

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Administration

New Jersey Property-Liability Insurance Guaranty Association Assessment Premium Surcharge

Adopted Amendment: N.J.A.C. 11:1-6.3

Proposed: July 21, 2003 at 35 N.J.R. 3071(a).

Adopted: November 19, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Filed: November 19, 2003 as R. 2003 d.495, **without change**.

Authority: N.J.S.A. 17:1-8.1 and 17:1-15e, and P.L. 2003, c. 89 (codified at N.J.S.A. 17:30A-16).

Effective Date: December 15, 2003.

Expiration Date: January 31, 2006.

Summary of Public Comments and Agency Responses:

The Department received comments from State Farm Indemnity Company and State Farm Fire and Casualty Company (State Farm), the Alliance of American Insurers, the Independent Insurance Agents of New Jersey (IIANJ), New Jersey Manufacturers Insurance Group (NJM), MediFax Consultants Inc., and B. Sachau.

COMMENT: Three commenters expressed their support for the proposed amendment. Two commenters indicated that consolidation of the UCJF Board and the UCJF with PLIGA will eliminate redundancies, resulting in a more efficient government, and will be in the best interests of the insurance companies.

RESPONSE: The Department thanks the commenters for their support.

COMMENT: One commenter stated that "uninsured motorists are causing insured motorists to pay almost \$100 per year to subsidize them driving. It is time to seize the car of any person driving without insurance or registration and either sell it to cover the costs of the seizure or re-release it to the driver after he takes care of registration/insurance and [pays a] \$2,000 fine. If we make sure every car on the road has insurance/registration this whole bureaucratic setup would not be necessary. We need to make sure this happens."

RESPONSE: While the Department agrees with the commenter, to the extent that the UCJF pays claims to accident victims of uninsured or unidentified motorists, as well as reimburses private passenger automobile insurers when medical expense benefits exceed \$75,000 per person per accident, the comment is beyond the scope of this proposed amendment, which is limited to establishing the two-year EMB assessment recoupment limit as mandated by P.L. 2003, c. 89.

Seizure of uninsured vehicles will be addressed by law enforcement authorities. Section 79 of P.L. 2003, c. 89, which becomes effective 365 days following enactment of the law, provides that an individual cited for failure to possess an insurance identification card for a motor vehicle has 24 hours to produce the card or a warrant to impound the motor vehicle will be issued. An impounded vehicle would not be released until a valid identification card is produced, and all costs including fines are paid. This section also establishes procedures for public auction of an impounded vehicle.

COMMENT: One commenter questioned whether PLIGA will have guidelines similar to those of the former UCJF Board regarding auditing hospital bills onsite over \$25,000, auditing physician and provider bills over \$2,000, and yearly onsite audits to long-term care facilities and

brain injury programs for accidents occurring before December 31, 2003 and accidents occurring after January 1, 2004.

RESPONSE: The comment is beyond the scope of this amendment, which establishes a two-year EMB assessment recoupment limit. PLIGA will address standards for reimbursement and advise member insurers about any changes in current procedures. As the transfer of the functions of the UCJF to PLIGA progresses, PLIGA will conclude the process of updating its Plan of Operation to address these issues, subject to the Commissioner's approval.

COMMENT: One commenter stated that while the "comments" to the proposal indicate that the functions of the UCJF Board have been transferred to PLIGA, this does not appear in the body of the regulation itself.

RESPONSE: The Department's proposal amends existing rules providing for the recoupment by member insurers of PLIGA of assessments so as to include EMB assessments. It is not necessary for the rule itself to contain language concerning the transfer of UCJF functions to PLIGA because P.L. 2003, c. 89 provided for that transfer.

COMMENT: One commenter stated that the Department's proposal does not contain an assessment or recoupment mechanism for payment of claims to individuals involved in automobile accidents with uninsured or unidentified motorists, and if PRN 2003-294 (which repeals the UCJF assessment rules at N.J.A.C. 11:3-28A) is adopted, provisions pertaining to the calculation of assessments must be included in this proposal. The suggestion that an assessment mechanism will be included in the PLIGA Plan of Operation rather than in regulation is not supportable as it does not provide an opportunity for notice and comment as required under the Administrative Procedure Act.

