

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

Standards For Written Notice: Buyer's Guide And Coverage Selection Form

Adopted Repeal: N.J.A.C. 11:3-15 Appendix, Exhibit 1

Adopted Amendments: N.J.A.C. 11:3-15.1 through 15.7

Adopted Recodification with Amendments: N.J.A.C. 11:3-15 Appendix Exhibits 2 and 3 as Exhibits 1 and 2

Adopted New Rule: N.J.A.C. 11:3-15.8

Proposed: August 4, 2003 at 35 N.J.R. 3523(a)

Adopted: February 20, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: February 20, 2004 as R. 2004 d.117, **with substantive or technical** changes not requiring additional public notice and comment N.J.A.C. 1:30-6.3

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 39:6A-23, and P.L 2003, c. 89, § 43a.

Effective Date: March 15, 2004

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

Timely comments were received from the following: Fireman's Fund, New Jersey Manufacturers Insurance Group, the Governing Committees of the New Jersey Personal Automobile Insurance Plan and the New Jersey Commercial Automobile Insurance Plan, Independent Insurance Agents of New Jersey, Alliance of American Insurers, Ohio Casualty Insurance Company, the Harleysville Group, State Farm Indemnity Company, Chubb & Son, Professional Insurance Agents of New Jersey, and one comment submitted jointly by the

Insurance Council of New Jersey, the American Insurance Association, and the National Association of Independent Insurers.

COMMENT: Numerous comments were received disagreeing with the inclusion of individually-owned private passenger automobile insurance on commercial policies in the regulations. One commenter asked for confirmation that the scope had not been broadened. One commenter stated the inclusion would create more confusion, as most of the options listed are not available on commercial policies. Another commenter suggested a separate and distinct guide if one was necessary. One commenter stated that the language which was used to include private passenger automobile insurance contained some confusing language which appeared to have been accidentally included.

RESPONSE: The broadening of the scope of the subchapter to include individually owned private passenger automobile insurance on commercial policies was deliberate. The individually owned private passenger automobiles are automobiles which are registered in the name of the individual owner or husband and wife and are rated from a personal vehicle manual. This is as opposed to private passenger type automobiles as defined by N.J.A.C. 11:3-1.1 which are owned by a corporation, partnership or any other entity except an individual or husband and wife and are rated using the commercial lines rating manual. The Department believes that the inclusion of the individually owned private passenger automobile insurance on commercial policies is necessary. The benefit of extending the rules to natural person owners, including those who may change from commercial to private policies, outweighs any confusion which may be caused. The Department agrees that all provisions of the Buyer's Guide will not apply to these consumers. However, in order to alleviate any confusion, the Department will add a footnote to the Buyers

Guide denoting those options which are not available under commercial policies. As consumers with individually owned private passenger automobile insurance on commercial policies should and will look to the insurers for clarification of any confusion, insurers could supplement their guides with information specific to these types of policies.

The Department agrees with the commenter who stated that additional language had inadvertently been added to the rule. The Department will delete the extraneous words "insurance policies" and make the necessary corrections to N.J.A.C. 11:3-15.2(b) upon adoption.

COMMENT: Several comments identified certain automobile insurance topics that were not addressed in the regulations. Specifically, several comments noted the absence of a notice describing the functions of the Office of the Insurance Claims Ombudsman. One commenter requested clarification that the Department meant to exclude any mention of that Office. Several commenters referred to the absence of any mention of new reforms to the laws governing automobile insurance in New Jersey realized through the enactment of P.L. 2003, c. 89, specifically the "phase out" of the requirement that insurers offer coverage to all eligible persons who submit applications for insurance to them. One commenter noted the absence of language stating that "many automobiles need to be inspected within 7 days" from the physical damage section. Another commenter stated the Buyer's Guide lacked the statement required by N.J.S.A. 39:6A-23 regarding the coordination of health benefits coverages with Personal Injury Protection coverage.

RESPONSE: The Department thanks the commenters for pointing out the items missing in the Buyer's Guide found on the Department's website. The Department did not intend to exclude any statutorily mandated language, such as the coordination of health benefits coverages with

Personal Injury Protection coverage, or the notice requirements set forth by N.J.S.A. 17:29E-11 regarding the Office of the Insurance Claims Ombudsman. Concurrent with adoption, the necessary language will be added to the version of the guide available on the Department's website. The Department also intends to update the guide concerning the new reforms, including any additional revisions as new regulations effectuating those reforms are adopted.

