

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Office of the Insurance Claims Ombudsman

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

Proposed: October 2, 2006 at 38 N.J.R. 4166(a)

Adopted: April 13, 2007 by Steven M. Goldman, Commissioner, Department of Banking and Insurance

Filed: April 13, 2007 as R. 2007 d. 156, **without change.**

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

Effective Date: April 13, 2007; Readoption;
May 7, 2007, Amendments.

Expiration Date: April 13, 2012

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance received timely written comments from the New Jersey Land Title Association and the Property Casualty Insurers Association of America.

COMMENT: One commenter questioned the need for the Office of the Insurance Claims Ombudsman when other State offices handle similar consumer issues and complaints. The commenter suggested that the Department discuss the need for this Office with key public officials and legislators as it considers the value of duplicate services and costs in State government. The commenter believes that there may be duplicate efforts within the Department itself when considering consumer complaints that may also be consolidated.

RESPONSE: The Department disagrees with the commenter. The Legislature determined by enacting N.J.S.A. 17:29E-1, et seq. ("the Act"), creating the Office of the Claims Ombudsman

within the Department of Banking and Insurance, that important consumer rights would be protected by the Ombudsman's efforts. The Department believes that these rules continue to implement the legislative mandate imposed by N.J.S.A. 17:29E-1 et seq. and continue to be relevant and necessary.

COMMENT: One commenter objected to the amendments to the definitions found in N.J.A.C. 11:25-1.2. Specifically, the commenter expressed concern with the Department's proposed addition of the phrase "or a claim denial" to the definition of "disputed insurance claim." The commenter stated that this change would add a new category of reviews by the Ombudsman that the commenter believes are unnecessary and inappropriate pursuant to the law. The commenter contends that the authorizing statute does not include this additional review requirement and believes that the Department's amendment goes beyond the legislative intent as to the scope of the Ombudsman's review authority. The commenter contends that pursuant to N.J.S.A. 17:29E-3, the Ombudsman is required to investigate consumer complaints and has the authority to investigate whether the claims settlement is appropriate and in accordance with the contract. The commenter argued that there is no mention in the statutes that the Department is required to treat a "claim denial" as a "disputed insurance claim."

The commenter further stated that a claim denial is not necessarily disputed. The commenter stated that the Department's proposal assumes that a denial is a disputed claim or that it is improper, neither of which is necessarily correct. Additionally, the commenter believes that there are other remedies available if a claim is denied. Those remedies are generally found in the applicable policies or applicable statutes and could include arbitration or other similar

procedures. Finally, the commenter stated that the amendments will only provide additional conflicts to the process.

RESPONSE: The Department believes that amending the definition of “disputed insurance claim” to include “or a claim denial” is appropriate and necessary. N.J.S.A. 17:29E-4 permits the Ombudsman to conduct a review of insurance claims settlements when: “any person who has a reasonable cause to believe that an insurer has failed or refuses to settle a claim...” The Department interprets the phrase “refuses to settle a claim” to include a claim denial. This language is also found at subsection (a) of N.J.A.C. 11:25-1.3, General provisions; disputed claims. The Department interprets this to include any claim determination, including a claim denial, which is, in whole or in part, rejected or challenged by the claimant.

The Department also disagrees that it is adding a new category of reviews to the Ombudsman’s authority since most insurers currently include claim denials as eligible for review in accordance with their Internal Appeals Process. While the Department recognizes that certain claim denials may not be disputed, it believes that the intent of the Legislature in providing for Ombudsman review of refusals by insurers to settle claims was to encompass claim denials that are disputed.

COMMENT: One commenter expressed concern with the proposed amendments to N.J.A.C. 11:25-2.5(a). The commenter stated that the proposed amendments require title insurance companies to “adopt procedures to implement an internal appeals procedure for dealing with certain disputed claims which would be subject to the Ombudsman.” The commenter stated that the proposed amendments would require title insurers to “provide policyholders and claimants with pertinent telephone numbers, fax numbers, e-mail and business addresses to which appeals

shall be submitted.” The commenter contends that these changes will inappropriately extend to title insurers due to the proposed amendments to N.J.A.C. 11:25-1.2, which expand the definitions of the words “claim” and “insurance” to include title insurance. The commenter argued that currently those definitions are limited in application to policies of insurance issued pursuant to N.J.S.A. 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. The commenter stated that the amended definitions will now include policies issued or written pursuant to N.J.S.A. 17:17-1 et seq. and that this change would bring title insurance under the umbrella of the Ombudsman (See N.J.S.A. 17:17-1h).

The commenter further contends that the proposed amendment to N.J.A.C. 11:25 to include title insurance expands N.J.S.A. 17:29E-1 et seq. and is beyond the Department’s delegated powers. Finally, the commenter suggested that as adopted N.J.A.C. 11:25-1.2 should be modified as follows to remain consistent with N.J.S.A. 17:46B-60:

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

“Insurance” means any contract of direct insurance written pursuant to N.J.S.A. 17:17-1, et seq. (excluding 17:17-1h), 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.”

RESPONSE: The Department disagrees with the commenter. The definitions of the terms “insurance” and “claim” found in N.J.S.A. 17:29E-1 include policies and claims filed on insurance policies written and issued pursuant to N.J.S.A. 17:17-1, which includes title insurance at N.J.S.A. 17:17-1h. Therefore, the amendments as proposed and adopted will serve to make

the rule consistent with the definitions found in the enabling statute (N.J.S.A. 17:29E-1 et seq.) as well as with N.J.A.C. 11:25-1.1(b).

The Department notes, however, that a title insurer is not subject to the internal appeals procedures set forth at N.J.A.C. 11:25-2.1, as title insurance is not considered a property and casualty or life insurance contract, but rather is classified as a separate and distinct line of insurance authority. See N.J.A.C. 11:25-2.1(a).

Federal Standards Statement

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

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 11:25.

Full text of the adopted amendments follows: