

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Office Of The Insurance Claims Ombudsman

Proposed Readoption with Amendments: N.J.A.C. 11:25

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

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

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

Proposed Number: PRN 2006-323

Submit written comments by December 1, 2006 to:

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The agency proposal follows:

Summary

In accordance with Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1 the Commissioner of the Department of Banking and Insurance (Commissioner) proposes to readopt N.J.A.C. 11:25 with certain amendments. This chapter, which concerns the Office of Insurance Claims Ombudsman, will expire April 13, 2007, pursuant to N.J.S.A. 52:14B-5.1c, unless it is readopted prior to that date.

The chapter contains rules, listed by subchapter codification below, concerning the following subjects:

1. General Powers and Duties; and

2. Internal Appeals Procedure.

These rules implement many essential provisions of N.J.S.A. 17:29E-1, et seq. As part of the readoption process, the Department of Banking and Insurance (Department) has undertaken a review of N.J.A.C. 11:25 to determine the current effectiveness of the rules contained therein. This review was undertaken pursuant to Executive Order No. 66 (1978) in order to ensure the continuing relevancy and effectiveness of the chapter. Each rule was examined to determine whether it still provides a useful function within the insurance structure in New Jersey. The Department examined the continuing relevance of the rules and also considered whether they require unnecessary time and expense. The Department finds that Chapter 25 continues to be relevant and necessary and the need for this chapter remains constant. The Department is proposing to readopt Chapter 25 with amendments that will not substantially alter the structure of the rules.

N.J.S.A. 17:29E-1 et seq. established the Office of Insurance Claims Ombudsman within the Department. The Ombudsman is appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor during his or her term of office. The Ombudsman is charged with the responsibility to:

- Investigate consumer complaints regarding policies of insurance, including the payment of claims;
- Establish procedures to monitor the implementation of N.J.S.A. 17:23A-1 et seq. (disclosure practices of policyholders' personal information); N.J.S.A. 17:29B-1 et seq. and 17B:30-1 et seq. (unfair methods of competition, unfair, deceptive and discriminatory acts or practices); N.J.S.A. 17:35C-1 et seq. (regulation of contract provisions; and required disclosure to consumers

in Medicare supplement health insurance policies) and monitor and investigate violations of N.J.S.A. 17:35C-11 (use of false, misleading, or fraudulent statements in advertising to sell Medicare supplement insurance);

- Respond to consumer inquiries including, but not limited to, those regarding policy provisions and availability of coverage;
- Ensure that accurate and understandable buyers' guides and rate comparisons are published and disseminated to consumers; and
- Review consumer complaints regarding the conduct of arbitrators appointed under the terms of a policy of insurance (except policies issued pursuant to N.J.S.A. 39:6A-1 et seq.).

Upon readoption the Department is proposing to amend definitions found in N.J.A.C. 11:25-1.2. The definitions of "claim" and "insurance" are being amended to include N.J.S.A. 17:17-1 et seq. in order to make these terms consistent with the definitions of the terms found in the enabling statute at N.J.S.A. 17:29E-1, as well as N.J.A.C. 11:25-1.1(b). The definition of "disputed insurance claim" is also being amended to include a claim denial.

N.J.A.C. 11:25-1.3 regarding general provisions and disputed claims is being amended. Specifically subsection (b), in which the PO Box for the Ombudsman's Office is referenced, is being amended in order to reflect the correct PO Box. The address should reflect PO Box 472 instead of PO Box 329. In paragraph (b)1 all references to the "Office of Enforcement and Consumer Protection" are being replaced by the "Office of Consumer Protection Services" per the recent Department reorganization. N.J.A.C. 11:25-1.3(b)3 is being amended to clarify that the time period referenced in this provision is 15 "business" days. In paragraph (b)5, the "seven

days” referenced in this paragraph for complaint rebuttal is being increased to “15 business days.”

