

**INSURANCE
DIVISION OF INSURANCE
Administration
New Jersey Property-Liability Insurance Guaranty Association Assessment
Premium Surcharge**

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

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 17:1-15e, and P.L. 2003, c. 89

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-289

Submit comments by September 19, 2003 to:

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The agency proposal follows:

Summary

P.L. 2003, c. 89, approved June 9, 2003, (the "Act") provides a well-balanced approach to addressing the immediate automobile insurance availability crisis facing consumers, insurers and regulators in New Jersey. Among other things, the Act consolidates within the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) several administrative functions relative to automobile insurance claims, which are currently handled separately. The Act eliminates the Unsatisfied Claim and

Judgment Fund Board and transfers all of its functions, powers and duties, along with the Unsatisfied Claim and Judgment Fund (UCJF), to PLIGA. Currently, the UCJF pays claims to accident victims of uninsured or unidentified motorists. In order to fund these claims, the PLIGA will assess auto insurers.

The UCJF also reimburses private passenger automobile insurers when medical expense benefits exceed \$75,000 per person per accident. The Act eliminates this reimbursement of excess medical benefits (EMB) for policies issued on or after January 1, 2004. However, the Act amends N.J.S.A. 17:30A-8 to provide that PLIGA will be responsible for reimbursing insurers for EMB that are incurred for injuries suffered in accidents covered by policies issued or renewed prior to January 1, 2004. In order to fund this EMB reimbursement, PLIGA will assess its member insurers. Current law already allows member insurers to recoup PLIGA assessments for insolvent insurers by way of a surcharge on premiums. Section 66 of the Act amends N.J.S.A. 17:30A-16 to allow PLIGA member insurers to recoup EMB assessments within two years of the date they are paid. The proposed amendment to N.J.A.C. 11:1-6.3(b)2 implements Section 66 of the Act by establishing the two-year EMB assessment recoupment limit.

A 60-day comment period is provided for this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

This proposed amendment will have a positive social impact on the automobile insurance industry because it furthers the legislative intent of the Act to eliminate redundancies and inefficiencies regarding automobile insurance claims payment by transferring the current EMB administrative functions of the UCJF to PLIGA. The public, especially injured victims seeking compensation from the UCJF will benefit by having such claims administered in a consistent and timely manner. By consolidating the fundings of UCJF and PLIGA and JUA/MTF, P.L. 2003, c. 89, as implemented in part by this proposed amendment, will actually reduce the size of state government by streamlining the various functions.

Economic Impact

Transferring and consolidating compatible operations of the UCJF and PLIGA is expected to achieve certain administrative efficiencies that will help contain the overall operational costs of these entities. Expanding the assessment base for EMB reimbursement to all property-liability insurers is expected to substantially alleviate the burden for automobile insurers, and, consequently, their current insureds, whose rates reflect the costs associated with accidents that occurred long ago. The expanded assessment base is expected to result in some increase in the total PLIGA assessment; however, pursuant to P.L. 2003, c.89, section 66, PLIGA members will be permitted to recoup the EMB portion of the assessment through a premium surcharge. This amendment would only establish a two year time frame in which to recoup the

assessment. Insureds may see a slight increase in PLIGA surcharges in the short term; however, over time the surcharge for EMB reimbursement will diminish and eventually disappear as the pool of EMB claims dissolves.

The expanded funding mechanism for the EMB runoff established by P.L. 2003, c. 89 and this amendment is expected to have a positive impact in attracting new automobile insurers into the State. Such new insurers would become PLIGA members that would contribute to any PLIGA assessments. While the Department is unable to quantify the actual results, it anticipates that these changes will have a stabilizing impact on the automobile insurance marketplace and may contribute to expanding the number of insurers, and will place downward pressure on the overall cost of automobile insurance paid by insureds as the UCJF assessment to cover EMB costs is reduced.

Federal Standards Statement

A Federal standards analysis is not required because this amendment establishing a two-year limit on automobile insurer recoupment of EMB assessments is not subject to any Federal requirements or standards.

Jobs Impact

Although the Department does not anticipate that the amendment alone will result in the generation or loss of jobs, it believes that the package of statutory and regulatory amendments of which it is a part, taken as a whole, will contribute to the attractiveness and competitiveness of the New Jersey automobile insurance market and

help preserve and expand employment in the automobile insurance industry and in insurance agencies and brokerage firms. The Department invites interested persons to submit any data or studies about the jobs impact of these proposed rules with their written comments.

Agriculture Industry Impact

The Department does not believe that this proposed amendment will have any impact on the agriculture industry in the State.

Regulatory Flexibility Statement

Some of the insurers affected by this proposed amendment may employ fewer than 100 full-time employees, and would be "small businesses" as that term is defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq.

N.J.A.C. 11:1-6.3(a) requires the Commissioner to order a surcharge on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies if it is determined that such surcharge is necessary to permit PLIGA member insurers to recoup assessments paid to PLIGA pursuant to N.J.S.A. 17:30A-8a(3). N.J.A.C. 11:1-6.3(b) sets forth the factors the Commissioner shall consider in determining the amount of the surcharge, and N.J.A.C. 11:1-6.3(b)2 states currently that the Commissioner shall consider the amount necessary for insurers to recoup any assessment paid to PLIGA over a reasonable time not less than one year.

This proposed amendment to N.J.A.C. 11:1-6.3(b)2 merely revises the factors the Commissioner shall consider in determining an appropriate premium surcharge amount by indicating that the Commissioner shall consider the amount necessary for insurers to specifically recoup EMB assessments within a two-year period. This proposed amendment would not directly impose any new or additional compliance requirements on small business insurers, or adversely impact those insurers. Accordingly, a regulatory flexibility analysis is not required.

Smart Growth Impact

The proposed amendment has no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY
ASSOCIATION ASSESSMENT PREMIUM SURCHARGE

11:1-6.3 Establishment of Association assessment premium surcharge

(a) (No change.)

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8a(3);

2. 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) over a reasonable time which shall not be less than one year, **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 they are paid**; and

3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(c) - (k) (No change.)

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