

**State of New Hampshire Insurance Department
NOTICE**

INFORMAL PUBLIC HEARING: March 26, 2007 at 8:30 a.m. at the NHID

Pursuant to concerns by numerous parties, the NHID was advised by JLCAR staff that the Department could conduct an informal public hearing to receipt additional public information and input before filing its final proposal.

This is your "official" notification of that informal public hearing. Please come prepared with all comments in written form. THERE WILL BE NO WRITTEN PUBLIC COMMENT PERIOD AFTER THE INFORMAL HEARING. **If you do not submit your comments in writing on or before March 26, 2007 they will not be considered.**

Readopt with amendment Ins 1000, effective 05-24-99 (Document #6999), to read as follows:

CHAPTER Ins 1000 CLAIM SETTLEMENT

Statutory Authority: RSA 400-A:15, I.

PART Ins 1001 CLAIM SETTLEMENT FOR ALL INSURERS, EXCEPT PROPERTY AND CASUALTY

Ins 1001.01 Communications Time Limit.

(a) Every insurer, upon notice of a claim, shall acknowledge the receipt of such notice in writing within 10 working days. This requirement of written acknowledgment shall not preclude a speedier method of acknowledgment where the circumstances warrant. Notification given to an agent of an insurer shall be notification to the insurer. If the notification is given to the agent of an insurer, such agent may acknowledge receipt of such notice. Unless otherwise provided by law or contract, notice to an agent of an insurer shall not be notice to the insurer if such agent notifies the claimant within 5 working days that the agent is not authorized to receive notices of claims.

(b) Every insurer shall reply within 10 working days to all claims communications from insureds, claimants, or authorized representatives of either.

(c) Every insurer, upon receipt of an inquiry from the insurance department shall within 10 working days furnish the department with a complete and accurate written response to the inquiry.

Ins 1001.02 Claims Settlement Time Limits.

(a) A complete decision regarding member payment or coverage or denial shall be made by the insurer within 30 days of receipt of any health insurance claim. In the event of extenuating circumstances, if a complete coverage decision is not made within 30 days, the insurer shall provide a written explanation to the member claimant justifying such delay. This provision shall not apply to provider submitted claims for reimbursement for services which have been provided to members.

(b) Unless otherwise provided by law, every insurer shall establish procedures to commence an investigation of any claim filed by an insured, claimant or authorized representative of either within 5 working days upon receipt of notice of loss. The procedures established shall anticipate the seasonal changes in the volume of claims. Every insurer shall mail to every insured, claimant, policyholder or their authorized representative a notification of all items, statements or forms as well as blank copies of all statements or forms which the insurer reasonably believes will be required in the settlement of the claim.

(c) Unless otherwise provided by law, within 10 working days after acknowledgment of the receipt of a notice of a claim from the insured, claimant or authorized representative of either, the insurer shall advise the insured, claimant or authorized representative of either in writing of the acceptance or rejection of the claim. If the insurer needs more time to determine whether the claim should be accepted or rejected, the insurer shall so notify the insured, claimant or authorized representative of either within 10 working days after acknowledgement of the loss and provide the reasons for the delay.

(d) The insurer shall within 30 days from the date of the letter setting forth a need for further time and every 30 days thereafter, send to the insured, claimant or authorized representative of either a letter setting forth the reasons for the delay in the claim settlement, unless the insured, claimant or authorized representative otherwise agrees.

(e) An insurer shall not justify a delay in processing or paying a claim on the grounds of suspected fraud unless the insurer has notified the department and has provided the department with specific reasons to support their suspicions.

(f) Whenever the insurer denies a claim on the basis of no coverage or the amount of loss is below the deductible, the insurer shall inform the insured in writing the reason for the denial and include the department's toll-free telephone number.

(g) Any letter setting forth the need for further time after the first 30-day period shall contain the following statement:

"Should you wish to take this matter up with the New Hampshire insurance department, it maintains a service division to investigate complaints at 56 Old Suncook Road, Concord, NH, 03301. The New Hampshire insurance department can be reached, toll-free, by dialing 1-800-852-3416."

(h) Unless otherwise provided by law, every insurer shall pay any amount finally agreed upon in settlement of all or part of a claim not later than 5 working days from the date of such agreement or from the date of the performance by the insured, claimant or authorized representative of either of all conditions set forth by such agreement.

(i) An insurer shall not request of a claimant or insured a waiver of insurer obligations under Ins 1000, except to request a waiver of the 30 day delay letter provision of this rule. This waiver shall be in writing and signed by the insured or claimant. The signed waiver shall be retained in the claim file.

Ins 1001.03 Additional Information Required in Accepting or Rejecting Claims.

