

**CHAPTER 4 - CONSUMER SERVICES DIVISION**

**SECTION .0100 - GENERAL PROVISIONS**

<b>11 NCAC 04 .0101</b>	<b>PURPOSE OF DIVISION</b>
<b>11 NCAC 04 .0102</b>	<b>DEPUTY COMMISSIONER</b>
<b>11 NCAC 04 .0103</b>	<b>STRUCTURE OF DIVISION</b>
<b>11 NCAC 04 .0104</b>	<b>DIVISION PERSONNEL AND PROCEDURES</b>
<b>11 NCAC 04 .0105</b>	<b>COMPLAINTS AND INQUIRIES AND INFORMATION</b>

*History Note:* Filed as an Emergency Repeal Eff. April 25, 1979, for a Period of 120 Days to be Reinstated on August 23, 1979;  
Authority G.S. 57-1; 57-4; 57-10; 57-13; 57A-18; 58-9; 58-9.2; 58-10; 58-11; 58-15; 58-18; 58-25; 58-25.1; 58-26; 58-27; 58-262; 58-262.4; 58-296; 58-357; 58-7.3;  
Eff. February 1, 1976;  
Readopted Eff. March 16, 1979;  
Repealed Eff. August 23, 1979.

**11 NCAC 04 .0106      RULE FOR LOSS AND CLAIM PRACTICES AND PROCEDURES**

*History Note:* Authority G.S. 57-4; 57-10; 58-9; 58-9.2; 58-15; 58-25; 58-25.1; 58-26; 58-27; 58-40; 58-40.1; 58-128;  
Eff. February 1, 1976;  
Repealed Eff. March 8, 1978.

**11 NCAC 04 .0107      SEX DISCRIMINATION IN INSURANCE**

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Authority G.S. 58-9; 58-44.3; 58-54.1; 58-54.13;  
Eff. May 5, 1977;  
Readopted Eff. March 16, 1979;  
Repealed Eff. August 23, 1979.

<b>11 NCAC 04 .0108</b>	<b>MISREPRESENTATION OF POLICY PROVISIONS</b>
<b>11 NCAC 04 .0109</b>	<b>ETHICAL STANDARDS</b>
<b>11 NCAC 04 .0110</b>	<b>STATEMENT OF ACTION</b>
<b>11 NCAC 04 .0111</b>	<b>LOSS OR CLAIM NOTICE</b>

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Authority G.S. 57-4; 58-8; 58-9; 58-39; 58-40; 58-40.1; 58-40.6; 58-41; 58-48; 58-52; 58-54.4; 58-199; 58-249;  
Eff. March 16, 1979;  
Repealed Eff. August 23, 1979.

<b>11 NCAC 04 .0112</b>	<b>PURPOSE OF DIVISION</b>
<b>11 NCAC 04 .0113</b>	<b>DEPUTY COMMISSIONER</b>
<b>11 NCAC 04 .0114</b>	<b>STRUCTURE OF DIVISION</b>

*History Note:* Authority G.S. 58-7.3; 58-9;  
Eff. December 15, 1979;  
Amended Eff. July 1, 1986;  
Repealed Eff. July 1, 1988.

#### **11 NCAC 04 .0115 DIVISION PROCEDURES**

(a) Complaints arising from insurance products, companies, insurance agents, adjusters, brokers, producers, and motor vehicle damage appraisers regulated under G.S. Chapter 58 will be processed in the following manner:

- (1) The analyst will request an explanation from company, agent, appraiser, or adjuster.
- (2) If the analyst finds that the issue has been handled in a manner that does not comply with statute, rule or policy contract, then the analyst will require that corrective action taken be to resolve the complaint.
- (3) If the issue is not resolved, the Deputy Commissioner may arrange a conference with the company representatives to resolve the problem.

(b) If a conference does not resolve a disputed issue, the Deputy Commissioner may recommend to the Commissioner that legal action as outlined in G.S. Chapter 58 be taken to ensure compliance with the statutes and rules, administered by the Department. Alternatively, this Division may refer issues to other Divisions for further investigation and regulatory action.

(c) The Division will not investigate a complaint that is also the subject matter of a pending lawsuit filed by an attorney representing the complainant. If a lawsuit has not been filed but the complainant has retained an attorney, as indicated on the complaint form or other correspondence submitted relating to the complaint, the Division will investigate the complaint provided it has first obtained the attorney's written consent solicited through the complainant.

*History Note:* Authority G.S. 58-2-40; 58-2-50; 58-2-155; 58-2-185; 58-2-190; 58-2-195; 58-2-200; 58-3-100; 58-33-45; 58-65-1; 58-65-40; 58-67-20; 58-67-150;  
Eff. December 15, 1979;  
Amended Eff. April 1, 1989;  
Readopted Eff. December 1, 2021.

#### **11 NCAC 04 .0116 INQUIRIES AND INFORMATION**

The toll free telephone number for the Consumer Services Division is 1-855-408-1212. The mailing address of the Consumer Services Division is: North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201; (Attention: Consumer Services Division). The street address of the Consumer Services Division is North Carolina Department of Insurance Consumer Services Division, 3200 Beechleaf Court, Raleigh, North Carolina.

*History Note:* Authority G.S. 58-2-25; 58-2-40;  
Eff. December 15, 1979;  
Amended Eff. January 1, 2018; July 1, 2012; April 1, 1989; July 1, 1986;  
Readopted Eff. October 1, 2021.  
Amended Eff. February 1, 2024.

#### **11 NCAC 04 .0117 STATEMENT OF ACTION**

(a) When an insurer denies a claim that included information for the insurer to identify the coverage involved, the denial shall be in writing and cite the policy provision or other legal basis used to deny the claim.

(b) When an insurer offers to settle a claim that included information for the insurer to identify the coverage involved, the offer, when requested by the consumer, shall be in writing and cite the specific policy provision or legal basis used in support of the claim statement.

*History Note:* Authority G.S. 58-2-40; 58-3-100; 58-63-15(11); 58-67-150;  
Eff. December 15, 1979;  
Amended Eff. April 1, 1989; December 15, 1979;  
Readopted Eff. November 1, 2021.

#### **11 NCAC 04 .0118 INSURANCE CARRIERS AS LENDERS**

(a) Any lender who offers an insurance product to a consumer either directly or indirectly through a subsidiary or affiliate in conjunction with an extension of credit shall inform the consumer of the protections afforded by G.S. 58-3-135.

(b) Nothing in this Rule shall limit the right of the lender to require insurance in connection with a loan.

(c) This Rule shall not apply where the extension of credit arises out of a life insurance contract itself or where the extension of credit is subject to the provisions of Regulation Z, 12 CFR 226, or other federal statutes or regulations requiring similar disclosures.

*History Note:* Authority G.S. 58-2-40; 58-3-135; 58-3-150;  
Eff. July 1, 1986;  
Amended Eff. April 8, 2002; April 1, 1989;  
Readopted Eff. November 1, 2021.

#### **11 NCAC 04 .0119 INSURER DEFINED**

*History Note:* Authority G.S. 58-2-40; 58-65-1; 58-67-150;  
Eff. April 1, 1989;  
Amended Eff. April 8, 2002;  
Repealed Eff. November 1, 2021.

#### **11 NCAC 04 .0120 POLICY OR SERVICE FEES**

An insurer, agent, broker, or limited representative who deals with an applicant and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he or she complies with the following:

- (1) A sign that shall be displayed and visible using large and bolded print so as to be seen and read by the public from any part of the office lobby that informs the applicant that a policy or service fee of [amount] will be charged.
- (2) The applicant's written consent shall be obtained on a separate form each time a policy or service fee is charged. The form, created by the insurer, agent, broker or limited representative, shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged.
- (3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium.

*History Note:* Authority G.S. 58-2-40; 58-2-195; 58-33-85(b);  
Eff. February 1, 1993;  
Amended Eff. February 1, 1996;  
Readopted Eff. December 1, 2021.

