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Approved: Hon. Victor A. Suarez-Melendez
Secretary of State



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Department of State

Government of Puerto Rico

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE of PUERTO RICO
Guaynabo, Puerto Rico

RULE NO. 101 OF THE REGULATIONS OF THE PUERTO RICO INSURANCE CODE

STANDARDS FOR SERVICE AGREEMENTS

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO
Guaynabo, Puerto Rico

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INSURANCE CODE OF PUERTO RICO**

STANDARDS FOR SERVICE AGREEMENTS

SECTION 1. - AUTHORITY

The Office of the Commissioner of Insurance of Puerto Rico (OCI) adopts Rule No. 101 of the Regulations of the Puerto Rico Insurance Code, titled Standards for Service agreements, under the powers and authority conferred in the provisions of Section 2.030 and Subchapter II of Chapter 21 of the Puerto Rico Insurance Code, Public Law No. 77, enacted on June 1, 1957, as amended, and Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

SECTION 2. - PURPOSE

This Rule is adopted for the purpose of establishing the guidelines that the Office of the Commissioner of Insurance (OCI) shall use for the approval of service agreement forms that are executed in Puerto Rico, and establish the requirements that are needed for the evaluation of applications for issuing service agreements, discontinuing operations, the financial condition of service agreement providers, and the management of funds held in trust to guarantee the obligations assumed in service agreements, under Section 21.260 of the Puerto Rico Insurance Code. The purpose of this Rule is to protect the interests of the holders of agreements and the public in general, by means of standards that will promote an adequate oversight of the service agreement business, to guarantee the fulfillment of the obligations in such agreements and the rights of consumers.

SECTION 3.- APPLICABILITY

The provisions of this Rule will be applicable to all individuals or entities that intend to or in fact issue, offer or sell service agreements to residents of Puerto Rico under the provisions of Subchapter II of Chapter 21 of the Insurance Code on service agreements.

SECTION 4. - STATEMENT OF NEED AND OBJECTIVE

Under the provisions of Subchapter II of Chapter 21 of the Puerto Rico Insurance Code, the Commissioner of Insurance has been authorized to exercise a regulatory and oversight function with regard to the service agreement business and to protect the holders of service agreements. The Commissioner has been afforded broad powers and faculties to do so, under the provisions of Chapter 2 of the Puerto Rico Insurance Code. The Commissioner of Insurance has been vested with the power to take any such action as may be necessary or appropriate to enforce the provisions of Subchapter II of Chapter 21 of the Puerto Rico Insurance Code and to promulgate the regulations that may be necessary to protect the holders of service agreements.

In view of the lack of clear legislation on standards that are applicable to service agreements, Subchapter II of Chapter 21 of the Puerto Rico Insurance Code was approved to provide a legal basis for specifically regulating service agreements and guaranteeing the rights of consumers. To reassure service agreement consumers that they will receive a service that is according to the price that was paid, the Commissioner issued Ruling Letter No. N-AM-9-66-2005, which established the procedure for service providers to certify that the rates that are charged for service agreements were appropriate and not excessive. However, due to the fact that the providers provide this information in different ways, the Commissioner issued Ruling Letter No. CN-2016-195-AP, for the purpose of clarifying and achieving uniformity in the manner of certifying the reasonability of rates. However, until now, no rule has been promulgated to clearly establish uniform standards that are applicable to other aspects of service agreements, to enable the OCI to effectively exercise its oversight function, and to adequately protect the rights of the service agreement holders.

Therefore, this Rule has the basic objective of establishing the standards to regulate service agreements, by providing adequate and uniform regulatory standards for the protection of the consumers. This Rule establishes the requirements for applications for authorization to issue service agreements in Puerto Rico, the standards for filing and disseminating service agreements, the criteria for complying with the mechanisms for fulfilling the guarantee of the obligations for service agreements holders, the obligations of service agreement providers, and the requirements for notification of discontinuation of operations.

The provisions of this Rule are necessary for fulfilling the oversight function of the OCI and guaranteeing the protection of the rights of consumers and holders of service agreements.

