



FORTHRIGHT

New Jersey No-Fault PIP Arbitration Rules (2011)

Amended August 1, 2011

ADMINISTERED BY FORTHRIGHT

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PART I – RULES OF GENERAL APPLICATION

1. Scope of Rules

New Jersey automobile insurance law was amended in 1998 to require that all automobile insurers provide any party with the option of submitting a dispute concerning personal injury protection benefits to binding arbitration. Such dispute resolution is governed by *N.J.S.A. 39:6A-5.1 et. seq* and *N.J.A.C. 11:3-5.1 et seq*. These administrative rules apply to disputes arising under contracts affected by the provisions of the 1998 New Jersey “Automobile Insurance Cost Reduction Act,” specifically, to claims under policies issued or renewed on or after March 22, 1999, and any voluntary submission by the parties pursuant to *N.J.S.A 39:6A-9.1 and 39:6A-11*. These administrative rules also apply to such cases as may be ordered to dispute resolution by a Court. The duties of Forthright under these rules may be carried out through such representatives as Forthright may direct.

These rules have been established at the direction and with the approval of the New Jersey Department of Banking and Insurance. The rules shall be effective and shall govern pending arbitrations and those filed on or after April 1, 2011, unless otherwise noted in the rules.

Arbitration proceedings are confidential. To the extent permitted by law, all parties may agree in writing to release their arbitration information. Arbitration Awards are not confidential and, subject to the redaction requirements imposed by law, are publicly disclosed. Forthright may disclose case filings, case dispositions, and other case information as required by applicable law and the New Jersey Department of Banking and Insurance.

2. Interpretation and Application of Rules

Forthright shall interpret and apply these administrative rules including establishing procedures governing arbitrations. The dispute resolution professionals (DRPs) shall interpret and apply these rules insofar as they relate to the DRP’s substantive powers and duties. When there is more than one DRP and a difference arises among them concerning a case to be determined, their decisions shall be by a majority vote.

3. Representation

Any party may be represented by counsel or other authorized representative as may be permitted by law.

4. Fully Electronic Case Filing and Case Management

“Fully electronic case filing and case management” shall mean that, for the duration of the entire case including post-award procedures, all communications and document exchanges between a party or its representative and Forthright are conducted electronically.

“Conducted electronically” means that:

- a. the party and its representative have authorized Forthright to deliver all communications, including documents, to the party or representative on the Forthright website; and
- b. all communications from the party and its representative, including document submissions, are delivered to Forthright via uploading at Forthright’s case management portal or, if the party or representative is a subscriber to the electronic document delivery service designated by Forthright, then via that service.

“Conducted electronically” does not include facsimile transmissions, emails, attachments to emails or submitting documents on CD or DVD.

The electronic document delivery service designated by Forthright appears on Forthright’s website at www.nj-no-fault.com.

Parties and their representatives who utilize fully electronic case filing and management will qualify for the fee refunds set forth in Rules F-1 or F-2.

5. Computing Time Periods

The time periods set forth herein are calendar days unless otherwise specified. Whenever a time period terminates on a Saturday, Sunday, federal holiday, New Jersey state holiday or a day upon which Forthright does not conduct business, it shall be extended through the next business day. Deadlines for submission of documents shall refer to the date of receipt by Forthright and shall extend to close of business for US mail and courier and 12:00 midnight for electronic documents, including faxes.

6. Types of Arbitrations

{This rule pertaining to on-the-papers arbitrations will become effective upon a date to be determined}.

The parties may offer such evidence as is relevant and material to the case. The DRP may receive and consider the evidence of witnesses by affidavit or other document. The DRP shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.

There shall be 2 types of arbitrations:

- a. “In-person” is defined as one where the parties or their representatives appear in person or telephonically before the DRP and present their case. Any case not covered by Rule 6(b) below shall be submitted to a DRP for in-person arbitration.

- b. “On-the-papers” is defined as one in which the parties or their representatives submit documentation supporting their case to Forthright, which shall transmit it to the DRP who shall decide the case based solely upon the documentation without in person or telephonic appearances by the parties or their representatives. Cases are required to be designated as on-the-papers when (1) there is no claim for future treatment or testing, and (2) the amount claimed owing for personal injury protection coverage benefits is less than \$1,000 exclusive of interest, attorney’s fees and costs of arbitration after all payments received by the claimant up to the day before the filing of the *Demand for Arbitration*. (For services subject to the NJ Automobile Medical Fee Schedules, no amount claimed shall be greater than the fee on the appropriate fee schedule). The filing party shall designate in the *Demand for Arbitration* whether the case is being filed as in-person or on-the-papers and shall pay the applicable administrative fees as set forth in Rule F-1. Should a filing party designate a case as in-person when the amount claimed does not qualify the case as such, Forthright will designate the case as on-the-papers and will advise the parties.

Forthright cannot verify the accuracy of the information provided by the filer in subparagraph b) above and cannot administratively resolve party disputes regarding the calculation of the amount

claimed in the *Demand*. All disputes regarding the amount claimed as owing for personal injury protection coverage benefits will be included in the DRP's final decision.

If the amount claimed as defined above is equal to or exceeds \$1,000, the filing party may designate the case as on-the-papers. Any named respondent may request that the case be in-person provided the request is received by Forthright no later than 45 days after the initiation date of the case. This request will require all parties to pay the additional fee for an in-person hearing.

Within 100 days from the initiation of a case, a respondent may remove a dispute that otherwise meets the definition of an on-the-papers case to in-person arbitration because the issues in dispute involve coverage under the policy, fraud investigations by the respondent's Special Investigations Unit (SIU) or causality of the injuries. Such a request shall be submitted to Forthright on the *Respondent In-Person Arbitration Selection Form* and will require all parties to pay the additional fee for an in-person case. A copy of the form is available online at www.nj-no-fault.com.

7. Demand for Arbitration

Any party may file a written *Demand for Arbitration* with Forthright online, by U.S. mail or by personal delivery at Forthright's office. All *Demands for Arbitration* must be accompanied by the administrative fee.

