



Essential Protections for Policyholders



Essential Protections When Buying Insurance

Essential Protections for Policyholders
is a project of
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Homeowners need readily available, easily understandable information about the insurance policies available to them and the insurance companies that offer those policies in order to shop effectively for insurance. Insurance companies mostly provide only one kind of information—price. Statutes, regulations, and administrative action are needed to provide consumers with more and better information. Giving consumers full, understandable information about insurance policies and insurance companies enables them to make wise buying decisions when shopping for insurance and when renewing insurance policies, and it creates competition among companies that leads to better products and fairer prices.



Consumers should have easily available, understandable information and tools for comparing coverage in insurance policies.

- **Insurance departments should post online commonly used policy forms and comparisons of key policy provisions for consumers to view and compare.**

Insurance is the only product for which consumers do not know what they are buying before they buy it. Insurance companies almost never provide copies of policy language or complete summaries of policy terms to prospective policyholders. Because policies are complex legal documents that vary widely among companies in what they cover and what they don't cover, consumers need ready access to policy forms and comparisons of key provisions to shop carefully for insurance.

Because most consumers won't read long, complex insurance policies before buying, a convenient comparison of key terms is essential. An example in the health insurance context is the Summary of Benefits and Coverage mandated by the Affordable Care Act and developed by state insurance regulators; the Summary answers in a clear format questions such as "What is the overall deductible?" and "Do I need a referral to see a

specialist?”¹ In homeowners insurance the policy comparison tool terms should include information such as

- Whether the policy is Named Perils or All-Risk;
- Whether coverage is Actual Cash Value, Replacement Cost, Extended Replacement Cost, or Guaranteed Replacement Cost;
- Whether the policy covers damage from flood, earthquake, windstorm, or other catastrophic causes, and whether other insurance is available for such losses from such causes.
- Whether the policy contains special deductibles such as a Hurricane Deductible.
- Whether the policy contains Law and Ordinance or Building Code Upgrade coverage, and, if not, whether such coverage is available at an additional cost.
- The extent of Additional Living Expense coverage.

The tool also should contain links to easily understandable explanations of the key terms.

The publication of policies would encourage better shopping by consumers. It also would encourage the development of concise ratings of different policies by consumer groups and websites as occurs in the United Kingdom, where the consumer organization Which? provides numerical ratings and five-star rankings of insurance policies and insurance companies.²

Recommended action:

Insurance departments should make available online residential property policy forms of all insurance companies doing business in the state, or at least those companies that have a significant market share based on direct premiums written.

Insurance departments should prepare and post online a policy comparison tool that enables consumers easily to compare key terms of insurance policies.

Current law:

¹ <https://www.healthcare.gov/health-care-law-protections/summary-of-benefits-and-coverage/>

² See <http://www.which.co.uk/money/insurance/>.

Insurance departments in practically every state already have sufficient legal authority to take these steps. Insurance companies are required to file policy forms with and typically have them approved by insurance departments. Although policies may be subject to copyright, departments in the exercise of their regulatory authority may publish the forms for the use of consumers.

Several states already publish policy forms online, typically for the insurer groups having the largest market share or a significant market share by direct premiums written in the state. See, for example, the websites of the Maine, Missouri, Nevada, Oklahoma, and Texas insurance departments. The Texas Insurance Department HelpInsure Home page provides comparisons of some key policy terms.

The National Association of Insurance Commissioners (NAIC) currently has a Transparency and Readability of Consumer Information Working Group. The charge of the Working Group is to “Study and evaluate actions that will improve the capacity of consumers to comparison shop on the basis of differences in coverage provided by different insurance carriers.”³

Consumers should have easily available, understandable information about insurance companies’ claim practices.

- **Insurance departments should post online information about insurance companies’ practices in paying claims for consumers to view and compare.**

Quality is an important attribute of any product, including insurance. The two measures of quality for insurance are insurance companies’ financial stability and their record of paying claims promptly and fairly. State insurance departments generally do a good job of monitoring companies’ financial stability, and easy-to-understand ratings are produced by ratings agencies such as A.M. Best and are widely available. Claim practices are not closely regulated and the information on which consumers can compare companies is not publicly available. An Essential Protection is to provide current, helpful statistics with which consumers can compare companies as to how promptly and fairly they pay claims. These statistics are now reported by companies to insurance departments and include, by year:

³ http://www.naic.org/committees_c_trans_read_wg.htm ;
http://www.naic.org/cipr_topics/topic_transparency_readability.htm .