SECTION 5. - DEFINITIONS

- A. "Cost of Acquisition": means the portion of the fees corresponding to the payment of commissions and/or fixed charges for issuing the agreement at the point of sale.
- B. "Cost of Services": means the expenses incurred by a provider of service agreements to fulfill its obligations in the service agreement.
- C. "Extended Warranty": means a kind of service agreement that is negotiated separately from the sale of the product and that, once the manufacturer's warranty has expired, obligates a person to compensate for defective parts, mechanical or electrical failures, labor costs for services or other coverage that was provided during the period in which the manufacturer's warranty was in effect.
- D. "Unearned Fees": means in annual or multiannual agreements, the portion of the fees that after a prorated calculation of the total fees among the total number of months in which the agreement will be in effect, corresponds to the months for which the provider has not yet provided the service, excluding the current months. For the purposes of this definition, if the agreement does not provide coverage during the manufacturer's warranty, the months that have elapsed since the issue of the agreement until the date on which the manufacturer's warranty expires (the

date on which coverage is activated) will not be used in calculating the prorated months. It is provided that in that case it will be deemed that the agreement will enter into effect on the date on which coverage is activated.

- E. "Loss Ratio": means the ratio between the cost of services for a given year divided by the fees earned in such period, according to the information shown in the financial report at the closing of the period.
- F. "Reserve" - means the loss reserve established and maintained the fulfillment of the obligations established under service agreements, under Section 21.260(3)(b) of the Puerto Rico Insurance Code.
- G. "Literature" - means the summary or pamphlet with all of the terms and conditions of the service agreement that the provider delivers to the consumer at the time of issuing the sale of the agreement.

The other terms used in this Rule shall have the same meaning and scope as provided in Subchapter II of Chapter 21 of the Puerto Rico Insurance Code.

SECTION 6. REQUIREMENTS FOR THE APPLICATION FOR AUTHORIZATION TO ISSUE SERVICE AGREEMENTS

A. Any legal entity that intends to issue, sell or offer service agreements in Puerto Rico shall complete and file with the Commissioner the Application for Authorization to Issue Service Agreements promulgated by the Commissioner, accompanied by the following documents, which will be part of the application, as well as the fees:

- (a) A copy of the certificate of incorporation or charter of the entity or legal person seeking authorization;
- (b) Certification by the Secretary of State of Puerto Rico stating that the legal entity or person is registered and authorized under the laws of the Commonwealth of Puerto Rico to do business in Puerto Rico;
- (c) A certified copy of the internal rules duly authenticated by the president or secretary of the entity;
- (d) The seal and logo of the legal entity or person to be used in its

communications;

- (e) A copy of the audited financial statements as of December 31 of the year immediately preceding the filing of the application, or instead, financial information certified to the satisfaction of the OCI;
- (f) Copies of the service agreement forms, application forms, or any other supplement or literature that is intended to be used in Puerto Rico, as well as the total fees (specifying the fees, charges, and remuneration charged by the seller of the agreement) and the actuarial certification that such total fees that the consumer will pay to acquire the service agreement are appropriate and not excessive;
- (g) Payment of fees of \$350.00 for filing the "Application for authorization to issue service agreements", by certified check or postal or bank money order payable to the Secretary of the Treasury of Puerto Rico;
- (h) Payment of fees for \$500.00 for annual registration with the OCI, by certified check or postal or bank money order, payable to Secretary of the Treasury of Puerto Rico, and for subsequent years, the fees shall be paid on or before of June 30 each year;
- (i) In case of a legal entity or person that is not a resident of Puerto Rico, the "Application for Authorization to Issue Service Agreements" should also comply with the following:
 - (1) Designate an agent that is authorized so receive summons or service of process on behalf of the applicant entity, who is a resident of Puerto Rico. The authorized agent in Puerto Rico should be registered as such at the Department of State; and
 - (2) Inform the Commissioner, at the time of filing the application for authorization, whether the provider or any other affiliated or related entity issues service agreements in other jurisdictions of the United States. In addition, the provider shall certify that the service agreements

that are issued in other jurisdictions of the United States offer substantially the same benefits as those offered in Puerto Rico for the same risks covered in the agreements that were issued, according to the provisions of Subchapter II of Chapter 21 of the Puerto Rico Insurance Code. It is further provided that this certification does not imply that in Puerto Rico coverage will be approved that does not qualify for being provided under the service agreements merely because it is offered in other jurisdictions. Any change in the information required in this paragraph shall be informed to the Commissioner within twenty (20) days of the occurrence of such.

B. When the provider intends to use the reimbursement policy as a method for guaranteeing the fulfillment of the obligations to the holders of the agreements, according to Section 21.260(3)(a) of the Insurance Code, the provider shall submit to the OCI a certification from the insurer that the provider intends to use to issue such policy stating that the insurer will issue the policy to the provider and the rate that will be charged by the business in Puerto Rico.