If filed online, filing shall be made through Forthright's web site or through such electronic document delivery service as may be designated by Forthright on its website. If submitted as paper, only one copy of the demand is required. The demand shall also be simultaneously served upon all named parties by electronic service as may be permitted by the party to be served, certified mail return receipt requested or by personal service. The demand shall be served at the address of the party or, in the case of an insurer, at the address for service designated pursuant to *N.J.A.C. 11:3-5.6(a)*. Forthright will make available on its website at www.nj-no-fault.com those addresses for service that insurers have provided to Forthright pursuant to *N.J.A.C. 11:3-5.6(a)*.

If no address is designated on Forthright's website and if the claims office handling the claim is located outside the state of New Jersey, then service shall be upon the claims office handling the claim.

A *Demand for Arbitration* shall include claims for only one accident unless the claims are for the same injured person. A *Demand for Arbitration* shall include the claims of only one injured person, except that one *Demand for Arbitration* may include the claims of a maximum of four (4) injured persons who occupied the same vehicle on the same date of accident.

The *Demand* shall include:

- 1) *Name of the injured person;
- 2) Address of the injured person;
- 3) *Name and address of the claimant;
- 4) *The email address of the claimant or a certification that the claimant attorney will provide the claimant with a copy of the DRP's final determination.
- 5) *Name, address, telephone number, and facsimile number of the filing attorney or representative;

- 6) Name and address of policyholder together with policy number, if known;
- 7) *The insurance claim file number(s);
- 8) *Name, address, and telephone number of the respondent;
- 9) *Date of accident and the state in which the accident occurred;
- 10) *The nature of the dispute;
- 11) *Names of the medical provider(s), the total of all amounts claimed exclusive of interest, attorney's fees and costs of arbitration after crediting all payments received up to the day before the filing of the *Demand for Arbitration* (For services subject to the NJ Automobile Medical Fee Schedules, no amount claimed shall be greater than the fee on the appropriate fee schedule), dates of the services in dispute and dates that the disputed bills were submitted to the respondent [Forthright cannot verify the accuracy of the information provided by the filer and cannot administratively resolve party disputes regarding the calculation of the amount claimed in the *Demand*. All disputes involving the accuracy of the information will be determined by the DRP in his/her final decision];
- 12) The amounts claimed for income continuation benefits, essential services benefits, death benefits and funeral expenses, if any;
- 13) Copies of the bills in dispute;
- 14) If the claimant is filing under an assignment of benefits, then a copy of the assignment and a copy of the internal appeal decision, if required by the assignment;
- 15) *The filing party shall certify that, to the best of its knowledge, there is no action pending in any court or arbitration proceeding which arises out of treatment to the same patient or arises out of the same accident. If any action is pending, the filing party shall identify the action by name, venue and number;
- 16) *Certifications of electronic filing, if applicable, and service of the *Demand for Arbitration* on the respondent(s);
- 17) *The appropriate administrative fee set forth in Rule F-1;
- 18) *Whether the claim is submitted as on-the-papers or in-person case and, if in-person, the region for the arbitration proceeding. {This item pertaining to on-the-papers arbitrations will become effective upon a date to be determined}

The information designated above with an asterisk {*} is necessary to begin administration of the case. Failure to provide the information to begin administration, or failure to make payment in item 17 above, will result in the *Demand for Arbitration* being deemed administratively deficient. Forthright will acknowledge receipt of the deficient *Demand for Arbitration* and indicate the specific deficiencies. The claimant shall rectify all deficiencies by submitting to Forthright the original *Demand for Arbitration* form with the deficiencies corrected therein within 30 days from the date of the deficiency letter. As a courtesy, Forthright will send a deficiency reminder before expiration of the 30-day deficiency period. In the event the deficiencies are not rectified during the specified time frame, the *Demand for Arbitration* will be administratively dismissed. After dismissal, claimant may request reinstatement of the case within 90 days from dismissal by submitting to Forthright the original *Demand for Arbitration* form with the deficiencies corrected therein and an additional administrative fee as set forth in Rule F-1. The request for reinstatement and corrected *Demand for Arbitration* shall be served simultaneously upon all named parties as provided hereinabove.

The parties are encouraged to upload their submissions in electronic form to Forthright at www.nj-no-fault.com or, if the party is a subscriber to the electronic document delivery service designated by Forthright, then via that service. Any paper documents which may be submitted

with the *Demand for Arbitration* are to be indexed and separated by exhibit pages, not exhibit tabs.

The filing date of a *Demand for Arbitration* shall be the date that it was received by Forthright.

Forthright will acknowledge receipt of the *Demand for Arbitration* to all parties by way of an *Initiating Letter* or deficiency letter. The *Initiating Letter* marks the formal beginning of administration of the arbitration.

8. Statement of Response

The respondent or its representative may submit to Forthright a *Statement of Response*. The *Statement of Response* shall either acknowledge the filing of the arbitration or advise that the parties have settled all claims. The *Statement of Response* may also include such other information as respondent deems appropriate to arbitration of the case. Any paper documents which may be submitted with the *Statement of Response* are to be indexed and separated by exhibit pages, not exhibit tabs. The *Statement of Response* must be received by Forthright within 45 days from the date of Forthright's *Initiating Letter* as a pre-condition for any refund of administrative fees pursuant to Rule F-2.