(a) If a claim is denied in whole or in part the insured, claimant or authorized representative of either shall be given the reason for the denial. In any case where coverage is denied the insurer shall notify the insured, claimant or authorized representative of either of the applicable policy provision upon which denial is based.

(b) Statements setting forth benefits included within claim payments shall be in writing and in sufficient detail so that the insured, claimant or authorized representative of either can reasonably understand the benefits included within the claim payment.

Ins 1001.04 Undisputed Amounts. In any case where there is no dispute as to one or more elements of the claim, an offer of settlement for such undisputed elements shall be made without prejudice to either party notwithstanding the existence of disputes as to other elements of the claim.

Ins 1001.05 Notice of Insurance Department. Any notice rejecting a claim in whole or in part shall contain the following statement:

"We will, of course, be available to you to discuss the position we have taken. Should you, however, wish to take this matter up with the New Hampshire insurance department, it maintains a service division to investigate complaints at 56 Old Suncook, Concord, New Hampshire 03301. The New Hampshire insurance department can be reached, toll-free, by dialing 1-800-852-3416."

Ins 1001.06 Advance Payments. No insurer shall refuse to grant advance payments on a claim because the claimant, insured or authorized representative of either has retained an attorney for the purpose of facilitating recovery on his behalf.

Ins 1001.07 Physician's Examination. Unless otherwise provided by law, when a disability benefits claim has been accepted by an insurer under either an individual accident and health policy or group policy, the insurer shall not require additional reports from the insured's or beneficiary's physician to substantiate disability which has already been established by a prior report.

Ins 1001.08 Insurers Use of Unlicensed Adjusters Prohibited. No insurer shall employ or otherwise utilize the services of an adjuster unless that adjuster has complied with all the appropriate licensing provisions of RSA 402-B or has been granted a temporary license pursuant to RSA 402-B:1. However, any claim adjusted to the satisfaction of an insurer and the claimant by an unlicensed adjuster shall bind the insurer.

Ins 1001.09 Telephone Communications With Claims Department. Every insurer shall provide telephone facilities whereby the insured, claimant, or authorized representative of either can, without expense, contact the company claims office handling the particular claim. If the company has no claims office located in New Hampshire or in the region, then provision shall be made so that the company home office can be contacted by the insured, claimant or authorized representative of either without expense. Notice of the fact that free telephone service is available along with the appropriate phone number shall be indicated on company claims forms. The toll-free telephone number or call-collect acceptance of the company means the insurer, and the independent adjuster or appraiser.

Ins 1001.10 Arbitration and Responsibilities.

(a) Every insurer that is a signatory to the intercompany arbitration agreement shall avail itself of the special arbitration procedures contained in that agreement to resolve disputes between insurers that have a bearing on a claim presented by a claimant, insured, or authorized representative of either.

(b) If, under the provisions of RSA 417:4, XV(a)(12), the insured fails or refuses to submit a report of the loss to the insurer, this shall be considered to be a request by the insured not to pay the claim.

(c) The insurer shall adjust all claims in accordance with the provisions of the New Hampshire insurance laws and these rules.

Ins 1001.11 Penalty. Any insurer, agent or broker who shall knowingly violate any provision of this part shall, in addition to any other penalty otherwise provided by law, after notice and hearing:

(a) Have its certificate of authority or license suspended or revoked; or

(b) Be subject to an administrative fine not to exceed \$2,500 for each violation. Repeated violations of this part shall constitute separate fineable offenses.

PART Ins 1002 CLAIM SETTLEMENT FOR PROPERTY & CASUALTY INSURANCE

Statutory Authority: RSA 400-A:15, I.; RSA 417-A:9

Ins 1002.01 Purpose and Scope.

(a) The purpose of this part is to establish claim settlement standards for all property and casualty insurance, except workers' compensation **[,] and policies for large commercial policyholders as defined in RSA 412:3, XI.**, unless otherwise provided by law.

(b) This part is applicable to all licensed property and casualty insurers.

Ins 1002.02 Definitions.

(a) "Claim file " means the claim file record maintained to show clearly the inception, handling, and disposition of each claim. The claim file shall be complete and specific so that events and dates of these events can be reconstructed.

(b) "Claimant" means any person who sustains bodily injury or property damage and who asserts a right to recover for damages against an insured. The term "claimant" shall include the claimant's authorized representative.

(c) "Communications" includes all correspondence and contact(s), regardless of source or type, that is materially related to the handling of the claim.

(d) "Documentation" includes, but is not limited to, all communications, transactions, notes, work papers, claim forms, bills and statement of loss relative to the claim.

(e) "Fair market value" means the price at which an asset would change hands between a willing buyer and a willing seller when neither is under compulsion to act and both have knowledge of all facts relevant to the sale.

