Service Company Proposed Rulemaking

Oral Proceeding
November 4, 2021; 10:00 a.m. to 12:00 p.m. (MST)

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Financial Reporting

R20-6-407(B) Definitions

5. “Insolvent” as used in A.R.S. § 20-1095.08(3) means total liabilities are equal to or exceed total assets.

Comment (CCIA): B.5. A new section that narrowly defines “Insolvent” to the balance sheet method only. The traditional test is the company inability to pay its debts as they become due. We would like to see the Department expand this definition to take that additional part of the solvency test into consideration. Insolvent as used in ARS 20-1095.08(3) means total liability is equal to or exceed total assets and the service company is unable to pay its debts as they come due.

(ARS 20-1095.08(3) says: 3. In the opinion of the director, the service company is insolvent.)

Financial Reporting (contd.)

8. "Solvent" as used in A.R.S. § 20-1095.03(A)(1) means total assets exceed total liabilities.

Comment (CCIA): B.8. The definition of "Solvent" should include the traditional test of solvency which include more than the balance sheet test. We respectfully request a revision as follows: "Solvent" as used in ARS 20-1095.03(A)(1) means total assets exceed total liabilities or the service company is unable to pay its debts as they become due.

(ARS 20-1095.03(A)(1) says "1. The applicant is solvent and organized under the laws of this state or another state, district, territory or possession of the United States.")

Financial Reporting (contd.)

Comment (APCIA): The proposed definition of both “solvent” and “insolvent” is too narrow. Common usage of these terms contemplates as a component the ability or inability to pay debts as they come due. We would like to see both definitions modified accordingly.

Financial Reporting (contd.)

R20-6-407(C)(2) Application. The application shall contain the following information:

I. A summary of the applicant's financial position;

Comment (CCIA): C.2.I. A "summary" of the applicant's financial position is ambiguous. There is already a requirement for the applicant's financial statement under C.3.a., therefore, we recommend deletion of this requirement.

Comment (APCIA): Similarly, section (C)(2)(I) requires a "summary of the applicant's financial position." However, such information is arguably already required under section (C)(3)(a) in the form of a copy of the applicant's most recent financial statement. Accordingly, one of the duplicative requirements should be deleted.

Financial Reporting (contd.)

R20-6-407(C)(3) Application attachments. The applicant shall include the following as part of the application:

a. A copy of the service company's most recent financial statement, including an income statement and a balance sheet, verified by a certified public accountant.

Comment (CCIA): C.3.a. Requiring an audited financial statement is an onerous and unnecessary change from the prior requirement. Currently, R20-6-407(C)(2) allows for a company's financials to be certified by the owners or a CPA. Certification by a CPA would add significant cost to a service company operating on a national basis or a small service company. Certification of financials by officers, combined with a bond or mechanical reimbursement policy, combined with biographical disclosures for owners, directors, and officers have proved sufficient for financial protection for consumers. We respectfully request the requirement revert to the prior requirement: "A copy of the applicants most recent financial statement, sworn to and certified by the owner, duly elected officer or a CPA."

Financial Reporting (contd.)

Comment (SCIC): Current law requires that a service company applicant be solvent but as stated in A.R.S. § 20-1095.03 B “does not require the director to determine the actual financial condition or claims practices of any service company” and “[t]he issuance of a service company permit indicates only that the entity appears to be financially sound and to have satisfactory claims practices and that the director has no credible evidence to the contrary.” Additionally, Arizona Senate Bill 1049 removed statutory references to audited financial statements and certified public accountants.

The proposed draft rule requires a service company to submit a copy of “the service company’s most recent financial statement, including an income statement and a balance sheet, verified by a certified public accountant.” It also defines “solvent” and requires applicants submit: “a summary of the applicant’s financial position.”

The proposed draft rule adds new requirements not contemplated in the current statute. Certainly, the Division has a responsibility and mandate to ensure applicants have the financial wherewithal to make good on their obligations and remain solvent, but the proposed rule seems to require specific, discreet methods to satisfy this requirement that may be inconsistent with current industry practices and add additional costs to preparing financial information. In addition, the current requirements appear vague and difficult to understand. For example, what type of “summary” would be required for the applicant’s financial position? We would recommend that the final rule indicate that the applicant must submit its most recent financial statement, including an income statement and a balance sheet, but to present the information in the method and format that they currently prepare in accordance with standard business or accounting practices, which also preserves all other, existing powers delegated to the Division to review the financial competency of the applicant. We further suggest that new, arbitrary documents that may not be currently developed could lead to filing and approval delays and added costs for providers.

Financial Reporting (contd.)

R20-6-407(E). Service company permit renewal and late-renewal.

3. Renewal attachments. The service company shall attach the following to the renewal:

a. A copy of the service company's financial statement as of the end of the service company's most recently completed fiscal year, including an income statement and a balance sheet, verified by a certified public accountant.

Comment (CCIA): E.3.a. Renewal attachments again require verification by a CPA. We again respectfully request this language revert to the prior requirement: "A copy of the service company's financial statement as of the end of the service company's most recent completed fiscal year, including income statement and balance sheet, sworn to and certified by the owner, duly elected officer or a CPA.

Financial Reporting (contd.)

R20-6-407(E)(3)(a) contd.