9. Consolidation of Cases

In order to promote the prompt and efficient resolution of PIP disputes, consolidation is preferred for interdependent cases and those involving common issues of coverage, eligibility, licensure of providers or exhaustion of policy limits. An "interdependent" case is one involving the same date of accident, the same dates of healthcare services and the same injured person. "Consolidation" shall mean that the cases will be assigned to the same DRP and heard on the same day and at the same time if possible. However, each case retains its original Forthright file number and a separate Award will issue for each case.

a. Consolidation by Consent. The parties may consent to consolidation of two or more cases at any time prior to the commencement of the hearing for an in-person case and prior to the last date for final party submissions for an on-the-papers case.

b. Consolidation by Party Request

1. If the parties do not consent to consolidation, a party may request consolidation of two or more cases by making a request to Forthright up to 30 days prior to the earliest date of any scheduled arbitration hearing for an in-person case and prior to the last date for final party submissions for an on-the-papers case. The requesting party shall provide copies of the request to the parties or party representatives on all cases proposed for consolidation. The other parties will have 10 days from Forthright's acknowledgement of receipt of the consolidation request to submit comments or objections. Requests for consolidation shall clearly set forth the basis for the request (interdependent cases, common issues of coverage, eligibility, etc.) and specific facts in the cases that support the request. Responses to consolidation requests shall clearly set forth the facts in the cases that do not support the consolidation request. Forthright will submit timely requests and any comments or objections to a DRP for determination. The DRP shall have 10 days to rule on the request.

2. Any party requesting consolidation less than 30 days prior to the deadlines in subparagraph 1 above must make the consolidation request directly to the DRP, with prior written notice to Forthright, by a telephone conference arranged by the party requesting the consolidation, which includes all adversaries and the DRP.

The DRP shall grant consolidation of interdependent cases and those cases involving common issues of coverage, eligibility, licensure of providers or exhaustion of policy limits, absent exceptional circumstances. The DRP's ruling on a request for consolidation shall clearly explain the basis on which the ruling is made.

c. *Administrative Consolidation – Effective as of August 1, 2011*

At the initiation of new cases filed on or after April 1, 2011, Forthright will endeavor to identify other interdependent cases that have been filed on or after April 1, 2011. If there are any such other previously filed cases then the new case will be administratively consolidated with the other case(s), provided that the other case or cases are not (1) scheduled for a hearing within 2 days of initiation of the new case for in-person cases or within 2 days of the last date for final party submissions for on-the-papers cases, or (2) in abeyance, stayed by court order, pending dismissal application, subject to the emergent relief process (Rule 34) or subject to the counsel fee dispute process (Rule 18).

d. Any cases on-the-papers cases that are consolidated with in-person cases will proceed in-person. Upon consolidation, the parties to the on-the-papers case must pay the additional in-person fee of \$25 set forth in Rules F-1 and F-2.

10. Panel of Neutral Dispute Resolution Professionals

Forthright shall establish and maintain a No-Fault claims panel of dispute resolution professionals (DRPs) in accordance with *N.J.S.A. 39:6A-5.1 et seq.* and *N.J.A.C. 11:3-5.1 et seq.*

11. Qualification of Dispute Resolution Professionals

No person shall serve as a DRP in any arbitration in which that person has any financial or personal interest. A DRP shall disclose any circumstances likely to create an appearance of bias, which might disqualify him or her as a DRP. If a DRP should resign, be disqualified, or is unable to perform the duties of the office, Forthright shall appoint a replacement in accordance with the provisions of Rule 12.

12. Appointment of Dispute Resolution Professionals

Cases will be heard by one DRP appointed by Forthright. Any party may request a panel of 3 DRPs if the aggregate amount claimed exceeds \$50,000. The request must be made within 45 days from date of the *Initiating Letter* and must be accompanied by the appropriate fee as set forth in Rule F-4.

For cases filed on and after April 1, 2011, Forthright will endeavor to assign to the same DRP who was assigned to the first initiated case, all other cases involving the same insurance company, injured person and date of accident. For in-person cases, this may cause an administrative transfer of the case to a different region (see Rule 31).

13. Communication with the Dispute Resolution Professional

No party, witness, or party representative shall have any ex-parte communication with the DRP either orally or in writing concerning the arbitration. No party, witness, or party representative shall submit any documents directly to a DRP except as permitted by Rule 43.

14. Expedited Medical Necessity Determination By MRO

Pursuant to *N.J.A.C. 11:3-5.4(b) 6*, an injured person or his/her health care provider may seek an expedited MRO determination of the medical necessity of future treatment or testing.

If an insurer denies approval for medical treatment or testing as not medically necessary and the treatment or testing has not occurred, then the injured person or his/her health care provider may request an expedited determination of medical necessity by a Medical Review Organization (“MRO”). The request shall be made by filing with Forthright a *Demand for Arbitration*, an *Expedited Medical Necessity Determination Request Form*, indexed copies of unredacted medical records and the fee payment set forth in Rule F-5. These documents must be served upon all other parties. Pursuant to *N.J.A.C. 11:3-5.4(b) 6*, no DRP will be assigned and no attorney’s fees may be claimed for requesting an expedited MRO determination.

The insurer may submit to Forthright an *Expedited Medical Necessity Determination Response Form* and any additional unredacted medical records. Any additional medical records must be received by Forthright within 15 days of the date Forthright has acknowledged receipt of the request. Copies of these documents must be served upon all other parties.

Upon expiration of the 15 day period above, Forthright will transmit the request, any response and the parties’ documents to the MRO. No further documents or requests will be submitted unless requested by the MRO. In the event the MRO requests additional documents, the parties shall have ten (10) days from the date of the request to submit the documents.

When Forthright receives the report from the MRO regarding medical necessity, it will transmit copies to all parties. If the MRO determination resolves the parties’ dispute, then the parties will so advise Forthright, which shall administratively dismiss the case. If the MRO concludes that the medical treatment or testing in issue is not medically necessary, then the injured person or health care provider may proceed with the arbitration. The determination of the MRO health care consultant shall be presumed to be correct by the DRP, which presumption may be rebutted by a preponderance of the evidence. Should the DRP find that the decision of the health care consultant is not correct, the reasons supporting that finding shall be set forth in the DRP’s decision.

All other issues raised by the parties will be decided by the DRP at the time of the arbitration hearing.

15. Request for Report by MRO

Forthright shall use the certified Medical Review Organization (“MRO”) or Organizations as may be designated by the New Jersey Department of Banking and Insurance to perform a medical review upon the request of (a) any party to the dispute or (b) the DRP.

