CHAPTER 91

SERVICE CONTRACTS

§7101. Short title; purpose; scope

1. Short title. This chapter may be known and cited as "the Service Contracts Act."
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Purpose. The purpose of this chapter is to create a legal framework within which service contracts may be sold in this State.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Exclusions. The following types of service contracts are exempt from the provisions of this Title, including the other provisions of this chapter:

A. Warranties; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Maintenance agreements; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. Warranties, service contracts or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the Public Utilities Commission; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. Service contracts sold or offered for sale to persons other than consumers; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

E. Service contracts on tangible personal property when the tangible personal property for which the service contract is sold has a purchase price of $100 or less, exclusive of sales tax; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

F. Road or tourist service contracts under section 3, subsection 2; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

G. Home service contracts under section 3, subsection 3; and [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

H. Warranties, service contracts and maintenance agreements that are conditioned upon or otherwise associated with the sale or supply of heating fuel. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Limited exclusions. The application of this chapter to the following is limited as follows.

A. Service contracts under which a motor vehicle dealer licensed pursuant to Title 29-A, chapter 9 is obligated to perform and that are sold in connection with the sale or service of a motor vehicle as defined in Title 29-A, section 101, subsection 42 are exempt from the requirements of section 7103, subsection 5 but must comply with all other requirements of this chapter. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. A motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products must comply only with section 7103, subsection 7; section 7105, subsection 1 and subsections 4 to 13; section 7109; and section 7110, as applicable. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

The types of agreements referred to in subsections 3 and 4 and service contracts governed by this chapter are not insurance and are not required to comply with any provision of the insurance laws of

this State other than as expressly made applicable in this chapter as long as the service contract provider and administrator have registered with the superintendent as required by section 7103, subsection 4.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7102. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

1. Administrator. "Administrator" means the person who is responsible for the administration of a service contract program or who is responsible for any submission required by this chapter.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Consumer. "Consumer" means an individual who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Maintenance agreement. "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Motor vehicle manufacturer. "Motor vehicle manufacturer" means a person that:

A. Manufactures or produces motor vehicles and sells motor vehicles under its own name or label; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Is a wholly owned subsidiary of a person that manufactures or produces motor vehicles; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. Is a corporation that owns 100% of a person that manufactures or produces motor vehicles; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. Sells motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles; or [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

E. Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person that manufactures or produces motor vehicles and that sells motor vehicles under the licensor's trade name or label. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

5. Nonoriginal manufacturer's parts. "Nonoriginal manufacturer's parts" means replacement parts not made for or by the original manufacturer of the property, commonly referred to as "aftermarket parts."
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

6. Person. "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

7. Premium. "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

8. Provider. "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

9. Provider fee. "Provider fee" means the consideration paid for a service contract.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

10. Reimbursement insurance policy. "Reimbursement insurance policy" means a policy of insurance, issued to a provider, that provides reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, pays to service contract holders on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

11. Service contract. "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or to indemnify for the repair, replacement or maintenance for an operational or structural failure of any motor vehicle or other property due to a defect in materials or workmanship or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service and road hazard protection. Coverage issued by an authorized insurance company pursuant to a personal automobile insurance policy for payment of towing, rental, emergency road service or automobile mechanical breakdown is not a service contract. Service contracts may provide for the repair, replacement or maintenance of property for damage resulting from power surges or interruption. "Service contract" includes a contract or agreement sold for a separately stated consideration for a specific duration that provides for any of the following:

A. The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs or composite scraps; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. The removal of dents, dings or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. The repair of small motor vehicle windshield chips or cracks but not the replacement of the entire windshield; or [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

E. The repair of damage to the interior components of a motor vehicle caused by wear and tear but that expressly excludes the replacement of any part or component of a motor vehicle's interior. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

Notwithstanding any other provision of law, service contracts are not insurance in this State and may not be regulated as insurance except for a contract or agreement providing indemnification for a loss caused by misplacement, theft, collision, fire or other peril typically covered in the comprehensive section of an automobile insurance policy or by a homeowner's policy or a marine or inland marine policy.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

12. Service contract holder. "Service contract holder" means a person who is the purchaser or holder of a service contract.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