Comment (NHSCA): Statute: “This article does not require the director to determine the actual financial condition of or claims practices of any service company. The issuance of a service company permit indicates only that the entity appears to be financially sound and to have satisfactory claims practices and that the director has no credible evidence to the contrary. ARS 20-1095.03(B).

Objection: Verification by a CPA is an unnecessary burden not contemplated by the statutory language. The previous rule only required “a copy of the service company’s most recent financial statement, sworn to and certified by the owner, duly elected officers, or a CPA.” Nothing in the recent amendments would suggest a heightened standard is necessary. In fact, SB1049 removed references in the statute to CPAs and audited financials. This is a new burden imposed on service contract providers with no basis in the law.

Financial Reporting (contd.)

Comment (APCIA): We object to the requirement at section (C)(3)(a) to submit financial statements verified by a certified public accountant and instead suggest leaving the current requirement that provides for certification by the owner, duly elected officer or a certified public accountant. Reversion to the current standard should also carry over to the permit renewal process at section (E)(3)(a).

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Reasonable time

B. Definitions. The definitions in A.R.S. § 20-1095 apply to this rule.

7. "Reasonable time" or "Reasonable period of time:"

a. As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than two business days after the purchase date of the contract. If a service company mails the contract, it can establish proof of mailing by USPS certified mail or first class mail using intelligent barcode or another similar tracking method used or approved by the USPS. If a service company electronically delivers the contract it must be delivered consistent with the requirements of Title 44, Chapter 26.

Comment (CCIA): B.7. Would add "Reasonable time" requirements to the statutory ARS 20-1095.06(C)(2) provision for a service contract to be offered in the state: "A copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase." This "reasonable time" would be delivery electronically or by mail not more than 2 business days after contract purchase. Mail delivery would have to be bt certified or first class mail using a tracking method approved by USPS. Electronic delivery would be subject to the electronic delivery requirements under ARS 44:26.

Reasonable time (contd.)

Comment (CCIA) contd: This definition is monumentally more restrictive than any other state service contract statute. Typically, two (2) weeks for delivery is considered reasonable where the service contract is not provided at the point of purchase. No state service contract statute requires proof of delivery. These requirements are burdensome, impose significant expense and unreasonable operational requirements without benefit to the consumer or statutory authority. We see no reason for the addition of this draconian definition and would delete it in its entirety.

Reasonable time (contd.)

Comment (NHSCA): Statute: “Service contracts may not be issued, sold or offered for sale in this state unless the service company has provided . . . A copy of the service contract to the service contract holder within a reasonable period of time after the date of purchase. ARS 20-1095.06(2).

Objection: Two days is simply too quick a turnaround to be considered reasonable. Companies require certain administrative processes to take place before final copies can be sent out. In the case of contracts attached to real estate transactions, money must be delivered in escrow, the escrow provider must pay out to the service contract provider, and only once checks have cleared can the contract be sent out. This also requires potentially multiple delays awaiting delivery by the postal service. It is simply impossible in these cases to provide a copy within 2 days. We believe 30 days is more reasonable. This does not prejudice the consumer in any way and provides businesses the necessary time to process and distribute contracts.

Reasonable time (contd.)

Comment (SCIC): Current law requires a service company to provide a copy of the service contract to the service contract holder within a reasonable period-of-time after the date of purchase. The proposed draft rule defines reasonable period-of-time as “mailed or electronically delivered but not more than two business days after the purchase date of the contract.”

Although the obligation to deliver the terms and conditions to the contract holder remains a high priority and the statutory requirement is within a “reasonable” time, two business days will be extremely difficult for the industry in certain circumstances and unduly burdensome. With the high volume of transactions, we respectfully recommend that the definition of “reasonable” and “reasonable period of time” be removed from the final rule, and general practices of reasonableness and protections imposed by unfair trade practices and standard business policies should govern provider and administrator behaviors in delivering contract holder forms. In our estimation, this balances the interests of service companies, regulators, administrators and contract holders and aligns with the statute.

In addition, current law lists “failure to perform the services promised under the service contract within a reasonable time and in a competent or workmanlike manner” as an unfair trade practice.

Reasonable time (contd.)

Comment (APCIA): Regarding the proposed definition for “Reasonable time” or “Reasonable period of time,” it is entirely unreasonable to expect for a copy of a service contract to be delivered within two business days of the purchase of the contract. Most states allow for a minimum of two weeks for the contract to be delivered, and we would request a similar timeframe.

We also object to any attempt to adopt a proof of mailing requirement, something not contemplated by the governing statute. Such a requirement would impose needless expense on our members, expenses which will simply be passed along to consumers in the form of higher prices.

Reasonable time (contd.)

B. **Definitions.** The definitions in A.R.S. § 20-1095 apply to this rule.

7. "Reasonable time" or "Reasonable period of time:"

. . .

b. As used in A.R.S. § 20-1095.09(A)(4), is what an ordinary person would consider "reasonable" under the totality of the circumstances.

Comment (SCIC): The proposed draft rule states that a reasonable time is "what an ordinary person would consider 'reasonable' under the totality of the circumstances. This is highly subjective and could lead to a lot of confusion in the marketplace; we respectfully request this language be stricken from the final rule and that the statute stand on its own merit.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Denial of claim appeal

R20-6-407(G). Filing of forms.