If requested by a party, the request must be received by Forthright no later than 20 days prior to the scheduled hearing for in-person cases or 20 days prior to the last date for final party submissions for on-the-papers cases. The request shall include one electronic copy or one paper copy of a completed *Medical Information Form*, one indexed copy of unredacted medical records and the appropriate payment. The *Medical Information Form* and medical records shall be served upon Forthright and all other parties by the requesting party.

The other party may submit to Forthright a *Medical Information Response Form* along with one indexed copy of any additional unredacted medical records. Any additional medical records must be received within 25 days of the date Forthright has acknowledged receipt of the MRO request. These documents must be served upon Forthright and all other parties. Upon expiration of the 25 day period above, Forthright will transmit the request and the parties' documents to the MRO pursuant to *N.J.A.C. 11:3-5(h)*. No further documents or requests will be submitted unless requested by the MRO. In the event the MRO requests additional documents, the requesting party has 20 days from the date of the request to submit the documents.

All disputes regarding submissions under this rule shall be addressed by the DRP at the time of the hearing for in-person cases and in the DRP's decision for on-the-papers cases.

A DRP may request a medical review at the hearing for in-person cases and prior to the DRP's decision for on-the-papers cases. In that event, the DRP shall apportion the costs of the review between the parties.

The MRO shall redact all medical records so as not to disclose to the medical reviewer the identity of the insurer pursuant to *N.J.A.C. 11:3-5.6(c) 1*.

Within 20 business days (or earlier if required by the medical exigencies of the case) after the review of the medical evidence, the medical review organization shall submit to Forthright a written report which shall contain the consultant's advisory opinion. Forthright shall submit such report to the DRP and the parties. After the issuance of the report, no party requests will be processed on the MRO report by Forthright.

The determination of the health care consultant on the dispute referred shall be presumed to be correct by the DRP, which presumption may be rebutted by a preponderance of the evidence. Should the DRP find that the decision of the health care consultant is not correct, the reasons supporting that finding shall be set forth in the DRP's decision.

Copies of the *Medical Information Form* and *Medical Information Response Form* are available online at www.nj-no-fault.com.

16. Arbitration Summary

The parties shall provide a summary of the claim(s)/defense(s) including (1) a description of all disputed medical services by the date of service, type of service, amount billed and amount owed, (2) the issue(s) related to each disputed amount, and (3) identification of the evidence relevant to the each claim/defense and each issue. The parties may use the *Arbitration Summary* form available at www.nj-no-fault.com.

17. Settlement

The parties may consent to a settlement of a case at any time prior to issuance of an award. Any party may submit a written notification of settlement to Forthright on notice to all other parties. If notification of settlement is received by Forthright within 45 days from the date of the *Initiating Letter*, then Forthright will waive the administrative fee for the settling respondent.

18. Counsel Fee Disputes

In the event that all claims in dispute, except for counsel fees and/or costs, are resolved prior to the hearing for in-person cases or prior to the last date for final party submissions for on-the-papers cases, that dispute shall proceed by way of document submission to a DRP. The claimant(s) shall, within 20 days of the settlement of all other claims, file with Forthright the written Attorney Fee Certification required by Rule 22. Counsel claiming a fee shall simultaneously serve a copy on all other parties. The respondent(s) shall, within 10 days from the expiration of the claimant's above time period, file a response with Forthright and simultaneously serve a copy on all other parties. No additional documents may be submitted after expiration of the response period. The DRP shall decide the counsel fee dispute in accordance with *N.J.A.C. 11:3-5.6*. Failure to submit the required certification shall result in the DRP denying the claim for attorney fees and costs.

19. Stay of Case or Abeyance

a. If a party moves in court for a stay of arbitration, administration of the arbitration will be suspended upon receipt by Forthright of a Court Order granting the stay. Neither Forthright nor the DRP is a necessary party to such proceedings and neither should be named as a party. The party who obtained the Court Order shall promptly serve Forthright and all other parties with any subsequent Court Orders respecting the case.

b. An arbitration will be placed in abeyance and all administration suspended if consented to by all parties. Only one abeyance by consent is permitted in each arbitration. An administrative fee will be applied to continue an arbitration in abeyance for more than 365 calendar days in accordance with Rule F-8. Failure to timely pay the administrative fee may result in an administrative dismissal of the case.

20. Form of Award

The Award shall be in writing in accordance with the standards set forth at *N.J.A.C. 11:3-5.6(d)* and shall be signed either by the sole DRP or by at least a majority if there is more than one DRP. It shall be in accordance with New Jersey law and the applicable policy provisions. The Award shall set forth findings of fact and conclusions of law upon which the Award is based.

21. Time of Award

The DRP shall render the Award within 45 days from the date of the close of either the hearing or the reopened hearing or within 45 days from the last date for party submissions, whichever is later. The parties may agree to waive this deadline.

22. Attorney Fees and Costs

The costs of the proceedings shall be apportioned by the DRP. The Award may include attorney's fees for a successful claimant in an amount consonant with the amount of the Award and with Rule 1.5 of the Supreme Court's Rules of Professional Conduct. The attorney for the claimant shall submit a written Attorney Fee Certification, which shall include the following information for each date upon which legal work was performed: date, description of work, name of person performing the work, hourly rate, time in fractions of one hour, total charges for all work and

itemized costs. All parties may present arguments on the claimed amount. A sample Attorney Fee Certification form is available for downloading at www.nj-no-fault.com. Failure to submit the required certification shall result in the DRP denying the claims for attorney's fees and costs.

23. Service of Award on the Parties

Parties shall accept as legal service of the Award (1) such means of electronic service as may be agreed to by the party or its representative, or (2) the placing of the Award in the U.S. mail addressed to such party or its representative at its last known address, or (3) personal service. In addition to the above, for cases filed on and after April 1, 2011, Forthright will send an electronic alert to the respondent and to each claimant when an Award involving that party has been posted on Forthright's award search website, unless the party representative has certified that it will provide a copy of the Award to the party.

