

consent. The party filing the appeal, generally the patient or the provider with the patient's consent, is notified of the IURO decision. Additionally, the change requested is outside of the scope of the current rule amendments. Accordingly, no change is being made in response to this comment.

5. COMMENT: One commenter requested that the Department provide clarification with respect to proposed N.J.A.C. 11:24A-3.7(a)1 and 11:24-8.7(k)1. The commenter questioned which entity would decide the existence of "medical exigencies" that would require a more rapid response than otherwise provided for in the rule.

RESPONSE: The HMO or carrier would determine medical exigencies initially, subject to review by the Department.

Federal Standards Statement

The Federal Patient Protection and Affordable Care Act, Pub.L. 111-148, as amended by the Health Care and Education Reconciliation Act, Pub.L. 111-152, and rules promulgated and guidance issued thereunder (collectively, "Federal law"), among a myriad of other things, addresses adverse benefit determinations and the right to appeal such determinations through both an internal and external appeals process. This rulemaking addresses the objective timeframe within which carriers and HMOs must take action to comply with the IURO determination resulting from the external appeal. The Department believes the consumer-oriented requirement is consistent with the appeal provisions of Federal law and does not exceed the requirements of Federal law.

Full text of the adoption follows:

CHAPTER 2 INSURANCE GROUP

SUBCHAPTER 17. UNFAIR CLAIMS SETTLEMENT PRACTICES

11:2-17.9 Rules for fair and equitable settlements applicable to life and health insurance

(a)-(k) (No change.)

(l) No insurer or carrier offering health benefits plans shall issue an explanation of benefits, explanation of payment, and remittance advice forms with denial reasons that are not applicable to the specific claim.

1. Use of denial reasons with multiple grounds shall only be used if all denial grounds apply to the specific claim, including when the reasons are separated by an "and," similar text, symbol, or punctuation. For example, if a denial reason stated that the claim was denied as follows: "lacked a referral, prior authorization, and the service was not rendered by a primary care physician," then all of those reasons must apply to the specific claim being responded to by the insurer or carrier.

CHAPTER 24 HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER 8. UTILIZATION MANAGEMENT

11:24-8.7 External appeals process

(a)-(j) (No change.)

(k) The IURO's determination shall be binding on the HMO and the member, except to the extent that other remedies are available to either party under State or Federal law. The HMO shall provide benefits (including authorization of a service or supply and payment on the claim) pursuant to the IURO's determination and comply with the IURO's determination without delay, but no later than 10 business days from receipt of the IURO's determination, regardless of whether the HMO intends to seek judicial review of the external review decision, unless there is a judicial decision stating otherwise.

1. The HMO shall provide benefits to comply with the IURO's decision sooner if the medical exigencies of the case warrant a more rapid response.

(l) (No change.)

CHAPTER 24A HEALTH CARE QUALITY ACT APPLICATION TO INSURANCE COMPANIES, HEALTH SERVICE CORPORATIONS, HOSPITAL

SERVICE CORPORATIONS AND MEDICAL SERVICE CORPORATIONS

SUBCHAPTER 3. UTILIZATION MANAGEMENT

11:24A-3.7 Carrier action on the IURO decisions

(a) A carrier shall provide benefits (including authorization of a service or supply and payment of the claim) pursuant to the IURO's determination and comply with the IURO's determination without delay, but no later than 10 business days from receipt of the IURO's determination, regardless of whether the carrier intends to seek judicial review of the external review decision, unless there is a judicial decision stating otherwise.

1. The carrier shall provide benefits to comply with the IURO decision sooner if the medical exigencies of the case warrant a more rapid response.

(a)

DEPARTMENT OF BANKING AND INSURANCE DIVISION OF PROPERTY AND CASUALTY

Automobile Insurance New Jersey Automobile Insurance Plans Adopted Repeals: N.J.A.C. 11:3-1 and 2 Adopted New Rules: N.J.A.C. 11:3-1

Proposed: October 2, 2017, at 49 N.J.R. 3317(a).

Adopted: December 20, 2017, by Richard J. Badolato,
Commissioner, Department of Banking and Insurance.

Filed: December 20, 2017, as R.2018 d.064, with a non-substantial change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: January 16, 2018.

Operative Date: July 1, 2018.

Expiration Date: December 3, 2020.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received two timely written comments from New Jersey Manufacturers Insurance Group and the Insurance Council of New Jersey.

1. COMMENT: Two commenters expressed their support for the Department's proposed rules.

RESPONSE: The Department appreciates the support of its proposal.