(f) "Independent repair shop or facility" means any entity that:

(1) Provides automobile repair services; and

(2) Has no arrangement with respect to repair prices or services with the insurer making a payment for settlement of the damaged motor vehicle; but

(3) May have arrangements with respect to repair prices or services with other insurers.

(g) "Insured" means for the purposes of this rule only, a person or persons who [is] are [covered by an insurance policy or] included in the definition of an insured as set forth in the insurance policy. The term "insured" shall include the insured's authorized representative.

(h) "Investigation" means the initial contact or documented attempted contact with the insured or claimant and all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy.

(i) "Local market area" means a maximum distance of **[50] 75** miles surrounding the area where the motor vehicle is principally garaged and not limited to the geographic boundaries of the state of New Hampshire.

(j) "Motor vehicle" means motor vehicle as defined in RSA 259:60 I.

(k) "Notice of a claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy, to an insurer or its appointed producer, by an insured or claimant, that apprises the insurer of the facts pertinent to a claim.

(l) "Uninsured motor vehicle" means a motor vehicle that is:

(1) Not insured under any insurance policy; or

(2) An insured motor vehicle for which the insurer is unable to make payment within the insured liability limits due to insolvency; or

(3) An insured motor vehicle that at the time of the accident had limits of liability insurance that were lower than the minimum limits required for a motor vehicle liability policy pursuant to applicable law.

Ins 1002.03 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this part shall be calendar days.

(b) Computation of any period of time referred to in this part shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

Ins 1002.**[03] 04** Communications Time Limit.

(a) Except as provided in (b) below, notice of a claim given by an insured or claimant to an insurer's appointed producer shall be considered notification to the insurer.

(b) Unless otherwise provided by law or the policy, notice by an insured or claimant to the appointed producer of the insurer shall constitute receipt of notice of a claim by the insurer for the purposes of this rule, unless the appointed producer notifies the insured or claimant within 5 working days of receipt of notice of a claim that the appointed producer is not authorized to receive notices of claims.

(c) Every insurer shall reply in no later than 10 working days to all claims communications from insureds or claimants. Receipt of documentation or information by an

insurer that was requested of the insured or claimant is a communication subject to response under this section.

(d) Every insurer, upon receipt of an inquiry from the insurance department shall within 10 working days furnish the department with a complete and accurate written response to the inquiry.

Ins 1002.[04] 05 Claims Settlement Time Limits.

(a) Unless otherwise provided by law, every insurer shall establish procedures to:

(1) Commence an investigation of any notice of a claim filed by an insured or claimant not later than 5 working days from receipt of the notice of a claim; and

(2) Anticipate the seasonal changes in the volume of claims in order to comply with this section; **[and]**

(b) Every insurer, upon receipt of notice of a claim, shall acknowledge the receipt of such notice to the insured or claimant, **[via a mutually acceptable method to the insured or claimant,]** within 10 working days, as follows:

(1) By written correspondence, including facsimile or e-mail **if acceptable to both parties;** or

(2) By telephone or face-to-face communication if the insurer provides the insured or claimant with the toll free telephone number of the insurer's claims office handling the claim. Thereafter, should the insured or claimant request a written acknowledgment, the insurer shall provide written acknowledgment within 5 working days from the request of the insured or claimant.

(3) The insurer shall document the acknowledgment in the claim file.

(c) Unless otherwise provided by law, within 30 days from the **[date of acknowledgment] receipt of the notice of claim**, the insurer shall:

(1) Make a complete decision regarding coverage, acceptance, denial or payment of a claim and communicate this to the insured or claimant.

a. If a decision cannot be made because the insurer needs more time to make a decision, the insurer shall provide the insured or claimant, in writing, a delay letter setting forth the specific reasons that the insurer needs more time to determine whether the claim will be covered, accepted, paid or denied.

b. The insurer shall, within 30 days from the date of the delay letter in (c)(1)a. above, and every 30 days thereafter, send a letter setting forth the specific reasons for the continued delay in the claim settlement process.

(2) If, however, the reason the claim remains open is that the insurer is waiting for documentation or information requested of the insured or claimant, then the insurer shall send a letter to the insured or claimant requesting the particular documentation or information necessary to accept, pay or deny the claim, but shall not be required to send the delay letter(s) to the insured or claimant as required in (c)(1)a. or (c)(1)b. above.

(3) If either party has filed suit and the settlement of the claim is being litigated in a court of law, the delay letter in (c)(1)a. or (c)(1)b. above is not required.

(d) Unless otherwise provided by law, every insurer shall pay all or part of the claim:

(1) Within 5 working days from date of agreement with an insured or claimant; or

(2) Within 5 working days after receipt from the insured or claimant, of documentation needed to process the claim for payment as requested by the insurer.

