

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Special Automobile Insurance Policy

Proposed New Rules: N.J.A.C. 11:3-2A

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, section 45 and 46.

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

Proposal Number: PRN 2003 –315

Submit comments by October 3 , 2003 to:

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The agency proposal follows:

Summary

P.L. 2003, c. 89, (the “Act”) provides a well-balanced solution to the immediate automobile insurance availability crisis facing New Jersey consumers, insurers and regulators. The Act strives to reduce the number of uninsured drivers. The Act recognizes that there are some persons in the State whose incomes are so low that they cannot afford even a “Basic” policy offered pursuant to N.J.S.A. 39:6A-3.1. To that end, section 45 of the Act creates the Special Automobile Insurance Policy (Special policy), a low-cost insurance policy that is designed to allow individuals enrolled in Medicaid an opportunity to comply with the mandatory insurance requirement imposed by N.J.S.A. 39:6A-3.

The Special policy provides a medical benefit that covers emergency room care for injuries sustained in an automobile accident, as well as treatment in acute care hospitals, and all medically necessary treatment of permanent or significant brain and spinal cord injuries and disfigurement after discharge from acute care. In addition, it provides a death benefit of \$10,000.

These coverage options will enable the policy to be priced at approximately \$365.00 per year, which should make it affordable for Medicaid enrollees who drive. Special policies will have a single Statewide rate without territorial or tier factors.

As insured motorists, Special policyholders will not be barred by N.J.S.A.17:6A-4.5 from making bodily injury liability claims against the at-fault driver in an accident in which they sustained injuries that meet the limitation on lawsuit threshold.

Although Medicaid enrollees have medical coverage that covers injuries sustained in automobile accidents, the fees paid to providers of medical services covered by Medicaid are very low. The Special policy will enable trauma centers and acute-care hospitals to receive payment for services at the rates used for auto Personal Injury Protection benefits, which are much higher than Medicaid reimbursements.

Because Special policies do not include liability coverage, part of the premium will go to the Unsatisfied Claim and Judgment Fund (UCJF) (administered by the Property Liability Guaranty Association (PLIGA) pursuant to section 4 of P.L. 2003, c.89) to help reimburse the UCJF for liability claims made against it.

Special policies will also have one policy form and application that will be approved by the Department. Issuance of Special policies will be handled by the Personal Automobile Insurance Plan (PAIP) in accordance with a manual that will be approved by the Commissioner. In accordance with the Act, PAIP certified producers will sell the policies and PAIP will

distribute the risk among its member companies in accordance with its normal distribution formula.

A section by section summary of the rules follows:

Proposed N.J.A.C. 11:3-2A.1 sets forth the purpose and scope of the subchapter.

Proposed N.J.A.C. 11:3-2A.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-2A.3 sets forth the general requirements for the policy. It will be administered by the New Jersey Personal Automobile Insurance Plan (the "PAIP") established pursuant to N.J.S.A. 17:29D-1, in accordance with a rating system and policy form established by the Commissioner. The PAIP shall distribute Special automobile insurance policies to insurers in accordance with its approved distribution system.

Proposed N.J.A.C. 11:3-2A.4 states that eligibility for the Special automobile insurance policy is limited to persons who are eligible for and enrolled in the Federal Medicaid program.

Proposed N.J.A.C. 11:2A.5 lists the coverages provided by the Special automobile insurance policy. The coverages are limited to emergency personal injury protection coverage not to exceed \$250,000 per person and a death benefit of \$10,000. In addition, special automobile insurance policyholders shall receive the limitation on lawsuit tort threshold.

Proposed N.J.A.C. 11:3-2A.6 requires that an insurer have a signed Special policy automobile insurance coverage selection form to provide coverage.

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 new rules will have a positive social impact on consumers, particularly low-income individuals. Many consumers in this State do not have automobile insurance because they simply cannot afford to pay the premium. The Special policy is designed to provide those individuals with a viable alternative so that they can comply with New Jersey law. Moreover, by obtaining auto coverage, these individuals will receive other benefits, such as emergency and catastrophic medical care and a right to make bodily injury liability claims under certain circumstances.

These new rules should also have a beneficial effect upon the members of the medical community who will benefit from a new funding source for catastrophic injuries suffered by individual who currently do not have such coverage. Moreover, insureds who purchase non-Special policies should realize some benefit through the reduction in the number of uninsured drivers due to the fact that a high number of uninsured drivers increases costs to drivers who purchase coverage.

Economic Impact

Insurers and the PAIP will be required to bear any costs associated with implementing system modifications necessary to provide Special policies as required under these proposed new rules. The Department, however, does not believe that the proposed new rules will impose an undue burden on insurers or producers. While there may be some additional costs in developing the system modifications necessary to issue and service the special automobile policies as set forth in the proposed rules, once the systems are in place, minimal, if any, additional costs should be imposed. Standard actuarial methodologies will be applied to ensure that the Statewide uniform rate established by the Commissioner is adequate to ensure that the offering of Special

policies does not have a substantial adverse economic impact upon insurers assigned the policies by PAIP. The Department expects the PAIP to develop an efficient system of distribution for these policies.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules relate to the provision of private passenger automobile insurance in this State, and are not subject to any Federal requirements or standards.