13. Superintendent. "Superintendent" means the Superintendent of Insurance.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

14. Tangible net worth. "Tangible net worth" means equity less assets that have no physical existence and depend on expected future benefits for their ascribed value.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

15. Warranty. "Warranty" means a warranty made solely by the manufacturer, importer or seller of property or services without consideration that is not negotiated or separated from the sale of the product and is incidental to the sale of the product and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7103. Requirements for doing business

1. Administrator. A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of the provider's service contracts and compliance with this chapter. All administrators of service contracts sold in this State shall register with the superintendent as provided in this section.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Provision of receipt and copy of contract. A service contract may not be issued, sold or offered for sale in this State unless the provider has:

A. Registered with the superintendent pursuant to this section; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. Complied with the provisions of this chapter. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Sample copy before sale. A provider shall make a complete sample copy of the service contract terms and conditions available for inspection by a consumer prior to the time of sale.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Registration. A provider or administrator of service contracts issued, sold or offered for sale in this State shall apply for registration with the superintendent on a form prescribed by the superintendent, providing the registrant's name, full business address, telephone number and contact person and designating an agent in this State for service of process. The registration must be updated by written notification to the superintendent if changes occur in the registration on file.

A. The registrant shall pay to the superintendent a fee as set forth in section 601, subsection 30 upon initial registration and every year thereafter. [RR 2011, c. 1, §44 (COR).]

B. A registrant whose registration has terminated shall send notice within 15 days as follows:

(1) To all in-force service contract holders, if the registrant is a provider. Such registrant shall also cease issuing new service contracts in this State and may not renew existing service contracts unless authorized by the terms of a run-off plan approved by the superintendent; and

(2) To all providers for which it acts as an administrator, and to all in-force service contract holders of those providers, if the registrant is an administrator. Such registrant shall also cease acting as an administrator as to all service contract programs that it has contracted for in this State. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

This section may not be construed to require a provider or administrator to apply for and obtain a license under chapter 16, subchapter 2-A.
[RR 2011, c. 1, §44 (COR).]

5. Provider's obligations. To ensure the performance of the provider's obligations to its service contract holders, the provider shall either:

A. Insure all service contracts under a reimbursement insurance policy filed with the superintendent and issued by an insurer authorized to transact casualty insurance in this State, purchased through a risk retention group registered with the superintendent, or issued pursuant to chapter 19 by an eligible surplus lines insurer that agrees in writing to comply with the terms of this chapter and to submit to the jurisdiction of the superintendent for purposes of enforcing this chapter, as long as such insurer or risk retention group either:

(1) At the time the policy is filed with the superintendent and continuously thereafter:

(a) Maintains surplus as to policyholders and paid-in capital of at least $15,000,000; and

(b) Files annually copies of the insurer's or risk retention group's as audited financial statements, its annual statement under section 423 and the actuarial certification required by and filed in the insurer's state of domicile; or

(2) At the time the policy is filed with the superintendent and continuously thereafter:

(a) Maintains surplus as to policyholders and paid-in capital of at least $10,000,000;

(b) Demonstrates to the satisfaction of the superintendent that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1; and

(c) Files annually copies of the insurer's audited financial statements, its annual statement under section 423 and the actuarial certification required by and filed in the insurer's state of domicile; or [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Maintains, or together with its parent company maintains, a tangible net worth of at least $100,000,000 and upon request provides the superintendent with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K or Form 20-F annual report filed with the United States Securities and Exchange Commission within the last calendar year or, if the company does not file with the United States Securities and Exchange Commission, a copy of the company's audited financial statements that shows a tangible net worth of the provider or its parent company of at least $100,000,000. If the provider's parent company's Form 10-K or Form 20-F annual report or financial statements are filed to meet the provider's financial stability requirement, the parent company shall agree, on a form approved by the superintendent, to guarantee the obligations of the provider relating to service contracts sold by the provider in this State. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

6. Other financial security requirements. Except for the requirements specified in subsections 4 and 5, other financial security requirements may not be required by the superintendent for providers. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

7. Return of service contract. A service contract must require the provider to permit the service contract holder to return the service contract subject to the following conditions.

