

Questions and Answers on Insurance Laws Regulating Certificates of Insurance in New Mexico

Why can't we just discontinue issuing certificates and have the insurance carrier be the sole issuer of Certificates of Insurance?

Most insurance companies transferred this responsibility to their agents to save money and most agents accepted the task as a way to provide prompt service to their policyholders. It is doubtful that companies will take the responsibility back.

We are often asked by certificate requesters to put specific wording in the 'Description of Operations' section of the ACORD 25 form that has to do with additional insureds or other information that does not apply to my insured's operations, locations, or vehicles. How should those requests be handled?

The 'Operations...' Box on the ACORD is meant to be used to describe only your insureds operations, locations, and vehicles insured on the policy. For all other information requested, the ACORD 101 (Additional Remarks Schedule) is the proper form used to supplement information provided on the certificate. Section 59A-18-32 of the New Mexico Insurance Code does not specifically address or prohibit additional remarks added to the certificate in the Description box. However, the law does provide general guidelines for the additional remarks, and the ACORD forms Instruction Guide gives further guidance about information that may be contained in a filed certificate of insurance or required when requesting a certificate of insurance. In any case, such remarks should not alter, amend or extend coverage provided by the policies, contain false or misleading information, or contain a reference to a legal or insurance requirement in a contract other than the underlying contract of insurance.

Most policies have a lot of endorsements. Will all endorsements need to be placed on the certificate?

We don't recommend attaching all endorsements to the certificate. It's OK to attach specific endorsements if the certificate holder requests them, or if you know the policies aren't satisfying the certificate holder's requirements in some way because of the endorsements.

Can we show Job Numbers and Job Names in the description box?

Yes.

Can we reference "if required by written contract" in the description box?

No. 59A-18-32 prohibits reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance. We recommend using the actual wording for blanket additional insured and waiver of subrogation endorsements as shown in your policy (use the ACORD 101 Supplemental form.)

If 59A-18-32 is based on the Location of the job, why isn't the job location required on the certificate? Many certificates are issued to "main office" which could be in a state other than New Mexico.

The law applies to operations in New Mexico, regardless of the location or mailing address of the certificate holder. It is designed to make out of state contractors subject to the same requirements as New Mexico contractors.

If we ask our underwriter to endorse waiver of subrogation and our underwriter emails back it has been approved and they are adding can we issue the certificate or do we wait for the endorsement?

If the underwriter has bound the coverage it can go on the certificate.

How does this law apply to a New Mexico agent who is insuring foreign or out of state assets or activities?

It will have no effect on out of state operations. The certificate laws of those states would take precedence.

Is it acceptable to put " Refer to policy for all coverages, conditions, and exclusions"?

That really isn't necessary. The ACORD certificate contains appropriate wording.

Does this mean that we should no longer list the blanket or specific additional insured or waiver endorsements that are on the policy?

You can list endorsement numbers (including edition dates) on a certificate or attach copies of the endorsements to the certificate as long as it's on the Acord 101 supplemental form.

What about the insured who has already signed the contract and demands the certificate include information not part of the policy?

Generally, the insured is requesting the wording to comply with the actual contract provisions. We focused on certificate holders who are making demands, but the same rules would apply to your insured.

Why not just provide the policy coverage forms along with the Certificate of Insurance to the certificate holder?

An excellent idea, if your customer agrees and the certificate holder will accept them. But the information on the certificate must still be accurate.

How will we know what certificates have been approved by the OSI?

You should check with the New Mexico OSI. Currently the only certificate forms approved for use in NM are the current editions of a standard certificate of insurance form that is promulgated by the association for cooperative operations research and Development (ACORD), the American association of insurance services or the insurance services office (ISO), although 59A-18-32 provides insurers with the option of submitting their own certificate of insurance forms to OSI for its review and approval.

Do agents need to submit filled-out certificates of insurance to OSI?

No.

We are sometimes asked to complete a letter stating that insurance is in place and providing policy numbers. Is that considered a "certificate"?

Yes, and therefore the letter (or the template for the letter) must be approved by OSI before it can be used and it must meet the other requirements for a certificate. Under 59A-18-32, a certificate of insurance is defined as any document or instrument prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage, but excludes an insurance policy, insurance binder, policy endorsement or automobile insurance identification or information card.

