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BULLETIN NO. 14-08

TO: ALL INSURERS AUTHORIZED OR ADMITTED TO TRANSACT BUSINESS IN NEW JERSEY, ALL LICENSED INSURANCE PRODUCERS, AND ALL LICENSED PUBLIC ADJUSTERS

FROM: KENNETH E. KOBYSLOWSKI, COMMISSIONER

RE: PRE- AND POST-DISASTER REGULATORY GUIDANCE

Summary

The purpose of this Bulletin is to provide guidance to insurers regarding pre- and post-disaster regulatory activity, including but not limited to the issuance of bulletins and/or orders, which would likely be undertaken by the Commissioner pursuant to [his/her] emergency powers in N.J.S.A. App. A:7-1 shortly before or following a declaration of a State of Emergency by the Governor related to a disaster. The regulatory activity described herein may be implemented as necessary depending upon the particular circumstances associated with the disaster and would be tailored, as appropriate, based upon the nature of the disaster and policyholder impact. Similar regulatory action was taken pre- and post- Storms Sandy and Irene. Examples of the content of such regulatory activity follow. The Department requests each insurer, producer and public adjuster licensed, authorized or admitted to transact business in this State to review and be familiar with the content of these potential pre- and post-disaster regulatory measures. This will enable each regulated entity to be as responsive as possible and will aid in the preparation for and recovery efforts after a disaster event.

I. Pre-disaster actions

A. Activation of Catastrophe Response Plans

The Commissioner may issue an Order or Bulletin to remind carriers to activate catastrophe response plans as follows:

The potential for widespread property damage in this State resulting from [event] has increased during the previous 24 hours. Accordingly, all authorized or admitted insurers (including all health carriers), and particularly property/casualty insurers writing or that have in-force property or multiline insurance policies covering property risks resident or located in this State, on the date of this Bulletin are reminded of the need to activate their Disaster Response Preparation Plan or Catastrophe Plan (or however else designated), marshaling all appropriate resources to secure operations and provide timely assistance to insureds. Property/casualty insurers are also reminded of their obligations with respect to the activation of such plans as set forth in Order No.

A09-103, which may be viewed on the Department's website at <http://www.state.nj.us/dobi/lrorders.htm>. Depending on the severity of the conditions, insurers may be required and/or requested to take measures which include, but are not be limited to, suspension of the cancellation and nonrenewal of policies for reasons related to the occurrence of the disaster or catastrophic event (e.g., for missed premium payments and/or material change in risk) and utilization of expedited and simplified claims processes.

All authorized or admitted insurers are also reminded that, if conditions warrant, any so-called "deemer" timeframes specified in various statutes and regulations within which the Department is required to act on a filing from an insurer may be suspended for the duration of the disaster or catastrophic event.

All producer licensees are encouraged to take all necessary actions to ensure their ability to promptly service claims and provide other essential services to insureds affected by the storm.

II. Post-disaster actions

A. Forbearance of Policy Cancellation or Non-renewal

The Commissioner may issue an Order or Bulletin to encourage insurers to voluntarily consider forbearance options as follows:

With the devastation resulting from [event] and the possible relocation and/or displacement of [number] victims and other personal hardships sustained by residents of New Jersey, the Department of Banking and Insurance is urging insurers to show forbearance with regard to the cancellation/non-renewal of policies covering residents impacted by the [event]. The Department would encourage that such forbearance be extended on all policies of insurance, including life, health, commercial property, homeowners, dwelling fire and commercial and personal automobile policies.

The Department will work with carriers to limit the regulatory effects of a carrier's forbearance, specifically in regard to financial review requirements.

Insurers are encouraged to work with their policyholders in the impacted areas, providing relief where the circumstances warrant for failures to timely pay premiums or failure to provide certification or documentation prior to renewal. Policyholders should be advised that such forbearance of premium payments is not a waiver; it is only an extension or grace period in which to pay the premiums. Insurers are urged to work with impacted policyholders in repaying the premiums that become due by either allowing a repayment plan, or a further extension in repaying the amount in full.

The forbearance on cancellations or non-renewals is to be offered for failures to pay premiums and for any material changes in risk related to the storm. If a policy is to be cancelled or non-renewed for any other allowable reason, the cancellation or non-renewal may be made pursuant to the statutory notice requirements. However, the Department requests that the insurance companies take into consideration that persons in heavily impacted areas may be unable to receive a notice of cancellation or non-renewal due to evacuation or delayed postal service in that area.