#### **11 NCAC 04 .0121 PREMIUM PAYMENT RECEIPTS**

All premium payment receipts and copies issued by an agent, broker, or limited representative, shall be dated and contain the printed or stamped name and address of the agency or agent, broker, or limited representative, and the name of the insurer. Receipts shall be signed by the person accepting the payment.

*History Note:* Authority G.S. 58-2-40; 58-2-185; 58-2-195;  
Eff. February 1, 1993;  
Amended Eff. February 1, 1996;  
Readopted Eff. October 1, 2021.

#### **11 NCAC 04 .0122 POWER-OF-ATTORNEY**

Except for authorizations given in accordance with G.S. 58-45-35(a) or G.S. 58-46-15, no agent, broker, or limited representative shall solicit a power-of-attorney from a consumer that authorizes the agent, broker, or limited representative to sign insurance-related forms.

*History Note:* Authority G.S. 58-2-40; 58-2-195;  
Eff. February 1, 1993;  
Readopted Eff. October 1, 2021.

#### **11 NCAC 04 .0123 USE OF SPECIFIC COMPANY NAME IN RESPONSES**

When an insurer makes a written response to an inquiry by the Division or complaint made by a consumer, the insurer shall identify on its response:

- (1) its mailing address;
- (2) official corporate name of the company against which the complaint is made;
- (3) the NAIC company code; and
- (4) specific corporate name if the insurer is part of a group of companies.

*History Note:* Authority G.S. 58-2-40; 58-2-190; 58-3-50; 58-63-65;  
Eff. April 1, 1995;  
Amended Eff. February 1, 1996;  
Readopted Eff. November 1, 2021.

**11 NCAC 04 .0124 INSURANCE COMPANY CONTACT PERSONS**

(a) Every insurer shall provide the Division with company contact information using a form provided by the Division, which shall include the name, title, address, and telephone number, including a toll-free number, of a designated person to whom any person may send a complaint or inquiry, and the company president's name, address, and telephone number for the Division's use.

(b) The form shall be completed, signed by a corporate officer, and returned to the Division by every insurer.

(c) A new form must be filed with the Division within 15 business days after any change in the information on the form.

*History Note:* Authority G.S. 58-2-40; 58-2-190; 58-63-65;  
Eff. April 1, 1995;  
Amended Eff. February 1, 1996;  
Readopted Eff. November 1, 2021.

**SECTION .0200 - MARKET CONDUCT EXAMINATION SECTION**

**11 NCAC 04 .0201 FUNCTION OF SECTION**

**11 NCAC 04 .0202 REPORT AND COLLECTION PROCEDURES**

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Eff. February 1, 1976;  
Readopted Eff. March 16, 1979;  
Repealed Eff. August 23, 1979;  
Transferred Eff. August 14, 1986.

**11 NCAC 04 .0203 MAINTENANCE OF RECORDS**

**11 NCAC 04 .0204 COMPLAINT RECORDS**

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Eff. March 16, 1979;  
Repealed Eff. August 23, 1979;  
Transferred to T11.11G; Eff. August 14, 1986.

**11 NCAC 04 .0205 FUNCTION OF SECTION**

*History Note:* Authority G.S. 57-10; 57A-18; 58-7.3; 58-9; 58-9.2; 58-16; 58-25; 58-25.1; 58-26; 58-27; 58-296;  
Eff. December 15, 1979;  
Transferred to T11.11G; Eff. August 14, 1986.

**11 NCAC 04 .0206 REPORT AND COLLECTION PROCEDURES**

*History Note:* Authority G.S. 57-10; 58-16; 58-16.2; 58-18; 58-63;  
Eff. December 15, 1979;  
Transferred to T11.11G; Eff. August 14, 1986.

**11 NCAC 04 .0207 MAINTENANCE OF RECORDS**

*History Note:* Authority G.S. 57-10; 58-9; 58-9.2; 58-15; 58-25; 58-25.1; 58-26; 58-27;  
Eff. December 15, 1979;  
Transferred to T11.11G; Eff. August 14, 1986.

**11 NCAC 04 .0208 COMPLAINT RECORDS**

*History Note:* Authority G.S. 57-10; 58-9; 58-16; 58-25.1; 58-26; 58-27; 58-54.5; 58-54.6;  
Eff. December 15, 1979;  
Transferred to T11.11G; Eff. August 14, 1986.

**SECTION .0300 - LIFE: ACCIDENT AND HEALTH**

- 11 NCAC 04 .0301 FUNCTION OF SECTION**
- 11 NCAC 04 .0302 RECEIPT AND DISTRIBUTION OF MEDICAL INFORMATION**
- 11 NCAC 04 .0303 PROVISIONS OF ACCIDENT: HEALTH AND DISABILITY CONTRACTS**
- 11 NCAC 04 .0304 PREMIUM NOTICES: PAYMENTS: AND REFUNDS**
- 11 NCAC 04 .0305 ISSUANCE OF ACCIDENT: HEALTH AND DISABILITY CONTRACTS**
- 11 NCAC 04 .0306 CONTESTABILITY CLAUSE AND RESCISSION**
- 11 NCAC 04 .0307 ISSUE AND PREMIUM PAYMENTS OF LIFE INSURANCE CONTRACTS**
- 11 NCAC 04 .0308 CREDIT ACCIDENT: HEALTH AND LIFE INSURANCE**
- 11 NCAC 04 .0309 LIFE INSURANCE SALES: FINANCING FIRST YEAR PREMIUM**

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58-260.1;  
Eff. February 1, 1976;  
Readopted Eff. March 16, 1979;  
Repealed Eff. August 23, 1979.

**11 NCAC 04 .0310 CLAIM PRACTICES: PROCEDURES: LIFE: ACCIDENT: HEALTH**

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Authority G.S. 57-1; 57-4; 58-9; 58-54.3;  
Eff. March 16, 1979;  
Repealed Eff. August 23, 1979.

**11 NCAC 04 .0311 FUNCTION OF SECTION**

*History Note:* Authority G.S. 57-1, -4; 58-9, -262.4;  
Eff. December 15, 1979;  
Repealed Eff. July 1, 1988.

**11 NCAC 04 .0312 INFORMATION USED IN CLAIM SETTLEMENTS**

(a) Any information, including medical information, used in whole or in part as the basis of settling a life, accident, health, or disability claim shall be provided to the Division as requested in connection with a complaint or injury. The delivery method may include a secure electronic portal provided by the Division.

(b) To the extent permitted by law, the Department shall treat medical information as confidential.

*History Note:* Authority G.S. 58-2-40; 58-2-190; 58-2-195; 58-2-200; 58-63-20; 58-65-105; 58-67-65; 58-67-150;  
Eff. December 15, 1979;

*Amended Eff. April 1, 1989;*  
*Readopted Eff. November 1, 2021.*

#### **11 NCAC 04 .0313 PROVISIONS OF CONTRACTS**

The following phrases and provisions, found in life, accident, health, and disability contracts, if not defined in the contracts, shall be construed by the Department in the following manner:

- (1) Regular Care and Attendance of a Physician. As used in life, accident, health, and disability policies, "regular care and attendance of a physician" shall not be construed to require insureds to see or be under the care of a physician on a regular basis if it can be shown that the insured has reached his or her maximum point of recovery yet is still disabled under the terms of the insurance contract. This requirement shall not restrict the right of the insurer, at its own expense, to examine or cause to have examined the insured according to the terms of the contract of insurance.
- (2) Premature Baby. A premature baby shall not be considered a well baby. The protection afforded newborn infants under G.S. 58-51-30 shall be provided to premature babies.
- (3) Medical Necessity. "Medical necessity" shall be construed as including treatment that restores not only the insured's physical but also his or her mental well-being. As used in this Item, "restoration of mental well-being" does not require coverage of psychiatric disorders when those disorders are excluded under the express terms of the contract.
- (4) Sound Health. The question, "Are you in sound health?" shall be considered ambiguous, and therefore answers to that question on an insurance application shall not be used as the basis for rescission of a policy or denial of a claim.