Federal Standards Statement

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

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

SUBCHAPTER 1. NEW JERSEY AUTOMOBILE INSURANCE PLAN

11:3-1.1 Purpose and scope

(a) This subchapter establishes a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide personal private passenger automobile insurance coverage for automobiles owned or operated by qualified applicants subject to the conditions stated; and

2. To provide insurance coverage for all motor vehicles other than private passenger vehicles owned or operated by qualified applicants, subject to the conditions stated.

(b) The purposes of this subchapter are:

1. To preserve to the public the benefits of price competition by encouraging maximum use of the voluntary insurance system;

2. To establish a procedure for the equitable distribution of private passenger automobile risks to assigned companies as defined by the PAIP and as set forth in the AIP plan of operation; and

3. To establish a procedure with respect to all motor vehicles other than private passenger vehicles for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey.

(c) The provisions of this subchapter shall apply to all insurers admitted to transact and transacting automobile insurance in this State, except as otherwise provided in this subchapter.

11:3-1.2 Definitions

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

“Actively writing” means an insurer writing private passenger and/or commercial automobile liability or physical damage insurance in this State in the voluntary or involuntary market. This includes new business and/or renewals.

An “affiliate” of, or a person “affiliated” with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

“AIP” means the Automobile Insurance Plan comprised of the CAIP and the PAIP, established pursuant to this subchapter.

“AIP manager” means the entity employed by the Governing Committee to manage and conduct the affairs of the AIP on a daily basis.

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or camper type vehicle used for recreational purposes, owned by an individual or jointly by individuals who are residents of the same household, not customarily used in the occupation, profession, or business of the insured other than farming or ranching; and solely for the purpose of this plan, a motorcycle as defined in N.J.S.A. 39:1-1. An automobile owned by a farm family co-partnership or corporation, which is principally garaged on a farm or ranch and otherwise meets this definition, shall be considered a private passenger automobile owned by two or more relatives, resident in the same household.

“Automobile insurance” means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance, or use of automobiles, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorist insurance.

“Automobile insurance urban enterprise zone” or “UEZ” means a geographic area identified by zip codes and designated by the Commissioner pursuant to N.J.A.C. 11:3-46.

“CAIP” means the Commercial Automobile Insurance Plan for all motor vehicles other than private passenger vehicles established pursuant to this subchapter and as set forth in the AIP plan of operation.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Emergency type vehicle” means any land vehicle, used to respond to distress calls, fires, or rescues, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars, and ambulances.

“Insurer” means any person or persons, corporation, association, partnership, company, or other legal entity authorized to transact the business of private passenger automobile insurance in this State, except any residual market mechanism created by or pursuant to statute.

“LAD carrier” means a limited assignment distribution carrier, which is a participating insurer that agrees to accept the PAIP assignments of another insurer pursuant to this subchapter and procedures set forth in the AIP plan of operation.

“Light truck” means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

“Motor vehicle” means any land vehicle propelled otherwise than by muscular power, including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

“Operating headquarters” means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive offices are, corporate decisions are made, and corporate functions are performed.

“PAIP” means the Personal Automobile Insurance Plan for private passenger automobiles insurance established pursuant to this subchapter and as set forth in the AIP plan of operation.

“Participant” means an insurer licensed and authorized to write motor vehicle liability or physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

“Participation” means a participant’s mandatory sharing of CAIP premium, loss, and expense, using Voluntary All Other Automobile Direct Written Premiums as the basis for apportionment as set forth in the AIP plan of operation.

“Personal injury protection” means those benefits as set forth at N.J.S.A. 39:6A-4.

“Personal private passenger automobile insurance” means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles that are owned individually, or jointly by individuals who are residents of the same household, and used for personal, family, or household needs.

“Policy year” means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

“Private passenger automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any voluntary or residual market mechanism created by statute other than PAIP, and is owned by an individual or husband and wife; or owned jointly by two or more relatives other than husband and wife; or owned jointly by two or more resident individuals; or owned by a corporation, partnership, or unincorporated association, governmental agency, or registered to a professional designation (that is, T/A, PA, or P.C.) where such automobiles are furnished to individuals and are not used for business purposes.

“Private passenger type automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership, or any other entity except an individual or husband and wife and used for business purposes.

“Voluntary All Other Automobile Direct Written Premiums” means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. CAIP direct written premiums included in the figures that the participant wrote as a service carrier for CAIP;
2. Any direct written premiums included in the figures from insureds who are qualified applicants for any residual market mechanism created by statute other than the CAIP;
3. Any reinsurance premiums assumed from other insurers included in the figures;
4. Any premiums for death and disability coverage included in the figures;
5. Private passenger nonfleet automobile bodily injury and property damage liability, medical payments, basic and additional personal injury protection, and uninsured and underinsured motorists and physical damage voluntary premium;
6. Miscellaneous nonfleet specialty personal automobile bodily injury and property damage and physical damage liability voluntary premiums for any class approved by the Department as specified in the AIP plan of operation; and
7. Taxi bodily injury, property damage liability, uninsured and underinsured motorists and physical damage premiums.