(3) In any claim in which the insurer cannot make a decision within 5 working days from the date of agreement or of receipt of the requested documentation, the insurer shall send a delay letter to the insured or claimant explaining the reasons for the delay in the claim settlement process.

(4) The insurer shall, within 30 days from the date of the delay letter in (d)(3) above, and every 30 days thereafter, send a letter setting forth the specific reasons for the continued delay in the claim settlement process.

(e) When the reason for delay is suspected fraud a delay letter issued pursuant to (c) or (d) above shall be deemed sufficient if it indicates that the reason for the delay is that further investigation is needed to determine the validity of the claim.

(f) Whenever the insurer denies a claim, in whole or in part, including on the basis of no coverage or that the amount of the loss is below the deductible, or issues a reservation of rights letter, or when sending a second or subsequent delay letter(s) as provided in (c)(1)b. and (d)(4) above, the insurer shall include the following statement in at least 12-point font bold type:

"We will, of course, be available to you to discuss the position we have taken. You may reach us at (insurance company toll free telephone number). If you are a New Hampshire resident; if your policy insures property located in New Hampshire; or if you have been injured/your property has been damaged by a New Hampshire resident and you wish to take this matter up with the New Hampshire Insurance Department, it maintains a consumer services division to assist consumers with complaints at 21 South Fruit Street, Suite 14, Concord, NH, 03301. The New Hampshire Insurance Department can be reached, toll free, by dialing 1-800-852-3416.

(h) An insurer shall not request of an insured or claimant a waiver of the insurer's obligations under this part, except to request a waiver of the 30 day delay letter provision of (c)(1)b. and (d)(4) above. The waiver shall be in writing and signed by the insured or claimant. The signed waiver shall be retained in the claim file.

Ins 1002.[05] 06 Additional Information Required in Accepting or Denying Claims.

(a) In addition to the provisions of Ins 1002.[04] 05 if a claim is denied in whole or in part the insured or claimant shall be given a written notice of the reason for the denial and any applicable policy provision upon which denial is based, provided however that if the reason for the denial is fraud the notification shall be deemed sufficient if it provides a general statement explaining that the damage did not occur in the manner reported by the insured and/or claimant.

(b) Every insurer shall provide with each claim payment, either on the check, draft or in a letter, the reason for the payment and the date of loss, for example, collision payment for your accident on (date), homeowner contents payment for your fire loss on (date) or property damage loss to your motor vehicle as the result of an accident on (date).

Ins 1002.[06] 07 Undisputed Amounts. In any case where there is no dispute as to one or more elements of the claim, an offer of settlement for such undisputed elements shall be made without prejudice to either party notwithstanding the existence of disputes as to other elements of the claim.

Ins 1002.[07] 08 Advance Payments. No insurer shall refuse to grant advance payments on a claim because the insured or claimant has retained an attorney for the purpose of facilitating recovery on his behalf.

Ins 1002.[08] 09 Value of Total Losses – (Other than [Automobile] Motor Vehicle). When the insured's or claimant's property has been determined to be a total loss, and there is no dispute concerning liability or coverage, and the provisions of RSA 407:11 do not apply, insurers attempting to establish the value of the property shall:

(a) Value the property in the community where the total loss property is located;

(b) **Be [P] prohibited from using [the] arbitrary methods [use of industry guidelines] to establish the value of the property that do not take into consideration the specific characteristics of the property;** however, this shall not preclude the insurer from making an offer of settlement on property based upon the fair market value of like, kind and quality property wherever situated.

(c) Consider as an element of damages additional costs incurred in purchasing and shipping the property.

Ins 1002.[09] 10 Insurers Use of Unlicensed Adjusters Prohibited. No insurer shall employ or otherwise utilize the services of an adjuster unless that adjuster has complied with all the appropriate licensing provisions of RSA 402-B or has been granted a temporary license pursuant to RSA 402-B:11, however, any claim adjusted to the satisfaction of an insurer and the insured or claimant by an unlicensed adjuster shall bind the insurer.

Ins 1002.[10] 11 Communications With Claims Department. To facilitate communication, every insurer shall provide a toll-free telephone number on all forms or correspondence [,] and if **it choses to do so, [available]** a facsimile number and/or e-mail address whereby the insured or claimant can contact the company claims office, independent adjuster or appraiser handling the particular claim.

Ins 1002.[11] 12 Arbitration and Other Insurer Responsibilities.

(a) Every insurer that is a signatory to the inter-company arbitration agreement shall avail itself of the special arbitration procedures contained in that agreement to resolve disputes between insurers that have a bearing on a claim presented by an insured or claimant.

[(b) An insurer shall not refuse to make an evaluation of the insured's liability in any claim because the insured:

(1) Fails to report a loss, or the details of a loss, to the insurer; or

(2) Does not make him/herself available for interview by the insurer regarding a loss for any reason; or

(3) Requests that the insurer not make a claim payment for a report loss.]