*History Note: Authority G.S. 58-2-40; 58-3-150; 58-51-1; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-67-65; 58-67-150;*  
*Eff. December 15, 1979;*  
*Amended Eff. July 1, 2012; April 8, 2002; April 1, 1989;*  
*Readopted Eff. November 1, 2021.*

#### **11 NCAC 04 .0314 PREMIUM NOTICES: PAYMENTS AND REFUNDS**

The Commissioner shall consider an unfair trade practice the failure by an insurer to adhere to any of the following procedures concerning premium notices, payments and refunds on life, accident, health, or disability policies pursuant to G.S. 58-63-15:

- (1) Premium Notices. Any insurer that makes a practice of sending premium notices shall maintain records to show that it mailed or otherwise delivered the notice to an individual insured or policy owner.
- (2) Timely Remittance. Insurance companies shall use date of mailing, rather than date of receipt, to determine whether the insured has made timely remittance of premium, provided the premium payment is received within seven days after either the termination date of the policy or the last day of its grace period, whichever is later.
- (3) Right to Return Policy. When this right is given by contract or statute, no insurer shall abridge or frustrate the right of the insured to return a policy within 10 days after he or she receives it for a full refund of premiums paid. Evidence of such delivery shall be signed statements from the policyowner of the date of delivery, copies of signed certified mail receipt, certification of mailing, or firm mailing book entry.
- (4) Unearned Premium Refund. When this right is given by contract or statute, no insurer shall abridge or frustrate the right of the insured to receive a refund of unearned premium.
- (5) Unearned Premium on Health Policies. When an insured covered by an accident, health or disability policy dies during the term of the policy, his or her insurer shall refund the unearned premium.
- (6) Commingling. No licensed person may commingle premiums, insurance deposits or other such funds. These funds are received in a fiduciary capacity on behalf of policyowner and must be immediately forwarded to the proper insurers or be deposited into an authorized account that is separate and distinct from the person's operating or personal accounts. The account shall be used to receive and disburse premiums paid for insurers, return premiums to policyowner, pay bank charges for the account, and transfer of earned commissions or fees.

*History Note: Authority G.S. 58-2-40; 58-2-195; 58-51-10; 58-51-15; 58-63-65; 58-65-40; 58-67-50; 58-67-65; 58-67-150; 58-63-40;*  
*Eff. December 15, 1979;*

*Amended Eff April 1, 1989;  
Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0315 ISSUANCE OF CONTRACTS**

The Commissioner shall consider an unfair trade practice the failure by an insurer to adhere to any of the following procedures with respect to the issuance of life, accident, health, or disability policies pursuant to G.S. 58-63-15:

- (1) Policies to Cover Newborn Infants. No health application or requirements of insurability shall be used to circumvent the requirements of North Carolina General Statute 58-51-30.
- (2) Rating of Guaranteed Issue Coverages. There shall be no rating of policies where guaranteed issue at a specified rate is to the public. When only guaranteed issue is presented for sale, the insurer shall disclose in writing to any applicant subjected to individual rating because the applicant did not qualify for guaranteed issue, the fact that his or her rate deviates from the specified rate for the guaranteed issue coverage. This Item shall not apply to individual policies issued to employees under a contract between their employer and his or her insurer.
- (3) Replacement of Existing Coverage. With respect to individual accident, health and disability coverages, when an insurer's agent, by misrepresenting the new policy as a supplement or addition to the existing policy, induces an insured to consent to the replacement of his or her existing policy with a new policy, new waiting periods shall be decreased by the amount of time coverage was afforded under the existing policy.
- (4) Continuous Coverage Under Credit Life, Accident and Health Policies. In a series of credit life or credit accident and health insurance transactions where the insured, the lender, and the insurer are the same and there is no lapse in coverage between transactions, the waiting periods of the insurance agreements shall run from the date of the first insurance contract, at least to the extent of the amount and term of the indebtedness outstanding at the time of renewal or refinancing.

*History Note: Authority G.S. 58-2-40; 58-3-125; 58-3-150; 58-33-75; 58-51-30; 58-63-40; 58-65-40; 58-67-50; 58-67-65; 58-67-150;  
Eff. December 15, 1979;  
Amended Eff. April 8, 2002; April 1, 1989; December 15, 1979;  
Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0316 CONTESTABILITY CLAUSE AND RESCISSION**

If an insurer does not attempt to rescind an accident, health, or disability policy upon becoming aware that the insured's application contained false statements, the insurer may not subsequently use such false statements as a basis for attempted rescission or alteration of the policy. The Commissioner shall consider failure to adhere to this principle an unfair trade practice pursuant to G.S. 58-63-15.

*History Note: Authority G.S. 58-2-40; 58-63-40; 58-65-1; 58-63-15; 58-65-40;  
Eff. December 15, 1979;  
Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0317 SEX DISCRIMINATION: LIFE: ACCIDENT AND HEALTH INSURANCE**

(a) Prohibited Practices. The Commissioner shall consider unfair discrimination the denial of life, accident, health or disability insurance on the basis of the insured's or prospective insured's sex or marital status. The amount of benefits payable on any term, condition or type of coverage shall not be restricted, modified, excluded or reduced on the basis of the sex or marital status of the insured or prospective insured. All underwriting criteria shall be applied in all instances of similar circumstances without regard to the sex or marital status of the insured or prospective insured, except to the extent that the amount of the benefits, terms, conditions or type of coverage vary as a result of the application of rate or premium differentials not prohibited under this Chapter, such as differentials for life insurance or annuities derived from sex-based life expectancy tables. Nothing in this Paragraph shall prohibit an insurer from taking marital status into account for the purpose of determining persons eligible for dependent benefits. Examples of the practices prohibited by this Section include:

- (1) denying coverage to females employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed;
- (2) denying policy riders to females when the riders are available to males;
- (3) denying maternity coverage to unmarried females covered under a policy or contract if maternity coverage is available to married females covered under that policy or contract;

- (4) denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;
- (5) denying disability income contracts to employed women when coverage is offered to men similarly employed;
- (6) treating complications of pregnancy differently from any other illness or sickness under the contract;
- (7) restricting, reducing, modifying, or excluding benefits payable for disorders of the genital organs of only one sex;
- (8) offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract;
- (9) offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract;
- (10) establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract; and
- (11) limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependent benefits.

(b) **Applicability and Scope.** This Rule shall apply to all contracts delivered or issued for delivery in this State by an insurer on or after the effective date of this Rule and to all existing group contracts which are amended or renewed on or after the effective date of this Rule.

*History Note: Authority G.S. 58-2-40; 58-3-120; 58-63-1; 58-63-65;  
Eff. December 15, 1979;  
Readopted Eff. December 1, 2021.*

#### **11 NCAC 04 .0318 LIFE INSURANCE SALES: FINANCING FIRST YEAR PREMIUM**

(a) The Commissioner shall consider an unfair trade practice the failure by an insurance company to adhere to the following procedures concerning the sale of life insurance contracts for which the first year's premium or any portion thereof is financed through a device suggested by the insurer or its agent with the insurance policy itself being assigned as security:

- (1) **Minimum Down-Payment Required.** A minimum down-payment of twenty five dollars (\$25.00) in cash or by valid and currently collectible check of the applicant is required for the insurance. Under no circumstances shall a company or an agent directly or indirectly either furnish this down-payment or waive this requirement.
- (2) **Financing Device to be Explained in Policy Application.** The furnishing of a promissory note in connection with financing part of the first year's premium must be explained in the policy application. The explanation must be clear and complete and shall specify the principal sum of the note or notes, the interest payable, the due date, the amount payable on that due date, the interest rate and the annual percentage rate.
- (3) **Execution of Promissory Note.** All blank spaces in a promissory note form or an assignment of an insurance policy form subsequently executed by the insured must be filled in by the handwriting of the insured except blank spaces relating to the policy number to be issued, and the signatures of witnesses and co-makers. No agent or anyone acting under his or her direction or control other than the insured shall write in such spaces.
- (4) **Promissory Note May be Sold Only With Recourse.** If a promissory note is taken to finance part of the first year's premium, the note may be sold or otherwise transferred by the payee with recourse only, and this fact must appear in bold print on the face of the note.
- (5) **Note to be Retained Until Policy Acceptance is Executed.** Any promissory note given by the applicant in connection with an application for a policy shall not be sold or otherwise transferred by the agent or company, nor any commissions on the sale paid to the agent until 15 days after a properly executed policy acceptance form has been received in the home office of the insurance company issuing the policy.
- (6) **Copy of Note to be Furnished Applicant.** A copy of the note executed by the applicant must be attached to the policy when delivered.
- (7) **Policy Acceptance to be Executed on Delivery of the Policy; Contract Rescission.** Upon delivery of the policy, a policy acceptance form must be executed that recites the following:
  - (a) The policy has been issued as represented;
  - (b) The applicant acknowledges and understands the provisions and obligations of the debt he has incurred in connection with applying for the policy and the terms are set forth in the record;