COMMENT: There were numerous objections to the rules allowing changes to the Buyer's Guide and the Consumer Bill of Rights to be made by bulletin. Commenters stated that notice to insurers and an adequate opportunity to comment are necessary for any proposed changes.

RESPONSE: The Department disagrees with the commenters' claims that N.J.S.A. 39:6A-23c. requires that any supplemental or revised information be added by regulation. N.J.S.A. 39:6A-23c. mandates that the "[t]he Commissioner of Insurance shall ... promulgate standards for the written notice and buyer's guide required to be provided under this section." In using this language, the Legislature intended to afford discretion to the Commissioner in creating such standards, and the Department believes that changes made by bulletin enhance its ability to make revisions promptly in response to changes in the market, the law, etc. As adopted, N.J.A.C. 11:3-15.5(a) and 15.8(a) provide that insurers will be notified of changes in the documents by Bulletin, and are required to provide the revised version(s) of the document(s) effective with all distributions of them made 60 days or later after the date of the Bulletin. Interested parties will always be free to submit opinions and suggestions on the text of the documents to the Department. In addition, the Department anticipates that it will solicit the views of the regulated community on contemplated non-emergent revisions to the Buyer's Guide and the Bill of Rights prior to issuing such Bulletins.

Based upon the text of N.J.S.A. 39:6A-23c. as referenced above, the Department does not, however, agree that notice to insurers and an adequate opportunity to comment are prerequisites to its making revisions to these consumer advisory documents authored by the Department.

COMMENT: Several commenters objected to reproducing the Buyer's Guide and the Consumer Bill of Rights exactly as presented on the website. They noted that exactly reproducing the documents would be extremely difficult or impossible, given the limitations of their existing systems. They stated that the Guide as presented was expensive to reproduce and mail.. Some commenters asked that deviations be allowed. Others suggested including references to the Department website, or eliminating the guide entirely and letting the coverage selection form suffice. Another commenter suggested that the Consumer Bill of Rights format be changed to enable it to fit on one side of a letter-size page.

RESPONSE: The Department has reviewed the commenters' concerns with regard to the requirement to exactly duplicate the guide, and has decided to retain some of text originally proposed for deletion, so as to allow for more flexibility and to make production of the guide more compatible with existing systems. Therefore the Department will not adopt the proposed deletions of N.J.A.C. 11:3-15.5(b), (c) and (d), but will recodify those provisions as N.J.A.C. 11:3-15.5(d), (e) and (f). However, some text in N.J.A.C. 11:3-15.5(b) and (d) is being deleted. The text being deleted from former subsection (b) is the sentence: "The Buyer's Guide shall be entitled in large type: New Jersey Auto Insurance Buyer's Guide." Because the entire text of the Guide, including the title, is to be duplicated in the format presented on the Department's website, as set forth in N.J.A.C. 11:3-15.5(b) as adopted, it is no longer necessary to specify the

title of the Guide in the text of the rule. The size of the type in which the title is to appear is now also governed by N.J.A.C. 11:3-15.5(b) as adopted, which requires that the Guide be reproduced in the format presented on the website, including fonts and type-print sizes, to the extent practicable.

The text in former subsection (d) that refers to the Commissioner prescribing by Order the content of the notice describing the functions of the Insurance Claims Ombudsman, which notice is to be contained in the Buyer's Guide, is also being deleted, as the Order has already been issued and the text of the notice, like that of the entire Buyer's Guide in which it is contained, will henceforth be established as set forth in N.J.A.C. 11:3-15.5(a) as adopted.

Finally, the text of N.J.A.C. 11:3-15.5(a)2 is not being deleted, but is being recodified as part of N.J.A.C. 11:3-15.5(b). In addition, language permitting company-specific information, such as coverage or contact information, which the now-repealed Appendix 1 had permitted, has also been added to N.J.A.C. 11:3-15.5(c).

The Buyer's Guide cannot be eliminated as one commenter suggested. N.J.S.A. 39:6A-23 requires applications for a policy to be accompanied by written notice which contains a buyer's guide and a coverage selection form. Thus, the coverage selection form alone will not suffice.