24. Modification/Clarification of Award

Any party may submit one request to (a) clarify the Award and/or (b) correct any clerical, typographical, or computational errors, and/or (c) consider claims presented to the DRP at the time of the hearing for in-person cases, or in the parties' submissions for on-the-papers cases but omitted from the Award.

Any party may make the request by written application on notice to all other parties and received by Forthright within 35 days after the date of Forthright's letter sending the Award to the parties. All other parties may submit a response to the request with Forthright and shall simultaneously serve all other parties within 45 days after the date of Forthright's letter sending the Award to the parties. Any request or response received by Forthright outside the above deadlines will not be submitted to the DRP.

Forthright will submit timely requests and any timely responses to the DRP for determination. The DRP shall issue an Order within 35 days of Forthright's submission to the DRP.

25. Appeals to 3 DRP Panel

Any party may appeal an Award or an Order granting dismissal to a panel of 3 designated DRPs on the No-Fault panel, none of which rendered the Award or Order being appealed. An Award or Order granting dismissal may be vacated, modified, or corrected pursuant to *N.J.S.A 2A:23A-13*. A majority of the panel must make all determinations.

An appeal must be submitted to Forthright within 35 days of the date of Forthright's letter sending the Award or Order granting dismissal to the parties. In the event a request for Modification/Clarification was made, the time to file the appeal will be 35 days from the date of Forthright's letter sending the Modification/ Clarification Order to the parties. The appellant shall simultaneously serve the appeal upon all named parties by certified mail, return receipt requested, or by personal service, or by means of electronic service as may be designated by the party to be served.

The appeal shall be submitted on a completed *Request for Appeal* form and must contain a copy of the Award or Order granting dismissal in issue and a copy of any Modification/Clarification Order issued in the case. The appeal must be accompanied by payment of the administrative fee. Appeals will be decided solely on documents submitted with the *Request for Appeal* or appeal response. All other parties shall have 55 days from the date of Forthright's letter sending the Award or Order granting dismissal to the parties in which to file a submission regarding the

appeal. Any *Request for Appeal* or response received by Forthright outside the above deadlines will not be submitted to the DRP panel.

Forthright shall forward copies of timely appeal submissions to the DRP panel for determination. The panel shall issue the Appellate Award within 60 days of Forthright's submission to the panel. Forthright will notify the DRP who rendered the original Award that an appeal has been requested.

26. Applications to Court and Exclusion of Liability

Neither Forthright nor any DRP nor any health care consultant referenced in Rules 14 and 15 is a necessary party in judicial proceedings relating to any arbitration. However, Forthright, in its discretion, may apply to intervene in any judicial proceeding in which it has an interest.

Neither Forthright nor any DRP nor any health care consultant referenced in Rules 14 and 15 shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

27. Re-Opening of a Case

Forthright may reopen a case only to correct an administrative error by Forthright or the DRP. The case may not be reopened for new evidence.

28. Extension of Time

Forthright may extend any period of time established by these rules to correct an administrative error by Forthright or the DRP, or if Forthright determines in its sole discretion that extraordinary circumstances have been shown.

29. Waiver of Rules

Any party who knows that any provision or requirement of these rules has not been complied with, and who fails to state a timely objection thereto in writing, shall be deemed to have waived the right to object.

30. Serving of Correspondence and Submissions Upon Parties

With the exception of the *Demand for Arbitration*, *Amended Demand for Arbitration*, *Request for Appeal*, and the *Application for Dismissal*, each party or representative shall be deemed to have consented that any other correspondence or submissions related to the arbitration process may be served upon such party or representative by:

1. Electronic service as may be designated by the party to be served
2. U.S. mail addressed to such party or its representative, or
3. Personal service, or
4. Facsimile transmission.

PART II – RULES GOVERNING IN-PERSON CASES

31. Fixing of Region [In-Person]

There shall be 3 regions for conducting in-person arbitrations – North, Central and South. At the time of the filing of the *Demand for Arbitration* the filing party may designate the region in which the arbitration will be conducted except that the region selection is subject to the assignment of DRP set forth in Rule 12.

32. Date, Time and Place of Hearing [In-Person]

Forthright shall fix the date, time and place for each arbitration hearing and shall send notice of the hearing to the parties or their representatives.

33. Challenge to DRP Appointment [In-Person]

Each party shall have the right to submit one challenge to the appointment of the DRP for reasonable cause within 20 days from the date of the notice of appointment. Reasonable cause may include application of the principles outlined in the Code of Judicial Conduct contained within the New Jersey Court Rules. The party challenging a DRP shall submit a written request for an Order, including the specific grounds for such challenge, and shall simultaneously serve a copy on all parties to the arbitration who will have 10 days within which to submit a response. After expiration of the 10 day period, Forthright will submit the challenge and any response to a designated DRP who shall make a determination and issue an Order.

34. Application for Emergent In-Person Hearing

At the time of the filing of its *Demand for Arbitration*, a party may request emergent hearing relief on the grounds that immediate and irreparable loss or damage will result in the absence of such relief. A *Demand for Arbitration* that includes a claim for emergent hearing relief shall be served on Forthright and all named parties by certified mail return receipt requested or by personal service, or by means of electronic service as may be designated by the parties to be served. The party requesting emergent hearing relief shall first notify Forthright and all other parties by a telephone call of its intended filing. The requesting party must also submit a written certification stating (a) the nature of the relief sought, (b) the reasons why such relief is required on an emergent basis, (c) the method and place of service of the *Demand for Arbitration* on all other parties and (d) the steps taken in good faith to telephonically notify all other parties of the intended filing. This filing must be complete and consistent with all other applicable rules and be accompanied by all applicable administrative fees and an additional application fee of \$100 pursuant to Rule F-1.

Within two (2) business days of receipt of the *Demand for Arbitration* and the above certification, Forthright shall appoint one specially designated DRP. Based on the facts disclosed in the claim, the DRP shall immediately disclose any circumstance likely to affect the DRP's impartiality. Any challenge to the appointment of the DRP must be made within one business day of the communication from Forthright to the parties of the appointment of the DRP and the circumstances disclosed.

