

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Office of the Insurance Claims Ombudsman

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

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

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

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

Proposal Number: PRN 2014-061.

Submit written comments by July 18, 2014, to:

Robert J. Melillo, Chief

Office of Legislative and Regulatory Affairs

20 West State Street

P.O. Box 325

Trenton, NJ 08625-0325

Fax: (609) 292-0896

Email: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

In accordance with Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Commissioner of the Department of Banking and Insurance (Commissioner) proposes to readopt N.J.A.C. 11:25 with certain amendments. This chapter, which concerns the Office of Insurance

Claims Ombudsman (the Office), will expire April 13, 2014, pursuant to N.J.S.A. 52:14B-5.1.b. Since this notice of rules proposed for readoption with amendments was filed with the Office of Administrative Law on April 14, 2014, pursuant to N.J.A.C. 1:30-6.4(g), the expiration date of this chapter is extended 180 days to October 10, 2014, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The chapter contains rules, listed by subchapter below, concerning the following subjects:

1. General powers and duties; and
2. Internal appeals procedure.

These rules implement many essential provisions of N.J.S.A. 17:29E-1 et seq. As part of the readoption process, the Department of Banking and Insurance (Department) has undertaken a review of N.J.A.C. 11:25 to determine the current effectiveness of the chapter. This review was undertaken pursuant to Executive Order No. 66 (1978) in order to ensure the continuing relevancy and effectiveness of the chapter. Each rule was examined to determine whether it still provides a useful function within the insurance structure in New Jersey. The Department examined the continuing relevance of the rules and also considered whether they require unnecessary time and expense. The Department finds that Chapter 25 continues to be relevant and necessary and the need for this chapter remains constant. The Department is proposing to readopt Chapter 25 with amendments that will not substantially alter the rules.

N.J.S.A. 17:29E-1 et seq., effective August 17, 1998, established the Office within the Department. The Office is charged with the responsibility to:

- Investigate consumer complaints regarding policies of insurance, including the payment of claims;
- Establish procedures to monitor the implementation of N.J.S.A. 17:23A-1 et seq. (disclosure practices of policyholders' personal information), N.J.S.A. 17:29B-1 et seq. and 17B:30-1 et seq. (unfair methods of competition; unfair, deceptive, and discriminatory acts or

practices), and N.J.S.A. 17:35C-1 et seq. (regulation of contract provisions; and required disclosure to consumers in Medicare supplement health insurance policies) and monitor and investigate violations of N.J.S.A. 17:35C-11 (use of false, misleading, or fraudulent statements in advertising to sell Medicare supplement insurance);

- Respond to consumer inquiries including, but not limited to, those regarding policy provisions and availability of coverage;
- Ensure that accurate and understandable buyers' guides and rate comparisons are published and disseminated to consumers; and
- Review consumer complaints regarding the conduct of arbitrators appointed under the terms of a policy of insurance (except policies issued pursuant to N.J.S.A. 39:6A-1 et seq.).

The Department is proposing to amend N.J.A.C. 11:25-1.2 and 2.2. Definitions of "consumer complaint," "insured," and "insurer" are being added to N.J.A.C. 11:25-1.2 because these terms are utilized in the subchapter and are currently undefined.

The proposed amendments to N.J.A.C. 11:25-2.2 will add definitions of "claim" and "insured" to add clarity to Subchapter 2, which addresses the internal appeals procedure insurers are required to establish for the review of disputed claims. The amendments are consistent with N.J.S.A. 17:29E-9, which is applicable only to insurers writing property and casualty or life insurance.

The Department is also proposing to amend N.J.A.C. 11:25-1.3(b)1 and 1.6(b) to specifically refer to the Consumer Assistance Unit in the Office of Consumer Protection Services. The Consumer Assistance Unit enters complaints within its data tracking system prior to action being taken, which may include referring the complaint to the Office.

The Department is further proposing to amend N.J.A.C. 11:25-1.3(c)2v by deleting reference to the Office of Insurance Fraud Prosecutor and replacing it with the Bureau of Fraud Deterrence.

The Department's notice of proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The readoption of N.J.A.C. 11:25 with amendments continues to implement the legislative mandates imposed by N.J.S.A. 17:29E-1 et seq. N.J.A.C. 11:25 has two subchapters, one of which requires insurers to adopt procedures to implement an internal appeals procedure for dealing with certain disputed claims. These rules continue to require insurers to interact with the Office regarding inquiries pertaining to disputed claims, as well as trade practices and other market conduct issues. Insurers are subject to the subpoena of personnel and documents needed by the Office in pursuit of investigations. The Department recognizes that these obligations may place a burden on insurers; however, the important public benefits derived from them continue to justify their imposition. Unsatisfied claimants, consumers, and society in general will continue to experience a positive impact as a result of the activities of the Office. Allegations of improper trade practices or disputes about claim dispositions will continue to be handled expediently for the benefit of all. As a result, the Department expects that the readoption of this chapter with amendments should continue to result in a positive social impact.

Economic Impact

The readoption of this chapter with amendments will not impose additional economic obligations on the Department or insurers. The Department notes that insurers are required to incur or maintain costs necessary for continuing an internal appeal process and complying with the obligation to provide proper notice to consumers regarding the availability of assistance from the Office.