Jobs Impact

Although the Department does not anticipate that the new rules alone will result in the generation or loss of jobs, it believes that the package of statutory and regulatory amendments of which they are 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 proposed new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules will impose compliance requirements on “small businesses,” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The small businesses to which these rules may apply are resident insurance producers and insurers authorized in this State transacting private passenger automobile insurance. As noted in the Summary and Economic Impact above, small businesses will be required to bear any costs incurred in developing and implementing system modifications to provide the special automobile policy set forth in the proposed new rules. The Department does not believe that any additional staff or professional services will be required to comply with these new rules, in that the same staff and basic systems currently utilized to issue policies would be utilized in providing the special automobile policy.

The proposed new rules provide no different compliance requirements based on business size. The proposed new rules implement section 45 of the Act requiring insurers to offer a special automobile insurance policy to certain low-income residents of this State. This goal does not vary based on business size, and variation of compliance requirements based on business size would not be feasible or consistent with the intent of the Legislature as set forth in section 45 of the Act. Accordingly, the proposed new rules provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed new rules 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 (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

[SUBCHAPTERS 2.A THROUGH 2.B (RESERVED)]

SUBCHAPTER 2A. SPECIAL AUTOMOBILE INSURANCE POLICY

11:3-2A.1 Purpose and scope

(a) The purpose of this subchapter is to assist certain low income individuals in this State and encourage their greater compliance in satisfying the mandatory private passenger automobile insurance requirements imposed by N.J.S.A. 39:6A-3.2.

(b) This subchapter shall apply to all insurers transacting private passenger automobile insurance in this State, the PAIP and to all insurance producers licensed in this State.

11:3-2A.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Emergency care” means all medically necessary treatment of a traumatic injury or a medical condition manifesting itself by acute symptoms of sufficient severity such that absence of immediate attention could reasonably be expected to result in: death; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part. Such

emergency care shall include, but not be limited to, immediate pre-hospitalization care, surgery, critical and acute care. Emergency care extends during the period of initial hospitalization until the patient is discharged from acute care by the attending physician. It shall also include all medically necessary treatment of permanent or significant brain injury, spinal cord injury or disfigurement after the patient is discharged from acute care.

“Emergency personal injury protection coverage” means the payment of benefits without regard to negligence, liability or fault of any kind, only to the named insured and dependant members of his or her family, as defined by the Federal Medicaid program, residing in his or her household, who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using the automobile of the named insured, with the permission of the named insured.

“Insurer” means an entity authorized or admitted to transact insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable.

“Insurance producer” means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.

“LAD carrier” means a limited assignment distribution carrier that is a participating insurer and that agrees to accept assignments of another insurer pursuant to this subchapter and procedures set forth in the plan of operation.

“PAIP” means the New Jersey Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-2.

“UCJF” means the Unsatisfied Claim and Judgment Fund, established pursuant to N.J.S.A. 39:6-61 et seq.

11:3-2A.3 General provisions

(a) The special automobile insurance policy shall be administered by the PAIP in accordance with a Special Policy plan of operation prepared by PAIP and approved by the Commissioner. The plan of operation shall include:

1. The procedure for the writing of Special Insurance Policies by:

i. Assignment of special automobile insurance policies to the member insurers of the PAIP pursuant to the apportionment methodology of the PAIP Plan of Operation; or

ii. The sharing of the premium, losses and expenses of the special automobile policies among the member insurers of the PAIP;

2. The designation of one or more LAD carriers or servicing carriers to issue and service special automobile insurance policies;

3. A rating system to be used for a special automobile insurance policy.

The special automobile insurance policy shall have a statewide uniform rate, established without regard to territorial or tier factors, to be utilized by all insurers. The Commissioner may adjust the rate annually by Order;

4. The policy form and the application for the special automobile insurance policy for the Special Policy, which shall clearly and conspicuously set forth the limitations on benefits provided under the policy;

5. A Coverage Selection Form for the Special Policy that meet the requirements of N.J.S.A. 39:6A-3.2 as amended by section 46 of P.L. 2003, c. 89; and

6. Such other provisions as are deemed necessary by the Governing Committee for the operation of the PAIP.

(b) Special automobile insurance policies shall not be included in the determination of a competitive market pursuant to N.J.S.A. 17:33B-15d, as amended by § 38 of P.L. 2003, c. 89.

11:3-2A.4 Eligibility for special automobile insurance policy

(a) The special automobile insurance policy shall only be available to individuals who are eligible for and enrolled in the Federal Medicaid program pursuant to N.J.S.A. 30:4D-3i(1) through (14).

(b) The PAIP special automobile insurance policy plan of operation shall provide procedures for verification of the Medicaid eligibility of applicants.

11:3-2A.5 Coverages

(a) The following coverages shall be included in all special automobile insurance policies:

1. Emergency personal injury protection coverage for emergency care not to exceed \$250,000 per person per accident; and
2. A death benefit in the amount of \$10,000.

(b) The limitation on lawsuit tort option provided in subsection a of N.J.S.A. 39:6A-8 shall apply to every named insured and any other person to whom the special automobile insurance policy applies.

(c) The special automobile insurance policy shall not provide liability, collision, comprehensive, uninsured or underinsured motorist coverage.

11:3-2A.6 Election of special automobile insurance policy

No insurer shall issue a special automobile insurance policy unless the named insured has signed a document entitled Special Policy Coverage Selection Form approved by the Commissioner.

SUBCHAPTER 2B. (RESERVED)