2. Requirements for approval. No service contract form shall be approved unless it:

f. Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report, maintenance records, or other evidence that show the contract holder was not aware, at the time of contracting, of any preexisting condition that would be the basis for the denial of the claim;

Comment (NHSCA): Statute: “Service contracts shall clearly indicate whether preexisting conditions are covered or excluded under the terms of the service contract.” ARS 20-1095.06(D)(12) (As modified by HB 2443).

Denial of claim appeal (contd.)

Comment (NHSCA) contd. Objection: The DOI's proposed rule effectively re-writes the statute by adding a requirement that the contract holder be "aware" at the time of contracting. This is clearly not contemplated by the amended language, and a careful review of legislative history of ARS 20-1095.06(D)(12) illustrates the significance of this language. The language passed by the legislature only requires that a service contract provider disclose If preexisting conditions are covered or excluded and nothing else. Any attempt by the DOI to expand this disclosure undermines the carefully selected language passed by the legislature and signed by the governor.

Denial of claim appeal (contd.)

Comment (CCIA): G.2.f. This proposed requirement that contract holder can upon denial of a claim produce evidence showing they were not aware at time of contracting of any pre-existing condition that would be the basis for the denial of the claim, directly conflicts with the Act. A.R.S. § 20-1095.06.D.12., as provided in HB 2443 passed during the Arizona 2021 legislative session, provides that "Service contracts shall clearly indicate whether pre-existing conditions are covered or excluded under the terms of the service contract".

(ARS 20-1095.06(D)(12): D. Service contracts that are marketed, sold, offered for sale, issued, made, proposed to be made or administered in this state shall be written, printed or typed in clear, understandable language that is easy to read and shall disclose the following, as applicable: . . . 12. Service contracts shall clearly indicate whether preexisting conditions are covered or excluded under the terms of the service contract.)

Denial of Claim Appeal (contd.)

Comment (SCIC): Title 20, Chapter 4, Article 11 §D.12. of the Arizona statutes states: “[s]ervice contracts shall clearly indicate whether preexisting conditions are covered or excluded under the terms of the service contract.”

The proposed draft rule states:

“No service contract form shall be approved unless it: . . . [n]otifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report, maintenance records, or other evidence that show the contract holder was not aware, at the time of contracting, of any preexisting condition that would be the basis for the denial of the claim;”

The proposed draft rule goes beyond what the statute authorizes, as amended by Senate Bill 1049 and the subsequent House Bill 2443. The statute requires contract holder notice as to whether preexisting conditions are covered or excluded under the service contract. The proposed rule identifies new considerations that an administrator must consider in adjudicating a claim, such as:

• the availability of a home inspection report,

• the availability of maintenance records, or

• “other evidence” that show the contract holder was not aware, at the time of contracting, of the preexisting condition that is the basis for denial.

Denial of Claim Appeal (contd.)

Comment (SCIC) contd: A standard adjudication or inspection process objectively assesses the breakdown to determine if there's a valid, covered claim. If a preexisting condition is discovered through this process, that is clear and contractually absolves the provider from covering damage that it should not legally, or contractually, be obligated to pay, and there's no other provision in the contract to the contrary, the claim is denied – that burden currently resides with the provider to establish. The proposed rule seems to enable the contract holder to throw any evidence into the process, which would place heightened burdens and requirements on the provider and could further confuse the process. Consider what happens when there's multiple, competing documents that speak to whether knowledge existed and was readily available prior to the date of contracting? How is a provider to reconcile? In addition, this also introduces the concept of moral hazard and purchasing coverage when a known defect exists, the objective evidence of inspection becomes irrelevant and the purported knowledge of what the contract holder knew, or didn't know, at the time of contracting is the operative fact.Furthermore, litigation and/or arbitration will ensue to resolve conflicts. Of supreme concern is what constitutes "other evidence"? This is highly subjective and could lead to untenable situations that put the provider and administrator at a significant disadvantage. In addition, the denial of a claim can be "appealed" according to the proposed rule, which adds further misunderstanding to the process. For example, what does an appeal look like? How does that work? Must a provider and/or administrator honor all appeals in this realm? Please keep in mind that it is standard industry practice where a contract holder may also protest or ask for reevaluation of their claim, including securing additional information that may be helpful to fully understand the outcome of their claim decision. The industry has a longstanding practice of honoring this process and the current framework strongly supports a consumer's ability to have their claim reevaluated, so the language on this topic in the proposed draft rule does little to enhance contract holder protections.

In our opinion, and supported by the current statute, the clear exclusion disclosure language in the contract holder's form, leveraging objective criteria and objective loss adjustment processes, is the best way to manage preexisting conditions and we respectfully request the final rule remove all new requirements currently being proposed pertaining to preexisting conditions.

Denial of Claim Appeal (contd.)

Comment (APCIA): We strongly disagree with the inclusion of section (G)(2)(f), new language which creates out of whole cloth an appeal process for claim denials based on preexisting conditions. Its inclusion is directly contravened by A.R.S. § 20-1095.06(D)(12), which provides, “Service contracts shall clearly indicate whether preexisting conditions are covered or excluded under the terms of the service contract.”