A. A service contract holder may return a service contract within 20 days of the date the service contract was mailed to the service contract holder or within 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder or lienholder if the service contract holder has financed the purchase of the service contract the full provider fee and any sales tax refund required pursuant to state law. The right to void the service contract provided in this subsection is not transferable and applies only to the original service contract purchaser and only if no claim has been made prior to its return to the provider. A monthly penalty equal to 10% of the provider fee outstanding must be added to a refund that is not paid or credited within 45 days after return of the service contract to the provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. After the time period specified in paragraph A for returning a service contract or if a claim has been made under the service contract within that time period, a service contract holder may cancel the service contract and the provider shall refund to the service contract holder 100% of the unearned pro rata provider fee, less any claims paid. An administrative fee not to exceed 10% of the provider fee paid by the service contract holder may be charged by the provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

8. Premium taxes. Insurance premium taxes under Title 36, chapter 357 apply as follows.

A. Provider fees collected on service contracts are not subject to premium taxes. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Premiums for reimbursement insurance policies are subject to premium taxes. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

9. Licensing exemption. Except for the registration requirements in subsection 4, a license or registration is not required under this Title to provide, administer, market, sell or offer to sell service contracts in this State.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

10. Insurance laws exemption. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators and other persons are exempt from all provisions of the State's insurance laws, except as specified in this chapter, as long as a service contract provider or administrator has registered with the superintendent as required by subsection 4. Reimbursement insurance policies are subject to all relevant provisions of this Title to the full extent consistent with this chapter.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

RR 2011, c. 1, §44 (COR). PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7104. Reimbursement insurance policy

1. Scope of policy. A reimbursement insurance policy insuring service contracts issued, sold or offered for sale in this State must unconditionally obligate the insurer that issued the reimbursement insurance policy to reimburse or pay on behalf of the provider any sums, including the refund of unearned provider fees, the provider is legally obligated to pay directly to the service contract holder or, in the event of the provider's nonperformance, to provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Application to insurer. A reimbursement insurance policy must provide that if a covered service is not provided by the provider within 60 days of proof of loss by a service contract holder, or unearned provider fees are not returned within 60 days of a valid refund request, the service contract holder may apply directly to the reimbursement insurance company for reimbursement or performance.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7105. Required provisions; service contracts

1. Form; language. A service contract marketed, sold, offered for sale, issued, made, proposed to be made or administered in this State must be written, printed or typed in clear and understandable language that is in a font size that is easily readable by a person with average eyesight and must conspicuously disclose the requirements set forth in this section, as applicable. A provider may comply with the font size requirement of this subsection by directing the consumer to a publicly accessible website containing a complete sample of terms and conditions of the service contract.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Notice of reimbursement insurance policy. A service contract insured under a reimbursement insurance policy pursuant to section 7103 must contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim, including any claim for the return of the unearned portion of the provider fee, within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." The service contract must also state the name and address of the insurer.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Notice when no reimbursement insurance policy. A service contract not insured under a reimbursement insurance policy pursuant to section 7103 must contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider and are not guaranteed under a service contract reimbursement insurance policy."
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Contact information. A service contract must state the name and address of the provider, the service contract seller and the administrator if different than the provider. A service contract must state the service contract holder's name and address to the extent furnished by the service contract holder. The identities of the service contract seller and service contract holder, to the extent furnished by the service contract holder, are not required to be preprinted on the service contract but may be added to the service contract at the time of sale.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

5. Purchase price and terms. A service contract must state the total purchase price of the service contract and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

6. Prior approval. A service contract must conspicuously state the procedure for obtaining prior approval for repair work when prior approval is required and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

7. Deductible amount. A service contract must conspicuously state the existence of any deductible amount, if applicable.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

8. Merchandise and services to be provided. A service contract must specify the merchandise and services to be provided and any limitations, exceptions or exclusions.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

9. Nonoriginal manufacturer's parts. A service contract covering a motor vehicle must state whether the use of nonoriginal manufacturer's parts is allowed.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

10. Transferability. A service contract must state any restrictions governing the transferability of the service contract, if applicable.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

