procurement of the documents must provide a copy to the prospective insured. However, the commenter wished to confirm that if an insurance producer does not charge a fee, whether by their own practice or because a particular insurance company pays the fee, then they are not required to provide those documents to the prospective insureds.

The commenter pointed out that "[a] few companies that require the insurance producer to pay the costs of motor vehicle abstracts and documents may return all, or a portion, of the

producer costs should the prospective insured actually complete the application and the policy is issued." The commenter requested that the Department allow the insurance producer to secure the fee from the prospective insured and if the prospective insured completes the application with a company that will then reimburse the insurance producer, the insurance producer would refund the fee to the insured. The commenter was concerned that the current language of N.J.A.C. 11:17B-3.1(e), which does not permit the return of a fee as an inducement to purchase a specific policy, or coverage within a policy, or coverage from a particular insurer, would preclude the return of the fee to the insured. The commenter believed that the return of the fee should be permitted as it would be in the best interest of the prospective insured, while providing for payment to the insurance producer for the abstracts and documents should the prospective insured never complete the application.

RESPONSE: The intent of the rule is to mitigate some of the actual out-of-pocket expenses producers incur in regard to obtaining documents or other materials related to the underwriting process for new automobile insurance applications and to ensure that all applicants receive copies of documents, the procurement of which they are charged for, which will enhance their ability to shop for coverage without incurring additional charges for the same documentation. If the insured or prospective insured is not charged a fee, the producer is not obligated to provide copies of the documents. Similarly, those producers who charge the applicant and then also receive "reimbursement" of the fee from the insurer are not incurring an "out-of-pocket" expense. Therefore, the fee should be returned, as such fees may only be charged to offset such expenses actually incurred by producers. As N.J.A.C. 11:17A-1.2 defines "inducement" as "money or any favor, advantage, object, valuable consideration or anything other than money

which has an intrinsic value or redeemable value greater than \$20.00"(emphasis added), the return of the fee to the applicants in such cases would not be a prohibited inducement.

COMMENT: One commenter pointed out that many consumers have multiple drivers on a policy and, since abstracts and documents must be ordered for each driver, the costs exceed the maximum of \$20.00 regardless of costs. Therefore, the commenter asked that the Department consider either allowing a flat fee of \$20.00, which on average would more accurately reflect the insurance producer's costs, or allowing a fee equal to the total out-of-pocket costs to a maximum of \$25.00.

RESPONSE: In developing this rule, the Department carefully considered insurance producers' costs, including the costs involved when processing applications for policies that will provide coverage to multiple drivers. The Department also carefully considered the burden the proposed fee would place on the consumer. The Department believes that the \$20.00 flat fee, regardless of costs, will help to mitigate the additional costs producers have incurred as a result of increases in the cost of obtaining the documents, while not being overly burdensome for the consumer. The intent of the amendments was never to fully reimburse insurance producers' costs, which are a part of the normal costs of doing business.

COMMENT: One commenter pointed out that most companies require that all abstracts and documents be dated within 30 days of the application or policy effective date. Therefore, the commenter believed that the 90-day period, during which another insurance producer is precluded from charging a fee, is too long. The commenter suggested a 60-day period.

RESPONSE: The Department thanks the commenter for the suggestion. However, as there is currently no data as to the effects of the 90-day period on the producer and the consumer, and the suggested change would constitute a substantive change requiring reproposal, the Department believes the 90-day period should remain in effect. The Department will consider amending the time period at a future date if it can be shown that a shorter period could still equitably balance the needs of the insurance producer and the financial burden on the consumer.

COMMENT: One commenter urged the finalization and adoption of the regulations as quickly as possible in order to provide some relief to insurance producers and to encourage prospective insureds to shop for their insurance coverage. The commenter also offered to work with the Department to develop documents insurance producers could use to provide the necessary disclosures and obtain the authorization for payment of the fee by the insured.

RESPONSE: The Department thanks the commenter for its offer and support. Producers may, however, use any forms they wish to develop, as long as those forms are in compliance with the regulation and New Jersey law.

COMMENT: One commenter, while recognizing that the amendments were directed toward the "automobile insurance industry," believed that amending the definition of "fees" to include all insurance producers could have unintended consequences for title insurance producers. The commenter further suggested that the regulation be amended to add provisions for title insurance that recognize that methods and practices differ from line to line of insurance. Specifically the commenter suggested that N.J.A.C. 11:17B-1.3, be amended to define "fee," for title insurance only, as defined in N.J.S.A. 17:46B-1f; that N.J.A.C. 11:17B-3.1(a) be amended to state that "for

title insurance only, insurance producers shall charge and receive fees in accordance with duly filed and published rates and fees pursuant to N.J.S.A. 46:17B-41 et seq.; and that N.J.A.C. 11:17B-3.1(b) be amended to state that "for title insurance only, the requirements of this subsection may be satisfied by issuing an invoice itemizing all rates and fees and obtaining a settlement statement in accordance with N.J.A.C. 11:17C-2.4(a)."

RESPONSE: The Department believes that the commenter is misreading the rule. The removal of the phrase "acting as insurance broker or insurance consultant" from the definition of "fees" in N.J.A.C. 11:17B-1.3 should result in no misapplication of the proposed amendments as suggested by the commenter. While the phrase has been deleted from the definition, proposed N.J.A.C. 11:17B-3.1(a) continues to clearly state that "[i]nsurance 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." Because this subsection clearly provides that insurance producers acting as agents cannot receive fees, the language being removed from the definition through this amendment was redundant and unnecessary, and its removal at this time has no effect other than to render the definition consistent with the amended text of N.J.A.C. 11:17B-3.1(a).

Federal Standards Statement

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

Full text of the adoption follows:

11:17B-3.2 Service fees

(a) (No change from proposal.)

1. – 8. (No change from proposal.)

9. (No change from proposal.)

[1.] **i.*** (No change in text from proposal.)*

[2.] **ii.*** (No change in text from proposal.)*

[3.] **iii.*** (No change in text from proposal.)*

(b) – (c) (No change.)

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