Nowhere in the statute is there a reference to an appeal process to determine whether the holder was aware of the preexisting condition or, indeed, an appeal process at all. Any attempt to adopt such a procedure by regulation is without statutory support.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Items not specifically excluded are covered

R20-6-407(G) Filing of forms.

2. Requirements for approval. No service contract form shall be approved unless it:

b. Itemizes each of the systems, products and appliances covered by the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those systems, products, and appliances which are excluded from coverage. Any item or component not specifically excluded from a covered system, product or appliance is covered;

Comment (CCIA): G.2.b. Requires each portion of a product included and excluded must be listed. This is unreasonable and impossible in the context of today's complex and ever changing products. The Section further indicates that those which are not specifically listed are covered. This is a significant change in risk and conflicts with A.R.S. 20-1095.06 D.6 which requires that "Service contracts shall specify the merchandise and services to be provided and any limits, exceptions or exclusions.

Items not specifically excluded are covered (contd.)

Comment (CCIA) contd: Exclusions from coverage shall be in bold-faced type. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system". Many companies offer both inclusionary and exclusionary coverage allowing consumers a flexible fee structure for the products. We respectfully request deleting this Section and reverting to the statutory language: "Service contracts shall specify the merchandise and services to be provided and any limits, exceptions or exclusions. Exclusions from coverage shall be in bold-faced type.

Items not specifically excluded are covered (contd.)

Comment (APCIA): We are very concerned about certain of the form filing requirements contained herein. The requirement found at section (G)(2)(b) to itemize the “systems, products and appliances covered by the contract” as well as “the specific items or components of those systems, products, and appliances which are

excluded from coverage” is overly burdensome and unrealistic. It would require our members to maintain a constantly evolving list of items or components that are not covered as manufacturers continually develop new product models (which they may or may not bother to inform our members about). Such an approach is unrealistic and impractical and would significantly lengthen the contract form.

A better approach to take would be to simply copy the statutory language found at A.R.S. §20-1095.06(6) and require that “[s]ervice contracts shall specify the merchandise and services to be provided and any limits, exceptions or exclusions.”

Items not specifically excluded are covered (contd.)

Comment (NHSCA): Statute: “Service contracts shall specify the merchandise and services to be provided and any limits, exceptions or exclusions. Exclusions from coverage shall be in bold-faced type. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.” ARS 20-1095.06(D)(6)

Objection: Service contracts, are not insurance and unlike insurance, are contracts of inclusion, not exclusion. The idea that any “item or component” is covered unless explicitly excluded is fundamentally not how home service contracts work. This added language goes beyond the statute. It opens a door to interpretation that would only frustrate the intent of the statute and not help it.

Items not specifically excluded are covered (contd.)

Comment (SCIC): The current rule requires contracts to list in large bold-faced type specific items or components which are excluded from coverage. The proposed draft rule adds “[a]ny item or component not specifically excluded from a covered system, product or appliance is covered.”

The proposed rule appears to go too far in affirming coverage for any item or component not specifically excluded, but it fails to consider that other limitations, conditions and exclusions that might exist in the form. It’s a considerable switch to require providers to list specific items or components which are excluded from coverage to requiring forms to list “any item or component not specifically excluded” and suggesting that failure to do so could result in a covered claim.

The new requirement will force providers to enumerate every possible item or component that would not be covered, which will add significant length of the form, introduce more confusion for contract holders and require a constant change, and refiling, of forms to accommodate new items or situations that may not exist on prior forms. Consider the area of automobile service contracts, with hundreds of component parts that vary wildly by manufacturer, vehicle model and customization (e.g., limited edition, luxury etc…). How could this possibly be administered? This is a significant change in risk and conflicts with statute 20-1095.06 D.6 which requires “6. Service contracts shall specify the merchandise and services to be provided and any limits, exceptions or exclusions. Exclusions from coverage shall be in bold-faced type. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.” Many companies offer both inclusionary and exclusionary coverage allowing consumers a flexible fee structure for the products.

To remove ambiguity and avoid confusion, we recommend reverting to the old language, which appears sufficient and protective of contract holder interests.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Provider definition unnecessary

6.“Provider” means a person who is contractually obligated to the service contract holder under the terms of a service contract. “Provider” is synonymous with “service company” and “obligor” as defined in A.R.S. § 20-1095(6).

Comment (CCIA): B.6. Adds a new definition of “Provider”. This term is not used within the proposed rule and is unnecessary.

Comment (APCIA): We question the inclusion of a definition of the term “provider,” a term that does not appear to actually be used in the proposed regulation. Because the governing statute does not use this term, neither should any regulations promulgated pursuant to that statute.

Department Response: “Provider” is used extensively throughout the statutory sections without definition.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Application Contact Person

R20-6-407(C)(2) Application. The application shall contain the following information:

f. Applicant's addresses, phone numbers, e-mail address(es) and website address(es);

g. Name, address, and phone number or e-mail address for each contact person of the applicant;

Comment (CCIA): C.2.g. Requires name, address, and phone number or email address for each contact person of the applicant. Perhaps the applicant defines 'contact person', but all that information was already provided in the biographical affidavit, and or application item C.2.f.