In addition to forbearance on collection and nonrenewal/cancellation activity, insurers are also urged to relax documentation and other requirements on matters such as notice of hospital admissions; due dates for filings; pre-authorization; administrative changes such as additions, terminations, and continuations; periodic proof of disability; late fees; and limits or exclusions for prescription refills with respect to damaged or lost prescriptions.

B. Processing of Claims

The Commissioner may issue an Order or Bulletin regarding claims processing as follows:

Following a declared disaster-related emergency, insurers shall promptly and in good faith adjust and satisfy all insurance claims directly resulting from the disaster taking into account the magnitude and circumstances surrounding the disaster and the severity and circumstances of individual claims. The Department urges insurers, licensees and interested parties to take the following actions upon receiving notice of a claim:

- promptly establish contact with the claimant;
- promptly survey and assess the claimant's damage;
- provide prompt and accurate responses to claimants;
- provide prompt payment, including advances, for additional living expenses and for temporary repairs after the assessment of the insured's damage; and
- promptly set appointments with the claimant for examination and resolution of all claim matters.

Following a declared disaster-related emergency, where necessary to protect health or safety, insurers are urged to permit claimants to immediately commence repairs to heating systems, hot water systems, and necessary electrical connections, as well as exterior windows and doors and, for minor permanent repairs to exterior walls in order to enable property to retain heat and for other safety reasons. Insurers are also urged to permit any policy requirement that the policyholder exhibit the remains of the property to be satisfied through the submission of proof of loss documentation of the damaged or destroyed property, including photographs or video recordings, material samples, inventories as well as receipts for any repairs to or replacement of property. This provision is not applicable to flood policies issued under the National Flood Insurance Program.

All authorized or admitted property and casualty insurers subject to licensure or regulation by the Department, including surplus lines insurers, may make first- or third-party claim payments for claims related to the storm by methods other than those permitted by N.J.A.C. 11:2-17.8(k), such as prepaid debit cards, electronic transfer or other comparable alternate payment method, but only: (a) where the claimant agrees to receive a claim payment by an alternate payment method; (b) where the alternate payment method is not subject to any fees that would result in the insured receiving less than the full amount due; (c) where the insured is permitted, at any time, to convert any balance into cash; and (d) where the claimant is notified of applicable terms and conditions.

C. Mediation

The Commissioner may, by Order and/or Bulletin, establish a non-binding mediation program following a declared emergency to facilitate the resolution of open and unresolved (not settled) claims for damage resulting from the disaster to real or personal property, including personally-owned marine craft. It is anticipated that such a mediation program would be structured as follows:

Participation in mediation is at the option of the policyholder. All insurers authorized or admitted to transact business in New Jersey and the New Jersey Insurance Underwriting Association shall be required to participate in the Mediation Program and resulting mediation conferences if selected by a policyholder. Surplus lines insurers and risk retention groups may elect whether to participate in such mediation conferences on a case-by-case basis. Except as otherwise agreed by the parties, the following claims shall not be eligible for mediation: 1) claims for which the amount in controversy is less than \$1,000; 2) claims made under a flood insurance policy issued by the National Flood Insurance Program; 3) claims where the loss incurred was not related to the storm; 4) claims where there was no coverage on the date of the loss; and 5) claims where the insurer has a reasonable basis to suspect fraud and has referred the matter to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety.

The Commissioner shall designate an entity to administer the mediations in accordance with open public bidding law, and mediations shall be conducted in accordance with procedures as specified by the Commissioner by Order and/or Bulletin. Except when the insured fails to appear for a duly scheduled mediation, the insurer shall be responsible to pay the designated entity's reasonable mediation fee, but shall not be responsible for any costs incurred by the insured including, but not limited to, costs incurred for advisors, representatives, attorneys or public adjusters.

Insurers shall be required to provide written notice to policyholders with mediation eligible claims of the availability of the mediation process. Such notice shall not be required to be provided in the event that a policyholder's claim is not eligible for mediation. Insurers shall be required to provide the notice within five (5) business days of the issuance of a bulletin by the Department advising of the selection of the mediation program administrator by the Commissioner. The Commissioner shall provide a sample mediation notification form which insurers may utilize as an attachment to that bulletin. Insurers may utilize alternate notification forms or methods, provided that such forms or methods at least convey the information set forth in the sample form provided by the Commissioner. For any claims reopened or filed after issuance of the triggering bulletin, insurers shall provide such notice with the insurer's offer of claim settlement or any denial of a claim, whether in whole or in part; however, if the matter remains open for 60 days without a settlement offer or denial, the notice of mediation availability shall be provided no later than 60 days from the date the claim was filed or reopened.