SECTION 7. - FILING OF FORMS

- (a) No provider will issue, deliver or use a service agreement, form or application for a form, or other supplement or literature that the provider proposes to use in Puerto Rico, without prior filing with the Commissioner and having obtained the Commissioner's approval.
- (b) All providers, at the time of filing a service agreement form for evaluation and approval by the Commissioner, shall include a statement of fees setting forth in detail all of the rights, charges, compensation, and any other item used in calculating the fees to be paid by the consumer for the acquisition of the service agreement. The statement of fees will also certify that the fees to be charged under the agreement are appropriate and not excessive.
- (c) If the agreement is for an extended warranty and is acquired and paid for

simultaneously with the purchase of the product that has a manufacturer's warranty in effect, the statement of fees shall certify that the fees represent the current value, taking into consideration the period of the manufacturer's warranty or the period not consumed in the manufacturer's warranty. The certification required in above paragraph (b), which shall accompany the statement of fees, and must be signed by a qualified actuary.

- (d) During the time the service agreement is in effect, the provider must file with the Commissioner for review by the Commissioner, every two (2) years, an itemized list of the fees that it will charge and that will be in effect for the biennial period, along with the statement of fees required in the above paragraph (c) and the actuarial certification that the fees to be charged under the agreement are appropriate and not excessive, all of which shall be filed with the Commissioner, through the SERFF electronic system, on or before June 30 in that period.

Service agreements that provide an extended warranty are charged from the time that the consumer purchases the product, and provide other incidental services or additional coverage to manufacturer's warranty during the period of such warranty shall contain a cancelation clause specifying that in the event of a cancelation before the expiration of the manufacturer's warranty, at the option of the provider, the provider may retain the lesser of the amounts between \$65 and the amount that results from multiplying the prorated fees by the number of months of the warranty.

- (e) The cancelation clause shall provide that in the event of cancelation there will be a right to claim from the provider the return of unearned fees. When the fees for the service agreements are included in the financing agreement for the product, the cancelation clause shall establish that in the event of cancelation, the check for the return of the unearned fees will be issued in the name of the holder of the agreement and the financing entity.

Nothing provided in this Section will imply that the services provided are exempted from complying with any other applicable provision under Subchapter II of Chapter 21 of the Code of Insurance.

SECTION 8.- REQUIRED DISCLOSURES AND CLAUSES IN SERVICE AGREEMENTS

- A. All providers or sellers of service agreements shall exhibit in a place that is visible to their customers the disclosures that are set forth in Appendix A of this Rule, provided that the annual fee of any of the agreements that are offered are equal to or more than \$100.00.
- B. All service agreements that are issued, sold, or offered for sale in Puerto Rico shall be written in clear and intelligible language. The agreement will be totally printed, and a copy of such will be provided for the holder of the agreement within forty-five (45) days from the date of acquisition and shall contain the following:
- (1) The name and the street and mailing addresses of the place of business of the provider, in a clearly distinguishable manner;
 - (2) The person or entity that will provide the services covered in the agreement;
 - (3) The fee (total price of the agreement) and the terms under which the agreement is sold;
 - (4) A detailed list of the products and services to be provided as well as any applicable limitations, exceptions or exclusions;
 - (5) It shall be set forth in a conspicuous and visible manner whether any deductible is applicable, and if there is, the amount of such shall be stated;
 - (6) In the case of a service agreement for motor vehicles, state the conditions under which the use of non-OEM replacement parts will be permitted;
 - (7) In cases where prior approval is required for obtaining the services, the service agreement shall set forth in a clear and simple manner the procedure for obtaining such approval and for filing a claim, including a toll-free telephone number for providing services for claims;

- (8) The terms, restrictions or conditions that are applicable to transferring to or subcontracting third parties for performing the services that the provider undertook to provide in the agreement. It is further provided that no charge will be allowed for the transfer of the agreement or subcontracting third parties;
- (9) The terms, restrictions or conditions regarding the termination or cancelation of the agreement, whether by the holder of the agreement or by the provider. In the latter case, the provider shall mail a written notice to the holder of the agreement at least fifteen (15) days in advance of the cancelation date of the service agreement. This notice shall establish the date the cancelation will enter into effect and the reason for such;
- (10) A clause regarding the immediate cancelation of the service agreement in the even of false or fraudulent representations that are material for the issue of the agreement, or that may have caused the good faith provider not to have issued the service agreement, if the provider had been knowledgeable of the actual facts;
- (11) A clause that will allow the holder of agreement to revoke the service agreement within a period of not less than ten (10) days from the delivery of the service agreement to the holder of the agreement or, if the service agreement were mailed, within a period of not less than twenty (20) days from the date of such mailing, within a contractually established longer period. This clause will specify that if the holder of the agreement exercises such right, and has not brought any claim under the service agreement, the provider will reimburse or credit to the holder of the agreement the complete fee for the service agreement. If the provider does not make the reimbursement or credit the fee within thirty (30) day following the date on which the holder returns the service agreement to the provider, the provider will also have the obligation to pay a penalty of ten percent (10%) monthly on such fee, which will be added to the reimbursement or credit for the fee;
- (12) The obligations or duties that are attributable to the holder of the service

agreement, such as any obligation to protect the property against any damage and provide maintenance and service for such; and

- (13) A clear and precise statement of whether the coverage excludes consequential damages or pre-existing conditions and what such damages and conditions consist of.