Comment (APCIA): Proposed changes to this section are alternatively ambiguous or duplicative. For example, section (C)(2)(g) appears to seek the same information as section (C)(2)(f) . . . The duplicative requirements should be deleted.

Application Contact Person (contd.)

Comment (SCIC) (re: Renewal Form): The proposed draft rule requires in the renewal form that it include “[a]ny changes to the service company’s contact person or persons or service contract administrator, or their contact information” . . . It is unclear why this information is necessary as the administrator’s contact information would always appear in the service contract form. We respectfully request this requirement be removed from the final rule.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Application types of items to be covered

R20-6-407(C)(2) Application. The application shall contain the following information:

j. The types of items the applicant intends to cover under its service contracts;

Comment (CCIA): C.2.j. ‘The types of items the applicant intends to cover under its service contracts is ambiguous and undefined. We would recommend: The lines of business the applicant intends to cover. Allowing selection of any or all of the following: consumer product; home warranty or home protection contract; residential property; motor vehicle.

Application types of items to be covered (contd.)

Comment (SCIC) (re Renewal Form): The proposed draft rule requires in the renewal form that it include . . . "[a]ny changes to the types of items the service company intends to cover under its service contracts." . . . Further, pertaining to the "types of items" the provider intends to cover, it is unclear what this means and how this would be addressed. Do "items" include categories of products, specific parts, something else, etc…? This could be a daunting task to list and providers would be fearful of inadvertently omitting something that the Division would view as important. The service contract form is the governing document that memorializes the obligations to the contract holder; we respectfully request that this requirement be removed from the final rule.

Application types of items to be covered (contd.)

Comment (APCIA): Section (C)(2)(j) requires an applicant provide “[t]he types of items the applicant intends to cover under its service contracts.” Rather than require applicants to describe “types,” we suggest instead replacing “types of items” with “lines of business” and include the following suggested lines: consumer goods; home warranty; and motor vehicle.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Application - Owners

R20-6-407(C)(2) Application. The application shall contain the following information:

h. A list of the applicant's officers, directors, managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;

Comment (CCIA): C.3.c. The biographical affidavit required in Section 3.c. will provide the department with all the information needed in C.2. h. Therefore, C.2. h. is redundant and should be deleted.

Comment (APCIA): ". . . section (C)(2)(h) seeks information that is duplicative of information required by section (C)(3)(c). The duplicative requirements should be deleted.

Application - Owners

R20-6-407(C) **Application for a service company permit.**

3. Application attachments. The applicant shall include the following as part of the application:

c. A biographical affidavit, on a form approved by the Division, for each officer, director, manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.

Comment (APCIA): Regarding section (C)(3)(c), the new language represents a significant expansion of disclosure requirements from the applicant to “owners, officers, managers, or directors of the applicant…” The expansion appears to have no basis in statutory language, and raises questions about who exactly is contemplated by “managers,” a potentially rather long list of personnel. We request the disclosure requirement remain limited to the applicant to avoid the associated compliance costs of maintaining such a list.

Application - Owners (contd)

R20-6-407(C) **Application for a service company permit.**

3. Application attachments. The applicant shall include the following as part of the application:

e. .A list of any actions taken against the applicant and a list of actions taken against any of the owners, officers, managers, or directors of the applicant in any jurisdiction by a regulatory agency or state attorney general.

Comment (SCIC): The current rule requires a list of suspensions, revocations or other disciplinary or rehabilitative actions taken against the applicant. The proposed draft rule additionally requires “a list of actions taken against any of the owners, officers, managers, or directors of the applicant in any jurisdiction by a regulatory agency or state attorney general.”

This appears to go beyond the statutory requirement and current Arizona law and could inject additional concerns with the stakeholders listed in the proposed draft rule, which go beyond standard NAIC requirements or the biographical affidavits that may previously have been required. This seems to shift the focus from the applicant to a broader subset of individuals, some of which may not be in any sort of leadership or officer-level role. For example, what is contemplated by the term “manager,” and how pervasive and expansive is that list desired to be? We respectfully request this provision be removed in the final rule, with focus on current rule requirements and reliance on the existing biographical affidavits.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

List of subcontractors

R20-6-607(C)(3) Application attachments. The applicant shall include the following as part of the application:

d. A list of subcontractors who are under common ownership or control or are affiliated with the applicant. If required by the type of work being performed, all subcontractors must be licensed.

Comment (CCIA): C.3.d. This requirement conflicts with A.R.S.20-1095.01 which limits the service company, sellers, and administrators to registration requirements only. Subcontractors, even if under common ownership or affiliated, is a broad and undefined term. We question the need for this Information.

Comment (APCIA): Section (C)(3)(d) requires an applicant provide a “list of subcontractors who are under common ownership or control or are affiliated with the applicant.” The registration requirements of the Service Contract Act are expressly limited to service companies, nor are we sure what value such information would provide. We recommend deleting this requirement, both here and at section (E)(3)(e).

List of subcontractors (contd.)

Comment (SCIC): The proposed draft rule would require an applicant to submit the name and contact information of any administrator used; requiring a “list of subcontractors who are under common ownership or control or are affiliated with the applicant.”