- (c) The applicant understands that he or she may cancel the policy and his or her promissory note and his or her down-payment will be returned if he or she refuses to accept delivery of the policy and sign the acceptance form, and the applicant understands that at any time within 10 days after the execution of the policy acceptance form he or she shall be allowed to rescind the agreement, and the promissory note, together with the total amount of his or her down-payment, shall be returned to the applicant;
  - (d) The applicant further understands that the rescission or rejection must be communicated to the company by mail and return of the policy within the 10 day period; and
  - (e) The applicant acknowledges that the obligations of the debt cannot be altered by a cancellation of the policy at his or her request unless properly cancelled within 10 days, in writing, mailed to the company at the address specified. The policy acceptance form shall contain a number designation corresponding to the policy issued and shall not be made available to the agent until the application is received in the home office. The provisions of Sub-items (7)(c) and (d) of this Item shall be printed in bold type upon the face of the policy.
- (8) Insured to be Notified of Assignment. The insurer, the note purchaser, assignee or company shall notify the note maker (insured) and all co-makers regarding the purchase, transfer or assignment of the note, after such transfer, inviting any questions relative to the note or the policy that is used as collateral security for the note.
  - (9) Requests for Cancellation to be Handled Promptly. The company and its agents shall give prompt and complete cooperation to the insured and the Department when requests to cancel the policy and premium financing arrangements are received.
  - (10) Special Rule in Event Applicant is Under Eighteen Years of Age. If the applicant is a minor and executes a promissory note for the payment of part or all of the first year's premium, the note must be witnessed by at least one of the applicant's parents or guardian.
  - (11) Disclosure of Extended Obligations. The agent shall clearly disclose to the insured that the cancellation of the note may reduce the cash surrender value of the policy in direct proportion to the amount of the promissory note. The agent shall not use terms such as "bonus payment", "free insurance", or any other term that induces the applicant to believe that the promissory note will be paid by monies other than his or her policy cash values. Terms leading the applicant to believe that he is receiving free insurance by deferring the premium payment for the first year shall not be employed.
  - (12) Cash Values. Cash values shown at the presentation shall be based on the policy offered. The cash values shown at the time of presentation shall be a specimen of the policy being offered and not for a larger policy.
  - (13) Cancellation of Existing Insurance. The disturbing of any permanent insurance, including the partial or total replacement of any provisions of an existing policy for the purpose of placing additional insurance, or "twisting" as defined in G.S. 58-3-115, will be cause for investigation and review by the Department of Insurance.
  - (14) Licensed Agents. Only licensed agents are eligible to sell life insurance. No person other than a licensed agent shall participate in or receive commission or any other valuable consideration in connection with the solicitation, negotiation, procurement, or making of life insurance contracts in this State.
  - (15) Agent Identification. An agent or field representative who is licensed by this State as a life insurance agent shall not represent, refer to, or hold himself or herself out to the public under any special title that would obscure the fact that he is a licensed agent of the company. Identification as an agent or representative of a special division may be permitted providing such a division actually exists and the agency relationship is disclosed.
- (b) This Rule shall not apply to life insurance policies financed in conformity with G.S. 58, Article 35.

*History Note: Authority G.S. 58-2-40; 58-3-115; 58-63-40;  
 Eff. December 15, 1979;  
 Amended Eff. April 8, 2002;  
 Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0319 CLAIMS PRACTICES: LIFE: ACCIDENT AND HEALTH INSURANCE**

The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of life, accident, health and claims:

- (1) Examining Physician's Opinion. When the patient's health is in question, an insurer shall give greater weight to the opinion of a physician who has examined the patient than to the opinion of a physician who has not examined the patient and whose opinion is based solely on a review of the examining physician's notes or reports. As used in this Item, "examination of the patient" shall include the interpretation by a specialist of the results of diagnostic tests performed on the patient by others.
- (2) Settlement Offers. Initial offers of settlement or compromise made by an insurer or its representative shall remain open for a period of time of not less than 30 calendar days.
- (3) Multiple Health Impairments. When an insured is confined to the hospital with multiple health impairments some of which are excluded from coverage, the insurer or its representative shall make pro rata payments where treatment for excluded conditions can be separated.
- (4) Assignment of Benefits. If an accident, health, or disability contract does not prohibit assignment of benefits and an assignment including notice to the insurer prior to the payment of the claim, is made, the insurer shall honor the assignment, even though it may have erroneously paid the insured. Submission of a completed claims form indicating that an assignment is on file shall be treated as though it were submission of the actual assignment.
- (5) Claim Status Reports. Health insurance claims subject to 58-3-225 shall be processed in accordance with the provisions of that statute. Otherwise, if benefits claimed under an accident, health, or disability contract have not been paid within 45 days after receipt of the initial claim by the insurer, the insurer shall at that time mail a claim status report to the insured.

*History Note:* Authority G.S. 58-2-40; 58-3-225; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-65-125; 58-67-65; 58-67-150;  
 Eff. December 15, 1979;  
 Amended Eff. July 1, 2012; April 8, 2002; April 1, 1989;  
 Readopted Eff. December 1, 2021.

**11 NCAC 04 .0320 STUDENT LOANS**

*History Note:* Authority G.S. 58-2-40; 58-3-135; 58-3-150;  
 Eff. July 1, 1986;  
 Amended Eff. April 8, 2002; April 1, 1989;  
 Repealed Eff. November 1, 2021.

**SECTION .0400 - PROPERTY AND LIABILITY**

- 11 NCAC 04 .0401 FUNCTION OF SECTION**
- 11 NCAC 04 .0402 RATING OF AUTOMOBILE INSURANCE**
- 11 NCAC 04 .0403 BILLING PROCEDURES FOR AUTOMOBILE LIABILITY INSURANCE**
- 11 NCAC 04 .0404 CANCELLATION: TERMINATION: RENEWAL OR NONRENEWAL**

*History Note:* Filed as an Emergency Repeal Eff. April 25, 1979, for a Period of 120 Days to be Reinstated on August 23, 1979;  
 Authority G.S. 58-9; 58-30.3; 58-30.4; 58-32; 58-72(4) through -72(22); 58-131.56;  
 58-131.57; 58-248.26; 58-248.31; 58-248.32; 58-248.36; 20-310;  
 Eff. February 1, 1976;  
 Readopted Eff. March 16, 1979;  
 Repealed Eff. August 23, 1979.