The heading of N.J.A.C. 11:25-1.6, as well as subsection (a) and (b) are being amended to change the reference of “claims” to “complaints”. N.J.A.C. 11:25-1.6(b) is also being amended to change the reference to the “Division of Enforcement and Consumer Protection” to the “Office of Consumer Protection Services.”

In N.J.A.C. 11:25-1.7(b), the term “consumer denial” is being revised to “claim denial.” In subsection (c), the word “excepted” is amended to “except.”

N.J.A.C. 11:25-2.3(a)1, which requires written notification to claimants of the contact information on the insurers’ employees responsible for internal appeals and disputed claims is being deleted from this location and incorporated into N.J.A.C.11:25-2.5(a). Additionally, in current N.J.A.C. 11:25-2.3(a)2 the record retention requirement concerning internal appeals is being reduced from five to three years, in order to be consistent with other Department record retention requirements. The Department is also deleting the term “filed” therein and is replacing it with “closed,” in order to be consistent with other Department record retention rules. The Department is also recodifying paragraphs (a)2 through 7 as (a)1 through 6.

The Department is also amending N.J.A.C. 11:25-2.5(a) to require that insurers provide claimants (in addition to policyholders) with a written explanation of the insurer’s internal appeal system and include telephone and fax numbers and e-mail and business addresses to which internal appeals shall be submitted.

The Department is amending N.J.A.C. 11:25-2.7, the penalty provision, in order to have it apply to N.J.A.C. 11:25-1.7 as well as Subchapter 2.

The Department's notice of 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

The readoption of N.J.A.C. 11:25 continues to implement the legislative mandates imposed by N.J.S.A. 17:29E-1 et seq. N.J.A.C. 11:25 has two subchapters, one of which requires insurers to adopt procedures to implement an internal appeals procedure for dealing with certain disputed claims. The Department's amendment to N.J.A.C. 11:25-2.3(a)2 which reduces from five to three years the record retention requirement should benefit insurers. Additionally, the Department believes that the amendments to N.J.A.C. 11:25-2.5(a) which requires insurers to provide policyholders and claimants with pertinent telephone numbers, fax numbers, e-mail and business addresses to which appeals shall be submitted should also have a positive social impact on insureds. These rules continue to require insurers to interact with the Office of Insurance Claims Ombudsman regarding inquiries pertaining to disputed claims, as well as trade practices and other market conduct issues. Insurers are subject to the subpoena of personnel and documents needed by the Ombudsman in pursuit of investigations. The Department recognizes that these obligations may place a burden on insurers; however, the important public benefits derived from them continue to justify their imposition. Unsatisfied claimants, consumers and society in general will continue to experience a positive impact as a result of the efforts of the Ombudsman. Allegations of improper trade practices or disputes about claim dispositions will continue to be handled expediently for the benefit of all. The Department's amendment to N.J.A.C. 11:25-2.3(a)2, which reduced from five to three years the record retention requirement

should benefit insurers. Additionally, the Department believes that the amendments to N.J.A.C. 11:25-2.5(a), which require insurers to provide policyholders and claimants with pertinent telephone numbers, fax numbers, e-mail and business addresses to which appeals shall be submitted should also have a positive social impact on the insured. As a result, the Department expects that the readoption of this chapter should continue to result in a positive social impact.

Economic Impact

The readoption of this subchapter will not impose additional economic obligations on the Department or insurers. The Department notes that insurers are required to incur or maintain costs necessary for continuing an internal appeal process and complying with the obligation to provide proper notice to consumers regarding the Office of Insurance Claims Ombudsman availability. Additionally, insurers will continue to incur costs associated with their employees who are required to participate in internal appeals panels and the continued administrative support that is needed to deal with the assignment of cases and the reporting of results. The proposed amendments reduce the time period during which records of appeals must be maintained and thus should have a positive impact on insurers by reducing costs attendant upon the retention of such records. The reduction in insurer's administrative costs should also be beneficial to consumers.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments regulate and relate to the business of insurance and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe that the rules proposed for readoption with amendments will cause any jobs to be generated or lost. The Department invites interested parties to submit any data or studies concerning jobs impact of these proposed readopted rules with their written comments.