The DRP shall, as soon as possible, but no later than 5 business days from the date of appointment, conduct a telephone conference with the parties or their representatives to determine whether immediate and irreparable harm will result in the absence of emergent hearing relief. The DRP may permit the parties to supplement their evidence with additional documents following the telephone conference. Within 2 business days from the conclusion of the telephone conference or, if supplementary evidence was permitted, from the final date for submission, the DRP shall issue an Order as follows:

- A. If the DRP determines that the party seeking the emergent relief has shown that immediate and irreparable loss or damage will result in the absence of emergent hearing

relief, and if the parties agree that they have no other evidence to present on any remaining issues, then the DRP shall issue an Order closing the hearing. Within 3 business days from the date of the Order, the DRP shall issue an Award.

- B. If the DRP determines that the party seeking the emergent relief has shown that immediate and irreparable loss or damage will result in the absence of emergent hearing relief and either party requests time to submit additional evidence, then the DRP shall issue an Order scheduling the case for an in-person emergent hearing on the remaining emergent issues. The DRP shall issue an Award within 3 business days of the close of the emergent hearing.
- C. If the DRP determines that the party seeking the emergent hearing relief has not shown that immediate and irreparable loss or damage will result in the absence of emergent hearing relief then the DRP shall issue an Order stating that the case will proceed through standard scheduling.

If the DRP determines that some issues are emergent and others are not, then with consent of the parties the DRP may determine all issues in the same Award. If the parties do not consent, then the remaining non-emergent issues will continue through standard scheduling. Except as modified in this rule, all other rules shall apply to the processing of emergent hearings.

35. Dismissal [In-Person]

If any party contends that (a) the requirements set forth in the applicable insurance policy have not been met or (b) there is no coverage or (c) Forthright lacks subject matter jurisdiction, such party may apply for an Order dismissing the case prior to hearing.

The applicant shall submit to Forthright (a) an *Application for Dismissal* form which includes a certification of service of the dismissal application on all named parties, (b) a copy of the policy provisions where applicable, (c) the facts supporting the pre-hearing dismissal request, (d) any supporting documentation, and (e) a \$100 application fee pursuant to Rule F-3. The dismissal application shall also be simultaneously served upon all named parties by certified mail return receipt requested, or by personal service, or by means of electronic service as may be designated by the party to be served. An *Application for Dismissal* that is deficient for any of the preceding requirements will not be processed.

The opposing party's response must be received by Forthright within 25 days from the date of Forthright's acknowledgement of receipt of the dismissal application. Forthright will submit the parties' documents to the DRP who will issue a written Order setting forth the basis of the determination within 21 days.

A non-deficient dismissal application under this section must be received by Forthright within 75 days from the date of the *Initiating Letter*. If the dismissal application is made more than 45 days after the date of the *Initiating Letter*, the appropriate respondent administrative fee must be received by Forthright for the dismissal application to be processed

36. Withdrawal of Claim [In-Person]

A claimant may withdraw a claim against a respondent at any time prior to the commencement of the arbitration hearing. No claim may be withdrawn after a hearing has commenced absent mutual consent of the parties or a ruling by the DRP.

37. Change of Claim [In-Person]

A claimant may make a new claim against a named respondent or amend a claim against a named respondent. The new or amended claim shall be made in writing and must be received by Forthright no less than 45 days prior to the scheduled hearing date. A copy thereof shall be served simultaneously on all other named parties. The new or amended claim will be permitted unless Forthright receives an objection from the other party(ies) within 10 days of Forthright's acknowledgement of receipt of the request for the new or amended claim. Any request to make a new claim or amend a claim less than 45 days prior to the scheduled in-person hearing, must be made to the DRP at the hearing.

38. Addition of New Respondent [In-Person]

Any party may add a new respondent to a pending arbitration, except during the pendency of an application for Dismissal, by filing an *Amended Demand for Arbitration* and serving it in accordance with Rule 7. The *Amended Demand for Arbitration* must be accompanied by payment of the appropriate administrative fee set forth in Rule F-1 if received by Forthright more than 45 days from the date of initiation of the original case.

If an *Amended Demand for Arbitration* is filed less than 45 days prior to a scheduled arbitration hearing, then the hearing shall be postponed to provide the new respondent with 45 days in which to settle the claims without imposition of the respondent's administrative fee or to otherwise respond.

39. Party Submissions [In-Person]

All filings and submissions by parties must be sent to Forthright for transmittal to the DRPs and must be simultaneously served upon all other parties to the arbitration. The parties are encouraged to upload their submissions in electronic form to Forthright at www.nj-no-fault.com, or if the party is a subscriber to the electronic document delivery service designated by Forthright, then via that service. All submissions of multiple paper documents are to be indexed and separated by exhibit pages, not exhibit tabs.

All submissions and the identity of any expert witness that a party intends to offer at a hearing must be provided to all other parties and Forthright at least 20 days in advance of the hearing. If not submitted within the above time frame, such submissions and/or expert(s) shall be disallowed at the time of the hearing if the DRP determines that the late submission creates surprise or prejudice for any party.

40. Request for Exchange of Information [In-Person]

In the event of a dispute between the parties regarding the exchange of information, the DRP may establish the extent of, and schedule, any such exchange pertaining to the subject matter of the arbitration including, but not limited to, the parties' rights under *N.J.S.A. 39:6A-13* or as provided by the applicable policy of insurance.

41. Postponements [In-Person]

If all parties consent, Forthright will administratively postpone the first scheduled arbitration hearing date. If the parties do not consent to postponement of the first scheduled hearing date, a

party may request a postponement, which request will be submitted to the DRP for a ruling. All requests to postpone subsequent hearing dates will be submitted to a DRP for ruling.

For a first ruling, the DRP may grant the request only if the DRP finds good cause. For any subsequent rulings, the DRP may grant the postponement only upon a finding of extraordinary circumstances.