SECTION 9.- GUARANTEES OF OBLIGATIONS IN SERVICE AGREEMENTS

- (a) To guarantee fulfillment of the obligations to the holders of service agreement policies, all Providers, in order to engage in the service agreement business in Puerto Rico shall comply with the guarantee mechanisms according to the requirements set forth in Section 21.260 of the Code.
- (b) All agreement providers that use the reimbursement policy method to guarantee the fulfillment of the obligations to the holders of agreements, shall file a certificate of coverage with the Commissioner every year, to be filed along with audited financial statements, or the certified financial statements or information. When the reimbursement policy is issued to cover the business of the provider in Puerto Rico and in other jurisdictions, the certification of coverage shall state in detail the rates charged by the business in Puerto Rico.
- (c) All Providers that use the method of maintaining a reserve in trust to guarantee fulfillment of the obligations to the holders of agreements, as provided in Section 21.260 of the Insurance Code, shall file with the Commissioner every year a report on the financial situation of the trust, along with audited financial statements, or the certified financial statements or information. The statement of financial situation of the trust shall include a quarterly list of deposits and withdrawals and shall be certified by the fiduciary in charge of administering the trust.
- (d) Under the provisions of Section 21.260 of the Insurance Code, it will be considered that the reserve held in trust is not adequate, if such reserve is less than the greater of the following amounts:

- (1) The result of the loss ratio shown on the financial statements filed under Section 10 of this Rule, multiplied by the sum of the deposits made in the previous year, according to the information shown on the annual report on the financial condition of the trust filed under paragraph c of this Section; or
- (2) The amount of the non-offset withdrawals made according to Section 10 of this Rule.

SECTION 10.- CRITERIA FOR MANAGING RESERVE FUNDS HELD UNDER TRUST

- (a) Providers may use the method of a reserve that is deposited and maintained under a trust, according to Section 21.260 of the Insurance Code, to guarantee fulfillment of the obligations to the holders of agreements. The reserve will be deposited in a trust that is created according to the laws of Puerto Rico and previously approved by Commissioner.
- (b) The deposits in the reserve held under the trust will be made in installments that are due forty-five (45) days after the closing of each quarter in which the provider issues service agreements in Puerto Rico.
- (c) In addition to the deposits made under paragraph (b) of this Section, the provider may make voluntary deposits, or deposits to offset withdrawals made according to paragraphs (d) and (e) of this Section.
- (d) Withdrawals of funds from the trust will be made monthly, on or before the 15th day of each month. The maximum withdrawals to be made under this paragraph will be one third of the most recent quarterly deposit made under paragraph (b) of this Section. The provider may choose not to make withdrawals from the trust in any given month.
- (e) In addition to the monthly withdrawals of funds of the reserve permitted under paragraph (d) of this Section, and for the purpose of fulfilling the obligations

under the agreements that have been issued, a provider may withdraw up to 100% of the funds that are deposited in the trust reserve, for the current month. The provider may not make use of the withdrawal of funds provided in this paragraph for two (2) consecutive months.

- (f) Income obtained from investment of assets of the trust will be credited to its funds, and will be subject to the standards that are applicable to the investments of domestic insurers under the Insurance Code.
- (g) The balances of the trust, at the closing of the previous calendar year will be shown on the annual financial report as assigned surplus, if permitted by the financial situation of the provider.
- (h) Any trust to guarantee the obligations of service agreements or transactions with the reserve funds established after the effective date of this Rule will be subject to compliance with the requirements set forth herein.

