

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE

Russell Toal



DEPUTY SUPERINTENDENT

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NOTICE
REGARDING IMPLEMENTATION OF
WILDFIRE EMERGENCY ORDER OF MAY 11, 2022

The questions and responses in this document are intended to provide implementation guidance related to the May 11, 2022, Emergency Order (“the Order”) issued by this office.

Question 1: Are insurers only required to waive the deductible for those who are impacted by the fire, or is waiver of deductible required for anyone in the areas identified, regardless of whether they are impacted by the fires?

Answer:

As identified under sections 1-7, 10, 11 and 12 of the Superintendent’s findings and conclusions, and section E of the Order, the scope of the Order for property & casualty insurers is intended to be limited to affected residents who:

- a) reside in the counties identified under an Executive Order issued by the Governor (2022-017, 2022-018, 2022-019, 2022-020, 2022-021, 2022-025); and
- b) had a policy in effect at the time of the loss and have filed a claim for destroyed or damaged property or Additional Living Expenses (ALE) resulting from the fires described in the Emergency Order.

For residents who meet these conditions and have notified their insurer that they have been directly impacted by the identified fires, resulting in a temporary inability to pay the deductible, insurers should provide policyholders the option to delay application of their deductible until they are able to pay, or the 120-day extension has expired, whichever occurs first.

Question 2: Does OSI expect insurers to waive the deductible for all claims or only for fire loss claims?

Answer:

The temporary deductible forbearance is intended to only apply to fire-related property losses which have been caused by the fires that are the subject of the Governor’s executive orders. The deductible waiver and cost-sharing moratorium also applies to health insurers who have policyholders negatively impacted by the fires.

As noted above, the order calls for a moratorium or waiver of deductibles and cost sharing for a limited period. Once the time period runs, or the impacted individual has been able to resume their ability to pay cost sharing obligations they are responsible for the payment.

Question 3: How should the 120-day waiver be applied by property and casualty insurers?

Answer:

The Order directs “insurers who write property or homeowners policies” and “insurers who write automobile policies” to waive deductibles for a period of 120 days. The Order should be interpreted to also include dwelling coverage. The intent of the Order is to ensure that a policyholder’s temporary inability to pay a deductible not delay the processing of a claim or impede the insured’s ability to make repairs, including removal of debris. In such instances, the insured would still be responsible for the deductible amount after the 120-day emergency forbearance period expires or once their individual circumstances have improved, whichever occurs first.

The 120-day period under Sections C-2 and D-2 of the Order shall begin on the date of loss for claim payments issued on or after the May 11, 2022, effective date of the Order. Upon expiration of the 120-day grace period, application of the deductible may resume, which may include applying the deductible to other sums owed to the policyholder for covered losses under the policy. If an insurer is issuing a claim payment for repair or replacement of damaged property within the 120-day period, and further payments under the claim after the 120-day period are not likely to exceed the deductible, the insurer may apply the deductible to that payment. The terms and conditions of the policy contract, including the deductible and policy limits available, shall remain in full effect.

If a policyholder has a policy coverage subject to a deductible, the Order requires the insurer to pay these claims without application of the deductible if there is an expressed hardship need on the part of the insured such that the insured cannot yet afford to pay the deductible owed.

The OSI urges insurers to give those negatively impacted by the fires full consideration of their circumstances. Our office will frown on insurers who on day 121, submit the insured an obligation for the full amount of the waived cost-sharing if the policyholder is actively attempting to get on their feet or establish an alternative living arrangement. In short, we ask that insurers exercise the due diligence they exhibited during the early stages of the COVID crisis.

Question 4: How should Property and Casualty insurers treat Section C-4 of the Order related to additional living expenses within the confines of the policy terms, conditions, and limits?

Answer:

The Order is intended to provide policyholders the option to temporarily waive application of any deductible that may apply for payments issued under Additional Living Expense (ALE) coverage portion of their policy and to provide policyholders a period of up to 12 months, if needed, to make a

claim for ALE benefits that may be available under their policy. ALE payments as permitted under this section of the Order shall be subject to the terms, conditions, and limits of the policy contract. [Please also refer to the Waiver of Deductibles section above for further guidance.]

Question 5: Do the protections apply to delinquencies/situations unrelated to the fires?

Answer:

No. As identified under sections 1-7, 10, 11 and 12 of the Superintendent's findings and conclusions, and section E of the Order, the scope of accommodations expected from property & casualty insurers under sections C and D of the Order is intended to be limited to affected residents who:

- a) reside in the counties identified under an Executive Order issued by the Governor (2022-017, 2022-018, 2022-019, 2022-020, 2022-021, 2022-025); and
- b) had a policy in effect at the time of the loss and have notified their insurer of being directly impacted by the fires described in the Order, resulting in a financial hardship, or filed a claim for destroyed or damaged property or ALE resulting from the described fires.

The 90-day grace period under Section E-1 shall begin on the date the Order was issued, May 11, 2022.

Question 6: What is the state's expectation regarding the communications ordered under Section E?

Answer:

Reasonable efforts under Section E may include, but are not limited to the following:

- verbally notifying policyholders of the Order and its provisions;
- providing a written or electronic copy of the Order to policyholders; or
- providing a notice to agents to communicate the Order and its provisions to policyholders.

Insurers also are requested to post information on the provisions of the Order, and guidance on how to notify the insurer of an individual's fire-impacted situation.

As identified under sections 1-7, 10, 11 and 12 of the Superintendent's findings and conclusions, and section E of the Order, the scope of communications expected from property & casualty insurers under section E of the Order is intended to be limited to affected residents:

- a) who reside in the counties identified under an Executive Order issued by the Governor (2022-017, 2022-018, 2022-019, 2022-020, 2022-021, 2022-025); and

- b) had a policy in effect at the time of the loss and have notified their insurer of being directly impacted by the fires described in the Order, resulting in a financial hardship, or filed a claim for destroyed or damaged property resulting from the described fires.

Question 7: Does the Order apply to non-admitted (e.g., surplus lines) insurers?

Answer:

No. The Order does not apply to surplus lines insurers.

Question 8: Are non-real property carriers included (e.g., inland marine carriers)?

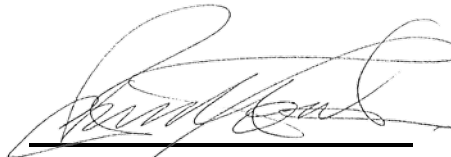
Answer:

“Marine and transportation” and “wet marine” as defined under NM ST §59A-7-5 are not included within the scope of the Emergency Order issued on May 11, 2022, and Emergency Orders referenced within. As identified under sections 9 and 11 of the Superintendent’s findings and conclusions, the intention of the Order is that it should be applied in response to the destruction of home and property, the health and safety of citizens, with the scope of the requirements being directed to assist residents who have left their homes and temporarily relocated to other areas.

For more information on the May 11, 2022 Emergency Order, please visit the OSI eDocket at <https://edocket.osi.state.nm.us/guest/case-view/5762>.

ISSUED this 27th day of May 2022.

SUPERINTENDENT OF INSURANCE



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