We respectfully ask that this requirement be removed. The service contract form will clearly identify the provider and administrator, with relevant contact information, to ensure contract holders know who to contact if they have any questions or concerns, or would like to submit a claim, under the terms and conditions of the contract. Listing all subcontractors would confuse contract holders, adds unneeded steps to the application, and renewal, process that do not serve a purpose that appears aligned with statutory intent. The applicant and the contracting parties with the contract holder retain all responsibility under the law and contract to fulfill its obligations and providers, administrators and other parties may elect to utilize subcontractors if permitted by law. Listing all subcontractors would add confusion for contract holders on who to contact, be cumbersome and unduly burdensome for the industry, and do not appear to advance any statutory or regulatory purpose. We respectfully request this request be removed in the final rule.

List of subcontractors (contd.)

R20-6-407(E) Service company permit renewal and late-renewal.

3. Renewal attachments. The service company shall attach the following to the renewal:

e. Any additions or deletions to the subcontractors that are under common ownership or control or are affiliated with the service company since the last report to the Division. If required by the type of work being performed, all subcontractors must be licensed.

Comment (CCIA): E.3.e. Renewal attachments, for the reasons stated above, this section should be deleted as it conflicts with A.R.S 20-1095.01C and does not define subcontractor.

(ARS 20-1095.01(C): C. The director shall adopt rules that provide for the application for permit, renewal procedures, fees, refund of the unearned portion of the contract price and approval of forms. Service companies are subject to chapter 1 of this title, except section 20-116, and this article.)

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Applicability of the Insurance Code

R20-6-407(G) Filing of forms.

1. Contracts to be submitted for approval. A service company shall submit contracts for the Division's approval pursuant to A.R.S. § 20-1095.06. A service company is not required to submit advertisements or marketing materials for approval by the Division but shall abide by the provisions of Title 20, Chapter 2 - Article 6, Chapter 4 - Article 11, and this Section regarding misrepresentations in the sales of service contracts.

Comment (NHSCA): Statute: "The types of agreements referred to in subsection A of this section are not insurance and are not required to comply with the insurance laws of this state unless a provision is made expressly applicable in this article." ARS 20-1095.02(C)

Objection: The proposed rule seeks to impose Chapter 4 – Article 11 and Chapter 2 – Article 6 of the Insurance Code on service contract providers. The statute explicitly prohibits this. Only the statute can authorize the application of an insurance law on service contract providers, and it does not apply either of these sections. Relevant fair business practices requirement as it pertains to service contracts are codified at ARS 20-1095.09. The application of insurance laws to service contracts by the department is inappropriate and prohibited by statute.

Applicability of Insurance Code (contd.)

Department Response:

20-441. Purpose of article; definition

A. Among the purposes of this article is the regulation of trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945, 59 Stat. 33, by defining, or providing for the determination of, all such practices in this state that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

B. For the purposes of this article, "insurance company" or "insurer" means any:

. . .

9. Service company as defined in this title.

10. Any other entity licensed under this title.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Regulatory Catch-all

R20-6-407(C)(2) Application. The application shall contain the following information:

n. Any other information the Division deems necessary.

Comment (NHSCA): Objection: This is inconsistent with the fundamental requirements of rulemaking. These rules exist to clarify, in practice, how statutes are to be enforced. By providing this carte blanche language for the DOI to ask for anything without notice is unfair and unduly burdensome to the industry. It only serves to create confusion and misunderstanding because companies can never be sure what will be asked of them. It also fosters and promotes disparate treatment of one provider from another.

Regulatory Catch-all (contd.)

Comment (SCIC): The current rule doesn’t enable the Division to ask for additional items in the application process. The proposed draft rule also requires applicants submit “any other information the division deems necessary.”

While we understand there may be instances where it would be helpful or appropriate for the Division to request information not strictly contemplated, the proposed rule is very broad and will lead to confusion. We certainly do not want to impede the Division’s ability to properly regulate the industry and protect contract holders, but the industry would desire more concrete guidance to effectively understand what could reasonably be requested by the Division. Our recommendation would be to remove this catch-all requirement, recognizing the Division has broad authority under separate, existing sections to secure the needed information to perform a full and complete assessment of the applicant in alignment with its statutory mandate.

Regulatory Catch-all (contd.)

R20-6-407(E) Service company permit renewal and late-renewal.

2. Renewal form. A service company shall use the renewal form designated by the Division. The renewal shall contain the following information:

e. Any other information the Division deems necessary.

Comment (CCIA): E.2.e. The Department can require any information “it deems necessary” for a service company permit renewal. The requirements for a renewal should be reasonable, transparent, and not exceed requirements set by statute or even the proposed rule for the permit application.

Comment (APCIA): The reference to changes to service contract administrator at section (E)(2)(e), when that information is not required to be provided in association with an initial application, should be deleted.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

No paper copy of permit

R20-6-407(D) Term of the service company permit.

2. The Division is not required to issue a paper copy of the service company permit.

Comment (CCIA): Terms of the service company permit by D.2. deletes the requirement for the Department to issue a paper copy of the service company permit. How does the Department propose to notify applicants of their authority?

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Permit renewal

R20-6-407(E) Service company permit renewal and late-renewal.

1. Timely renewal. A service company seeking to renew its permit shall file with the Division a renewal application, consisting of the renewal application form, all required attachments and the renewal fee after the end of its fiscal year but before the expiration of its permit term. . . .