(b) In the event that an insured breaches its contractual duty to the insurer in relation to a claim, and prior to concluding that as a result of the breach there is no coverage for the loss, the insurer shall first investigate the insured's liability and determine that the insured's breach is substantial and prejudicial to the insurer. If the insurer concludes that the breach is substantial and prejudicial the basis for this finding shall be documented in the claim file.

(c) An insurer shall not refuse to make an evaluation of the insured's liability in any claim because the insured requests that the insurer not make a claim payment for a reported loss.

Ins 1002.[12] 13 Loss of Use. In all motor vehicle property damage liability claims when liability has become clear then:

(a) The claimant shall be immediately informed that coverage exists for the rental of a motor vehicle that is of like kind and quality for the time period necessary for repair **provided however that the insurer shall not be required to provide coverage for that portion of the motor vehicle rental that the insurer establishes is required due to an unreasonable delay in the repair caused by the direct action of inaction of the claimant.**

(b) The costs that would have been incurred in the operation of the claimant's own motor vehicle, shall be deducted from the total costs of renting and operating the rented motor vehicle, provided, however [,] that if the **[insured] claimant** does not have **comprehensive and collision** insurance coverage as required by the rental company, the insurer shall pay the **reasonable** cost of **[the] this** required insurance.

(c) The insurer shall specifically document the claim file with evidence to show that a rental was offered to the claimant.

Ins 1002.[13] 14 Estimates. The insured or claimant shall only be responsible for the cost of one damage estimate for motor vehicle property damage liability and collision and comprehensive claims. The insurer shall be responsible for any charge incurred by the insured or claimant for a second or any subsequent damage estimates required by the insurer.

Ins 1002.[14] 15 Determining Amount of Motor Vehicle Total Loss Claims.

(a) In adjusting motor vehicle total loss property damage liability and collision and comprehensive damage claims, insurers shall determine total loss settlement based upon the motor vehicle's fair market value using **[the]** one of the following methods:

(1) The average retail value **[indicated by the applicable National Automobile Dealers Association valuation guide (NADA)] derived from the application of an objective and documented process or methodology that the department accepts as a statistically valid method of establishing fair market value in the local market area;**

a. In order for a methodology to be acceptable, the insurer, or vendor on behalf of the insurer, shall submit to the department a description of their methodology or model accompanied by supporting details. Supporting details shall include a discussion of how the valuation process or model is designed and an analytical and/or statistical validation of the assumptions, parameters, data elements and results of the process or model.

b. The department will publish a list annually, at the beginning of the calendar year, of accepted valuation guides and methodologies;

c. If there are any changes made to the process or methodology provided to the department pursuant to (1)(a) above, the insurer or vendor shall provided the department with details as to the changes being made so that the department can determine whether the process or method will remain on the accepted list.

(2) **[Actual] Documented** sales **cost** of no fewer than 2 motor vehicles of the same make, model and year as the total loss motor vehicle that have occurred within the previous 90 days within the local market area;

(3) If **[actual] documented** sales **cost [data]** of a motor vehicle of the same make, model and year as the total loss motor vehicle, as described in (a)(2) is unavailable then:

a **[Actual] Documented** sales **cost [data]** of no fewer than 2 motor vehicles of like kind and quality that have occurred within the previous 90 days within the local market area; or

b An average sales price derived from written quotations for a motor vehicle that is the same make, model and year as the total loss motor vehicle, obtained by the insurer from at least **[4] 3** different licensed dealerships located within the local market area, that engage in the buying and selling of motor vehicles of like kind and quality in the ordinary course of their business;

[(4) Values derived from the application of an objective and documented methodology that the department finds to be a statistically valid method of establishing fair market value in the local market area.

a. **A copy of the methodology, accompanied by supporting detail as required by the Department, shall be provided to the Department by the insurer;**

b. **The insurer shall identify the methodology with a unique name or number sufficient to distinguish the methodology from other methodologies or forms used by the company; and**

c. **If there are any changes made to the methodology provided to the department pursuant to (a)(4)(a) above, the insurer shall provide the department with a copy of the revised methodology, which shall be identified with a new name or number.**

d. **The methodology must meet the following criteria:**

i. **The methodology shall give primary weight to known actual sales data for motor vehicles in the local market area. Secondary weight may be given to alternative data, including data obtained from outside the local market area, but only if it can be demonstrated that the additional data is statistically significant;**

ii. **The methodology shall not permit selective exclusion of relevant, actual sales data or other data that occurs within the local market area; and**

iii. **The methodology shall be comprehensive, producing values for at least 95 percent of all makes and models for the last 8 model years taking into account the values of all major options for these motor vehicles;]**

(b) In conjunction with a total loss settlement offer, the insurer shall provide to the insured or claimant a report which explains the basis for the valuation underlying the offer.