Agriculture Industry Impact

Pursuant to P.L. 1998, c. 48, the Right to Farm Act, and N.J.S.A. 52:14B-4(a) of the Administrative Procedures Act, the Department does not anticipate any impact from the rules proposed for readoption with amendments on the agriculture and related industries in this State.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments apply to most insurers, some of which are 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 rules proposed for readoption with amendment will apply to small businesses, they are required to incur or maintain costs necessary for continuing an internal appeals process as well as complying with the obligation to provide proper notice to consumers regarding the Office of Insurance Claims Ombudsman's availability. This proposed readoption continues to impose reporting requirements on insurers to accumulate and file information pertaining to their internal appeals procedures. The Department notes that it is proposing to reduce the record retention requirement in N.J.A.C. 11:25-2.3(a)2 from five to three years, which will make this requirement less burdensome on insurers. Additionally, the Department notes that

its amendments to N.J.A.C. 11:25-2.5(a), which require insurers to provide policyholders and claimants with pertinent telephone numbers, fax numbers, e-mail and business addresses to which appeals shall be submitted, adds an additional compliance requirement for insurers, but the Department does not anticipate any added cost for insurers in order to comply with this amendment. The Department does not anticipate that insurers will have to employ professional services in order to comply with these rules.

Since the underlying legislation, which mandates these obligations, does not allow for any small business exception in the development of these plans, all companies, regardless of size, are required to comply with these requirements. Additionally, all insurers, large and small, are under a continuing obligation to ensure that they comply with the obligations set forth in this subchapter to properly inform consumers regarding the availability of assistance from the Office of Insurance Claims Ombudsman and to refrain from any unfair claims settlement practices. Thus, the Department believes that all insurers regardless of size should be required to comply.

Existing law already compels many of the expenditures required to comply with the rules proposed for re-adoption (buyers' guides and premium comparisons) and results in greater consumer knowledge and confidence regarding the integrity of the insurance industry. As a result, no distinction in the application of any of these rules is being made for small businesses.

Smart Growth Impact

The rules proposed for re-adoption with amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:25.

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

11:25-1.2 Definitions

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

"Claim" means any claim filed under a policy of insurance issued pursuant to N.J.S.A. **17:17-1, et seq.** 39:6A-1 et seq., or any policy of life or health insurance issued pursuant to Title 17 or Title 17B of the New Jersey Statutes.

. . .

"Disputed insurance claim" means any offer of settlement made by any insurer which is, in whole or in part, rejected or refused by the claimant **or a claim denial**.

"Insurance" means any contract of direct insurance written pursuant to N.J.S.A. **17:17-1, et seq** 39:6A-1 et seq., or any policy of life or health insurance issued pursuant to Title 17 or Title 17B of the New Jersey Statutes.

. . .

11:25-1.3 General provisions; disputed claims

(a) (No change.)

(b) Consumers seeking review in accordance with (a) above shall file a complaint with the Ombudsman in any form, which indicates that the complainant is seeking review of a disputed claim. All complaints shall be sent to:

The Office of Insurance Claims Ombudsman
20 West State Street
PO Box [329] **472**
Trenton, NJ 08625-[0329]**0472**
Telephone: (800) 446-7467
Telefax: (609) 292-2431
E-mail: ombudsman@dobi.state.nj.us

1. All complaints received by the Ombudsman shall be entered into the data tracking system of the Office of [Enforcement and] Consumer Protection **Services**. The Ombudsman shall retain complaints for further action, or refer them to the Office of [Enforcement and] Consumer Protection **Services** for disposition. The Office of [Enforcement an] Consumer Protection **Services** may likewise refer matters to the Ombudsman.