11:3-1.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of automobile insurance for qualified applicants to be known as the New Jersey Automobile Insurance Plan.

(b) The AIP shall be administered by a Governing Committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the AIP shall be located within the State of New Jersey.

11:3-1.4 Governing Committee

(a) The AIP shall be administered by a Governing Committee of 18 members. No employee of a voluntary market automobile insurer that is not actively writing automobile insurance or that has filed and received approval of an application to withdraw from writing automobile insurance in New Jersey shall be eligible to serve as a member of the Governing Committee.

1. Eleven members shall be salaried employees of an insurer that is a participant in AIP.

2. Four members shall be licensed producers.

3. Two members shall be public representatives who are knowledgeable about automobile insurance matters but who are not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner shall be an ex-officio, non-voting member of the Governing Committee. The Commissioner may designate an alternate.

(b) The following organizations shall each nominate two members to represent insurer participants of AIP:

1. Property Casualty Insurers Association of America (PCI); and

2. The American Insurance Association.

(c) Insurers that are not members of the organizations in (b) above shall nominate two members to represent insurer participants in accordance with a fair method set forth in the AIP plan of operation.

(d) The following organizations shall each nominate two members to represent producers:

1. Independent Insurance Agents of New Jersey; and

2. Professional Insurance Agents of New Jersey.

(e) Five of the 18 members shall be representatives of one or more insurer participants in the organizations referenced in (b) above or of a non-member insurer participant as referenced in (c) above, to serve as at-large representatives. The five at-large members shall be nominated in accordance with the method set forth in the AIP plan of operation.

(f) All members shall be appointed by the Commissioner. All members shall serve for two years or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(g) All meetings of the Governing Committee shall be conducted in accordance with this subchapter and the AIP plan of operation.

(h) The Governing Committee shall have the following powers and duties:

1. To develop and submit for approval to the Commissioner:

i. A plan of operation;

ii. A rating system, including rates, rules, and forms; and

iii. A plan for a producer certification program, which may not exclude those producers with no affiliation with an insurer.

2. To appoint, conditionally appoint, or terminate:

i. An AIP manager, subject to approval by the Commissioner, which shall be located in this State, to be responsible for the conduct and administrative affairs of the AIP; and

ii. Other employees, professionals, and contractors required to administer the AIP.

3. To enter into and/or negotiate contracts as are necessary or proper to carry out the provisions of this subchapter;

4. To sue or be sued in the name of the AIP, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members. A judgment against the AIP shall not create any direct liability against the Governing Committee or its individual members, or the individual participating members of the AIP.

The AIP shall not be liable for claims made on or pursuant to individual policies issued through the AIP;

5. To budget expenses, levy assessments, and disburse funds;

6. To investigate complaints and hear appeals from applicants, insureds, producers, LAD carriers, CAIP servicing carriers, or insurers about any matter pertaining to the proper administration of the AIP;

7. To arrange for the independent audit of the AIP each year;

8. To furnish all insurers with:

i. An annual written operations report;

ii. The approved annual budget upon request;

iii. A copy of the annual audit upon request;

iv. A copy of the plan of operation and all amendments;

v. A copy of all policy forms, rates, rules, and manuals upon request; and

vi. A copy of the minutes from all meetings upon request;

9. To audit the records of any insurer relating to the subject matter of AIP and establish such policies, records, books of account, documents, and related material, which shall be maintained for the proper administration of AIP;

10. To indemnify each member of the Governing Committee and AIP employees for any and all claims, suits, costs of investigations, cost of defense, and settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. The AIP shall refuse to indemnify if it is determined that the act or failure to act was due to actual fraud, willful misconduct, or actual malice;

11. To appoint from among its members or from qualified nonmembers appropriate legal, actuarial, claims, and other committees as necessary to provide technical assistance in the operation of the AIP, policy and other contract design, and any other function within the authority of the AIP. The Commissioner may serve as an ex-officio, non-voting member of any committee established pursuant to this section (except an appeals subcommittee). The Commissioner may designate an alternate;

12. To assume the assets and liabilities of the CAIP on behalf of the member insurers;

13. To assume the rights and obligations of the CAIP on behalf of the member insurers; and

14. To perform such other functions as may be necessary and proper to administer AIP in accordance with this subchapter and the approved AIP plan of operation.

