

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF CONSUMER PROTECTION SERVICES**

Acceptance, Renewal, Nonrenewal and Cancellation of Automobile Insurance Policies

Standards for Nonrenewals - Ineligible Persons

Acceptance Criteria

Proposed Amendments: N.J.A.C. 11:3-8.5 and 8.12

Authorized By: Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.14a3, 17:28-1.1, 17:29A-14, 17:29C-4, 17:33B-13g, 17:33B-15, and 39:6A-1.2.

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

Proposal Number: PRN 2012-074.

Submit comments by July 6, 2012 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) recently adopted amendments to N.J.A.C. 11:3-8 regarding the acceptance, renewal, nonrenewal, and cancellation of private passenger automobile (PPA) insurance policies. See 42 N.J.R. 1984(a) and 43 N.J.R. 2525(a). The purpose of the amendments was: 1) to conform the nonrenewal rule to the applicable statutes by incorporating the concept of “eligible” and “ineligible” insureds pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4; and 2) to give insurers the flexibility to nonrenew the policies of insureds who no longer meet their acceptance criteria by defining such insureds as ineligible persons.

In response to certain comments received on the proposal, the Department stated that while it agreed with the comments, the suggested changes could not be made upon adoption. These comments and responses are reproduced below.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-8.5(b)1, which provides that, for purposes of determining whether a person is an eligible person, an insurer shall consider those eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy. One commenter stated that proposed N.J.A.C. 11:3-34.4 provides that an “eligible person” does not include any person who, for purposes of nonrenewals under N.J.A.C. 11:3-8 only, does not satisfy the insurer’s acceptance criteria as set forth in N.J.A.C. 11:3-8.12. This commenter stated that the rules are unclear as to whether the rule limits the use of a driver’s accident and violation record to the last 36 months where the insurer’s acceptance criteria uses a driver’s accident violation record but does not use a point system for those accidents and violations. The commenter stated that if this “restrictive” interpretation were to be adopted for nonrenewal,

competition would decline and consumers would have a more difficult time purchasing automobile insurance. Accordingly, this commenter suggested that N.J.A.C. 11:3-8.5(b)1 be deleted.

Another commenter stated that it appears that the driving experience to be used in an insurer's acceptance criteria is limited to three years, which the commenter believed is too restrictive and inconsistent both with common industry practice and the standards in the rules for "two percent" and "two-for-one" nonrenewals. This commenter suggested that the rule be revised to reflect a 60-month experience period. This commenter also stated that the reference to "eligibility points" in the rule is restrictive. It is common industry practice to use the number of accidents and/or violations and not the number of "eligibility points" to determine acceptance criteria satisfaction. The standards in the rule for "two percent" and "two-for-one" nonrenewals also utilize a minimum number of events and not a number of "eligibility points." The commenter suggested that the rules be revised to allow the consideration of accidents and violations accrued in the defined experience period.

RESPONSE: The Department agrees with the commenters that a uniform 36-month experience period is not appropriate in the current automobile insurance marketplace, where insurers may have experience periods of varying lengths. It would be preferable to have each insurer establish its own renewal experience period as part of its acceptance renewal criteria. However, the change is a substantial one requiring additional notice and opportunity to comment and, therefore, cannot be made upon adoption. The Department will propose amendments to the rule revising this provision in future rulemaking.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-8.5(b)2, which establishes a standard for nonrenewal of ineligible persons that an insurer shall not issue a notice of nonrenewal for the reason that a member of the insured's household is not an eligible person unless the member of the insured's household usually accounts for 10 percent or more of the use of the vehicle insured. The rule further provides that a driver's record cannot be used to nonrenew more than one car in the household unless there are more cars than drivers in the household. One commenter noted that this essentially requires that each driver be assigned to only one car in the household. The commenter stated that because people in a household drive more than one household vehicle, the risk of a bad driver attaches to more than one car in the household. Accordingly, this commenter asserted that insurers should be permitted to underwrite based on that risk. In addition, the commenter stated that the risk presented by a household where each driver may have a marginal driving record (for example, two violations or one accident) exceeds the risk of a household of drivers with clean driving records or where only one driver has a marginal driving record (these would be households that the commenter would seek to renew). The commenter averred that companies should be permitted to underwrite based on that household risk as well. The commenter stated that under the proposed rules, for the household with a single bad driver, nonrenewal would be confined to one car unless there were more cars than drivers. For the household with several marginal drivers, the commenter stated that the practical effect is that no driver can be nonrenewed. The commenter stated that nothing in the statute bars the use of household underwriting with regard to the definition of an eligible person. The commenter stated that N.J.S.A. 17:33B-13g, which includes the definition of "eligible person," allows "such other risk factors as determined to be relevant by rule or regulation of the [Commissioner of Banking and Insurance (Commissioner)]" to be used to determine if a person is an eligible person. The commenter stated that this provides the Commis-