D. Claims Data Reporting

The Commissioner will by Order, require claims data reporting by all authorized or admitted property/casualty insurer groups with a total of \$5,000,000 or more written property/casualty insurance premiums in this State that had insurance policies in force on [date]

and that incurred damage due to the [event]. The Order will provide specific criteria and format for the reporting. Insurer information supplied in accordance with this Order shall be kept confidential to the extent allowed by applicable State law, including, but not limited to, N.J.S.A. 17:23-24 and 47:1A-1 et seq. Failure to comply with the terms of this Order may result in the imposition of penalties as authorized by law, including, but not limited to, penalties pursuant to N.J.S.A. 17:33-2.

E. Timeframe to Respond to Departmental Inquiries

The Commissioner may issue an Order or Bulletin reducing the timeframe for carriers to respond to Departmental inquiries regarding the disaster event as follows:

Due to the substantial and/or widespread damage resulting from the [event] and the ensuing significant hardships and disruptions, the Commissioner by Order may require every insurer upon receipt of any inquiry from the Department respecting a claim related to [event] shall, within five working days of receipt of such inquiry, furnish the Department with a complete and accurate written response to the inquiry based on information available to the insurer. Prior to the expiration of the initial five business day period insurers may request one extension of no more than five additional business days. No additional extensions may be requested.

F. Price Gouging and Fee Issues

The Commissioner may issue Orders or Bulletins regarding price gouging and fees as follows:

All licensees are advised that price gouging following a disaster is prohibited by N.J.S.A. 56:8-107, et seq. All licensees are urged to report instances of price gouging to the Department of Law and Public Safety, Division of Consumer Affairs, 124 Halsey Street, Newark, NJ 07102, or email: askconsumeraffairs@lps.state.nj.us.

The Department reminds all public adjusters, including those who hire or retain temporary sublicensees pursuant to N.J.S.A. 17:22B-11 and N.J.A.C. 11:1-37.7, that any fees for adjusting services charged to consumers must be reasonably related to the services rendered, whether the loss was related to [the event] or not, and that public adjusters must be able to demonstrate this relationship upon inquiry by the Department. The Department does not anticipate that public adjusters will need to increase their normal fees due to [the event]. The Department also expects that all public adjusters will act in a professional and responsible manner with due consideration toward the hardships and disruptions being experienced by property owners affected by [the event]. The Department cautions public adjusters to refrain from charging fees that do not reasonably reflect the actual amount of adjusting services being provided. Documentation on the reasonableness of a public adjuster's fee would include time records that detail the actions taken on each claim file and the hours during which the public adjuster engaged in each activity, and expense records, including receipts for items such as computer software and travel. The Department will closely monitor all fees charged by public adjusters, and in particular any fees that appear excessive. The Department intends to vigorously enforce N.J.A.C. 11:1-37.13, and the related prohibited conduct provisions of N.J.S.A. 17:22B-13 and N.J.A.C. 11:1-37.14, against any public adjusters who charge fees that are not reasonably related to the services rendered.

G. Access Issues

The Commissioner may issue an Order or Bulletin regarding access to disaster-impacted areas as follows:

The Commissioner is committed to assisting insurers in addressing any impediments to adjusters accessing areas impacted by a declared disaster emergency and the Commissioner urges insurers to promptly share any such issues which may arise with the Department so that the Department can facilitate the resolution of any such impediments. Information relative to any such issues will be shared with insurers through posting any such information on the Department's website.

H. Hurricane Deductibles (if applicable)

The Commissioner may issue an Order or Bulletin to provide guidance to insurers regarding the use of mandatory and optional hurricane deductibles in connection with [event].

N.J.A.C. 11:2-42.7 provides that the uniform policy language insurers shall utilize for all mandatory and optional hurricane deductible programs for homeowners' insurance is set forth in Exhibit D in the Appendix to subchapter 42. Exhibit D provides, in pertinent part, that "[a hurricane] deductible applies as described below, in the event of direct physical loss to property covered under this policy, caused directly or indirectly in the event of a hurricane named by the National Weather Service or its successor from which sustained hurricane force winds of 74 miles per hour or greater have been measured in New Jersey by the National Weather Service (regardless of whether the sustained hurricane force winds reach the risk insured under the policy) and shall replace any other applicable deductible in that event." The Department's Order or Bulletin will advise insurers whether or not the regulatory criteria for application of hurricane deductibles have been met by the particular storm.

In conclusion, the Department thanks its licensees for their anticipated cooperation and compliance with these likely regulatory measures if the State were to experience a state of emergency and/or disaster. We value your continued vigilance in serving the insurance needs of our residents, especially during difficult times.

August 14, 2014
Date



Kenneth E. Kobylowski
Commissioner