Comment (CCIA): E.1. This new language uses the service company fiscal year as a measure for timely renewal. This is unreasonable and conflicts with the Act. The Department assigns a permit term. To require the earlier of the end of the service company's fiscal year but before the expiration of its permit term is unreasonable and unduly burdensome.

Department Response:

R20-6-407(D) Term of the service company permit.

1.Term of permit. A service company permit shall have a term that begins on the date that the Division either grants or renews a service company permit and expires at midnight on the last day of the month, three months after the service company's fiscal year-end date.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Renewal Form should be limited to changes only

R20-6-407(E) Service company permit renewal and late-renewal.

Comment (CCIA): E.2. Renewal Form requirements should be limited to changes from the prior year's renewal application. We respectfully request that the phrase "that differ from the prior year's application" be added to Items E.2.b. and E.2. c. and the Renewal attachments E.3.c and E.3.d. Additionally, Item E.2.c. adds the requirement for changes in service contract administrator however, the initial application does not require a listing of the administrator. For the reasons stated above, we would delete any reference to administrator.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Late renewal fee

R20-6-407(E) Service company permit renewal and late-renewal.

5. Late-renewed application and fee.

c. Fee. In addition to the nonrefundable renewal fee required under subsection (E)(4) of this Section, the service company shall pay a nonrefundable additional fee of $25 per day starting the calendar day after the permit term expiration and ending on the date the service company files a complete renewal application.

Comment (CCIA): E.5. c. The late renewed application fee is unreasonable and excessive. Relative to the entire application and renewal fee, a $25 per day penalty is not only punitive, but excessive.

Comment (APCIA): The $25 daily fee imposed in section (E)(5)(c) on expired permit holders is arbitrary and should be deleted.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Contract holder financial responsibility re: subcontractors

R20-6-407(G). Filing of forms.

2. Requirements for approval. No service contract form shall be approved unless it:

d. Specifies in clear and easily understood language the specific circumstances under which a contract holder may engage a subcontractor who is not recommended by the service company without becoming financially responsible under the contract and whether pre-authorization is required prior to engaging a subcontractor who is not recommended by the service company;

Comment (CCIA): G.2.d. This Section appears to prohibit pre-authorization. The ability to authorize a claim provides the consumer with certainty knowing what their financial responsibility will be. We respectfully require deletion of this Section or revision to provide clear and conspicuous notice to the consumer when pre-authorization is required.

Contract holder financial responsibility re: subcontractors (contd.)

Comment (SCIC): Listing specific circumstances under which the contract holder may engage a subcontractor that is not recommended by the service company will be difficult to administer. It is extremely difficult to contemplate every “specific” circumstance that will govern this situation, which could lead to an endless cycle of form changes and Division filings to contemplate enhancements, emerging loss trends and other patterns that need to be addressed. Administrators have a vested interest in providing timely, competent and safe repairs to contract holders due to covered breakdowns, coupled with extensive requirements dictating how to adjudicate claims and avoid unfair claim practices. This language also appears to prohibit pre-authorization. The ability to authorize a claim provides the consumer with certainty knowing what their financial responsibility will entail. Our recommendation and supported by the statute, is to allow claims professionals and administrators the professional discretion to adjudicate claims in a compliant, safe and timely manner, recognizing that preauthorization to utilize subcontractors is the best way to protect the interests of all stakeholders.

Contract holder financial responsibility re: subcontractors (contd.)

Comment (APCIA): Similarly, section (G)(2)(d) could lead to excessively long contract forms that seek to identify every possible circumstance under which the contract holder may engage a subcontractor that is not recommended by the service company and should be deleted.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Service Company's Financial Responsibility

R20-6-407(G) Filing of forms.

2. Requirements for approval. No service contract form shall be approved unless it:

e. Specifies in clear and easily understood language the service company's financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired;

Comment (SCIC): It is unclear what is meant by "financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired." Again, this will add additional language to the contract that could also lead to further contract holder confusion. In addition, the commitment under the form/agreement is to repair or replace breakdowns after they occur, ensuring the contract holder is made whole when coverage exists under a covered claim. There are several ways in which an administrator can perform this legal and contractual obligation, which enables the administrator to work with the contract holder in a way that is in everyone's best interest and aligned with applicable adjudication statutes and requirements. It is our recommendation that this requirement be removed from the final rule and leverage the plain reading of the forms to dictate situations where a repair or replacement is not possible following a covered claim.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Dates of Coverage

R20-6-407(G) Filing of forms.

2. Requirements for approval. No service contract form shall be approved unless it:

h. States the dates of coverage under the service contract including any delay in coverage that differs from the purchase date of the contract which would extend the coverage term of the contract and any terms that govern renewal of the service contract; and

Comment (CCIA): G.2.h. Proposed requirement that any delay in coverage that differs from the contract purchase date which would extend the expiration of the contract and any terms governing the renewal of the contract exceeds requirements of A.R.S. § 20-1095.06. The statute does not require that any coverage be extended or renewed. Again, if the Department requires this language, we respectfully request the addition of language ‘If applicable’ to be clear.

Dates of Coverage (contd.)

