

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

Unfair Claims Settlement Practices

Rules for Fair and Equitable Settlement and Reasonable Explanations Applicable to All Insurance

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

Authorized By: Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:29B-1 et seq., and 17B:30-1 et seq.

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

Proposal Number: PRN 2014-046.

Submit comments by June 20, 2014, 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) has 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, such as through a prepaid debit card issued by the insurer. The Department has determined that it is reasonable and appropriate to revise the existing rules 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.

The Department proposes to amend N.J.A.C. 11:2-17.8(k) to provide that, with respect to first party claims, insurers shall make claim payments by check or draft, electronic transfer, or an alternative payment method such as a prepaid debit card or other comparable method. The Department also proposes to amend this subsection to provide that any payment by a method other than a check, draft, or electronic transfer shall first be affirmatively agreed to by the claimant. In addition, all first party claim payments made to the covered person, and all such payments made directly to the providers of health care or medical supplies or other services

under the personal injury protection or comprehensive/collision coverage components of an automobile insurance policy, or the coverage provided under a health insurance policy or a health benefits plan, shall also include all information required to be provided with such payments by all laws and rules applicable to such benefit payments. When utilizing alternative payment methods, in addition to the notice currently required in N.J.A.C. 11:2-17.8(k), the insurer shall provide to the claimant at the time payment is initially disbursed, and annually thereafter for as long as a balance remains on the card or similar payment method, a notice in easy-to-understand language advising that the claimant may convert any current balance remaining on the card or other payment method into cash. All such notices must also include a description in easy-to-understand language of the terms and conditions applicable to such payment method, and a statement advising the claimant that the balance on the card may be subject to unclaimed property laws, N.J.S.A. 46:30B-1 et seq. The insurer may not pay claims with an alternative payment method through an arrangement with an institution that charges fees to the insured associated with such payment method, or in any other manner that would reduce the claim payment amount through the imposition of any fee or other charge.

N.J.A.C. 11:2-17.8(k) is also proposed to be amended to provide that, where payment is made by electronic means, whenever possible the statement setting forth the coverage detail shall be provided electronically at the same time 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. Where payment is made by prepaid debit card or other comparable method, the statement shall be provided at the time of delivery of the card or comparable method of payment. 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 that appears in that subsection shall not apply to claims in which the claim payment figure was arrived at through negotiations between the insurer and first party claimant. This proposed change clarifies the application of the rule.

The Department also proposes a new subsection (l) to provide that the alternative payment methods 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. 11:2-17.8(k) as proposed to be amended. Existing subsection (l) is proposed to be recodified as subsection (m) with no change in text.

The proposed amendments will afford to insurers the ability to offer, and to 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 which will reduce the actual claim payment amount. When using an alternative payment method, the claimant shall be provided an opportunity to deposit or convert to cash the full amount of the payment with no fee. Other fees that may be incurred due to the claimant's election of certain means to access the funds, such as 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 proposed amendments set forth procedures for additional payment options for first party claims for all insurance and third party property/casualty claims. The proposed 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 proposed amendments will have no negative economic impact on insurers or insureds. The proposed amendments afford to 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 proposed amendments provide additional flexibility for insurers and insureds with respect to the payment of claims. Professional services required to comply with the proposed 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 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 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 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 proposed amendments.

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

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The 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 proposed amendments apply to small businesses, they will apply to insurers domiciled in this State seeking to offer options for the payment of claims using alternative payment methods. The economic

impact and services required for compliance with the 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 proposed amendments. In addition, compliance with the 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 proposed amendments related thereto and as outlined in the proposal Summary above. The proposed amendments provide no differentiation in compliance requirements based on business size. As set forth previously, the 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 claims.

Housing Affordability Impact Analysis

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

Smart Growth Development Impact Analysis

The proposed amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the 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 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 [with], **direct deposit, wire transfer, or other electronic means, or an alternative payment method such as a prepaid debit card or other comparable method.**

1. All claim payments shall be accompanied by 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 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.**

i. 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.

ii. Where payment is made by prepaid debit card or other comparable method, the statement shall be provided at the time of delivery of the card or comparable method of payment.

iii. The [details should] statement shall include an explanation of how the benefit payment was calculated. [This subsection shall not apply to claims in which the

claim payment figure was arrived at through negotiations between the insurer and the first party claimant.]

2. All first party claim payments, whether made to the covered person or made directly to a provider of health care or medical supplies or other services under the personal injury protection or comprehensive/collision coverages of an automobile insurance policy, or under the coverage provided by a health insurance policy or a health benefits plan, shall also include all information required to be provided with such payments by all laws and rules applicable to such benefit payments.

3. 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 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 electronic or alternative payment method shall not be construed as consent to the use of such method.

i. When utilizing a prepaid debit card or other comparable payment method, in addition to the said explanation and disclosures and the statement required by (k)1 above, the insurer shall provide to the claimant at the time payment is initially disbursed, and annually thereafter for as long as a balance remains on the card or other comparable payment method, a notice which advises that the claimant may at any time convert any current balance remaining on the card or other payment method into cash and advises that the balance on the card or other comparable payment method may be subject to unclaimed property laws, N.J.S.A. 46:30B-1 et seq.

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

5. 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 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, 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.

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

[(1)] (m) (No change in text.)