11:3-1.5 AIP plan of operation

(a) The AIP plan of operation shall provide for the prompt and efficient provision of automobile insurance to qualified applicants. The AIP plan of operation shall provide for, among other matters:

1. The internal organization and proceedings of the Governing Committee;

2. Standards and procedures for:

i. The appointment, compensation, and termination of producers, the AIP manager, and other employees, professionals, and contractors required to administer the AIP;

ii. The appointment, compensation, and termination of LAD carriers (consistent with any requirements established by regulation by the Commissioner); and

iii. The standards and procedures for the number, selection, appointment, compensation, and termination of CAIP servicing carriers; and the distribution of assignments to those servicing carriers.

3. Performance standards for insurers, producers, LAD carriers, CAIP servicing carriers, the AIP manager, and other employees, professionals, and contractors required to administer the AIP;

4. A producer certification program, which may not exclude producers with no affiliation with a voluntary market insurer;

5. The extent of coverage to be offered by AIP to qualified applicants;

6. Premium rules, surcharges, and minimum premiums;

7. Procedures to apply for coverage;

8. Commissions to be paid producers;

9. Procedures for cancellation or the nonrenewal of policies;

10. Methods and means for the collection, investment, and disbursement of funds;

11. Procedures for handling CAIP premium charge-offs;
12. Procedures for the performance of preliminary premium audits on certain risks identified by the Governing Committee and approved by the Commissioner;
13. Procedures for a CAIP servicing carrier performance audit program;
14. Procedures for the provision of coverage to good faith applicants where a producer has violated plan rules;
15. Development of a basic CAIP servicing carrier contract, procedures for making modifications to that contract and the establishment of a specified term to that contract, which term shall not exceed five years;
16. Development and maintenance of a statistical plan and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the AIP plan of operation; and
17. Such other provisions as are deemed necessary by the Governing Committee for the operation of the AIP.

(b) The Governing Committee shall submit to the Commissioner, for his or her review and approval, a proposed AIP plan of operation. The Governing Committee may propose an amendment to the AIP plan of operation at any time.

(c) The proposed plan and any amendments shall be submitted to the Commissioner for his or her review and approval. If approved, the Commissioner shall certify approval to the Governing Committee.

1. If the Commissioner disapproves all or any part of the AIP plan of operation or any amendment, he or she shall return the same to the Governing Committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make; and

2. The Commissioner may review the AIP plan of operation at any time and may propose amendments to the Governing Committee. If the Governing Committee does not adopt amendments acceptable to the Commissioner within 30 days, the Commissioner may certify amendments and their effective date to the Governing Committee. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposal are provided to the Governing Committee.

11:3-1.6 PAIP exemptions

(a) Every insurer shall participate in the PAIP to the extent required by this subchapter and the AIP plan of operation.

(b) The requirements of this subchapter shall not apply to the following:

1. Insurers that have not issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983;

2. Insurers that have issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983, but only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1et seq.;

3. Insurers transacting private passenger automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent that waiver of participation in the PAIP is explicitly provided by the terms of the approved plan of orderly withdrawal; or

4. Insurers transacting private passenger automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-23 and 24, but only to the extent provided by the terms of the order.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of automobiles (for example, motor homes, recreational vehicles, antique automobiles, or motorcycles) shall participate in the PAIP but only for the particular types of automobiles currently being insured.

(d) Insurers claiming to be excluded from participation pursuant to the provisions of (b) or (c) above shall comply with the following:

1. Such insurers shall file with the AIP no later than *(60 days from the effective date of this rule)* **March 16, 2018** a certified statement containing the following information:

- i. The insurer's name, including the NAIC group number;

ii. A statement that the insurer is not required to participate in the PAIP or receive assignments through the PAIP;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with this subchapter;

iv. The particular provision of this section under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct, and accurate to the best of the officer's information, knowledge, and belief based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the AIP at the address as shown on the AIP's website: <https://www.aipso.com/plansites/newjersey.aspx>

3. A copy of the information filed pursuant to (d)1 and 2 above shall be filed with the Department at the following address:

Property & Casualty
New Jersey Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325

11:3-1.7 PAIP eligibility

(a) PAIP shall provide coverage to all PAIP qualified applicants as set forth in the AIP plan of operation. For purposes of this subchapter, a "qualified applicant" shall include:

1. A person domiciled in New Jersey, who is an owner of an automobile registered and principally garaged in this State or will be registered and principally garaged in this State within 60 days; and

2. A person who certifies, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in this section and (b) and (c) below. An applicant so certifying shall be considered for assignment upon submitting a complete application in good faith to the PAIP. An application shall be considered to have been made in good faith if the applicant reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form.