Comment (SCIC): A.R.S. § 20-1095.06 does not require that any coverage be extended or renewed. Again, if the Division requires this language, we respectfully request the addition of language ‘If applicable’ to be clear. Without modification the proposed rule is redundant as this information already exists in the form and further requirements would add to the length of the form and potentially introduce contract holder confusion. Typically, the term and date that coverage begins is on the declarations page, with renewal terms in a separate section that govern cancellation and/or termination. Requiring this language to be duplicated via a disclosure or elsewhere in the form could lead to confusion, duplication and extend the length of the form. It is our recommendation that this requirement be removed from the final rule, recognizing that these are key, salient terms that are always addressed in the base form and easy to locate.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Pro rata refund upon cancellation notice

R20-6-407(G) Filing of forms.

2. Requirements for approval. No service contract form shall be approved unless it:

i. States that the administrative expenses may not exceed $75 or ten percent of the purchase price of the service contract, whichever is less, when providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract.

Comment (CCIA): G.2.i. As proposed this Section would require a disclosure of the cancellation fee of $75 or 10% of the purchase price, whichever is less, even if there is no cancellation. This conflicts with A.R.S. § 20-1095.06. D.9. as it requires the disclosure, if applicable, and that the cancellation fee not exceed ten percent of the gross amount paid by the contract holder for the service contract.

(ARS 20-1095.06(D): D. Service contracts that are marketed, sold, offered for sale, issued, made, proposed to be made or administered in this state shall be written, printed or typed in clear, understandable language that is easy to read and shall disclose the following, as applicable:

9. Service contracts shall state the terms, restrictions or conditions governing cancellation of the service contract before the termination or expiration date of the service contract by either the service company or the service contract holder. At a minimum, a service contract shall provide for a pro rata refund after deducting for benefits paid and administrative expenses associated with the cancellation. The administrative expenses may not exceed $75 or ten percent of the purchase price of the service contract, whichever is less. Any administrative expense assessed may not exceed the amount of the refund due to the service contract holder.)

Pro rata refund upon cancellation notice (contd.)

Comment (SCIC): The proposed rule states:"[n]o service contract form shall be approved unless it…[s]tates that the administrattive expenses may not exceed $75 or 10% of the purchase price of the service contract, whichever is less, when providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract."

The proposed draft rule requires the above statement in all forms. While the industry accepts the ability to collect the cancellation fees to help absorb processing and related costs associated with cancellation of contracts, a provider or administrator may not wish to charge a cancellation fee and this appears to not be an option, as drafted. The language as stated in the rule conflicts with A.R.S. § 20-1095.06.D.9. which requires the disclosure, if applicable, and that the administrative expense may not exceed $75 or 10% of the gross amount paid whichever is less. We recommend the following modification to the final rule to align with the statutory intent to read as follows: "no service contract form shall be approved if it……[s]tates that the administrative expenses exceed $75 or 10% …."

ARS 20-1095.06(D)(9): D. Service contracts that are marketed, sold, offered for sale, issued, made, proposed to be made or administered in this state shall be written, printed or typed in clear, understandable language that is easy to read and shall disclose the following, as applicable:

9. Service contracts shall state the terms, restrictions or conditions governing cancellation of the service contract before the termination or expiration date of the service contract by either the service company or the service contract holder. At a minimum, a service contract shall provide for a pro rata refund after deducting for benefits paid and administrative expenses associated with the cancellation. The administrative expenses may not exceed $75 or ten percent of the purchase price of the service contract, whichever is less. Any administrative expense assessed may not exceed the amount of the refund due to the service contract holder.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Department exceeds its authority

Comment (CCIA): In general, it appears this proposed rulemaking exceeds the Department's authority granted in A.R.S.20-1095.01C which provides, "The director shall adopt rules that provide for the application for permit, renewal procedures, fees, refund of the unearned portion of the contract price and approval of forms." The proposed rules directly conflict with the statute as noted.

Comment (NHSCA): These rules as proposed circumvent and go substantially beyond the carefully considered and negotiated language passed by the Arizona legislature. The Arizona Department is required to pass regulations which are the "least burdensome" to accomplish the statutory purpose. These regulations in much part, impose new and unusual burdens far from the scope or debate in the legislature.

Categories of Comments

1. Financial Reporting
2. Reasonable Time
3. Denial of Claim Appeal
4. Items not specifically excluded are covered
5. Provider definition unnecessary
6. Application Contact Person
7. Application types of items to be covered
8. Application - Owners
9. List of subcontractors
10. Applicability of the Insurance Code
11. Regulatory Catch-all
12. No paper copy of permit
13. Permit renewal
14. Renewal Form should be limited to changes only
15. Late renewal fee
16. Contract holder financial responsibility re: subcontractors
17. Service Company's financial responsibility
18. Dates of Coverage
19. Pro rata refund upon cancellation notice
20. Department exceeds its authority
21. Changes to forms on a going forward basis

Changes to forms on a going forward basis

Comment (CCIA): The statute allows any changes that may be required to forms as a result of the recent changes to be implemented going forward as service companies make changes to already approved forms. (A.R.S.20-1095.06 F) This is very important to service companies due to the expense of updating and implementing forms. Although not stated in the proposed rule, any proposed changes should be implemented in conformance with statute.

(ARS 20-1095.06(F) not found.)