(c) The following deviations from the valuation methods in (a)(1) through (a)(3) shall be permitted:

(1) For construction equipment as defined in RSA 259:42 and commercial motor vehicles as defined in RSA 259:12-e, data may be collected from outside the local market area but only to the extent necessary to obtain sufficient data as required in (a)(1) through (a)(3) above;

(2) If the insurer can demonstrate that the motor vehicle is a make or model vehicle not customarily found in the local market area, data may be collected from outside the local market area but only to the extent necessary to obtain sufficient data as required in (a)(1) through (a)(3) above.

[(b)] (d) If the insured or claimant disagrees with the value derived from any methodology allowed under (a) **[(4)] (1)** above, and **[the insured]** can demonstrate by presenting to the insurer within 15 days of receipt of the settlement payment, evidence from 2 reliable sources that the motor vehicle would have a higher cash value in the local market area than as represented by the total loss settlement, then the insurer shall recalculate a new total loss settlement considering this reliable evidence in determining a revised total loss settlement. Reliable sources shall be limited to the following:

(1) [The average retail values indicated by the applicable National Automobile Dealers Association valuation guides (NADA)] Any objective documented process or methodology that the department accepts pursuant to section (a)(1);

(2) Actual sales of one or more motor vehicles of the same make, model and year as the total loss motor vehicle, that have occurred within the previous 90 days within the local market area;

(3) Actual sales of one or more motor vehicles of like kind and quality that have occurred within the previous 90 days within the local market area; or

(4) At least 2 written quotations for a motor vehicle of the same make, model and year, obtained from licensed dealerships located within the local market area, that engage in the buying and selling of motor vehicles of like kind and quality in the ordinary course of their business.

[(c)] (e) Fair market value as determined in (a) (1) through **[(4)] (3)** and (b) (1) through (4) above shall be adjusted to reflect motor vehicle condition, high and low mileage and accessory options if not otherwise provided for in the methodology or data source;

[(d)] (f) Betterment or depreciation adjustments to total loss value shall be calculated as follows:

(1) Betterment deductions are allowable only if the deductions:

a. Reflect a measurable decrease in fair market value attributable to prior damage to the motor vehicle, considering its age, for either or both:

1. Normal wear and tear or rust, limited to no more than a deduction of \$1,000;

2. Missing parts, limited to **[no more of a deduction than the cost of] the reduction in the fair market value of the vehicle as a result of** the missing **[part or]** parts;

3. Damage to the motor vehicle limited to the reduction in the fair market value of the vehicle as a result of the damage;

b. Are measurable, itemized, specified as to dollar amount and documented in the claim file.

(2) No insurer shall require the insured or claimant to supply parts for replacement.

(3) No insurer shall decrease market value for motor vehicle reconditioning or dealer preparation costs.

(4) No insurer shall reduce or attempt to reduce for depreciation any settlement or any offer of settlement for motor vehicle accessory options not adversely affected by age, use, or obsolescence.

(g) The provisions of (d) above shall not apply if the insurer included in its documentation at the time of settlement, a written notification of the availability and location in the local market area of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options, in as good or better condition as the total loss vehicle, which could have been purchased for an amount equal or less than the fair market value of the total loss vehicle as determined by the insurer. The documentation shall include the vehicle identification number.

[(e)] (h) If the insured or claimant chooses to keep the motor vehicle, the settlement payment shall be the difference between the total loss value as determined in (a) above and the salvage value for a motor vehicle of like kind and quality. Salvage value shall be calculated based on the salvage value available within a 150 mile radius of the insured's or claimant's residence or upon the salvage value available to the insurer from any salvage facility that is utilized by the insurer in the normal course of the insurer's business. Any costs that the insurer would have incurred for storage or transportation to any salvage facility shall be deducted from the salvage value.

Ins 1002.[15] 16 Willing and Able Contractors and Repairers: (Other Than [Auto]Motor Vehicle).

(a) Every settlement made or offered upon the basis of an appraisal conducted on behalf of the insurer relative to property and liability insurance shall:

(1) Include a written statement that **if the claimant or insured cannot find a contractor or repairer to do the repair or replace the damage property for the price quoted, then the insured or claimant may request that** the insurer **[shall]** supply **[to]** the insured or claimant **with** the name and address of **[a] any known** recognized, competent and conveniently located contractor or repairer who is **ready**, willing and able to repair or replace the damaged property with other of like, kind and quality for the price quoted in the appraisal or as otherwise provided for in the insurance policy.

(2) **If the insurer provides the insured or claimant with the name of a contractor or repairer [Include in the written statement required by] as set forth in (a)(1) above, the insurer shall also provide a written** disclosure that any contractor or repairer may be used at the discretion of the insured or claimant.