(b) "PAIP qualified applicant" shall also include military personnel with respect to an automobile if, at the time application is made, the applicant is a nonresident who is stationed in this State, whose automobile is registered in another state and garaged in this State.

(c) No person shall, however, be deemed a PAIP qualified applicant, if the principal operator of the automobile to be insured does not hold a driver's license that is valid in this State; or if a regular operator of the automobile other than the principal operator does not hold such a license; or if timely payment of premium is not tendered; or if the principal operator of the automobile does not furnish the information necessary to effect insurance; or if such person rents or leases automobiles to others which are used for commercial purposes.

(d) The Governing Committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant and producer showing the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination;
3. Claim history for the preceding three years;
4. Driving history for each operator; and
5. Copies of vehicle registration(s).

(e) The Governing Committee shall establish procedures for the cancellation or nonrenewal of policies to persons who are not or are no longer PAIP qualified applicants.

11:3-1.8 PAIP coverage

(a) PAIP shall provide to PAIP qualified applicants bodily injury liability, property damage liability, personal injury protection, uninsured/underinsured motorists, and physical damage coverages at the minimum levels required by law, including all options related thereto.

(b) PAIP shall provide a variety of increased limits for the above coverages up to the following:

1. \$250,000 per person/\$500,000 per accident for bodily injury liability coverage, and \$100,000 for property damage liability coverage, or a combined single limit of \$500,000 for bodily injury liability and property damage liability coverage;

2. \$250,000 per person/\$500,000 per accident for uninsured/underinsured motorists bodily injury liability coverage and \$100,000 for uninsured/underinsured motorists property damage liability coverage, or a combined single limit of \$500,000 for uninsured/underinsured bodily injury liability and property damage liability coverages.

(c) The PAIP shall provide additional personal injury protection coverages as set forth in N.J.S.A. 39:6A-10.

(d) The PAIP shall provide physical damage coverages with no less than the minimum deductibles required pursuant to N.J.S.A. 17:29A-39. PAIP shall offer higher deductibles as provided by N.J.A.C. 11:3-13.3.

1. All physical damage coverages shall be on an "actual cash value" basis, less deductible, subject to a maximum loss payable of \$60,000, or such amount at which physical damage coverage may be placed in the surplus lines market as set forth on the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43.

2. For purposes of this section, "actual cash value" means the replacement cost of the automobile, less physical depreciation.

11:3-1.9 Determination and fulfillment of PAIP quotas

(a) With respect to PAIP risks only, the Governing Committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private automobile insurance relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. The PAIP shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

2. The PAIP shall cease acceptance of applications for new policies upon certification by the Commissioner that the Plan has reached or exceeded 10 percent of the private passenger automobile non-fleet exposures.

3. The PAIP shall resume acceptance of applications for new policies upon certification by the Commissioner that the PAIP is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile market in the State.

4. Each insurer shall receive credit against its respective portion of assigned risks for private passenger automobile risks written voluntarily in the State that are garaged in the urban enterprise zones (UEZs). Such credits shall be in an amount established in the AIP plan of operation.

5. In order to encourage the writing of risks in traditionally underserved areas, the PAIP shall, in its allocation of credits as set forth in the AIP plan of operation, consider the loss ratio of the municipality, identified by zip code, in which the risk is located. The loss ratios for municipalities shall be established by the Department from data compiled by the statistical agents and shall be included in the AIP plan of operation.

6. No insurer whose surplus, as regards policyholders, is less than \$1,500,000, as reported on page three of the most recent statutory annual statement, shall be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10 or in excess of a combined single limit of \$100,000.

(b) An insurer that issues only policies that provide physical damage coverage shall not be subject to assignments from the PAIP, but shall be entitled or obligated, as the case may be, to receive or pay a cash settlement of its obligation, in lieu of receiving assignments, for the current year, in accordance with procedures established by the Governing Committee in the AIP plan of operation.

(c) Each insurer or statistical agencies designated by such insurers shall report to the AIP manager all data necessary to comply with the distribution procedures. Each insurer shall permit its statistical agent to release such data to the AIP manager and shall permit its statistical agent to furnish the AIP manager with statements of its AIP experience.

(d) There shall be no exceptions to the type or class of risks assigned to an insurer other than as provided in this subchapter nor shall there be any agreement with an insurer to refrain from assigning risks in any territory or area of the State.

(e) The PAIP shall not suspend assignments to an insurer for any period of time, for any reason, other than a suspension of insurer obligations granted by the Commissioner pursuant to N.J.S.A. 17:33B-23 and 17:33B-24 and N.J.A.C. 11:2-35. The AIP shall promptly notify all insurers of such action.