What about certificate forms that the state issues to show insurance (i.e. pest control, plumbers, etc.)?

Certificate of insurance forms whose content and wording are specifically provided for by federal law or regulation, or law or regulation of New Mexico are exempted by 59A-18-32. Other than these, there is no exception in the law for a public entity. They must file their certificates for OSI approval.

What if a governmental agency requires specific wording in a certificate of authority but refuses to cite the statute or regulation that allegedly requires this wording?

Let OSI know and it will attempt to contact that agency to obtain the underlying statute or regulation.

If policy includes Blanket Additional Insured wording or endorsement, will we be able to provide this info on the certificate?

Yes. We recommend that you not check the additional insured box but add wording to the via the supplemental 101 certificate form indicating the blanket endorsement is attached.

There are cases when a subcontractor has already finished a job and now the general contractor is asking for a certificate with non compliant wording. What should we do?

The law applies to certificates issued at any time, even after the job is complete. For what it's worth, we have seen court decisions in other states forcing general contractors to pay the subcontractor in these situations.

Can we file a complaint against the certificate holder?

Yes. Agents and policyholders can file complaints regarding noncompliant certificates with Evelyn Padilla of the New Mexico Office of Superintendent of Insurance at evelyn.padilla@state.nm.us.

Does the new law apply to property certificates?

Yes.

What if the insurance company specifically tells you not to use the blanket additional insured wording that is suggested by Best Practices publications?

You should follow your company's instructions regarding certificates issued on their behalf. If the company offers some other wording to put on the certificate, be sure it complies with the law and put it in the Acord 101 Supplemental form.

When our policyholders send us wording in contracts that reflect the coverage not available such as broad form property damage, blanket contractual etc., how do we address with the client? Aren't contracts addressed specifically by the new law also?

59A-18-32 specifically prohibits such requested wording:

“A contract number or description in a certificate of insurance shall not indicate that the insurance policy complies with the insurance or indemnification requirements of a contract. A person shall not certify in a certificate of insurance that the insurance policy to which it refers complies with the insurance or indemnification requirements of a contract.”

Obviously, if you can't put requested language on the certificate, your first call should be to your policyholder to explain why. Although the law does not prevent a certificate holder from requesting specific coverages or wording on the certificate, it does address what you put on the certificate. If the certificate requester continues to insist on wording that is illegal, then you should contact Evelyn Padilla of the New Mexico OSI at evelyn.padilla@state.nm.us for help in contacting the requesting entity.

Can we show endorsements on the certificate?

You can list endorsement numbers (including edition dates) on the certificate (using the Acord 101 Supplemental form) or attach copies of the endorsements to the certificate.

Who can issue certificates?

A certificate of insurance in New Mexico must be prepared by an insurer or insurance producer. An insurance producer is defined as a person required to be licensed pursuant to the laws of New Mexico to sell, solicit or negotiate property or casualty insurance.

Our agency issues many certificates through ISNET. How will this be impacted by 59A-18-32?

If it's a system whereby you enter policy information and that information is furnished to a third party on a form that has not been approved by OSI, then the form produced by the system has to be approved by the New Mexico OSI before agents can use ISNET, or another similar vendor.

If the contract calls for XYZ company to be an additional insured on ABC company's CGL policy and the policy has a blanket additional insured endorsement, what wording can we use on the certificate?

If you cannot cite the coverage wording verbatim, then we suggest the following wording because it's purposefully vague:

“The policy includes a blanket additional insured endorsement (or provision) that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.”

We are sometimes asked to issue certificates with lower umbrella limits than the policy provides. Would this be a violation of the law?

Yes. The certificate should accurately reflect the limits shown on the policy declarations. The law says the certificate must not alter, amend or extend the coverage or terms and conditions provided by the policy. And the law says a person (including the policyholder) may not require issuance of a certificate that contains false or misleading information.

Can we use the terms "blanket contractual" or "broad form property damage" on the certificate when the certificate holder asks for it?

No. There is no coverage available that uses these terms. A certificate holder cannot require an agent or insurer to certify insurance coverage that is not available.

Can we certify that the CGL policy covers the indemnity obligations in the insured's contract with the certificate holder?

No. Courts can't even agree from one case to another whether the contractual liability coverage on a CGL policy applies to certain contractual obligations. Don't put yourself in the position of guaranteeing that the CGL coverage applies to all such obligations.