

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Unsatisfied Claim and Judgment Fund's Reimbursement of Excess Medical Expense Benefits
Paid By Insurers

Proposed Amendment: N.J.A.C. 11:3-28.7

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 39:6-61 et seq.

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

Proposal Number: PRN 2006-347

Submit written comments by December 15, 2006 to:

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The agency proposal follows:

Summary

The Department recently readopted Chapter 3 of Title 11. See 38 N.J.R. 2828(c). The Department recognized, as part of that readoption, that a change was needed for N.J.A.C. 11:3-28.7, but that the change could not be made on adoption because it was a substantive change that required additional notice and public comment. Therefore, the Department is now proposing an amendment to N.J.A.C. 11:3-28.7(a)1. The amendment deletes the current provision and requires insurers to submit a request for reimbursement from the Unsatisfied Claim and

Judgment Fund (Fund) of the payment of an “excess medical benefit” (EMB) by an insurer within two years from the date of the payment. The Department believes that the proposed amendment provides predictability to the Fund’s cash flow with respect to the assessment on insurers to cover the cost of EMB reimbursements pursuant to N.J.S.A.17:30A-2.1. The amendment is also more flexible and reasonable for insurers. On several occasions, insurers have submitted otherwise valid requests for reimbursement of the payment of excess medical benefits which were filed shortly after the expiration of the one-year period for the submission of reimbursement requests prescribed by the current rule. The Department’s amendment extends the time period for the submission of reimbursement requests in order to enable such requests to be granted. Although the amendment extends the time period for the submission of reimbursement requests to two years, it continues to prevent requests from being submitted indefinitely regardless of the size of the claim.

The Department’s rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendar.

Social Impact

The proposed amendment will have minimal, if any, social impact, as its primary effect will be to provide more flexibility and a more reasonable timeframe for the submission of EMB reimbursement requests by insurers. The amendment should benefit the Fund and insurers by continuing the predictability of the assessment process.

Economic Impact

The proposed amendment will be beneficial to insurers and the Fund because it will make the amount of the assessments imposed upon insurers more predictable. This amendment should also be beneficial to the Fund and insurers for accounting purposes, thus enhancing the efficiency of their operations. The amendment also provides a more reasonable timeframe for insurers to submit reimbursement requests to the Fund, thus enabling insurers to obtain reimbursement for bona fide EMB payments that otherwise would have been denied as untimely under the current rule. Based on past experience with requests made on a untimely basis, the Department believes the proposed amendment will have a negligible, if any, effect on the assessment imposed on insurers to cover the cost of EMB reimbursements. Pursuant to N.J.S.A. 17:30A-16, the assessment may be recouped through a surcharge on the premiums on the kinds of policies that are subject to N.J.S.A. 17:30A-1 et seq. The economic impact on policyholders will also be negligible.

Federal Standards Statement

A Federal standards analysis is not required because the rules set forth in N.J.A.C. 11:3 regulate and relate to the business of automobile insurance and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment.

Agriculture Industry Impact

Pursuant to P.L. 1998, c. 48, the Right to Farm Act, and N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act, the Department does not anticipate any impact on the agriculture and related industries in this State from the proposed amendment.

Regulatory Flexibility Analysis

Pursuant to N.J.S.A. 52:14B-17, a “small business” is any business resident in this State which employs fewer than 100 full-time employees, is independently owned and operated, and is not dominant in its field. To the extent the proposed amendment applies to small businesses, they will be insurers authorized to transact private passenger automobile liability and commercial automobile liability insurance in this State that pay excess medical benefits and are subject to UCJF assessments. The Department does not believe that the proposed amendment will impose any undue burden on small businesses, nor will it necessitate the employment of professional services. The proposed amendment does not impose additional reporting or recordkeeping requirements. However, the amendment revises the time period within which a request for reimbursement for excess medical benefit payments may be submitted to the Fund. The purpose of the amendment is to permit insurers to have a more reasonable and flexible timeframe within which to submit a reimbursement request to the Fund, which is beneficial to all insurers subject to the proposed amendment and, indirectly, to their insureds. Varying the time limit for the submission of reimbursement requests beyond the two-year period based upon the size of an insurer would impair the Fund’s need for predictability in the assessment process. Therefore, the proposed amendment provides no differentiation in compliance requirements based on an insurer’s size.

Smart Growth Impact

The proposed amendment will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

11:3-28.7 Reimbursement of excess medical expense benefits paid by insurers

(a) Insurers shall submit to the Fund itemized accounts with supporting documentation of excess medical expense benefit claim payments as soon as practicable after the close of the quarter for which reimbursement is sought for claim payments of \$20,000 or more. For claim payments of less than \$20,000, insurers shall submit to the Fund itemized accounts with supporting documentation of excess medical expense benefits either quarterly or at the close of the calendar year in which such expenses are incurred. Insurers shall not be reimbursed for interest, attorney fees or punitive damages.

1. [For a period of one year from the date of payment of a claim for excess medical expense benefits by an insurer, the insurer may submit to the Fund a request for reimbursement of a claim which was not included in the insurer's quarterly submission. The insurer shall include with its request, specific documentation to identify the subject payment.]

Regardless of the size of a claim payment for excess medical expense benefits, an insurer shall submit to the Fund a request for reimbursement within a period of two years from the date of payment by the insurer of the excess medical expense benefit for which reimbursement is sought.

- 2. (No change.)
- (b) – (d) (No change.)

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