All postponement requests which require DRP ruling must be received by Forthright at least 2 business days (no less than 48 hours) prior to the scheduled hearing. Any party seeking a postponement less than 2 business days prior to the hearing must make its postponement request directly to the DRP either (a) at the time of the hearing or (b) in advance of hearing by a telephone conference arranged by the party requesting the postponement, which includes all adversaries and the DRP.

42. Attendance at Hearing [In-Person]

Persons having a direct interest in the arbitration are entitled to attend the hearing. The DRP shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the DRP to determine the propriety of the attendance of any other persons.

Parties and/or their representatives are encouraged to personally appear at all arbitration hearings. Any party or representative who intends to appear by telephone shall use best efforts to notify the other parties and Forthright in advance of the hearing. Any party or representative appearing by telephone, or who has a witness appearing by telephone, must arrange for and bear the cost of teleconferencing for the DRP and all other parties.

43. Conduct of Hearing [In-Person]

An arbitration hearing shall be opened by the DRP by recording the date of the hearing and the appearances or non-appearances of the parties.

The parties or their representatives shall identify the issues involved. The DRP may ask for statements clarifying the issues involved. The claimant shall present its claims, proofs and witnesses. The respondent may present its defenses, proofs and witnesses. The DRP has the discretion to vary this procedure in the interest of efficiency but shall afford full and equal opportunity to all parties for the presentation of material or relevant proofs.

Subject to Rule 44, at an arbitration hearing all evidence shall be taken in the presence of all parties, except parties who have not appeared or who have waived the right to be present. The DRP may receive and consider the evidence of witnesses by affidavit or other document. The DRP shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. Parties and representatives may not submit documents or other evidence directly to the DRP except at hearings and subject to the provisions below. Any submissions made directly to the DRP at the hearing must also be received by Forthright within the time set by the DRP at the hearing or will not be considered evidentiary. The closing of the arbitration hearing shall be in accordance with Rule 48.

44. Hearing in the Absence of a Party or Representative [In-Person]

a. In the event one of the parties does not appear at the designated time and place for the arbitration hearing, the DRP shall, in the presence of all other parties, place a call to the absent

party or, if known, to that party's representative. At that time, the DRP shall determine under what conditions the hearing will be held. The DRP may require the party present to submit such evidence as may be required for the making of an Award.

b. In the event that none of the parties or their representatives appear at the designated time and place for the arbitration hearing, the DRP shall, during the time allotted for the hearing, telephone the Forthright case coordinator who shall attempt contact with the non-appearing parties or representatives. Thereafter, the DRP will determine under what conditions the hearing will be closed or will be held open pursuant to Rule 48.

45. Interpreter [In-Person]

Any party wishing the services of an interpreter shall make such arrangements and payments with the interpreter directly and shall notify the other parties and Forthright of such arrangements in advance of the hearing.

46. Stenographic Record of Hearing [In-Person]

Any party wishing a stenographic record shall make such arrangements and payment with the stenographer directly and shall notify the other parties and Forthright of such arrangements in advance of the hearing. The party arranging for the stenographic record shall provide a copy of the transcript to Forthright upon the request of the DRP and shall provide a copy to all other parties upon request.

47. Consent Award [In-Person]

If the parties settle their dispute at the time of the arbitration hearing, the DRP, upon their request, may set forth the terms of the settlement in a Consent Award.

48. Closing of Arbitration Hearing [In-Person]

The DRP shall specifically inquire of the parties whether they have any further evidence. If they do not, the DRP shall declare the hearing closed. If briefs, supplementary evidence, written closing arguments or summaries are to be submitted, the DRP shall set the time for each party to submit post-hearing documents. Unless the DRP finds good cause, the DRP may not grant total post-hearing time of more than 20 days. The hearing shall be declared closed as of the final date set by the DRP at the hearing for receipt of the submissions.

All post hearing documents must be received by Forthright on or before the date provided to the party by the DRP at the time of the hearing. The submitting party shall simultaneously serve a copy of all submissions on all other parties.

Any post hearing documents not received by Forthright on or before the date provided to the party by the DRP at the time of the hearing will not be evidentiary and will not be submitted to the DRP for consideration. There shall be no further extensions of time to submit post-hearing documents.

PART III – RULES GOVERNING ON-THE-PAPERS CASES

{The following rules governing on-the-papers cases will become effective on a future date to be determined.}

49. Appointment of Dispute Resolution Professionals [On-the-Papers]

Cases will be heard by any one DRP appointed by Forthright from the panel of DRPs. Forthright will endeavor to assign to the same DRP who was assigned to the first initiated case, all other cases involving the same insurance company, injured person and date of accident.

50. Withdrawal of Claim [On-the-Papers]

For a case designated as on-the-papers, a claimant may withdraw a claim against a respondent at any time prior to the last date for final party submissions. No claim may be withdrawn after the last date for final party submissions absent mutual written consent of the parties.

51. Change of Claim [On-the-Papers]

For a case designated as on-the-papers, a claimant may make a new claim against a named respondent or amend a claim against a named respondent in writing. The new or amended claim must be received by Forthright prior to the last date for final party submissions. A copy thereof shall be served simultaneously on all other named parties. A change of claim will cause the last date for final party submissions under Rule 53 to be extended by 45 days.

Should a new or amended claim cause the total amount claimed for personal injury protection benefits to equal or exceed \$1,000 as defined in Rule 6 above, then the case shall continue on-the-papers unless:

1. either party requests an in-person hearing within 10 days from Forthright's acknowledgement of the new or amended claim, and
2. the requesting party designates the in-person region in which the hearing will occur, and
3. the requesting party tenders the \$25 in-person fee.

The \$25 in-person fee is due and owing from the non-requesting party when Forthright advises the parties that the case has been transferred to an in-person hearing.

52. Addition of New Respondent [On-the-Papers]

Any party may add a new respondent to a pending arbitration, except during the pendency of an application for Dismissal, by filing an *Amended Demand for Arbitration* and serving it in accordance with Rule 7. The *Amended Demand for Arbitration* must be accompanied by payment of the appropriate administrative fee set forth in Rule F-1 if received by Forthright more than 45 days from the date of initiation of the original case.