RESPONSE: The method by which certain assessments imposed by PLIGA pursuant to N.J.S.A. 17:30A-16 are recouped is set forth in subsection (a) of N.J.A.C. 11:1-6.3, which was not proposed for amendment. The Department does not believe it is necessary for this rule to contain a provision regarding the method by which assessments are calculated or imposed. The method by which PLIGA currently assesses its member insurers is set forth at N.J.S.A. 17:30A-8, which has been amended by P.L. 2003, c. 89 to include an assessment for excess medical benefit reimbursements. In addition, pursuant to P.L. 2003, c. 89, PLIGA has been authorized to impose assessments upon auto insurers for losses and costs related to uninsured/unidentified motorist and pedestrian PIP claims. PLIGA's authorizing statute provides that the specifics of its procedures are to be set forth in a Plan of Operation developed by its Board and approved by the Commissioner, consistent with the statutes and administrative rules adopted by the Department. The membership of PLIGA's Governing Board includes insurance company and trade association representatives. PLIGA has functioned for decades pursuant to its Plan of Operation, as modified from time to time. It is not a "State agency" as defined at N.J.S.A. 52:14B-2 and is not authorized to adopt or promulgate rules. It is not necessary or required that the Department promulgate any particular portion of, or the entire PLIGA Plan of Operation as a rule. Accordingly, the assessments will be determined pursuant to PLIGA's procedures and Plan of Operation, consistent with the provisions of P.L. 2003, c. 89. As the transition proceeds, PLIGA will conclude the process of updating its Plan of Operation to address these issues, subject to the Commissioner's approval. The commenter may wish to forward suggestions to PLIGA directly or through its trade association representative on the PLIGA Governing Board regarding this issue.

COMMENT: Three commenters expressed concern with the recoupment time period and the method by which the Department plans to maintain a proper accounting of the costs associated with EMB. One commenter supports separate accounts in order to properly assess the costs associated with this new function that many insurers previously have not had to assume. The commenter also stated that the proposal does not clarify that insurers may surcharge the EMB in a period less than two years. The commenter added that the legislative intent is clear that insurers are permitted to recoup the costs of the EMB in less than two years. Also, the Department should permit insurers to recoup the costs in a shorter period of time based on their individual circumstances and requirements.

A second commenter stated that recouping the two assessments for payments to victims of uninsured or unidentified motorists and for EMB over different periods of time is costly because insurers must set up a second recoupment surcharge line on their premium billing notices and separately track the receipts of the two assessments over different time periods. Further, since recoupments over longer than one year (up to two years) are permitted for both assessments, and the assessments are made annually, the potential exists for an insurer to recoup four different assessments on a premium billing notice. The commenter suggested that the better concept is for both assessments to be recouped simultaneously (appearing as one line on the premium billing notice rather than two or four). The commenter suggested revising proposed N.J.A.C. 11:1-6.3(b)2 to read (additions in boldface; deletions in brackets): "The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) and **N.J.S.A. 17:30A-16** over a reasonable period of time which shall not be less than one year **and** [except in the case of excess medical benefits assessments which shall be recouped as provided at N.J.S.A. 17:30A-16

within] not more than two years of the date that they are paid. **Insurers shall carry forward any over-recoupment or under-recoupment to apply to the next assessment. An insurer may vary the recoupment period so as to reduce or eliminate any over-recoupment or under-recoupment from either the current year or from prior years that were carried forward."**

The third commenter stated that good fiscal and accounting management principles dictate that recoupment should take place during the same year that funds are expended.

RESPONSE: Section 66c of P.L. 2002, c. 89 (amending N.J.S.A. 17:30A-16) requires PLIGA members to recoup EMB assessments "within two years of the date they are paid." The proposal reflects that statutory mandate, and does not change the provision at subsection (a) of N.J.A.C. 11:1-6.3 that provides for issuance of a recoupment order by the Commissioner. The language in the adopted amendment is not intended to mandate a specific recoupment schedule, but simply conforms the text of subsection (b) to the statutory language for a maximum two-year EMB recoupment period. As stated above, PLIGA will issue assessments consistent with its existing Plan of Operation as authorized by statute. As the transition of the former UCJF Board's functions to PLIGA proceeds, PLIGA will conclude the process of amending its Plan of Operation to address these issues, subject to the Commissioner's approval.

The recent amendments to N.J.S.A. 17:30A-8 and 17:30A-16 did not empower or require insurers to recoup through a surcharge on insureds the assessments to be made by PLIGA for losses and costs related to uninsured motorist coverage and pedestrian PIP benefit payments. Pursuant to N.J.A.C. 11:3-6.2 as amended, insurers may consider those assessments as expenses when calculating rates.