With regard to formatting the Consumer Bill of Rights to fit on one side of a letter-size page, the Department has reviewed the proposed Consumer Bill of Rights and has decided to allow some additional flexibility in this area as well. The format which was to be duplicated included a layout which emphasized certain items by means of bolding, Times New Roman font and a minimum 10-point type size. Although the rules as adopted will allow some variation in formatting, duplication of the exact language will still be required. The text, however, shall be

printed in no smaller than 10-point type. Retaining this standard upon adoption is consistent with the type set requirements imposed by N.J.A.C. 11:2-18.4(c) for the Buyer's Guide and Coverage Selection Form. As adopted, the rules will provide that the use of the font, colors and illustrations shall be duplicated to the extent practicable. However, the use of bolding for emphasis in the Consumer Bill of Rights shall continue to be required. Thus, upon adoption, the text of N.J.A.C. 11:3-15.8(b) will provide that, as long as the Consumer Bill of Rights is reproduced in at least 10-point type, bolded where indicated on the Department's website, and, where practicable, uses the font and the colors and illustrations which may appear in the document as displayed on the Department's website, the guide may be reformatted to fit on one side of a letter-size page.

COMMENT: Numerous comments were received stating that the implementation date for both the Buyer's Guide and the Consumer Bill of Rights of 90 days after the effective date of the amendments was, at best, a very tight schedule or, at worst, not enough time for compliance. One commenter asked if there was an anticipated implementation date.

RESPONSE: The Department agrees that the timing of implementing the amended rules pertaining to the Buyer's Guide and Consumer Bill of Rights is problematic. The Department is proposing on adoption to change the effective date to 120 days after the effective date of adoption to alleviate these implementation concerns.

COMMENT: Several commenters pointed out typographical errors and inconsistencies in the proposal, specifically the repeat of the phrase "automobile insurance policies," using the title

"Consumer Guide to Auto Insurance" for the Buyer's Guide, and the use of an apostrophe in the Consumer Bill of Rights.

RESPONSE: The Department thanks the commenters for pointing out the errors and will make the necessary corrections upon adoption.

COMMENT: Several comments were received concerning the coverage selection form. One commenter suggested simplifying and standardizing the coverage selection form. They further suggested removing the percentage price differences and indicating if the option would result in the insured being charged more or less premium. Another commenter requested that language be the same for the Coverage Selection Form as for the Buyer's Guide, pointing to the inconsistencies as to the lawsuit threshold language. Commenters believed that the use of three written notices -- the Buyer's Guide, the Consumer Bill of Rights and the Coverage Selection Form -- was unnecessary, suggesting that they be combined in various ways.

RESPONSE: The Department agrees that the language of the Buyer's Guide, the Consumer Bill of Rights and the Coverage Selection Form should be consistent, and will therefore, remove the inconsistencies in the next versions of the material. As previously stated, N.J.S.A. 39:6A-23 requires both a buyer's guide and a coverage selection form. Also, the Department believes that the intent of section 43 of the P.L. 2003, c. 89 is to require separate documents. Comments on the language and makeup of the Coverage Selection Form are beyond the scope of this proposal.

COMMENT: Several comments concerned the obligations listed in both the Buyer's Guide and the Consumer Bill of Rights. One commenter asked to remove the obligation of agents representing multiple companies, discussed in both the Buyer's Guide and the Consumer Bill of

Rights, to provide quotes for every company they represent. They stated that the obligation ignores the ability of the agent to properly counsel his client and that the obligation seems unnecessary in light of the proposed requirement to provide three insurance scenarios. One commenter stated that the last of the required seven items, regarding additional information being available by contacting the insurer, was missing from the Consumer Bill of Rights. One commenter believed that in the Consumer Bill of Rights several factors should be clearly listed under "Your obligations," in order to better ensure that consumers understand that failing to meet their responsibilities can result in increased premium or loss of insurance coverage. The commenter suggested wording concerning premium remittance, complete and accurate information, renewal questionnaires and the consequences of a failure to meet obligations.

RESPONSE: The Consumer Bill of Rights, which will be available on the Department's website, will contain all of the items required by the regulation.