sioner with the authority to define as an additional risk factor the additional risk of other persons in the household who would have access to the car being insured. The commenter stated that the rationale for household underwriting being barred by N.J.A.C. 11:3-35 (which has since been repealed) under the prior requirement that insurers provide coverage to all eligible persons was that household underwriting would have significantly increased the number of ineligible persons. The “take-all-eligible-persons” requirement was intended to limit the number of ineligible persons (and the residual market) to no more than 10 percent of the market and there was concern that this limit could be exceeded. The commenter stated that this is not a problem under the proposed rules. The commenter stated that the Department is addressing this issue by limiting the number of such non-renewals to two percent per territory. This commenter reiterated that it had supported the rules adopted in 2008 on acceptance criteria as part of the final element of the 2003 statutory reforms that brought back competition to the New Jersey private passenger automobile insurance market. The commenter stated that restrictions on renewal acceptance criteria will have the opposite effect; competition will decline and consumers will have a more difficult time purchasing private passenger automobile insurance. The commenter stated that if an insurer is forced to retain unacceptable risks, it will be much more cautious in taking on new risks.

Another commenter stated that, since there is no reliable objective means by which an insurer may confirm the amount of usage of a vehicle by a member of a household, the potential for fraud is great, especially when there are more drivers than vehicles in a household. For example, a parent of a youthful operator with a poor driving record could simply indicate that the child had limited use of the vehicle. Even if the child was in an accident, the insurer would have no way to demonstrate that he or she used the vehicle more than 10 percent of the time. Additionally, the commenter stated that although the insurer would be “on the risk” not only if the ineligible driver used an insured vehicle, but also as an excess carrier if that driver utilized a vehicle owned by any-

an insured vehicle, but also as an excess carrier if that driver utilized a vehicle owned by anyone else, the insurer may not be able to obtain an adequate rate. This commenter therefore opposed the adoption of this provision.

RESPONSE: The Department agrees with the commenters that the restrictions in N.J.A.C. 11:3-8.5(b)2i and ii on who may be nonrenewed were applicable when these rules were part of the repealed “take-all-eligible persons” scheme and are not appropriate to be used in determining which policies an insurer may nonrenew in the current automobile insurance market. However, the change is a substantial one requiring additional notice and opportunity to comment and, therefore, cannot be made upon adoption. The Department will propose amendments to the rule eliminating this provision in future rulemaking.

COMMENT: One commenter expressed concern with N.J.A.C. 11:3-8.12(b)5, which provides that an insurer is prohibited from using acceptance criteria based on whether the insured or a member of the insured’s household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount. The commenter stated that this rule would appear to advantage insurers who partner with unaffiliated companies to provide access to other lines of business. As worded, an insurer with such an arrangement would not be restricted from using criteria based on whether the insured purchases or continues to purchase other insurance or services from a specific unaffiliated company.

RESPONSE: The Department has examined this issue further and determined that some insurers do have agreements with insurers and companies that are not affiliates or under common management. Currently, all these agreements are for rate discounts, which would be permitted under the rule. The Department agrees that the rule should be revised to impose the restriction on any company with which the insurer has an agreement. However, the change is a substantial one requiring additional notice and opportunity to comment and, therefore, cannot be made upon adoption. The Department will propose amendments to the rule amending this provision in future rulemaking.

In order to implement the Department's intent as reflected in its Responses to the Comments in the previously filed notice of adoption as set forth above (43 N.J.R. 2525(a)), the Department is proposing to amend N.J.A.C. 11:3-8.5 and 8.12. A summary of the proposed amendments follows.

The Department is proposing to amend N.J.A.C. 11:3-8.5(b)1 to delete the 36-month look-back period for accidents and violations and to permit insurers to use the experience period set forth in their acceptance criteria for renewal business established in accordance with N.J.A.C. 11:3-8.12(a). In addition, the Department is proposing to eliminate the 10 percent use requirement discussed above by deleting N.J.A.C. 11:3-8.5(b)2 in its entirety.

The Department also proposes to amend N.J.A.C. 11:3-8.12(b)5 to delete the phrase "under common management or ownership" for the reasons set forth above.