(3) If the insurer is unable to provide the name of a contractor or repairer upon request, then any fair and reasonable cost incurred to repair or replace the damage as set forth in the appraisal, in excess of the insurer's appraisal price, shall be at the expense of the insurer. If the insurer has provided the insured or claimant with the name of a contractor or repairer who is ready, willing and able to repair or replace the damaged property with other of like, kind and quality for the price quoted in the appraisal and the insured or claimant uses another contractor or repairer, than any cost in excess of the insurer's appraisal prices shall not be at the expense of the insurer.

(b) The insured or claimant shall be entitled to the usual and customary guarantees as to materials and workmanship relative to the property that is being repaired or replaced.

[(c) If the insurer is unable to provide the name of a contractor or repairer upon request, then any fair and reasonable cost incurred to repair or replace the damage as set forth in the appraisal, in excess of the insurer's appraisal price shall be at the expense of the insurer.]

[(d) (c) In processing any claim for damage to a home, dwelling or other property, the insurer shall not require as a condition to the payment of such claims that repairs be made by a particular contractor or repairer.

[(e) (d) Any settlement made based upon an agreement negotiated by an adjuster on behalf of the insurer with a contractor or repairer shall include a provision for coverage of hidden damage that is determined to be connected with the claim in question.

[(f) (e) For all claims, insurers and their adjusters, whether hired under contract or employed, shall not make any coercive, threatening, or intimidating statements at any time, orally or in writing, to an insured or claimant for the purpose of influencing the insured's or claimant's choice of a particular contractor or repairer.

Ins 1002.[16] 17 Willing and Able Repair Facilities: Motor Vehicle Insurance.

(a) Every settlement made or offered upon the basis of an appraisal conducted on behalf of the insurer relative to motor vehicle insurance shall:

(1) Represent the fair and reasonable price in the area charged by repair shops or facilities providing similar services with the usual and customary guarantees as to materials and workmanship.

(2) Include a written statement that the insurer shall supply to the insured or claimant the name and address of a recognized, competent and conveniently located repair shop or facility who is willing and able to repair or replace the damaged motor vehicle with other of like, kind and quality within a reasonable time for the price quoted in the appraisal.

(3) Include in the written statement a disclosure that any repair shop or facility may be used at the discretion of the insured or claimant.

(b) The insured or claimant shall be entitled to the usual and customary guarantees as to materials and workmanship relative to the motor vehicle that is being repaired or replaced.

(c) If the insurer is unable to provide the name of a repair shop or facility upon request, any additional repair or replacement costs incurred in excess of the insurer's appraisal price shall be at the expense of the insurer.

(d) In processing any claim for any damage to a motor vehicle, the insurer shall not require as a condition to the payment of such claims, that repairs be made in a particular repair shop or facility.

[(e) Insurers shall not require the use of after market parts on motor vehicles that are less than 2 years old and that have less than 30,000 miles recorded on the odometer, unless the insured elects otherwise.]

[(f)] (e) Insurers specifying the use of after market parts shall:

(1) Pursuant to RSA 407-D:4 not require the use of after market parts unless the parts are at least equal in like kind and quality to the original part in terms of fit, quality and performance. Accordingly, no insurer shall require the use of such part unless the insurer states or certifies in writing that the part is of like kind and quality **[.] ; and**

(2) Consider the cost of any modifications, re-repairs or delays that might become necessary when making the repair **[: and] .**

[(3) Capture the data for these costs in a manner so that costs can be measured to determine whether the use of the after market parts results in a savings compared to the estimated cost to use original manufacturer parts.]

[(g)] (f) Any settlement made based upon an agreement negotiated by an appraiser or an adjuster on behalf of the insurer with a repair shop or facility shall include a provision providing for coverage of hidden damage that is determined to be connected with the claim in question.

[(h)] (g) If an independent repair shop or facility and an insurer are unable to agree on a price, and the insurer has complied with (a) through **[(g)] (f)** above, then:

(1) The price shall be the price available from any other recognized, competent and conveniently located independent repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time; and

(2) The insurer shall furnish to the insured or claimant a written statement containing the following disclosure:

"Under New Hampshire law, you are always entitled to use the repair shop or facility of your choice. Unfortunately, we have been unable to agree on price with the facility you have chosen. In this situation, New Hampshire law provides that our payment for repair cost may be limited to the price available from a recognized, competent and conveniently located independent repair shop or facility that is willing and able to repair the damaged motor vehicle within a reasonable time. You may be responsible for the difference between our payment and the price charged to you by the facility you have chosen. Upon your request, we will furnish a written disclosure of the factual basis for our determination of the fair and reasonable price. If you are our insured and disagree with our determination of the amount of loss, you are entitled to exercise the appraisal provision of your policy."