- 11 NCAC 04 .0405 DRIVE-IN CLAIM SERVICE FACILITIES**
- 11 NCAC 04 .0406 TOTAL LOSSES ON MOTOR VEHICLES**
- 11 NCAC 04 .0407 REPAIR ESTIMATES**
- 11 NCAC 04 .0408 DETERMINATION OF REPAIR COSTS**
- 11 NCAC 04 .0409 NOTICE OF CESSION**
- 11 NCAC 04 .0410 PROMPT DETERMINATION OF DAMAGE**
- 11 NCAC 04 .0411 SEX DISCRIMINATION IN AUTOMOBILE INSURANCE**

**11 NCAC 04 .0412      HANDLING OF LOSS AND CLAIM PAYMENTS**  
**11 NCAC 04 .0413      WRITTEN CONFIRMATION OF ORAL AGREEMENTS**

*History Note:*      *Filed as an Emergency Repeal Eff. April 25, 1979, for a Period of 120 Days to be Reinstated on August 23, 1979;*  
*Authority G.S. 58-9; 58-30.3; 58-30.4; 58-39; 58-44.3; 58-54; 58-54.4; 58-131.37;*  
*Eff. March 16, 1979;*  
*Repealed Eff. August 23, 1979.*

**11 NCAC 04 .0414      FUNCTION OF SECTION**

*History Note:*      *Authority G.S. 58-7.3, -9, -72;*  
*Eff. December 15, 1979;*  
*Repealed Eff. July 1, 1988.*

**11 NCAC 04 .0415      SAFE DRIVER INCENTIVE PLAN**

The following are Department of Insurance provisions regarding the Safe Driver Incentive Plan ("SDIP"):

- (1) License revocation for refusal to submit to chemical tests shall not be considered conviction of a moving traffic violation.
- (2) A conviction for driving the wrong way on a one-way street is not a conviction for driving on the wrong side of the road.
- (3) The revocation or suspension of a driver's license solely because of the accumulation of motor vehicle points shall not be considered a conviction.
- (4) When new operators are added to an automobile policy, their SDIP points may be added to the policy at the same time coverage is extended to them.
- (5) SDIP points for an operator whose license has been suspended or revoked may be added only at the date the operator again becomes eligible for license. However, SDIP points may be charged at the inception date of the current policy if the operator has previously been convicted of a moving traffic violation while his or her license was suspended or revoked or if there is evidence that the operator does operate a motor vehicle.
- (6) If an operator dies or permanently leaves an insured's household during the policy period, the operator's SDIP points shall be removed at the time of his or her death or departure.

*History Note:*      *Authority G.S. 58-2-40; 58-36-65; 58-36-75;*  
*Eff. December 15, 1979;*  
*Amended Eff. February 1, 1993;*  
*Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0416      BILLING PROCEDURES FOR AUTOMOBILE INSURANCE**

- (a) With respect to new business, an insurer shall take no more than 90 days from the effective date of the policy to make any investigation other than review of the initial application and to bill the insured for proper rate classification or sub-classification.
- (b) With respect to renewal business, an insurer shall not bill for any additional premium after the renewal quotation is made for any condition that existed at the time of renewal and is on the driver's motor vehicle record.
- (c) With respect to renewal business, if the insured does not provide updated and complete rating information necessary to underwrite the policy or makes an effort to withhold rating information, the insurer shall take no more than 90 days from the effective date of the renewal to make inquiry of the insured, to make any other investigation, and to bill the insured for proper rate classification and sub-classification.
- (d) When an insurer obtains information from sources other than the Department of Motor Vehicles for use in underwriting an automobile policy and the insured alleges that the information is incorrect, the insurer shall verify the accuracy of such information.
- (e) Unearned premium refunds shall be determined from the later of either the date the consumer gives direct notice to a company or an agent of the company of the cancellation or the effective date of cancellation requested by the insured. In the case of physical damage insurance where there is a loss payee, the effective date of cancellation for the purposes of determining unearned premium refund shall be 10 days from the date cancellation notice was given to a company or a company's agent.

(f) If the consumer can show proof that within the 10 day period in this Rule where cancellation involves a loss payee, and the consumer had obtained replacement physical damage coverage that included the loss payee, then the cancellation date for purposes of determining unearned premium refund shall be the last date of any lapse in coverage for the loss payee during the 10 day time set out in this Rule. In the case of no lapse, shall be determined as if no loss payee was involved.

*History Note: Authority G.S. 58-2-40; 58-63-65;  
Eff. December 15, 1979;  
Amended Eff. April 1, 1989; July 1, 1986;  
Readopted Eff. November 1, 2021.*

#### **11 NCAC 04 .0417 DRIVE-IN CLAIM SERVICE FACILITIES**

No insurer shall require any claimant to use a drive-in claim service operated by the insurer. The claimant's voluntary utilization of a drive-in claim service or preferred repair shop shall not prejudice the right of either party to obtain independent appraisals and negotiate settlement on the basis of such appraisals.

*History Note: Authority G.S. 58-2-40; 58-63-65;  
Eff. December 15, 1979;  
Amended Eff. July 1, 2012;  
Readopted Eff. October 1, 2021.*

#### **11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES**

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning the settlement of covered "total loss" motor vehicle claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

- (1) "Licensed Motor Vehicle Dealer" means a person who is licensed by the North Carolina Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of the N.C. General Statutes.
- (2) "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the insurance company may increase the radius in increments of 50 miles until a substantially similar motor vehicle can be found.
- (3) "Published Regional Average Values" means values derived from printed or electronically published motor vehicle pricing guides recognized in the motor vehicle industry, including National Automobile Dealers Association Pricing Guide Book or Kelley Blue Book that analyze current and historical motor vehicle sales data taking into consideration the year, make, model and condition of the motor vehicle, motor vehicle market conditions, and geographic area to reach an average retail value of the motor vehicle.
- (4) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, and year of the damaged motor vehicle.

(c) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule, an insurance company shall designate the motor vehicle as a "total loss" and pay the claimant the pre-accident value. In return, the insurance company shall receive possession of the legal title of the salvage of the total loss motor vehicle.

(d) If the insurance company and the claimant are unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the settlement offer shall be based upon the following values:

- (1) The published regional average values of substantially similar motor vehicles; and
- (2) The retail cost of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles are available or were available within 90 days of the accident to consumers in the local market area.

If no substantially similar motor vehicle is able to be located in the local market area, the settlement offer may be based upon quotations obtained from two or more licensed motor vehicle dealers located within the local market area.

(e) The settlement offer may be adjusted for condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident.

(f) Applicable sales tax and vehicle registration fees shall be included as part of the actual cash value settlement of the total loss motor vehicle, except where the claimant retains the salvage vehicle.

- (g) The insurance company shall give consideration to evidence presented by the claimant such as receipts, photographs, or other documentation that the total loss motor vehicle owned by him or her was in a better condition prior to the accident than suggested by the insurer's settlement offer.
- (h) When a motor vehicle's total loss is settled on a basis which deviates from this Rule, the deviation must be supported by documentation within the claim file detailing the total loss motor vehicle's condition and the reason for the deviation. Any deductions from the actual cash value of the total loss motor vehicle, including deduction for salvage or prior damage, shall be itemized and contain the amount of the deduction. The documentation that supports the basis for the settlement shall be shared with the claimant. The insurance company's record shall include documentation of the total loss settlement.
- (i) If requested by the claimant, a total loss payment by an insurance company shall be accompanied by a written statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of these values.
- (j) No insurance company, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) to keep the repair cost of a damaged motor vehicle below 75 percent of its pre-accident value.
- (k) At the election of the claimant, or in those circumstances where the insurance company will be unable to obtain an unencumbered title to the total loss motor vehicle, the insurance company shall have the right to deduct the value of the salvage of the total loss motor vehicle from the actual cash value calculation and leave the salvage motor vehicle with the claimant.
- (l) If the insurance company makes a deduction for the salvage value of a total loss motor vehicle retained by the claimant, the insurance company shall, upon request of the claimant, furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.
- (m) Where the insurance company has the right to elect to replace the total loss motor vehicle and does so, the replacement motor vehicle shall be substantially similar to the total loss motor vehicle and paid for by the insurance company, subject only to the deductible and to the value of any additional options and equipment chosen by the claimant.
- (n) The insurance company shall be responsible for all reasonable towing and storage charges until three days after the motor vehicle's owner and storage facility are notified in writing that the insurance company shall no longer reimburse the motor vehicle's owner or storage facility for storage charges. Notification to the motor vehicle's owner shall include the name, address, and telephone number of the facility where the motor vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the motor vehicle's owner. Proof of mailing, as defined in Rule .0430 of this Section, shall serve as the proof that the notification required by this Rule occurred.
- (o) In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.
- (p) No insurance company shall abandon the salvage of a total loss motor vehicle to a towing or storage service without the consent of the towing or storage service involved.