(f) If an insurer is ordered or permitted to discontinue writing automobile insurance in this State in accordance with an informational filing withdrawal pursuant to N.J.A.C. 11:2-29, or other Order of the Commissioner, or Order by a court of competent jurisdiction, the insurer's obligations to pay assessments, receive assignments, and run-off existing business shall be pursuant to such Order of the Commissioner or Order of a court of competent jurisdiction.

(g) In the event an insurer is merged with another insurer, there is a consolidation of insurers, or an insurer acquires another insurer's book of business, the continuing insurer shall receive the assignments and assessments of the insurer merged, consolidated, or acquired until the quota of such merged, consolidated, or acquired insurer, as established by its writings prior to such merger, consolidation, or acquisition has been filled; provided, however, the continuing insurer may be relieved from such obligations if another insurer has agreed, in a manner satisfactory to the Governing Committee, to assume such obligations.

(h) Groups of insurers under the same ownership and management shall be treated as a single insurer. Groups of insurers under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(i) The Governing Committee shall establish procedures in the AIP plan of operation permitting an insurer by mutual agreement to transfer its obligations to accept assignments to another insurer (to be known as a LAD carrier). The basic contract to be entered into between insurers and LAD carriers, including the minimum duration of such agreement, shall be approved by the Governing Committee and the Commissioner. Any substantive modifications to the approved contract shall be submitted to the Governing Committee and Commissioner for approval prior to its use. With respect to the transfer of an insurer's obligations to accept assignments to a LAD carrier, the plan shall address the following:

1. Eligibility criteria for an insurer to act as a LAD carrier and accept additional assignments;

2. The maximum number of additional assignments a LAD carrier may assume;

3. Minimum provisions for contracts between insurers and LAD carriers, including the minimum time duration for such contracts;

4. The parameters for fees to be paid to LAD carriers by the participating insurer for the assumption of the insurer's assigned risk quota;

5. Procedures by which the allocation of assignments to LAD carriers are adjusted to reflect additional assignments as a result of entering into a contract to assume additional assigned risks; and

6. Any other procedures deemed necessary to provide for a LAD carrier distribution system.

11:3-1.10 CAIP qualifications

(a) CAIP shall provide coverage to all CAIP qualified applicants as set forth in the AIP plan of operation. For the purposes of this section, a "CAIP qualified applicant" means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is unable to obtain automobile insurance in New Jersey in the voluntary market and is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute other than the CAIP. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. No applicant shall be deemed qualified if the principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

(b) As a prerequisite for insurance from CAIP, a prospective insured must attempt, within 60 days prior to the date of application, to obtain

automobile insurance in New Jersey, and be unable to obtain such insurance. The prospective insured must certify, in the application form prescribed by CAIP, that the applicant has attempted, but has been unable, to obtain automobile insurance in New Jersey through ordinary methods. An applicant so certifying shall be considered for assignment upon making an application in good faith to the CAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements of a material nature in the prescribed application form approved by the Commissioner.

(c) For any risk consisting of 10 or more vehicles, the applicant must also provide:

1. A copy of the notice of cancellation or nonrenewal from the applicant's previous insurer, or an explanation concerning why the applicant was not insured; and

2. A certification that the applicant has been refused insurance within 60 days of the date of application from at least three named insurers licensed to transact automobile business in New Jersey. Such certification shall list the three insurers.

(d) No producer shall bind a risk for CAIP or submit an application for insurance to CAIP if such producer knows that the risk currently has or has been offered coverage from the voluntary market.

(e) A CAIP qualified applicant shall not be afforded coverage until it:

1. Submits an application as prescribed in the AIP plan of operation;

2. Pays the premium, or portion thereof, required in the AIP plan of operation;

3. Is accepted for coverage by CAIP as provided for in the AIP plan of operation; and

4. Completes such other requirements as set forth in the AIP plan of operation.

11:3-1.11 CAIP coverage

(a) CAIP shall provide to CAIP qualified applicants, bodily injury liability and property damage liability coverages as follows:

1. CAIP shall provide basic combined single limit of \$35,000 and statutory uninsured motorist coverage except:

i. When limits in excess of the basic combined single limit of \$35,000 are required by law, the plan shall offer limits adequate to comply with the minimum requirements of that law, except with respect to limits over \$5 million in which case excess coverage is conditioned upon the plan being able to secure facultative reinsurance. CAIP shall provide a policy for limits less than the minimum requirements of the law when evidence of adequate excess insurance is provided by the producer or the insured.

ii. CAIP shall provide limits adequate to comply with the provisions of the financial responsibility law of any state in which the motor vehicle will be operated, but only while the vehicle is being operated in that state.

iii. CAIP shall also offer the optional limits of liability as specified in the AIP plan of operation.