COMMENT: One commenter expressed concern that assessments will either be over-recouped or under-recouped, especially given the possible two-year time frame and if the surcharge rate is set by the Commissioner for the entire industry. Growing insurers will tend to over-recoup, and insurers with declining premium volume will tend to under-recoup. The commenter believes that insurers should expressly be allowed to carry forward any over- or under-recoupment, and also to vary the recoupment time period so as to reduce or eliminate any over-recoupment or under-recoupment from the current period or from prior periods that was carried forward.

RESPONSE: As stated above, PLIGA will function consistent with its existing Plan of Operation authorized by statute. As the transition of the former UCJF Board's functions to PLIGA proceeds, PLIGA will conclude the process of amending its Plan of Operation to address this issue, subject to the Commissioner's approval. The Department anticipates that any over- or under-recoupments for EMB will be handled in the same manner as certain over-recoupments of PLIGA assessments were handled in past years, by way of Orders issued by the Commissioner. For example, Order No. A03-108, issued on January 30, 2003, provided the procedures for PLIGA member insurers to handle recoupments in excess of prior assessments. Similarly, the Department anticipates that under-recoupments will be addressed by Order of the Commissioner. Moreover, these procedures should not be unfamiliar to PLIGA member insurers who have been paying PLIGA assessments and will now also be assessed for EMB.

COMMENT: One commenter stated that the potential application of the National Association of Insurance Commissioner's (NAIC) Statement of Statutory Accounting Principles No. 35 (SSAP No. 35) needs to be considered in developing the assessment mechanism for the

UCJF. SSAP No. 35 establishes statutory accounting principles for guaranty fund and other types of assessments. The commenter quoted the following portions of SSAP No. 35:

"6. . . . Loss based administrative-type and second injury fund assessments are presumed probable when the losses on which the assessments are expected to be based are incurred."

"9. The liability for assessments shall be established gross of any probable and estimable recoveries from premium tax credits and premium surcharges. Because assessments are generally paid before premium tax credits are realized or policy surcharges are collected, an asset may result, which represents a receivable for premium tax credits that will be taken and policy surcharges which will be collected in the future. These amounts, to the extent it is probably they will be realized, meet the definition of assets, as specified in SSAP No. 4 -- Assets and Nonadmitted Assets and are admitted assets to the extent they conform to the requirements of this statement. The asset shall be established and reported independent from the liability (not reported net)."

"10. In certain circumstances, a reporting entity acts as an agent for certain state or federal agencies in the collection and remittance of fees or assessments. In these circumstances, the liability for the fees and assessments rests with the policyholder rather than with the reporting entity. The reporting entity's obligation is to collect and subsequently remit the fee or assessment. When both the following conditions are met, an assessment shall not be reported in the statement of operations of a reporting entity:

- a. The assessment is reflected as a separately identifiable item on the billing to the policyholder;
- and
- b. Remittance of the assessment by the reporting entity to the state or federal agency is contingent upon collection from the insured."

The commenter goes on to say that while PLIGA assessment and surcharge procedure appears to meet subsection 10a of SSAP 35, it does not appear to meet subsection 10b. The unfunded UCJF liability could trigger application of SSAP 35, resulting in significant additional liabilities and admitted or non-admitted assets being recorded by New Jersey insurers if the provisions of section 10 are not met. The assessment/surcharge process should be designed to meet these requirements, and would involve adding a new subsection to N.J.A.C. 11:3-6.3 requiring PLIGA to reimburse an insurer that is ceasing writing business and can no longer recoup for any assessment that is under-recouped. If section 10 requirements are not met, then insurers will need to know how much unfunded PLIGA liabilities to put on their books.

RESPONSE: As stated above, PLIGA will develop an assessment mechanism to carry out its responsibilities under P.L. 2003, c. 89, and continue to function consistent with its existing Plan of Operation authorized by statute. As the transition of UCJF functions to PLIGA proceeds, PLIGA will conclude the process of amending its Plan of Operation to address the form and manner of the assessment, which will be subject to approval by the Commissioner.

Both PLIGA (in developing the assessment mechanism) and the Department (in approving the Plan of Operation) will be sensitive to accounting concerns regarding the assessment, including the potential implications of SSAP No. 35. There appear to be models or practices from other assessments and in other jurisdictions that will be helpful in this regard. Should an appropriate mechanism require future amendments to the rule for further clarity, they may be considered at that time.

Federal Standards Statement

A Federal standards analysis is not required because this amendment is not subject to any Federal standards or requirements.

Full text of the adoption follows:

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