*History Note: Authority G.S. 20-279.2; 58-2-40; 58-63-65;  
Eff. December 15, 1979;  
Amended Eff. April 1, 1993; April 1, 1989; July 1, 1986;  
Readopted Eff. October 1, 2020.*

#### **11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES**

- (a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning repair estimates on covered motor vehicle damage claims when the failure is so frequent as to indicate a general business practice.
- (b) For the purposes of this Rule, the following terms shall mean:
- (1) "Digital Inspection" means an inspection of a damaged motor vehicle conducted by using digital photographs, videos, or other digital evidence through an electronic processing system authorized by an insurer.
  - (2) "Licensed Motor Vehicle Damage Appraiser" means an individual who is licensed as a motor vehicle damage appraiser pursuant to Article 33 of Chapter 58 of the N.C. General Statutes or is licensed in another state whose licensing requirements are substantially similar to or exceed those established under that Article.
  - (3) "Physical Inspection" means an inspection of a damaged motor vehicle conducted in person by an insurer's representative.
- (c) When a motor vehicle is damaged, and the claim is either covered by an insurer for a first-party claim or liability is established for a third-party claim, the insurer shall adhere to the following procedures concerning repair estimates:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, any cost of the additional estimate(s) shall be paid by the insurer.
- (2) An insurer shall perform a physical or digital inspection of the damaged vehicle within 10 business days of receipt of the claim. If the insurer cannot perform the inspection in the timeframe, the insurer shall provide the claimant with a verbal or written explanation of the reason the inspection has not occurred. The reason for the delay shall be documented in writing within the claim file.
- (3) No insurer shall refuse to perform a physical inspection of the damaged vehicle if requested by the claimant.
- (4) The insurer may satisfy the inspection requirements of this Rule by having a licensed motor vehicle damage appraiser conduct the inspection of the damaged vehicle.
- (5) An insurer shall provide a verbal or written explanation to the claimant if there is any delay in responding to a request for a supplemental inspection. The reason for the delay shall be documented in writing in the claim file.
- (6) An insurer shall, upon request, provide copies of the original estimate and all supplemental estimates to the claimant.
- (7) When the insurer elects to have the damaged vehicle repaired, the insurer shall, upon request of the claimant, furnish the claimant with a copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by someone other than the insurer, the name and address of the person preparing the estimate. If there is a dispute concerning pre-existing damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage shall be stated in the estimate.

*History Note:* Authority G.S. 58-2-40; 58-63-65;  
Eff. December 15, 1979;  
Amended Eff. April 1, 1993; April 1, 1989;  
Readopted Eff. October 1, 2020.

#### **11 NCAC 04 .0420 WRITTEN CONFIRMATION OF ORAL AGREEMENTS**

- (a) Once an insurer accepts liability or advises a claimant to have damaged property repaired with the understanding that the insurer will pay or reimburse the claimant, the insurer shall, if requested by the claimant, confirm the understanding in writing. Such writing shall clearly state the responsibility assumed by the insurer for payment of incurred costs.
- (b) If so requested by the claimant, the insurer or its representative shall confirm in writing all other oral agreements between itself or its representative and the claimant.

*History Note:* Authority G.S. 58-2-40; 58-3-100; 58-63-15;  
Eff. December 15, 1979;  
Readopted Eff. November 1, 2021.

#### **11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS**

- (a) The Commissioner shall consider the failure by an insurer to adhere to the procedures in this Rule concerning loss and claim payments as prima facie evidence violation of G.S. 58-63-15(11) when such failure is so frequent as to indicate a general business practice.
- (b) When a motor vehicle is damaged and the claim is covered by an insurer, the insurer shall adhere to the following procedures concerning loss and claim payments.
  - (1) Loss and claim payments shall be mailed or delivered within 10 business days after the claim is settled.
  - (2) Unless the insured consents, no insurer shall deduct premiums owed by the insured on a policy from a loss or claim payment made under another policy.
  - (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
  - (4) If a release or full payment of claim is executed by a claimant involving a repair to a motor vehicle, it shall not bar the right of the claimant to assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the motor vehicle if the damages were caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. This claim shall be asserted within the statute of limitations set forth in G.S. 1-52(16).
  - (5) If a release or full payment of claim is executed by a third-party claimant involving a repair to a motor vehicle, it shall not bar the right of the third-party claimant to assert a claim for diminution in fair market

value pursuant to G.S. 20-279.21(d1) caused by the accident and could not be determined or known until after the repair or attempted repair of the motor vehicle. This claim shall be asserted within the statute of limitations set forth in G.S. 1-52(16).

(c) For purposes of this Rule, "diminution in fair market value" shall be as defined in 11 NCAC 04 .0425.

(d) If a claim for diminution in fair market value is asserted pursuant to this Rule and G.S. 20-279.21(d1), the written appraisal reports prepared by each appraiser shall be exchanged with the other party.

*History Note:* Authority G.S. 20-279.2; 58-2-40; 58-63-65;  
Eff. December 15, 1979;  
Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1, 1986;  
Readopted Eff. October 1, 2020.

#### **11 NCAC 04 .0422 CANCELLATION OF INSURANCE**

The Commissioner shall consider an unfair trade practice the cancellation by an insurer of any personal lines insurance policy for which the premium has been paid because there is another policy in force for which the premium has not been paid.

*History Note:* Authority G.S. 58-2-40; 58-63-40;  
Eff. December 15, 1979;  
Amended Eff. February 1, 1996;  
Readopted Eff. November 1, 2021.

#### **11 NCAC 04 .0423 ETHICAL STANDARDS**

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when conducting insurance business with a member of the public:

- (1) identify himself or herself and his or her occupation; and
- (2) provide his or her National Producer Number and the Department's website address and phone number for verification of licensure status when requested to show proof of licensure by any claimant, any repairer while he or she is investigating a claim or loss, any Department representative, or any other person with whom he or she has contact while performing his or her insurance business.

(b) No claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

- (1) accept any gratuity or other form of remuneration from any provider of services for recommending that provider to claimants;
- (2) purchase salvage from a claimant;
- (3) intimidate or discourage any claimant from seeking legal advice or counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking legal counsel nor recommend any legal counsel to any claimant; or
- (4) cause a delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without informing the claimant that he or she is under no obligation to use the recommended repair service and that he or she may use the service of his or her choice.

*History Note:* Authority G.S. 58-2-40; 58-33-130; 58-35-25; 58-63-65; 58-65-40;  
Eff. December 15, 1979;  
Amended Eff. October 1, 2010; April 1, 1993; April 1, 1989; July 1, 1986;  
Readopted Eff. November 1, 2021.

#### **11 NCAC 04 .0424 PURPOSE**

*History Note:* Authority G.S. 58-9;  
Eff. April 1, 1989;  
Repealed Eff. April 1, 1993.

## **11 NCAC 04 .0425        DEFINITIONS**

As used in this Section the following terms shall be construed as follows:

- (1) "After market part" means a part made by a nonoriginal manufacturer.
- (2) "Claimant" means a first-party or third-party claimant.
- (3) "Diminution in Fair Market Value," as that term is used in G.S. 20-279.21, means the difference in the fair market value of the vehicle immediately before the accident and after any repairs made to the vehicle as a result of the accident have been completed.
- (4) "Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage appraiser who:
  - (a) Is not employed by either the claimant or the insurer;
  - (b) Has no financial interest in the outcome of the appraisal; and
  - (c) Did not participate in the original appraisal.
- (5) "First-Party Claimant" means a person that is making a claim on an insurance policy in which they are the insured party.
- (6) "Insurer" means as defined in G.S. 58-1-5(3), and includes any person authorized by the insurer to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.
- (7) "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.
- (8) "Part" means a component of a motor vehicle.
- (9) "Third-Party Claimant" means a person that is making a claim on an insurance policy in which they are not the insured party.