(b) CAIP shall offer to CAIP qualified applicants, additional uninsured or underinsured motorist coverage as follows:

1. Additional uninsured and underinsured motorist coverage shall be provided as an option to the named insured up to the limits set forth in N.J.S.A. 17:28-1.1b and subject to the deductibles specified in the AIP plan of operation. The limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage respectively.

2. Uninsured and underinsured motorist coverage shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

3. Uninsured motorist coverage shall be subject to the policy terms, conditions, and exclusions approved by the Commissioner, including, but not limited to, unauthorized settlements, nonduplication of coverage, subrogation, and arbitration.

(c) CAIP shall provide to CAIP qualified applicants, standard and additional personal injury protection coverage as follows:

1. With respect to those automobiles subject to the New Jersey Automobile Repair Reform Act, N.J.S.A. 39:6A-1 et seq., CAIP shall provide personal injury protection coverage under every automobile liability policy as required by the Act and shall also offer to the named insured additional Personal Injury Protection as required by the Act and by regulations promulgated by the Commissioner thereunder.

(d) CAIP shall provide to CAIP qualified applicants, physical damage coverage as follows:

1. CAIP shall only offer physical damage coverage to:

i. Private passenger vehicles;

ii. Private passenger type vehicles;

iii. Light trucks;

iv. Motorcycles;

v. Recreational trailers (excluding trailers used as residences); and

vi. Social services vehicles of the private passenger, station wagon, van, or minibus type owned by or operated on behalf of a non-profit entity used to transport persons without charge.

2. Notwithstanding (d)1 above, as necessary to ensure the plan's efficient operation, the CAIP plan of operation shall provide that physical damage coverage shall not be offered to certain vehicles, including, but not limited to:

i. Risks consisting of fleets of 10 or more vehicles not including trailers and semi-trailers;

ii. Vehicles more than 25 or more years old;

iii. Vehicles with a seating capacity in excess of 20;

iv. Any emergency type vehicle; and

v. Any vehicle which is operated under a registration plate not issued for a specific vehicle.

3. Comprehensive and collision coverage shall be provided on an actual cash value basis, less deductible, subject to a maximum loss payable of \$60,000 or such amount at which physical damage coverage may be exported in accordance with the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43. CAIP shall also offer optional higher deductibles as specified in the plan of operation.

4. Physical damage coverage shall be offered only in connection with a policy written by the plan affording bodily injury and property damage coverage.

5. Upon request, CAIP shall issue a loss payable clause for the benefit of a lienholder.

11:3-1.12 CAIP participation

(a) Every insurer admitted to transact and transacting motor vehicle insurance in the State of New Jersey shall participate in CAIP to the extent required by this subchapter and the AIP plan of operation. At the end of each fiscal period, CAIP's operating profit or loss shall be determined separately for each policy year. Profit shall be credited or distributed to each participant and loss shall be charged against each participant as set forth in the AIP plan of operation.

(b) All data necessary to comply with the foregoing participation procedures shall be reported to the CAIP's central statistical agent in the manner described in the approved statistical plan.

(c) Groups of participants under the same ownership and management shall be treated as a single participant. Groups of participants under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(d) In the event a participant discontinues writing motor vehicle liability or physical damage insurance in this State and retains its certificate of authority to write such business, it shall continue to pay assessments, provided, however, that if the automobile liability or physical damage business of a participant discontinuing the writing of automobile liability or physical damage insurance in this State has been purchased by, transferred to, or reinsured by another company, the latter shall receive the assessments of the former.

(e) In the event a participant is merged with another company or there is a consolidation of companies, the continuing company shall receive the assessments of the company merged or consolidated, provided, however, the continuing company may be relieved from such obligations

if another company has agreed, in a manner satisfactory to the Governing Committee, to assume such obligations.

(f) Participation shall be suspended upon order of the Commissioner of Banking and Insurance if he or she finds that such action is required by the financial condition of that participant.

(g) All participants in CAIP shall participate in the business written by the CAIP pursuant to an approved AIP plan of operation.

11:3-1.13 Rates and policy forms

(a) The Governing Committee shall file for prior approval by the Commissioner, all rates, rules surcharges, minimum premiums, classifications, and policy forms which shall be used by insurers writing risks through the AIP. Proceedings to review rate filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall reflect the experience of the risks insured by the AIP and shall not be excessive, inadequate, or unfairly discriminatory. Every rate filing shall include an analysis of the adequacy of the rating plans. Premiums for risks shall be subject to the rating plan established in the plan of operation.