11. Cancellation. A service contract must state the terms, restrictions or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or the service contract holder. The provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least 15 days prior to cancellation by the provider. The notice must state the effective date of the cancellation and the reason for the cancellation. If a service contract is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the service contract holder 100% of the unearned pro rata provider fee, less any claims paid. An administrative fee not to exceed 10% of the provider fee paid by the service contract holder may be charged by the provider.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

12. Obligations and duties. A service contract must set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and any requirement to follow instructions in the owner's manual.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

13. Consequential damages. A service contract must state whether the service contract provides for or excludes consequential damages or preexisting conditions, if applicable. A service contract may, but is not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7106. Record-keeping requirements

1. Provider records. A provider shall keep accurate accounts, books and records concerning transactions regulated under this chapter. The provider's accounts, books and records must include the following:

A. Copies of each type of service contract sold; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. The name and address of each service contract holder to the extent furnished by the service contract holder; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. A list of the locations where service contracts are marketed, sold or offered for sale by the provider; and [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. Written claims files, which must contain at least the dates and descriptions of claims related to the provider's service contracts. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Retention period. Except as provided in subsection 4, a provider shall retain all records required to be maintained by this section for at least 3 years after the specified period of coverage has expired.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Form of records. The records required under this chapter may be, but are not required to be, maintained on a computer disk or other record-keeping medium. If the records are maintained in other than hard copy, the records must be capable of transfer to legible hard copy at the request of the superintendent.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Discontinuation of business. A provider discontinuing business in this State shall maintain its records until it furnishes to the superintendent satisfactory proof that it has discharged all obligations to service contract holders in this State.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7107. Cancellation of reimbursement insurance policy

An insurer that issued a reimbursement insurance policy may not cancel or nonrenew the policy for any reason, including at the request of the policyholder, until the insurer has delivered a notice of such action to the superintendent at least 45 days before such action. The cancellation or nonrenewal of a reimbursement insurance policy does not reduce the insurer's obligations as to service contracts issued by providers prior to the date of cancellation or nonrenewal. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7108. Obligation of reimbursement insurance policy insurers

1. Receipt of premium; agency. A provider is the agent of the insurer that issued the reimbursement insurance policy for purposes of obligating the insurer to service contract holders in accordance with the service contract and this chapter. When a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the insurer of the existence and identities of the other providers. An insurer issuing a reimbursement insurance policy to a provider is deemed to have received the premiums for such insurance upon the payment of provider fees by consumers for service contracts issued by the insured provider.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Indemnification or subrogation. This chapter does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7109. Enforcement provisions

1. Investigation and examination by superintendent. The superintendent may conduct investigations and examinations of providers, administrators, insurers or other persons to enforce the provisions of this chapter and protect service contract holders. Upon request of the superintendent, a person subject to this chapter shall make available to the superintendent all accounts, books and records concerning service contracts sold by the provider that are necessary to enable the superintendent to determine compliance or noncompliance with this chapter.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Enforcement actions. The superintendent may assess civil penalties or take any other action permitted under section 12-A against any person who violates any provision of this chapter or the superintendent's rules and orders, and nothing in this section may be construed as limiting the superintendent's authority to take enforcement action under section 12-A in connection with violations of applicable provisions of this Title.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Refusal of registration, suspension or revocation. The superintendent may suspend, revoke or refuse to accept the registration of a provider under this chapter as set out in this section.

A. The superintendent shall deny an application for registration if the registrant has not demonstrated that it is qualified to do business in accordance with this chapter or for any reason that would be a ground for suspension or revocation of registration. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. If, upon investigation or examination, the superintendent finds that a person registered under this chapter in this State has exceeded its powers, has failed to comply with any of the provisions of this chapter, is not fulfilling its service contracts in good faith or is conducting its business fraudulently or in a manner injurious to its contract holders or the public, the superintendent shall notify the person of the deficiency or deficiencies and state in writing the reasons that warrant suspension, revocation or refusal of the person's registration. The notice must require that the deficiency or deficiencies be corrected.