*History Note:*     *Authority G.S. 20-279.2; 20-279.21; 58-2-40;*  
                          *Eff. April 1, 1989;*  
                          *Readopted Eff. October 1, 2020.*

## **11 NCAC 04 .0426        LIKE KIND AND QUALITY**

No insurer shall require the use of an aftermarket part in the repair of a motor vehicle unless the aftermarket part is at least equal to the original part in terms of fit, quality, performance, and warranty. Insurers specifying the use of aftermarket parts shall include in the estimate the costs of any modifications made necessary by the use of aftermarket parts.

*History Note:*     *Authority G.S. 58-2-40;*  
                          *Eff. April 1, 1989;*  
                          *Readopted Eff. November 1, 2021.*

## **11 NCAC 04 .0427        DISCLOSURE REQUIREMENTS**

Every insurer that writes motor vehicle insurance in this State and that intends to require or specify the use of after market parts must disclose to its policyholders in writing, either in the policy or on a sticker attached thereto, the following information in all capital letters and font size no smaller than ten-point:

IN THE REPAIR OF YOUR COVERED AUTO UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE.

All after market parts installed on a motor vehicle shall be identified on the estimate and invoice for such repair.

*History Note:*     *Authority G.S. 58-2-40;*  
                          *Eff. April 1, 1989;*  
                          *Amended Eff. March 1, 2004;*  
                          *Readopted Eff. December 1, 2021.*

## **11 NCAC 04 .0428        ENFORCEMENT**

*History Note:*     *Authority G.S. 58-9;*



*Eff. May 1, 1989;*  
*Repealed Eff. May 3, 1993.*

**11 NCAC 04 .0429 COMMINGLING**

The accounting records maintained by agents, brokers, and limited representatives shall be separate and apart from any other business records and demonstrate at all times that collected funds due to insurers and return premiums due to policyholders are available at all times.

*History Note: Authority G.S. 58-2-40; 58-2-195;*  
*Eff. February 1, 1993;*  
*Amended Eff. February 1, 1996;*  
*Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0430 PROOF OF MAILING; AUTOMOBILE INSURANCE**

As used in G.S. 58-36-85, "proof of mailing" means a certificate issued by and bearing the date stamp of the United States Postal Service or an official United States Postal Service tracking number or similar proof of mailing.

*History Note: Authority G.S. 58-2-40; 58-36-85;*  
*Eff. February 1, 1993;*  
*Amended Eff. July 1, 2012; February 1, 1996;*  
*Readopted Eff. October 1, 2021.*

**11 NCAC 04 .0431 DEFINITION OF CLAIMANT**

As used in this Section, unless the context indicates otherwise, "claimant" means a first party claimant or a third party claimant.

*History Note: Authority G.S. 58-2-40(1); 58-63-15;*  
*Eff. April 1, 1993;*  
*Readopted Eff. November 1, 2021.*

**11 NCAC 04 .0432 REFUND OF EXCESS PREMIUM ON SCHEDULED ITEMS**

If an insured has any scheduled item listed for additional insurance covered by a homeowner's or personal inland marine insurance policy, and that item is replaced for less than the scheduled amount of coverage, the insurer shall refund the insured the difference in premium charged between the scheduled amount of coverage and the actual amount of the loss paid by the insurer, if the refund per policy term is greater than five dollars (\$5.00). Any refund shall be computed from the date of issuance of the policy or five years, whichever is less.

*History Note: Authority G.S. 58-2-40; 58-63-65;*  
*Eff. April 1, 1995;*  
*Amended Eff. July 1, 2012;*  
*Readopted Eff. December 1, 2021.*

**11 NCAC 04 .0433 REFUND OF AUTO INSURANCE PREMIUM ON NEW BUSINESS**

If an insured asks an insurer to cancel a newly issued motor vehicle insurance policy on or before the premium billing due date, the unearned premium refund made by the insurer shall be made on a pro rata rather than a short rate basis, and the refund shall be based on the premium initially quoted by the insurer if both of the following conditions are met:

- (1) The insured provided the insurer with accurate and complete rating information.
- (2) The insurer subsequently calculated the premium to be greater than the premium initially quoted.

*History Note: Authority G.S. 58-2-40; 58-36-85; 58-63-65;*  
*Eff. April 1, 1995;*  
*Readopted Eff. December 1, 2021.*

**SECTION .0500 - LIFE INSURANCE ILLUSTRATIONS**

## 11 NCAC 04 .0501 SCOPE AND DEFINITIONS

(a) These Rules apply to all policies sold on and after the effective dates of these Rules and to all certificates issued under those policies.

(b) As used in this Section, the following terms have the following meanings:

- (1) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.
- (2) "Basic illustration" means a ledger or proposal used in the sale of a policy that shows both guaranteed and non-guaranteed elements.
- (3) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.
- (4) "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy as of the preparation date of the illustration or declared to become effective within the next 95 days.
- (5) "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer.
- (6) "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy that are guaranteed and determined at issue.
- (7) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:
  - (A) The disciplined current scale; or
  - (B) The currently payable scale.
- (8) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy over a period of years and that is either a basic illustration, in-force illustration, or a supplemental illustration.
- (9) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.
- (10) "Illustration actuary" means an actuary meeting the requirements of 11 NCAC 04 .0509 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.
- (11) "Lapse-supported illustration" means an illustration of a policy failing the test of self-supporting as defined in this Subparagraph (b)(16) of this Rule, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100 percent policy persistency thereafter.
- (12) "Non-guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy that are not guaranteed or not determined at issue.
- (13) "Policy" means a group or individual life insurance policy or certificate. "Policy" does not include:
  - (A) A variable life insurance policy or certificate.
  - (B) An annuity contract.
  - (C) A credit life insurance policy or certificate.
  - (D) A life insurance policy with no illustrated death benefit on any individual exceeding ten thousand dollars (\$10,000).
- (14) "Policy owner" means the owner named in a policy or the certificate holder in the case of a group policy.
- (15) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.
- (16) "Self-supporting illustration" means an illustration of a policy for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.
- (17) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this Section, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

*History Note:* Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;  
Eff. January 1, 1997;  
Readopted Eff. December 1, 2021.

#### **11 NCAC 04 .0502      ASSUMED EXPENSES AND CURRENT SCALE**

(a) An insurer may choose to designate each year the method of determining assumed expenses for all policies from the following:

- (1) Fully allocated expenses.
- (2) Marginal expense.
- (3) A table of fully allocated expenses developed by the Actuarial Standards Board and approved by the National Association of Insurance Commissioners.

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(b) Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- (1) Are consistent with all provisions of this Section.
- (2) Limit a disciplined current scale to reflect only actions that have been taken on events that have already occurred.
- (3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date.
- (4) As used in this Rule, "minimum assumed expenses" means the minimum expenses used in the calculation of the disciplined current scale for a policy. Do not permit assumed expenses to be less than minimum assumed expenses.

*History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65; Eff. January 1, 1997; Readopted Eff. December 1, 2021.*

#### **11 NCAC 04 .0503      ILLUSTRATED POLICIES**

(a) Each insurer marketing policies regulated by this Section shall notify the Commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being marketed on the effective date of this Section, the insurer shall identify in writing those policy forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this Section, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the Commissioner.

(b) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration before the first policy anniversary for any policy form using that policy is prohibited.

(c) If a policy form is identified by an insurer as one to be marketed with an illustration, the insurer shall prepare and deliver a basic illustration in accordance with this Section, except that a basic illustration need not be provided to individual members of a single employer group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to those individuals. The illustration furnished to an applicant for a group policy issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) As used in this Paragraph, "non-term group life" means a group policy or individual policies of traditional permanent or universal life insurance issued to members of a single employer group where:

- (1) Every plan of coverage was selected by the employer.
- (2) The premium is paid by the employer or through payroll deduction.
- (3) Group underwriting or simplified underwriting is used.