If an *Amended Demand for Arbitration* is filed within 45 days from the last date for final party submissions pursuant to Rule 53, then the times for party submissions under Rule 53 will begin anew from that date.

53. Party Submissions [On-the-Papers]

All filings and submissions by parties must be sent to Forthright for transmittal to the DRPs and must be simultaneously served upon all other parties to the arbitration. The parties are encouraged to upload their submissions in electronic form to Forthright at www.nj-no-fault.com, or if the party is a subscriber to the electronic document delivery service designated by Forthright, then via that service. All submissions of multiple paper documents are to be indexed and separated by exhibit pages, not exhibit tabs.

- a. Initial submissions by the parties must be received by Forthright within 100 days from the date of initiation of the case, or from the extended date pursuant to Rules 51 and 52, whichever is later.

A copy thereof shall be served simultaneously on all other named parties. Within the initial submission, the parties shall identify the claims, defenses and issues to be determined by the DRP.

b. The initial submission period will be administratively extended to 120 days from initiation of the case, or from the extended date pursuant to Rules 51 and 52, whichever is later, upon request of either party. Such request must be received by Forthright within 100 days from the date of initiation of the case, or from the extended date pursuant to Rules 51 and 52, whichever is later. A copy thereof shall be served simultaneously on all other named parties.

c. Final party submissions are limited to addressing the claims, defenses and issues identified by the parties in the initial submission. Final submissions must be received by Forthright within 130 days from the date of initiation of the case or from the extended date pursuant to Rules 51 and 52, whichever is later, unless the time for submissions was extended by (b) above, in which case the deadline will be 150 days from the date of the initiation of the case. A copy thereof shall be served simultaneously on all other named parties. At the end of this period, the time for submissions is closed and further submissions are not evidentiary and will not be considered by the DRP.

Forthright will administratively enforce the deadline for final submissions in subparagraph (c) above. The DRP will decide any other disputes over the timeliness or contents of the above submissions in his or her decision.

PART IV - FEES

F- 1. Claimant's Fees

Administrative Fee and In-Person Fee

The party filing a (1) *Demand for Arbitration* or (2) a corrected *Demand for Arbitration* to reinstate a case shall pay fees in the amount of \$225 to Forthright, consisting of a \$200 administrative fee and a \$25 in-person fee. The fees are due and payable in full at the time of filing.

The claimant shall be entitled to a refund of \$50 of the administrative fee if (a) the respondent filed a *Statement of Response* within 45 days of the initiating letter and (b) Forthright received notice of the settlement of all claims in dispute within 30 days from the date the respondent's *Statement of Response* was received by Forthright.

Any party filing an *Amended Demand for Arbitration* to add a new respondent pursuant to Rule 38 more than 45 days from the date of initiation of the original case shall pay \$225 to Forthright, consisting of a \$200 administrative fee and a \$25 in-person hearing fee. The fees are due and payable in full at the time of filing.

If the claimant utilizes fully electronic case filing and management, at the conclusion of the case (which includes any post-award procedures) Forthright will refund claimant \$15.

Administrative Fees – On-the-papers

{Reserved}

Emergent Relief

Any application for Emergent relief shall include an application fee of \$100, in addition to the fees set forth above.

F- 2. Respondent's Fees

Administrative Fee and In-Person Fee

Fees in the amount of \$225, consisting of a \$200 administrative fee and a \$25 in-person fee are due from the respondent to Forthright unless all claims in dispute are resolved and Forthright receives a notice of settlement or withdrawal within 45 days from the date of the initiating letter.

The respondent shall be entitled to a refund of \$50 of the administrative fee if (a) the respondent filed a *Statement of Response* within 45 days of the initiating letter, and (b) Forthright received notice of the settlement of all claims in dispute within 30 days from the date the *Statement of Response* was received by Forthright, and (3) the respondent has paid the administrative fee.

If the respondent utilizes fully electronic case filing and management, at the conclusion of the case (which includes any post-award procedures) Forthright will refund respondent \$15.

Administrative Fee – On-the-Papers

{Reserved}

Emergent In-Person Hearing

If a *Demand for Arbitration* seeks an Emergent hearing, then the respondent's administrative fee is due immediately.

F- 3. Dismissal Application Fee

Any application for Dismissal shall include an application fee of \$100.

If the Application for Dismissal is not received by Forthright within 45 days of the date of the Initiating Letter, the respondent must also submit the appropriate administrative fee in subsection b) above.

If the Application for Dismissal results in an Order dismissing all claims presented, or if the arbitration is withdrawn by the filing party prior to the date that Forthright submits the *Application for Dismissal* and response to the DRP for decision, then the successful respondent shall be entitled to a refund of the \$100 dismissal application fee.

F- 4. Fee for Three-DRP Panel

An additional \$500 shall be paid when 3 DRPs are appointed in accordance with Rule 12. The fee shall be paid by the requesting party or shall be paid equally if agreed upon by all parties.

F- 5. MRO Processing Fee

Any requests for MRO review made pursuant to these rules shall be accompanied by a processing fee of \$100 in addition to the charges required by the medical review organization.

F- 6. Fees for Appeal

A party requesting an Appeal shall pay an administrative fee of \$630.

F- 7. Fees for Information Requests

Parties requesting case information or copies of documents from Forthright shall pay such fee as set by Forthright in its sole discretion.

F- 8. Abeyance Fee

If a case is placed in abeyance by consent of all parties, Forthright shall keep the case in abeyance without charge for up to 365 calendar days. If the parties consent to keeping a case in abeyance for any additional time, the claimant shall pay to Forthright an administrative fee of \$100 for each additional period of up to 365 calendar days. If the claimant fails to pay the required fee, Forthright shall administratively dismiss the case on notice to all parties.

F- 9. Fees Nonrefundable

All fees are nonrefundable except where otherwise specifically indicated.

F- 10. Interest

Forthright reserves the right, in its sole discretion, to charge interest on all past due fees.