After receipt of the notice, the person has 30 days to comply with the superintendent's request for correction, and if the person fails to comply the superintendent shall notify the person of the findings of noncompliance and require the person to show cause, on a date set by the superintendent, why its registration should not be suspended, revoked or refused. If on that date the person does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, the superintendent may suspend or refuse the registration of the person to do business in this State until satisfactory evidence is furnished to the superintendent that the suspension or refusal should be withdrawn or the superintendent may revoke the authority of the person to do business in this State. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Service of process. A provider and administrator registered under this chapter shall appoint in writing an agent located in the State in the same manner as insurers are required to appoint agents under section 421.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

5. Administrative procedures. Any person aggrieved by an order of the superintendent under this chapter may submit an application for a hearing as provided in section 229, upon which the procedures set forth in section 229 apply.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

6. Construction; existing contracts. This section may not be construed as preventing any provider from continuing in good faith all service contracts made in this State during the time the provider was legally authorized to transact business in this State.
[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7110. Unfair methods of competition; unfair and deceptive acts and practices

1. Prohibited acts and practices. A person may not engage in this State in any act or practice determined by the superintendent to be unfair or deceptive or in any of the following acts or practices in connection with the marketing, sale, offering for sale, issuance, making, proposing to make or administration or solicitation of a service contract.

A. A person may not make, issue, circulate, or cause to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any service contract issued or to be issued or the benefits or advantages promised thereby or make any misleading representation or any misrepresentation as to the financial condition of any provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. A person may not make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication or on a business card, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of service contracts or with respect to any person in the conduct of that person's service contract business in a manner that is untrue, deceptive or misleading. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. A person may not file with any supervisory or other public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, delivered to any person or placed before the public, any false statement of financial condition of a provider with intent to deceive. A person may not make any false entry in any book, report or statement of any provider with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such person is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. A person may not engage in any of the following service contract claims practices in conscious disregard of this section and any rules adopted under this section or with such frequency as to indicate a general business practice of the person to engage in such conduct:

(1) Knowingly misrepresenting to service contract holders relevant facts or service contract provisions related to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent written communications with respect to claims arising under its service contracts;

(3) Failing to develop and maintain documented claim files supporting decisions made regarding liability;

(4) Refusing to pay claims without conducting a reasonable investigation;

(5) Failing, in the case of claims denials, to provide an accurate explanation of the basis for those actions; or

(6) Failing to adopt and implement reasonable standards to ensure that the repairs of a repairer owned by or required to be used by the provider are performed in a competent and professional manner. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

E. A provider may not use in its name the words "insurance," "casualty," "surety," "mutual" or any other words descriptive of the insurance, casualty or surety business or use a name deceptively similar to the name or description of any insurance or surety corporation or to the name of any other provider. The word "guaranty" or a similar word may be used by a provider. This section does not apply to a provider that was using any of the prohibited language in its name prior to January 1, 2012; however, such provider must include in its service contracts a statement in substantially the following form: "This agreement is not subject to regulation as an insurance contract." [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

F. A person, including but not limited to a bank, savings and loan association, lending institution, manufacturer or seller of any product may not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

G. A provider of a service contract on a motor vehicle or its representative may not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive or misleading statement with respect to:

(1) The provider's affiliation with a motor vehicle manufacturer;

(2) The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(3) The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or

(4) A requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Cease and desist order. The superintendent may issue a cease and desist order pursuant to section 12-A, subsection 2 if, after a hearing, the superintendent finds that any person in the State has engaged or is engaging, or that a resident of the State has engaged or is engaging in another state, in an unfair or deceptive practice not described in this chapter or in rules adopted pursuant to this chapter. For any practice not described in this chapter or in rules adopted pursuant to this chapter, the civil penalties set forth in section 12-A, subsection 1 may not be imposed for practice engaged in prior to the issuance and service of a valid cease and desist order.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7111. Rule-making authority

The superintendent may adopt rules necessary to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

§7112. Transition

The exemptions in section 7101, subsection 3 are effective immediately upon the effective date of this chapter and extend to contracts that are already in force. All other service contracts entered into, renewed or offered for sale in this State on or after January 1, 2012 must comply with this chapter. The exemptions in section 7101, subsection 4 apply to all service contracts entered into, renewed or offered for sale on or after the provider's registration date. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

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