Potential enrollees for policies and certificates of non-term group life subject to this Section shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this Section, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the policy or certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

*History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65; Eff. January 1, 1997; Readopted Eff. December 1, 2021.*

## **11 NCAC 04 .0504            GENERAL RULES**

(a) As used in this Rule, "generic name" means a title descriptive of the policy being illustrated, such as "whole life", "term life", or "flexible premium adjustable life." An illustration used in the sale of a policy shall satisfy the requirements of this Section, be labeled "life insurance illustration" and contain the following information:

- (1) Name of insurer;
- (2) Name and business address of producer or insurer's authorized representative, if any;
- (3) Name, age and sex of proposed insured, except where a composite illustration is permitted under this Section;
- (4) Underwriting or rating classification upon which the illustration is based;
- (5) Generic name of the policy, the company product name, if different, and policy form number;
- (6) Initial death benefit; and
- (7) Dividend option election or application of non-guaranteed elements, if applicable.

(b) When using an illustration in the sale of a policy, an insurer or its agents or other authorized representatives shall not:

- (1) Represent the policy as anything other than a life insurance policy;
- (2) Use or describe non-guaranteed elements in a manner that is misleading;
- (3) State or imply that the payment or amount of non-guaranteed elements is guaranteed;
- (4) Use an illustration that does not comply with the requirements of this Section;
- (5) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
- (6) Provide an applicant with an incomplete illustration;
- (7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
- (8) Use the term "vanish" or "vanishing premium", or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;
- (9) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
- (10) Use an illustration that is not "self-supporting."

(c) If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

*History Note:*     *Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;*  
                          *Eff. January 1, 1997;*  
                          *Readopted Eff. December 1, 2021.*

## **11 NCAC 04 .0505            STANDARDS FOR BASIC ILLUSTRATIONS**

(a) Format. A basic illustration shall conform with the following requirements:

- (1) The illustration shall be labeled with the date on which it was prepared.
- (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
- (3) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.
- (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.
- (5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.
- (6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.
- (7) If the illustration shows any non-guaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.
- (8) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements").

- (9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
  - (10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.
  - (11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.
  - (12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
    - (A) The benefits and values are not guaranteed;
    - (B) The assumptions on which they are based are subject to change by the insurer; and
    - (C) Actual results may be more or less favorable.
  - (13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.
  - (14) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the effect on future policy benefits and values.
- (b) Narrative Summary. A basic illustration shall include the following:
- (1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy.
  - (2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the policy, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code.
  - (3) A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the effect they may have on the benefits and values of the policy.
  - (4) Identification and a brief definition of column headings and key terms used in the illustration.
  - (5) A statement containing the following: This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur. Actual results may be more or less favorable than those shown.
- (c) Numeric Summary.
- (1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20 and 30. The columns of the numeric summary shall be as follows:
    - (A) Policy guarantees;
    - (B) Insurer's illustrated scale; and
    - (C) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:
      - (i) Dividends at 50 percent of the dividends contained in the illustrated scale used;
      - (ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and
      - (iii) All non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.
  - (2) In addition, if coverage would cease before policy maturity or age 100, the year when coverage ceases shall be identified for each of the three bases.
- (d) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this Section.

- (1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."
- (2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) Tabular Detail.

- (1) A basic illustration shall include the following for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration, and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable is to change:
  - (A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;
  - (B) The corresponding guaranteed death benefit, as provided in the policy; and
  - (C) The corresponding guaranteed value available upon surrender, as provided in the policy.
- (2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.
- (3) Non-guaranteed elements may be shown if described in the policy. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

*History Note:* Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;  
Eff. January 1, 1997;  
Readopted Eff. December 1, 2021.

**11 NCAC 04 .0506 STANDARDS FOR SUPPLEMENTAL ILLUSTRATIONS**

- (a) A supplemental illustration may be provided as long as:
  - (1) It is appended to, accompanied by or preceded by a basic illustration that complies with Rule .0505 of this Section;
  - (2) The non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
  - (3) It contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and
  - (4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the illustration.
- (b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements.

*History Note:* Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;  
Eff. January 1, 1997;  
Readopted Eff. December 1, 2021.

**11 NCAC 04 .0507 DELIVERY OF ILLUSTRATION AND RECORD RETENTION**

- (a) If a basic illustration is used by an insurance agent or other authorized representative of the insurer in the sale of a policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Rule, shall be submitted by an insurance agent or other authorized representative to the insurer and the applicant at the time of policy application.
- (b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Rule, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and insurance agent or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(c) If no illustration is used by an insurance agent or other authorized representative in the sale of a policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(d) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(e) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail directly from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this Paragraph shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(f) A copy of the basic illustration and a revised basic illustration, if any, signed if required by rule, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

*History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;  
Eff. January 1, 1997;  
Readopted Eff. December 1, 2021.*

#### **11 NCAC 04 .0508 ANNUAL REPORTS AND NOTICES TO POLICY OWNERS**

(a) In the case of a policy designated as one for which an illustration will be issued, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain the information specified in this Rule.

(b) For universal life policies, the report shall include the following:

- (1) The beginning and end date of the current report period;
- (2) The policy value at the end of the previous report period and at the end of the current report period;
- (3) The total amounts that have been credited or debited to the policy value during the current period, identifying each by type (e.g., interest, mortality, expense and riders);
- (4) The current death benefit at the end of the current report period on each life covered by the policy;
- (5) The net cash surrender value of the policy as of the end of the current report period;
- (6) The amount of outstanding loans, if any, as of the end of the current report period; and
- (7) Either:
  - (A) For fixed premium policies: If, assuming guaranteed interest, mortality, expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or
  - (B) For flexible premium policies: If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(c) For all other policies, where applicable, the report shall contain:

- (1) Current death benefit;
- (2) Annual contract premium;
- (3) Current cash surrender value;
- (4) Current dividend;
- (5) Application of current dividend; and
- (6) Amount of outstanding loan.

(d) Insurers writing policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(e) If the annual report does not include an in force illustration, it shall contain the following notice in boldface print with a capitalized heading "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration of your policy. You may annually request, without

charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive an illustration of your policy within 30 days from your request, you should contact your State insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(f) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of 11 NCAC 04 .0504(a), .0504(b), .0505(a), and .0505(e). No signature or other acknowledgment of receipt of this illustration shall be required.

(g) If an adverse change in any non-guaranteed element that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and a description of the change. The notice and description shall be printed in boldface print in a type at least two points larger than the report.

*History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65; Eff. January 1, 1997; Readopted Eff. December 1, 2021.*

### **11 NCAC 04 .0509 ANNUAL CERTIFICATIONS**

(a) The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this Section.

(c) The illustration actuary shall:

- (1) Be a member in good standing of the American Academy of Actuaries;
- (2) Be knowledgeable of the standard of practice regarding life insurance policy illustrations;
- (3) Not have been found by the Commissioner, following appropriate notice and opportunity for hearing to have:
  - (A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;
  - (B) Been found guilty of fraudulent or dishonest practices;
  - (C) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
  - (D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;
- (4) Notify the Commissioner of any action taken by an insurance regulator of another state with laws similar to that under Subparagraph (c)(3) of this Rule;
- (5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar form, this shall be disclosed in the annual certification; and
- (6) Disclose in the annual certification which of the following methods are used to allocate overhead expenses for all illustrations:
  - (A) Fully allocated expenses;
  - (B) Marginal expenses; or
  - (C) A table of fully allocated expenses developed by the Actuarial Standards Board and approved by the National Association of Insurance Commissioners.

(d) The illustration actuary shall file a certification with the board and with the Commissioner:

- (1) Annually for all policies for which illustrations are used; and
- (2) Before a new policy is illustrated.

At the time an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the Commissioner.



- (e) If an illustration actuary is unable to certify the scale for any policy illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the Commissioner of his or her inability to certify.
- (f) An officer of the insurer, other than the illustration actuary, shall certify annually that the illustration formats meet the requirements of this Rule and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary and that the company has provided its agents with information about the expense allocation used by the company in its illustrations and disclosed as required in Subparagraph (c)(6) of this Rule.
- (g) The annual certifications shall be provided to the Commissioner each year by a date determined by the insurer.
- (h) At the time an insurer changes the illustration actuary responsible for all or a portion of the company's policies, the insurer shall notify the Commissioner of that fact and disclose the reason for the change.

*History Note: Authority G.S. 58-2-40; 58-2-171; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;  
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