- Number of claims opened, closed with payment, and closed without payment.
- Median days to final payment.
- Number of claims closed with and without payment within 0-30 days, 31-60 days, and so on.
- Number of suits by policyholders opened and closed.

Insurance departments also should create online tools that facilitate comparison of different companies, such as ratios of claims closed with and without payment to claims opened, by company and jurisdiction-wide. Information about consumer complaints and regulatory actions including market conduct examinations also should be readily available to consumers.

Recommended action:

Insurance departments should publish online on an annual basis data about individual insurance companies' claim practices and tools for comparing information about different companies.

Insurance departments should post online information about nonrenewals, consumer complaints, market conduct examinations, and other regulatory actions.

Recommended statutory language:

Notwithstanding the provisions of subsection [] of this section or of any other law to the contrary, in order to assist in the performance of the commissioner's duties, the commissioner may:

...

(4) Use documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, communications, or information to provide to consumers information on insurers' claims practices, by insurer by line of insurance, including, without limitation:

- a) relevant information equivalent to that provided on the Market Conduct Annual Statement; and
- b) annual ratios of:
 - i) claims unprocessed to claims filed or pending;
 - ii) claims closed without payment to claims closed;

- iii) claims closed within specified time periods;
- iv) non-renewals to policies in force;
- v) cancellations by specified time periods to policies in force; and
- vi) suits opened to claims closed without payment.⁴

Current law:

Most states already collect this data and report it to the NAIC, which aggregates it and reports it in limited form to insurance companies. The NAIC Market Conduct Surveillance Model Law (MDL-693) § 7 and the National Conference of Insurance Legislators' Market Conduct Annual Statement Model Act § 8 provide that claims data reported to or collected by the department are privileged and confidential. The NAIC Model Law has been adopted in substantially the same form in many states.⁵ Other states have statutes in different form that are similar in effect.⁶ The recommended statutory language removes that confidentiality and requires insurance commissioners to make the data available.

Policyholders should be given clear information about their own insurance policies.

- **Insurance policies and notices to policyholders should be clearly organized and written in plain language.**

Insurance policies are complex legal documents. A typical homeowners' insurance policy will run for dozens of pages with definitions, terms of coverage, exclusions, exceptions, conditions, and more. For a policyholder to evaluate a policy being considered for purchase, to determine whether to file a claim, or to resolve a dispute with an insurance company, the policy must be clearly organized and written in plain, non-technical language.

⁴ This language would amend Section 7.D. of the NAIC Market Conduct Surveillance Model Law (MDL-693) (October 2004). Variations in state adoptions would require appropriate changes.

⁵ E.g., Ariz. Rev. Stat. Ann. § 20-158; Haw. Rev. Stat. § 431:2D-107; Ohio Rev. Code Ann. § 3916; R.I. Gen. Laws Ann. § 27-71-8; Wash. Rev. Code Ann. § 48.37.080.

⁶ E.g., Ga. Code Ann. § 33-2-14.

Recommended action:

States should require insurance policies to conform to minimum standards of organization, presentation, and readability. At a minimum, the standards should prescribe that policies:

- Use clear layout, font, headings, spacing, and other measures of legibility.
- Meet defined tests for readability and plain language.
- Contain a table of contents and index.

Current law:

Many jurisdictions have Plain Language laws governing insurance policies. The NAIC's Property and Casualty Insurance Policy Simplification Act (MDL-730) sets a general standard requiring that policies be "simplified, taking into consideration the following factors:"

- A. Use of simple sentence structure and short sentences;
- B. Use of commonly understood words;
- C. Avoidance of technical legal terms wherever possible;
- D. Minimal reference to other sections or provisions of the policy;
- E. Organization of text; and
- F. Legibility.

The implementing Model Regulation (MDL-731) adds requirements such as a table of contents, self-contained sections, legibility, and a minimum score on the Flesch Reading Ease Test of 40. The use of a Flesch score as a test of readability is common.⁷ Other typical requirements include avoiding "unnecessarily long, complicated, or obscure words, sentences, paragraphs, or constructions,"⁸ "sentences that contain double negatives and exceptions to exceptions [and] sentences and sections that are in a confusing or illogical order."⁹

The NAIC Transparency and Readability of Consumer Information Working Group is considering changes to the Model Regulation and related regulations including new

⁷ E.g., Colo. Rev. Stat. Ann. § 10-4-110.8 (fifty, or tenth-grade reading level); Conn. Gen. Stat. Ann. § 38a-297 (forty-five); Fla. Stat. Ann. § 627.4145 (forty-five); Tex. Ins. Code Ann. § 2301.053 (minimum score established by the insurance commissioner).