[(i)] (h) For all claims, insurers and their appraisers and adjusters, whether hired under contract or employed, shall not make any coercive, threatening, or intimidating statements at any

time, orally or in writing, to insureds or claimants for the purpose of influencing the insureds' or claimants' choice of repair shop or facility.

Ins 1002.[17] 18 Storage and Towing.

(a) For the purposes of storage [, the insurer shall]:

(1) [Provide notice to the insured or claimant prior to termination of payment for motor vehicle storage charges; and] Once coverage has been accepted for the damage to an insured's motor vehicle under physical damage coverage, and unless otherwise provided for in the insured's policy, the insurer shall be responsible for all accumulated storage charges to the date of acceptance and thereafter provided however, that if the insured refuses a request by an insurer to move the motor vehicle to a storage facility of the insurer's choosing to reduce or terminate storage charges, then the insurer will only be responsible for storage charges up to the date the insured refuses to allow the motor vehicle to be moved.

(2) [Provide time for the insured or claimant to remove the motor vehicle from storage prior to the termination of payment.] Once liability has been accepted for damage to a claimant's motor vehicle under property damage liability coverage, the insurer shall be responsible for all accumulated storage charges to the date of acceptance of liability and thereafter, provided however, that if the claimant refuses a request by an insurer to move the motor vehicle to a storage facility of the insurer's choosing to reduce or terminate storage charges, then the insurer will only be responsible for storage charges up to the date the claimant refuses to allow the motor vehicle to be moved.

(3) [Once liability has been accepted for the loss of an insured's or claimant's motor vehicle, either under physical damage or property damage liability coverage, the insurer shall be responsible for all accumulated towing and storage charges. If an insured or claimant refuses a request by an insurer to move the motor vehicle to a storage facility of the insurer's choosing to reduce or terminate storage charges, the insurer will only be responsible for storage charges up to the date the insured or claimant refuses to allow the motor vehicle to be moved.] If the insurer can document that the insured or claimant has intentionally acted to incur storage charges that are excessive in relation to those in the local market area, then the insurer shall be responsible only for charges equal to those charged in the local market area. This documentation shall be retained by the insurer in the claim file.

(4) Once coverage or liability has been accepted and when terminating storage charges other than as provided for in (a)(1) and (2) the insurer shall:

a. Provide written notice to the insured or claimant prior to termination of payment for motor vehicle storages charges and give the specific reason for terminating the storage charges. The date the insurer will terminate payment shall not be less than 5 days from the date the notice is mailed; and

b. Provide in the written notice in (4) a. time for the insured or claimant to remove the motor vehicle from storage prior to termination of payment for motor vehicle storage charges. The time period provided for the insured or claimant to move the motor vehicle shall not be less than 5 days from the date of mailing of the notice in (4) a.

(b) For the purposes of towing, insurers [may]:

[(1) Provide an insured or claimant with the name of a towing company prior to the insured's or claimant's use of another towing company. The insurer shall pay any and all towing charges associated with the claim regardless of the towing company used.]

[(2) (1) Shall [D] disclose that any towing facility may be used at the discretion of the insured [or claimant] unless otherwise provided for the insured's policy.

(2) Shall pay the insured's towing charges associated with the claim regardless of the towing company used unless otherwise provided for in the insured's policy or this rule.

(3) Shall disclose that any towing facility may be used at the discretion of the claimant.

(4) Shall pay all of the claimant's towing charges associated with the claim regardless of the towing company used unless otherwise provided in this rule.

(5) If the insurer can document that the insured or claimant has intentionally acted to incur towing charges that are excessive in relation to those in the local market area, then the insurer shall be responsible to the insured or claimant only for those charges equal to the charge in the local market area. This documentation shall be retained by the insurer in the claim file.

Ins 1002.[18] 19 Miscellaneous Provisions.

(a) Pursuant to RSA 417-A:11 an insurer shall not apply an insured's collision deductible when the damage is:

- (1) Caused by an uninsured motor vehicle, and
 - (2) The operator of the uninsured motor vehicle has been positively identified;
- and
- (3) The operator of the uninsured motor vehicle is solely at fault.

(b) Every insurer shall exercise due diligence in the pursuit of subrogation on behalf of the insured. Upon receipt of the final subrogation recovery, the insurer shall return the insured's portion as soon as practical but not later than 30 days from receipt of the final recovery.

Ins 1002.[19] 20 Insurer Documentation. Every insurer shall maintain in its files, in either written or electronic form, physical evidence of compliance with all of the provisions of this part and RSA 400-B.

Ins 1002.[20] 21 Penalty. Any insurer or representative thereof who shall knowingly violate any provision of this part shall be subject to the provisions of RSA 400-A:15, III.