The obligation of the agent to supply several quotes is outside the scope of this proposal. In addition, since the Consumer Bill of Rights should, by definition, be about the rights of the consumer, the Department does not believe it is the appropriate document within which to list the consumer's obligations or the consequences that can result from a failure to fulfill those obligations.

COMMENT: One commenter suggested inserting the language "certain initial hospitalizations and certain" in the Buyer's Guide before the word permanent in "Up to \$250,000 for permanent and significant injury" in the row describing PIP coverage found in the table comparing the Standard and Basic Policies.

RESPONSE: The Department does not agree with the commenter and believes that the addition of the suggested language would be more confusing than beneficial to the average consumer.

COMMENT: One commenter stated it was unclear as to whether the requirements to provide the Consumer Bill of Rights and/or the Buyer's Guide would apply to applicants for special policies as provided for by N.J.S.A. 39:6A-3.3.

RESPONSE: The commenter is correct that many of the statements contained in the documents are not applicable to the new special policy. However, N.J.S.A. 39:6A-23 mandates that no policy of insurance shall be issued unless the application for the policy is accompanied by a written notice identifying and containing a buyer's guide and coverage selection form. In addition, N.J.S.A. 17:29A-52 mandates that every insurer writing private passenger automobile insurance in this State shall provide each insured at least annually, and each applicant upon receipt of initial application with an Automobile Insurance Consumer Bill of Rights. Therefore, insurers are required to provide the documents to applicants for, and insureds on, special policies.

COMMENT: The remaining comments concerned language that various commenters thought should be added to or deleted from the Buyer's Guide and/or the Consumer Bill of Rights.

One commenter requested language be added informing the reader that they may not be able to get an appointment with an agent right away.

One commenter requested language be added on page four of the Buyer's Guide saying: Comprehensive and Collision coverage may be available as options on both the standard and basic policies."

One commenter asked that language be included on page nine of the Buyer's Guide as follows: "The limit of collision and comprehensive coverage is the market value or 'book value' of the automobile." The commenter also asked that the deductible section on that page be amended to state that the standard deductible for collision and comprehensive coverage is \$750.

One commenter asked that the text of the Buyer's Guide be clarified to explain that an insured cannot receive income continuation for more than his or her current earnings.

One commenter noted that a property damage coverage limit of \$250,000 is not listed in the Buyer's Guide even though it is available as an option.

One commenter objected to the section for "miles to work" because not all companies use this criteria for rating. They stated that some companies use "annual mileage."

One commenter suggested that page 12 of the Buyer's Guide, which discusses credits and discounts, should be clarified by adding the following language: "A company may provide some of the following discounts if you are eligible. Other discounts may apply. Please check with your agent."

One commenter believed that the charts on pages 14 and 15 of the Buyer's Guide would be hard for the average consumer to understand, and suggested they be replaced by a replica of the comparison chart distinguishing the basic and the standard already found in the Buyer's Guide.

One commenter asked that page 17 of the Buyer's Guide answer the question, "How much time does an insurance company have to approve or reject my application?" with the clear response: "Five business days."

One commenter asked that the second option concerning collision damage coverage on page 21 of the Buyer's Guide be amended as follows: "Yes, I choose to be covered for collision damage with the **DEFAULT \$750** [basic \$[500]] deductible."

One commenter asked that the phrase "regardless of the number of individuals involved" be added to the Bodily Injury Liability coverage section at page 5.

One commenter asked that page 13 of the Buyer's Guide provide space for at least two cars.

One commenter stated that, since the Consumer Bill of Rights is sent to the insured after the policy has been purchased, the inclusion of the topics "Locating An Agent" and "How To Shop" is unnecessary.

One commenter stated that the language on page 10 does not adequately explain lawsuit thresholds. The commenter stated that the language did not clearly explain that if individuals choose the "limitation on lawsuits" option, they would still be compensated for medical bills and could seek compensation from the at-fault driver for all economic damages, giving up only the right to recover pain-and-suffering damages in non-serious cases.

RESPONSE: The Department will take all of these suggestions into account when considering future revisions to the Buyer's Guide and Consumer Bill of Rights. The Department will incorporate some of the suggested language into the versions of the documents it will make available on the Department's website concurrent with adoption. The language being amended at this time includes the use of the \$750 default and the suggested revision to the text regarding the limitation on lawsuits option.