2. (No change.)

3. A copy of the filed complaint shall be sent promptly to the respondent together with a transmittal letter that advises the respondent that an answer to the complaint must be filed no more than 15 **business** days after the date of receipt of the transmittal letter.

4. (No change.)

5. Thereafter, the complainant shall be advised of the respondent's contentions and given an opportunity to rebut within [seven days] **15 business days** of receipt of the notice.

6. (No change.)

(c) (No change.)

11:25-1.6 Registry of closed [claims] **complaints** and confidentiality of information

(a) The Ombudsman shall maintain a central registry of all closed [claims] **complaint** investigations that shall contain information on the nature of the investigation, findings and disposition. The Ombudsman shall report to the Commissioner any evidence that an insurer may be engaged in a pattern of conduct which violates N.J.S.A. 17:29B-1 et seq., 17:23A-1 et seq., 17:29B-1 et seq., 17B:30-1 et seq., 17:35C-1 et seq., or 17:35C-11. The contents of this central registry shall be confidential 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) Any correspondence or written communication from any complainant and any written material submitted by an insurer to the Ombudsman shall remain confidential and shall not be considered a public record pursuant to the "Right to Know Law," N.J.S.A. 47:1A-1 et seq., and shall not be subject to release unless such disclosure is necessary to enable the Ombudsman to perform his or her duties and to support any opinions or recommendations, or as may be necessary to enable the Commissioner to perform any function authorized by law, including any action to stop unfair claims settlement practices. Any statement or communication made by the Ombudsman or which is provided in good faith to the Ombudsman shall be deemed to be privileged and confidential in accordance with N.J.S.A. 17:29E-12(c). Confidentiality shall

attach only after the Ombudsman has exercised his or her jurisdiction to investigate a complaint. Complaints sent to the Ombudsman that he or she does not elect to investigate pursuant to N.J.A.C. 11:25-1.4(c)2 shall be returned to the complainant or referred to the [Division of Enforcement and] **Office of** Consumer Protection Services for further action. Only those [claims] **complaints** retained by the Ombudsman shall be subject to the confidentiality provision of this chapter.

11:25-1.7 Publication of information

(a) (No change.)

(b) As a part of any claim, [consumer] **claim** denial, payment, compromise or any other disposition, all insurers shall provide notice and explanation of the insurer's internal appeal process that is established in accordance with N.J.A.C. 11:25-2.

(c) As a part of any final action taken by an insurer's internal appeals panel, except[ed] those covered by N.J.S.A. 39:6A-5.1 and 5.2 and N.J.A.C. 11:22-1, notice shall be provided to all parties that the Office of Insurance Claims Ombudsman may be contacted at the address in (d) below if further review is sought.

(d) (No change.)

11:25-2.3 Complaint and internal appeals system--general requirements

(a) Every insurer shall establish and maintain an internal appeals system to provide for the presentation and review of complaints brought by a consumer. All internal appeals procedures shall, at a minimum, include the following components:

[1. Written notification to all claimants of the telephone numbers, FAX number, e-mail (if used) and business addresses of the insurer's employees responsible for internal appeals of disputed claims;]

[2.] **1.** A system to record and document the status of all internal appeals which shall be maintained for a period of [five] **three** years from the date the internal appeal is [filed] **closed;**

Recodify existing 3. – 7. as **2. – 6.** (No change in text.)

11:25-2.5 Notice to insureds and maintenance of data

(a) All insurers shall provide policyholders **and claimants** with a written explanation of the insurer's internal appeals system which is consistent with this subchapter, **including any pertinent telephone numbers, fax numbers, e-mail addresses (if used) and business addresses to which the internal appeals shall be submitted.**

(b) (No change.)

11:25-2.7 Penalties

Failure to comply with the provisions of this subchapter **and N.J.A.C. 11:25-1.7** shall subject the insurer to penalties as provided by N.J.S.A. 17:29E-14.