(b) Any risk with five or more vehicles not including trailers and semi-trailers shall be considered as a fleet. The AIP shall file base rates for fleets with the Commissioner for his or her prior approval which are different than the rates for non-fleet risks if the AIP determines that the loss expectancy of fleet risks insured by the AIP is different than the loss expectancy of non-fleet risks insured by the AIP.

11:3-1.14 Installment payment option

(a) The PAIP shall provide for an installment premium payment option in accordance with procedures established by the Governing Committee in the AIP plan of operation. With respect to the installment premium payment option, the AIP plan of operation shall specify:

1. The minimum initial deposit required, which shall be no more than 30 percent of the estimated total premium;
2. The schedule for the payment of premiums on an installment basis which shall provide for installment payments over a period of not less than nine months;
3. Installment charges;
4. The minimum "per installment" amounts; and
5. Any other procedures deemed necessary by the Governing Committee.

(b) Additional premium in excess of an amount set by the Governing Committee in the AIP plan of operation resulting from changes to the policy shall be spread over the remaining installments, if any, or may be billed immediately as a separate transaction.

(c) Return premium resulting from changes to the policy shall be used to reduce the outstanding balance. If the outstanding balance is eliminated, any amount remaining in excess of an amount set by the Governing Committee in the plan of operation shall be returned within 30 days. If an outstanding balance remains, the number and amounts of the remaining installments shall be adjusted accordingly, except when the return amount is less than \$20.00, in which event it may be treated as a separate transaction.

(d) The CAIP shall provide for an installment premium payment option in accordance with procedures established by the Governing Committee in the AIP plan of operation.

11:3-1.15 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, LAD carrier, CAIP servicing carrier, person applying to act as a LAD carrier or CAIP servicing carrier, or insurer may petition for appeal to the Commissioner from an adverse decision of the Governing Committee by filing a request in writing within 20 days of the date of receipt of the written decision of the Governing Committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the Governing Committee.

2. The Commissioner shall notify the petitioner and the Governing Committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the Governing Committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this section shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:3-1.16 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

SUBCHAPTER 2. (RESERVED)

(a)

DEPARTMENT OF BANKING AND INSURANCE DIVISION OF INSURANCE

Health Benefit Plans

Prompt Payment of Claims

Adopted Amendments: N.J.A.C. 11:22-1.2, 1.6, 1.9, and 1.10

Adopted New Rule: N.J.A.C. 11:22-1.5

Proposed: September 5, 2017, at 49 N.J.R. 2877(a).

Adopted: December 20, 2017, by Richard J. Badolato,

Commissioner, Department of Banking and Insurance.

Filed: December 20, 2017, as R.2018 d.062, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17B:30-26 through 34; and P.L. 2005, c. 352.

Effective Date: January 16, 2018.

Expiration Date: September 21, 2018.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from the New Jersey Obstetrical & Gynecological Society; the New Jersey Society of Anesthesiologists; the New Jersey Association of Osteopathic Physicians and Surgeons; Home Care and Hospice Association of New Jersey; the New Jersey Association of Ambulatory Surgery Centers; the Medical Society of New Jersey; Delta Dental of New Jersey, Inc.; New Jersey Dental Association; Infectious Diseases Society of New Jersey, the New Jersey Society of Thoracic Surgeons; New Jersey Academy of Otolaryngology; New Jersey Society for Bariatric Surgeons, Inc.; New Jersey Chapter American College of Surgeons; and the New Jersey Association of Health Plans.

COMMENT: One commenter contends that the inclusion of provisions related to standards for an explanation of benefits (EOBs) form, which by definition is a document that a carrier issues to a covered person, seems to be misplaced in N.J.A.C. 11:22-1.1 et seq., as this subchapter is otherwise about the prompt payment of claims. The commenter noted that the Purpose and Scope for this subchapter provide that the rule "sets standards for the payment of claims relating to health benefits plans and dental plans." Minimum standards for EOBs does not relate to setting a standard for the payment of claims. Rather, an EOB is a carrier-to-consumer communication.

RESPONSE: The Department notes that while the rule deals with claim processing, the outcome of the claim processing is summarized on the EOB. The Department reasoned that it was fitting to place the rules governing the EOB in a subchapter that already addressed claims. The Department believes the rule is appropriately codified in this subchapter. However, on August 21, 2017, the Department proposed new rules and amendments to implement the Health Claims Authorization, Processing and Payment Act (HCAPPA), P.L. 2005, c. 352, in N.J.A.C. 11:22-1 (49 N.J.R. 2729(a)), which are being simultaneously adopted with this EOB proposal (HCAPPA rule amendments). These HCAPPA rule amendments are more expansive than this proposal, have added new subsections to Subchapter 1, and have eliminated certain paragraphs and/or provisions that are proposed herein for technical cross-reference