A 60-day comment period has been 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

The proposed amendments will further enhance the regulatory framework governing the acceptance, renewal, nonrenewal, and cancellation of automobile insurance policies in this State. The proposed amendments to N.J.A.C. 11:3-8.5 will eliminate an unnecessary restriction on an insurer's ability to consider an insured's past accidents and violations, and will permit insurers to establish their own renewal experience period as part of their acceptance renewal criteria. It also eliminates the requirement that insurers base eligibility determinations on whether the driver used the vehicle more than 10 percent of the time. This, in turn, will have a positive social impact by enhancing competition among insurers.

Similarly, the proposed amendment to N.J.A.C. 11:3-8.12 will prohibit conditioning acceptance of automobile insurance risks on the purchase of other insurance or services from any other company, not only from those under common management or ownership, thus providing a level playing field among insurers as to prohibited activities.

All of the proposed amendments should have a positive social impact by further enhancing the operation of the existing regulatory framework by eliminating insurers' confusion as to standards for the nonrenewal of PPA insurance, and provide stability to the market by minimizing disruptions to policyholders due to nonrenewals of PPA policies.

Economic Impact

The proposed amendments will eliminate unnecessary costs to insurers by eliminating unnecessary or unworkable restrictions for developing acceptance, renewal, nonrenewal, and cancellation criteria as set forth in the Summary above. Compliance with the proposed amendments should not result in significant additional costs and in fact should reduce costs. No additional professional services should be required in order to comply with the proposed amendments and insurers should

be able to comply with the proposed amendments by utilizing existing professional services and systems.

The proposed amendments enhance and clarify the existing requirements governing acceptance of PPA risks to reflect applicable statutory requirements, as set forth above. Accordingly, the benefits of clarifying the rules so as to affirm their conformity with the applicable statutory provisions related to the nonrenewal or acceptance of private passenger automobile insurance as discussed in the Summary and Social Impact above, and to thereby affirm the ability of insurers to nonrenew ineligible persons and write risks consistent with applicable law, outweigh any negligible costs that may be imposed.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments 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 amendments. As noted above, the proposed amendments are intended to clarify and enhance the rules governing the nonrenewal of PPA insurance to further reflect the current statutory and regulatory framework for the provision of PPA insurance.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments may impose new compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed amendments apply to small businesses, they will apply to New Jersey domestic insurers authorized to transact PPA insurance in this State. As noted above, the proposed amendments eliminate unnecessary or unworkable restrictions in the development of criteria for the acceptance, renewal, nonrenewal, or cancellation of PPA insurance policies, and otherwise apply certain restrictions more consistently. As noted above, no new professional services should be required in order to comply with the proposed amendments. The purpose of the proposed amendments is to better achieve consistency among the legal authorities that govern the nonrenewal and acceptance of PPA policies held by New Jersey consumers. These goals do not vary based on the size of the insurer from whom a consumer purchases their PPA coverage. Accordingly, the proposed amendments provide no basis for differentiation in compliance requirements based on business size.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on housing affordability in this State in that the proposed amendments relate to the provision of PPA insurance.

Smart Growth Development Impact Analysis

The Department believes that there is an extreme unlikelihood that these proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the proposed amendments relate to the provision of PPA insurance.

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

11:3-8.5 Standards for nonrenewals--ineligible persons

(a) (No change.)

(b) [The following shall apply to insureds who are ineligible pursuant to N.J.A.C. 11:3-34.4:

1.] For the purpose of determining whether a person is an eligible person **pursuant to N.J.A.C. 11:3-34.4**, an insurer shall consider those accidents and violations accrued only in the [36-month period ending 90 days prior to the expiration of the current policy or the failure to meet other renewal acceptance criteria] **experience period set forth in its acceptance criteria for renewal business established in accordance with N.J.A.C. 11:3-8.12.**

[2. An insurer shall not issue a notice of nonrenewal for the reason that a member of the insurer's household is not an eligible person unless the member of the insured's household usually accounts for 10 percent or more of the use of the vehicle insured. For the purposes of this section:

i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.]

(c) (No change.)

11:3-8.12 Acceptance criteria

(a) (No change.)

(b) An insurer is prohibited from using any of the following in its acceptance criteria:

1. - 4. (No change.)

5. Criteria based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies [under common management or ownership], except that this provision shall not prohibit a rate discount; and

6. (No change.)

(c) - (g) (No change.)