Federal Standards Statement

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

Jobs Impact

The Department does not believe that the rules proposed for readoption with amendments will cause any jobs to be generated or lost. The Department invites interested parties to submit any data or studies concerning jobs impact of the rules proposed for readoption with amendment with their written comments.

Agriculture Industry Impact

Pursuant to P.L. 1998, c. 48, the Right to Farm Act, and N.J.S.A. 52:14B-4(a)(2), the Department does not anticipate any impact from the rules proposed for readoption with amendments on the agriculture and related industries in this State.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments apply to most insurers, some of which are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments continue to impose reporting requirements on insurers to accumulate and file information pertaining to their internal appeals procedures.

The Department does not anticipate that insurers will have to employ professional services in order to comply with these rules. Since the underlying legislation, which mandates

these obligations, does not allow for any small business exception in the development of these plans, all companies, regardless of size, are required to comply with these requirements. Additionally, all insurers, large and small, are under a continuing obligation to ensure that they comply with the obligations set forth in this chapter to properly inform consumers regarding the availability of assistance from the Office and to refrain from any unfair claims settlement practices.

Thus, the Department believes that all insurers, regardless of size, should be required to comply. Existing law already compels many of the expenditures required to comply with the rules proposed for readoption with amendments (buyers' guides and premium comparisons) and results in greater consumer knowledge and confidence regarding the integrity of the insurance industry. As a result, no distinction in the application of any of these rules is being made for small businesses.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not have an impact on housing affordability or evoke a change in the average costs associated with housing because the rules address duties of the Claims Ombudsman and obligations of insurers to have an internal appeals procedure.

Smart Growth Development Impact Analysis

The Department anticipates that the rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules

address duties of the Claims Ombudsman and obligations of insurers to have an internal appeals procedure.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:25.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL POWERS AND DUTIES

11:25-1.2 Definitions

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

...

“Consumer complaint” means any inquiry filed with the Department or the Ombudsman under a policy of insurance issued pursuant to N.J.S.A. 17:17-1 et seq., 39:6A-1 et seq., or any policy of life or health insurance issued pursuant to Title 17 or Title 17B of the New Jersey Statutes.

...

“Insured” means any individual, policyholder, or entity who has purchased a policy of direct insurance written pursuant to N.J.S.A. 17:17-1 et seq., 39:6A-1 et seq., or any policy of life or health insurance issued pursuant to Title 17 or Title 17B of the New Jersey Statutes.

“Insurer” means any entity authorized or admitted to transact the business of a property/casualty or life or health insurance in accordance with Titles 17 and 17B of the New Jersey Statutes.

...

11:25-1.3 General provisions; disputed claims

(a) (No change.)

(b) Consumers seeking review in accordance with (a) above shall file a complaint with the Ombudsman in any form, which indicates that the complainant is seeking review of a disputed claim. All complaints shall be sent to:

The Office of Insurance Claims Ombudsman

20 West State Street

PO Box 472

Trenton, NJ 08625-0472

Telephone: (800) 446-7467

Fax: (609) 292-2431

E-mail: ombudsman@dobi.state.nj.us

1. All complaints received by the Ombudsman shall be entered into the data tracking system of the **Consumer Assistance Unit in the Office of Consumer Protection Services**. The Ombudsman shall retain complaints for further action, or refer them to the **Consumer Assistance Unit in the Office of Consumer Protection Services** for disposition. The **Consumer Assistance Unit in the Office of Consumer Protection Services** may likewise refer matters to the Ombudsman.

2.-6. (No change.)

(c) At the discretion of the Ombudsman, an investigation and hearing may be conducted in person and under oath.

1. (No change.)

2. The Ombudsman may elect not to investigate a complaint if it is determined that:

i.–iv. (No change.)

v. The subject is already under investigation by the Department or the [Office of Insurance Fraud Prosecutor] **Bureau of Fraud Deterrence**.

11:25-1.6 Registry of closed complaints and confidentiality of information

(a) (No change.)

(b) Any correspondence or written communication from any complainant and any written material submitted by an insurer to the Ombudsman shall remain confidential and shall not be considered a public record pursuant to the “Right to Know Law,” N.J.S.A. 47:1A-1 et seq., and shall not be subject to release unless such disclosure is necessary to enable the Ombudsman to perform his or her duties and to support any opinions or recommendations, or as may be necessary to enable the Commissioner to perform any function authorized by law, including any action to stop unfair claims settlement practices. Any statement or communication made by the Ombudsman or which is provided in good faith to the Ombudsman shall be deemed to be privileged and confidential in accordance with N.J.S.A. 17:29E-[12(c)]**12.c**. Confidentiality shall attach only after the Ombudsman has exercised his or her jurisdiction to investigate a complaint. Complaints sent to the Ombudsman that he or she does not elect to investigate pursuant to N.J.A.C. 11:25-1.4(c)2 shall be returned to the complainant or referred to the **Consumer Assistance Unit in the** Office of Consumer Protection Services for further action. Only those complaints retained by the Ombudsman shall be subject to the confidentiality provision of this chapter.

SUBCHAPTER 2. INTERNAL APPEALS PROCEDURE

11:25-2.2 Definitions

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

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

...

“Insured” means any individual, policyholder, or entity who has purchased a policy of property and casualty insurance or any policy of life insurance issued pursuant to Title 17 or Title 17B of the New Jersey Statutes.

...