However, the Department must balance the various requests for additional language with the need to keep the documents as simple and easy to understand as possible. This reflects the

Legislature's intent that the Buyer's Guide and the Consumer Bill of Rights contain a limited amount of information explaining an insured's coverage options. It is not required, for example, that these documents be customized for every insured and vehicle. Since the Department intends to allow companies some latitude in designing the documents in question with respect to layout, sizing and illustration, company-specific additions may also be made by the companies in their particular documents, so long as any such additions are not inconsistent with applicable laws and rules.

Federal Standards Statement

A Federal standards analysis is not required because the adopted repeal, amendments and new rules are not subject to any Federal requirements or standards.

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

11:3-15.2 Scope

(a) (No change from proposal)

(b) This subchapter applies to personal lines private passenger automobile insurance policies and individually-owned private passenger automobile ***s*** *[insurance policies]* written on commercial insurance policies.

11:3-15.4 Compliance

(a) No new private passenger automobile insurance policy or renewal shall be issued on or after *[90 days after the effective date of the amendments to this subchapter]* **July 13, 2004*** unless the application for the policy or renewal notice is accompanied by a Buyer's Guide, a Coverage Selection Form and an Automobile Insurance Consumer Bill of Rights that meet the minimum standards prescribed in this subchapter.

1. (No change.)

(b) (No change from proposal.)

(c) ***[Within 45 days after the effective date of the amendments to this subchapter]* *By April 29, 2004***, each insurer shall file its Coverage Selection Forms with the Department's Insurance Claims Ombudsman. The filing shall include both Coverage Selections Forms, the supporting information on how the Lawsuit Option rate differentials were calculated as required by N.J.A.C. 11:3-15.6(g)4 and a letter listing all alterations and additions, if any made from the text found in Appendix, Exhibits 1 and 2.

1. (No change.)

(d) (No change from proposal.)

11:3-15.5 New Jersey Auto Insurance Buyer's Guide

(a) Each insurer shall produce a Buyer's Guide by reproducing the *[Consumer Guide to Auto Insurance]* ***Buyer's Guide*** available on the Department's website at <http://www.state.nj.us/dobi/acrobat/autoguide02.pdf> . The Department shall notify insurers of any changes to the Buyer's Guide by Bulletin. Insurers shall provide the Buyer's Guide, as revised, for new and renewal business *[60 days]* ***as soon as practicable, but no later than 90 days*** after the date of the Bulletin.

(b) The Buyer's Guide shall be reproduced *[exactly as]* ***in the format*** presented on the website, duplicating *[all]* ***the information provided therein and, to the extent practicable, the layout,*** fonts, type-point sizes, colors and illustrations. ***Notwithstanding the foregoing, consistent with the requirements of N.J.A.C. 11:2-18.4, all text in the Buyer's Guide shall be printed in at least 10-point type on paper of a quality sufficient to assure that the printing does not bleed from one side to the other.***

(c) The Buyer's Guide shall *[describe]* ***provide general descriptions of:***

1. - 8. (No change from proposal.)

(d) ***In addition, the Buyer's Guide may include company-specific information, such as its name and/or company logo, contact information and company-specific coverage options, provided that the information is consistent with the purposes of this subchapter.**

(e) The Buyer's Guide shall contain a statement advising the insured or applicant that additional information concerning coverages or premiums is available by contacting the insurer or the producer. Insurers that write at least two percent of the New Jersey private passenger automobile market shall provide a toll-free telephone number for this purpose.

(f) As required by N.J.S.A. 17:29E-11, the Buyer's Guide shall contain a notice describing the functions of the Insurance Claims Ombudsman, the mailing address of the Ombudsman and a toll-free information telephone number.*

11:3-15.8 New Jersey Automobile Insurance Consumer Bill of Rights

(a) (No change from proposal.)

(b) The Consumer Bill of Rights shall be reproduced **[exactly]** ***in the format*** as presented on the website, duplicating **[all]** *** the language provided therein, and to the extent practicable, the layout,*** fonts, type-point sizes, colors and illustrations. ***Notwithstanding the foregoing, all language bolded on the Consumer Bill of Rights as depicted on the Department's website shall be bolded and no type-point size less than 10 point shall be used.***

(c) (No change from proposal)

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