SECTION 11.- BOOKS, RECORDS , AND EXAMINATIONS

- A. All providers shall keep exact accounts, books, and records on the transactions of service agreements that are regulated under the Insurance Code, for a period of not less than three (3) years after the expiration of the term of each coverage, according to the requirements set forth in the Section 21.300 of the Code.
- B. The accounts, books, and records of providers should include at least the following:
 - (1) Copies of each kind of service agreement issued;
 - (2) The name and address of each holder of an agreement insofar as this information has been provided by the holder;
 - (3) A list of the places where the provider advertises, sells, and offers for sale the service agreements;
 - (4) The claim files shall contain at least the date, amount, and description of each receipt, claim, and expenses incurred in relation to the service agreements; and
 - (5) Include, by kind of agreement, at least the duration of the agreement and the unearned prorated portion of the fees received.

- C. Providers may keep the records required under this Section in an electronic format. In that case, the records shall be readily accessible to the Commissioner from a terminal or reading device and shall have the capacity of being printed in a legible format.
- D. The Commissioner may examine the operations, transactions, accounts, and records of all authorized providers in order to verify compliance with their obligations and to facilitate oversight by the OCI of the discontinuation of their business.
- E. All providers shall file audited financial statements or in place thereof, certified financial statements or information to the satisfaction of the OCI, on or before June 1 of every year with regard to the year of operations ending on December 31 of the previous year, that show separately the results of their operations as providers, in case they are engaged in other businesses, including: fees, premiums paid for reimbursement policies, unearned fees, the financial situation of the reserve, cost of services, costs of acquisition, and claims.

SECTION 12.- DISCONTINUATION OF OPERATIONS

Any provider that decides to discontinue its operations in Puerto Rico shall notify the Commissioner at least ninety (90) days in advance of the last day of operations. The notice of discontinuation shall include:

- (a) The planned date of discontinuation and the reasons for the discontinuation;
- (b) A list of current agreements, according to Section 11 of this Rule;
- (c) An interim financial statement as of the date of the last completed quarter before the date of discontinuation;
- (d) The manner in which the provider's obligations to the holders of service agreements will be extinguished, whether by transferring the business to another currently authorized provider of service agreements or a run-off of the obligations;
- (e) The period or date of termination of the reimbursement policy in effect, if applicable;

- (f) An interim statement of the financial situation of the trust, if applicable;
- (g) Name and address of the representative of the provider, who shall be a resident of Puerto Rico, and will take charge of the operations until the provider's obligations have been fully extinguished; and
- (h) A draft of the public notice to be published in a daily newspaper of general circulation, notifying the discontinuation of operations. The public notice shall be published at least sixty (60) days before the date of discontinuation.

SECTION 13.- SEVERABILITY

If any word, sentence, paragraph, section, subsection or part of this Rule were found to be null and void by a court of competent jurisdiction, the order issued by that court will not affect or invalidate the remaining provisions of this Rule and its effect will be limited to that word, sentence, paragraph, section, subsection or part that was found to be null or invalid.

SECTION 14. - EFFECT

The provisions of this Rule will enter into effect thirty (30) days of the filing with the Department of State of Puerto Rico, under the provisions of Public Law No. 170, *supra*

/s/

Angela Weyne-Roig
Commissioner of Insurance

Date of approval: December 21, 2016

Date of Filing
at the Department of State:

Date of Filing
at the Legislative Library:

APPENDIX A

DISCLOSURES ON PROCESSING OF SERVICE AGREEMENTS

All service agreement consumers will have the following rights:, among others

1. The right to choose the service agreement provider of the consumer's preference.
2. The right that a loan or sale of any goods not be conditioned on acquiring a service agreement.
3. The right to obtain a receipt for the acquisition of the service agreement.
4. The right to be provided with a copy of the service agreement within 45 days of the date of acquisition.
5. The right to have the service agreement state the total price of the agreement.
6. The right to have the agreement be in the language chosen by the consumer, whether English or Spanish.
7. The right to cancel the service within ten (10) days from delivery to the consumer, or within twenty (20) days of the date of mailing to the consumer, or for a longer period of time, if allowed in the agreement. In these cases the full amount of the fees will be returned to the consumer, if the consumer has not filed any claim. If the provider has not made the reimbursement or issued credit for the fees within thirty (30) days of the cancelation, the provider will also have the obligation to pay a penalty of ten percent (10%) monthly on such fees, which will be added to the reimbursement or credit of the fees.
8. The right to reimbursement of the unearned fees in the event of the cancelation or termination of the service agreement before the date of maturity.
9. If the service agreement is insured under a reimbursement insurance policy, the right to file a claim against the reimbursement insurance policy if the provider should fail to fulfill its obligations under the service agreement (regardless of whether or not the provider has paid the corresponding reimbursement insurance premium to the insurer).
10. The right to submit a request for investigation to our Office, through our web page or by email at investigaciones@OCS.gobierno.pr, if the consumer believes that his or her rights have been violated.