



The State of New Hampshire Insurance Department

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CHAPTER 137 – HB 419-FN – INSURANCE CERTIFICATES

Reminder – The Provisions of Chapter 137 are Effective January 1, 2012

The Commissioner reminds insurers, producers, brokers, contractors and any person who seeks to be or is identified as a certificate holder on a certificate of insurance that the recently enacted statute, RSA 412:6-b (Chapter 137, HB 419) will become effective January 1, 2012. This new section of RSA 412 establishes requirements for the content, purpose, issuance and use of certificates and authorizes the Commissioner to adopt rules relative to defining a reasonable fee for providing insurance certificates and circumstances in which such a fee may be charged.

The following are requirements for the content, purpose, issuance, and use of certificates of insurance as stated in section RSA 412:6-b II (b), and which should be reviewed carefully so that all parties comply with NH law:

(1) Each certificate shall contain the following statement, in sufficient font and size and located on the certificate to be readily identifiable:

“This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage, terms, exclusions, and conditions afforded by the policy or policies referenced herein.”

(2) No person shall demand or require the issuance of a certificate of insurance from an insurer, insurance producer, or policyholder that contains any false or misleading information concerning any policy of insurance to which the certificate makes reference.

(3) No person shall knowingly prepare or issue a certificate of insurance that contains any false or misleading information.

(4) No person shall prepare or issue a certificate of insurance that purports to affirmatively or negatively alter, amend, or extend the coverage provided by any policy of insurance referenced in the certificate.

(5) The requirements of this section shall apply to certificates of insurance issued as evidence of insurance policies and coverage on property, operations, or any risk located in this state, regardless of where the certificate holder, policyholder, insurer, or insurance producer is located.

(6) No certificate of insurance shall contain references to contracts, including construction or service contracts, other than the referenced contract of insurance, unless such reference is in relation to coverage or other requirements of the insurance contract.

(7) A certificate holder shall only have a contractual right to notice of cancellation, nonrenewal, or any similar notice concerning a policy of insurance if the person is identified and designated within the policy or any endorsement to that policy as an additional insured and that policy or endorsement requires notice to be provided.

The Department has received a number of questions and comments seeking clarification on various provisions outlined above. Here is a summary along with our response:

Does this law apply to automobile insurance identification cards? *No, certificates of insurance are not issued to insureds. Automobile insurance identification cards are typically issued to individual personal automobile policyholders by insurers to carry in their vehicles for reference.*

Are the sample certificates published on the Department's website to provide templates as to form and content the only certificates that can be used? *No, these are templates that have been submitted by vendors or trade organizations for review and which the Commissioner feels, in his opinion, meet the requirements of the new statute. They are examples that can be used for guidance by others. The preparer issuing the certificate can use these examples as guidance. Ultimately that preparer is responsible for issuing certificates which include the required wording and otherwise comply with the provisions listed above.*

Can older versions (editions) of the sample templates be used, thereby avoiding costly programming and system changes? *Yes, older editions that comply with RSA 412:6-b may be used. The Department is not expecting vendors and trade associations to submit older versions for our review; therefore it is up to the preparer to determine if older versions are in compliance.*

Does the wording shown in (1) from the list above have to be replicated exactly on the certificate? *The Department does recommend that to avoid any potential problem, it would be prudent to replicate the proscribed language exactly. However the Department also understands that there may need to be some flexibility for business reasons. As long as the wording covers all the provisions of item (1) [information only, no rights conferred to the holder, does not amend, extend, or alter the coverage, terms, exclusions, and conditions afforded by the policy or policies referenced] without changing the legislative intent and does not add wording which is contrary to legislative intent, the Department would find such acceptable. It may be noted that language contained on some of the Accord templates reflects slight variations to the specified wording.*

Are there guidelines for submitting templates for review by Department staff? *Yes, they can be found on the Department's website under "Property and Casualty" (www.nh.gov/insurance/pc/certificates.htm).*

What jurisdiction "governs" the issuance of certificates? What if the certificate holder is not located in NH and makes requests that are contrary to NH statute? *NH statute must be followed when a certificate is issued as evidence of in force insurance coverage for a NH based policyholder.*

If I am aware that an insurance policy is being non-renewed or cancelled at a future date, should I refuse to issue a certificate reflecting insurance currently in force? *No, certificates of insurance are a snapshot in time, reflecting the insurance in force at the particular moment they are issued. The issuance of a certificate is legitimate as long as the policy is active and has not yet reached its expiration date. Issuance of legitimate certificates should occur upon request.*

Can the preparation of certificates be outsourced to others and who is responsible for compliance with the NH statute? *Preparers can certainly outsource the production of requested certificates. However, it is ultimately the responsibility of the preparer (insurer or producer, for example) to ensure that the certificate is in compliance.*

Are non-resident producers expected to comply with the new statute? *They certainly are, just as they are required to operate in compliance with any NH law. Any non-resident producer not compliant will be subject to Department enforcement action and/or penalties (NH RSA 412:40), just as a resident producer would be.*

Per the law, the certificate needs to be issued to a "person". What about the situation when an insured is looking for a bond and the bonding agent is asking for a certificate but with no specific bonding carrier in mind? Can it be issued with "for bonding purposes only"? At some point the bonding carrier would have to be identified and a certificate holder should be named.

Ultimately the responsibility to comply with the statute resides with the preparer – if the preparer relinquishes control of the preparation by producing certificates where certain information will be filled in at some future point in time, they may be at risk for non-compliance, enforcement action and/or penalties.

What is the status on the promulgation by the Department of a rule defining a reasonable fee for providing insurance certificates and circumstances in which a fee may be charged under RSA 412:6-b? *The Department (as of late December) is finalizing a proposed draft. The intent is for the Department to distribute the draft to insurer and producer representatives early in 2012 for initial commentary. After a brief period for industry review and commentary, we will make revisions as necessary and formally submit a new rule and from that point on follow JLCAR timelines and procedures.*

Is there any requirement as to how the certificate is to be delivered? *The statute is silent as to delivery of certificates of insurance. The preparer will have to determine what levels of service they are willing to provide and at what cost.*

Can copies of specific coverage forms or endorsements be provided along with certificates; can they accompany certificates in the same envelope, fax transmission, e-mail? *We believe there is no statutory prohibition about providing policy forms or endorsements along with the certificate itself. The statute is quite clear however, that the certificate is NOT an insurance contract and cannot amend or alter the insurance contract.*