⁸ Conn. Gen. Stat. Ann. § 38a-297(a); Fla. Stat. Ann. § 627.4145(1)(d).

⁹ N.J. Stat. Ann. § 56:12-10(a).

readability rules, promoting consistent, clear and logical formatting and organization of all policies, and other measures to “facilitate consumers' capacity to understand the content of insurance policies and assess differences in insurers' policy forms.”¹⁰

- **Insurance companies must give to applicants for insurance and policyholders at the time of renewal clear explanations of key policy terms, significant limitations and exclusions, the need for and availability of additional insurance for natural disasters, and any new and altered policy terms in the case of renewal.**

Even insurance policies that are well-organized and readable often will not be read or understood by consumers because the policies are necessarily long and complex and because consumers are likely to not pay attention to the details of their policies until they have a potential claim. Therefore, applicants and policyholders need to be provided accessible summaries of the terms that are likely to be most important to them. At the time of renewal, policyholders especially need to be informed about changes in terms. Some of the most important terms are common to all homeowners and others will vary among the states. The information should be provided in a standardized form prescribed by the state and should contain at least the following information, with understandable explanations of each:

- A simple explanation of the major coverages and exclusions of the policy.
- In the case of a renewal, any changes in terms or premium.
- Whether the policy is Named Perils or All-Risk;
- Whether coverage is Actual Cash Value, Replacement Cost, Extended Replacement Cost, or Guaranteed Replacement Cost;
- Whether the policy covers damage from flood, earthquake, windstorm, or other catastrophic causes, and whether other insurance is available for such losses from such causes.
- Whether the policy contains special deductibles such as a Hurricane Deductible.
- Whether the policy contains Law and Ordinance or Building Code Upgrade coverage, and, if not, whether such coverage is available at an additional cost.

¹⁰ http://www.naic.org/cipr_topics/topic_transparency_readability.htm .

- That the policy contains time limitations for Additional Living Expense and for providing notice of loss, filing claims, repairs to be completed, and a claim to be adjusted.

Recommended action:

States should require that at the time of application, issuance of a policy, and renewal, insurance companies must furnish to policyholders, in a standardized form prescribed by the state, essential and easily understandable information about the terms of the policy.

Current law:

Many states require notifications that include some of this information. For example:

- A simple explanation of the major coverages and exclusions of the policy.¹¹
- In the case of a renewal, any changes in terms or premium.¹²
- Whether the policy is Named Perils or All-Risk;
- Whether coverage is Actual Cash Value, Replacement Cost, Extended Replacement Cost, or Guaranteed Replacement Cost;¹³
- Whether the policy covers damage, from flood, earthquake, windstorm, or other catastrophic causes, and whether other insurance is available for such losses from such causes.¹⁴
- Whether the policy contains special deductibles such as a Hurricane Deductible.¹⁵
- Whether the policy contains Law and Ordinance or Building Code Upgrade coverage, and, if not, whether such coverage is available at an additional cost.¹⁶

¹¹ La. Rev. Stat. Ann. 22:1332.

¹² Colo. Rev. Stat. §10-4-110.8(9).

¹³ Cal. Ins. Code § 10101; La. Rev. Stat. Ann. 22:1332.B(3); S.C. Code Ann. § 38-75-755.

¹⁴ Cal. Ins. Code § 10081; N.J. Stat. Ann. § 17:36-5.38; La. Rev. Stat. Ann. 22:1332.B(2); S.C. Code Ann. § 38-75-755.

¹⁵ La. Rev. Stat. Ann. 22:1332.B(6); N.Y. Ins. Law § 3445.

¹⁶ Cal. Ins. Code § 10101; Colo. Rev. Stat. § 10-4-110.8(6)(a).

- That the policy contains time limitations for providing notice of loss, filing claims, repairs to be completed, and a claim to be adjusted.¹⁷
- That the policyholder should read the policy for complete details and that the summary notification does not replace any provision of the policy.¹⁸

¹⁷ S.C. Code Ann. § 38-75-755.

¹⁸ Colo. Rev. Stat. Ann. § 10-4-111.

About Essential Protections for Policyholders

Essential Protections for Policyholders is a project of the Rutgers Center for Risk and Responsibility in cooperation with United Policyholders.

The Rutgers Center for Risk and Responsibility at Rutgers Law School explores the ways in which society makes choices about risk, its proper allocation, and compensation for the harm caused when risks materialize.

United Policyholders is a non-profit 501(c)(3) organization whose mission is to be a trustworthy and useful information resource and a respected voice for consumers of all types of insurance in all fifty states.

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