

# NEW MEXICO PUBLIC REGULATION COMMISSION

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John G. Franchini,  
Superintendent of Insurance

## Insurance Division Bulletin No. 2011-001 January 14, 2011

TO: PROPERTY /CASUALTY INSURERS AND INSURANCE AGENTS

RE: CERTIFICATES OF INSURANCE

THE FOLLOWING BULLETIN is issued pursuant to NM Insurance Code 59A-16-4

Certificates of insurance, evidences of insurance, memorandums of insurance, and similar insurance policy-related documents (collectively "certificates") serve a valuable informational purpose and provide a courtesy summary of the basic coverage's and limits of an insurance policy to an insured or third party. The Insurance Division is aware, however, that some insurance producers, agencies and insurers have been asked to provide certificates that purport to amend, extend, or alter the terms of the underlying policy, or inaccurately suggest the existence of certain contractual rights. Although the insurance industry may feel pressured or obligated to provide certificates that revise policy language or misrepresent the actual policy terms, they are in violation of New Mexico's Insurance Code when they do so. This also includes any customized certificate of insurance forms provided by a proposed certificate holder.

Insurers, agencies and producers are in violation of New Mexico Code 59A-16-4 when they issue a certificate of insurance that obscures or misrepresents the insurance coverage or terms, the obligation of notice by an insurer, or other rights provided under an insurance policy; and may be subject to administrative penalties and/or license suspension or revocation. In addition, New Mexico Code sections 59-A-18-2 and 59A-18-12 mandate that insurers file all of their insurance policy forms. This mandate includes certificates of insurance and/or evidences of insurance intended for use in this state. A licensee, or an employee of a licensee, cannot issue any such form(s) unless they are filed and approved by the Insurance Division.

When an insurer or insurance producer executes a certificate of insurance or other evidence of coverage which extends beyond offering a mere synopsis of the policy, the insurer or producer risks modifying the policy's terms or coverage's. In addition, if an insurer or its producer includes any statement in a certificate of

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insurance purporting to amend or extend coverage from the underlying policy, including references to construction contracts, service contracts or insurance requirements, the insurer or producer may be misrepresenting the policy terms. By issuing such a certificate, the insurer or producer is in violation of the above referenced Insurance Code prohibiting a producer or insurer from intentionally or materially misrepresenting the terms of an actual or proposed insurance contract. Such violations can result in administrative actions by the Insurance Division, which may include a monetary penalty, suspension, revocation or probationary action against a licensee.

The following guidelines should be reviewed and adhered to by insurers and producers when issuing certificates of insurance:

(1) Certificates of Insurance are merely evidence of insurance in lieu of an actual copy of the insurance policy. They are to be used to show evidence of insurance. They are not to be used to attempt to modify the terms of the policy itself. No insurer or agent should issue or sign a Certificate of Insurance that contains terms or conditions that differ from those in the underlying policy. Therefore, no licensed insurer or its licensed producer may issue a binder, certificate of insurance or indemnity agreement or any other type instrument which either affirmatively or negatively amends, extends or alters the coverage provided by its approved policy forms and endorsements without the written approval of the Superintendent of Insurance.

(2) Each certificate or memorandum of property or casualty insurance when issued to any person other than the policyholder shall contain the following or similar statement: "This certificate or memorandum of insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by policy number \_\_\_\_\_ issued by \_\_\_\_\_." A statement substantially similar to that above is included on the form certificates available from ACORD and ISO. Use of the ACORD and ISO forms will be considered by the Department to meet the requirements of this bulletin so long as the forms are not altered to inappropriately modify terms of the policy.

(3) No certificate of insurance shall contain references to construction or service contracts or insurance requirements for the purpose of amending coverage afforded by the policies to which the certificate makes reference. No certificate of insurance may be used to amend, extend, restrict or alter coverage afforded by the policies to which the certificate of insurance makes reference. A person shall have a right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance only if the person is named within the policy or any endorsement and the policy or endorsement, law, or regulation of this state requires notice to be provided. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance in accordance with the laws and regulations of this state and cannot be altered by a certificate of insurance.

(4) Prior to its use, each insurer not using the standard ACORD or ISO "Certificate of Insurance" forms shall file with the Superintendent of Insurance the form of certificate or memorandum of insurance which will be used by such insurer.

(5) All users of the standard ACORD or ISO "Certificate of Insurance" forms must use the most recent version approved by the Insurance Division. The Accord or ISO.

"Certificates of Insurance" must be completed in accordance with the instructions provided by Accord or ISO including utilizing the correct form for the coverage provided in the underlying policy.

(6) No licensed insurer or its producer licensed to do business in New Mexico shall have the authority to issue an "Agent's Opinion Letter" or any other correspondence purporting an insurance policy provides coverage which the policy does not actually provide.

All insurers are directed to inform their personnel and agents of the contents of this Directive.

Questions regarding this bulletin should be directed to Alan Seeley of the Insurance Division at 505 827-4307 or at [alan.seeley@state.nm.us](mailto:alan.seeley@state.nm.us).

DONE AND ORDERED this 14<sup>th</sup> day of January, 2011

  
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JOHN FRANCHINI  
*Superintendent of Insurance*