

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Special Automobile Insurance Policy

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

Proposed: August 4, 2003 at 35 N.J.R. 3519(b)

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

Filed: November 19, 2003 as R.2003 d.497, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 39:6A-3.2 and 3.3.

Effective Date: December 15, 2003

Expiration Date: January 4, 2006

Summary of Public Comments and Agency Responses:

NJM Insurance Group

N.J. Personal Automobile Insurance Plan

Alliance of American Insurers

Independent Insurance Agents of New Jersey

New Jersey Auto Agents Alliance

One comment provided jointly by the Insurance Council of New Jersey, the American Insurance Association and the National Association of Independent Insurers

Claire Schuster

B. Sachau

COMMENT: Several commenters supported the proposal.

RESPONSE: The Department appreciates the support.

COMMENT: Several commenters inquired whether the excluded coverages are part of the scope of coverage in the event of an out-of-State accident? One commenter indicated that the Department should not approve a filing that is in conflict with the statutory provision that excludes liability, collision, comprehensive, uninsured or underinsured coverage from the scope of a special automobile insurance policy. One commenter suggested that the Department define the term "insured" and address the status of out-of-State accidents therein.

RESPONSE: The intention of the Legislature in enacting P.L. 2003, c. 89, Section 45, was to provide a way for certain low income residents of this State to become "street legal" by making a low-cost auto insurance policy available to them. It is clear from the statutory provisions that a Special Policy meets the mandatory private passenger automobile insurance requirements of New Jersey. See N.J.S.A. 39:6A-3.3. That being the case, if a special policy insured has an accident outside of New Jersey, the policy is conformed to the statutory minimums of the state in which the accident occurs. Descriptions of coverages provided or excluded in all auto insurance statutes do not specifically refer to the operation of policy provisions that enable an insured to drive in another state without worrying about whether their policy is valid in that state. The special policy is no different from the Standard and Basic policies in that respect.

COMMENT: Several commenters expressed concern that these policies, which satisfy the mandatory insurance laws of this State, could be interpreted to provide out-of-State coverages required for the use of a vehicle in another state, or to comply with proof of financial

responsibility requirements in another state. One commenter expressed concern that the premiums will not be sufficient to provide coverage to satisfy the financial responsibility law of other states. Another commenter indicated that policyholders who live near State borders could conceivably do much of their driving out-of-State.

RESPONSE: As noted in response to the previous Comment, a Special Policy will meet the mandatory insurance requirements of New Jersey, and will therefore comply with the financial responsibility requirements of other states. The comment that the premium will not be sufficient to meet claims that are incurred in out-of-state-accidents is speculative.

COMMENT: One commenter suggested that the proposed rule specifically enable the PAIP Board to file for rate increases on special policies and provide for the industry to review and comment on such requests.

RESPONSE: The Department does not agree with the commenter. N.J.S.A. 39:6A-3.3 specifically provides that the Commissioner shall have the authority to approve the rating system for the Special Policy.

COMMENT: One commenter inquired if she could add coverages to a special automobile insurance policy for purposes of complying with her financing agreement, which requires collision coverage.

RESPONSE: The statute provides that the only coverages available on a Special Policy are Emergency Personal Injury Protection Coverage and a death benefit. If the terms of a financing agreement required additional coverage, the financed vehicle could not be insured under a Special Policy.

COMMENT: One commenter expressed concern that the special automobile insurance policies will create additional fraud and abuse problems. The commenter noted that trauma centers and acute care hospitals will be permitted to seek reimbursement at PIP, rather than Medicaid, rates.

RESPONSE: The Department does not believe that people enrolled in Medicaid are more likely to engage in fraud than other insureds. Many of the fraud rings investigated by the Office of the Insurance Fraud Prosecutor have involved outpatient treatment of soft tissue injuries. The only medical treatment provided by the Special Policy is that provided in emergency rooms, trauma centers and acute care hospitals unless there is serious brain or spinal cord injury, so it appears at this time that there is a reduced likelihood of fraudulent claims being submitted by Special Policy insureds. If that proves not to be the case, the Department and the Office of the Insurance Fraud Prosecutor will work together to address the problem. In addition, the Department believes that hospitals will be paid at PIP, rather than Medicaid, rates for treatment and services provided to Special Policy insureds injured in automobile accidents. It is appropriate that Medicaid enrollees be able to buy automobile insurance and receive the same reimbursement for care as other insureds injured in automobile accidents.

COMMENT: One commenter requested that the Department establish safeguards for PAIP to follow, and that the Department and the Office of the Insurance Fraud Prosecutor work together to monitor for fraud.

RESPONSE: As noted above in response to another Comment, the Department does not believe that Special Policyholders are more likely to engage in fraud than other insureds. At this time, the Department feels that the procedures currently in place to detect auto insurance fraud are adequate. If the experience with the Special Policy shows that it is more susceptible to fraud, measures to address that can be taken in the future.

COMMENT: One commenter inquired how the \$365.00 annual premium amount for a Special Policy was determined. The commenter noted that the cost should be determined through standard actuarial review.

RESPONSE: No insurance policy with these types of benefits has ever been offered. Consequently, there is no historical experience that could be subjected to actuarial review. In determining the rate, the Department believed that a dollar a day would be an appropriate cost for a policy designed for persons with extremely low-incomes. The Department solicited advice from several insurers and determined that \$365.00 would be sufficient to cover the costs of the benefits provided under the policy, a fee for underwriting and loss adjustment, a producer commission plus a small amount to go to the Unsatisfied Claim and Judgment Fund to help reimburse claims made against it.

COMMENT: One commenter suggested that N.J.A.C. 11:3-2A.3(a)3 be amended to permit the Department to adjust the rate annually after a notice and comment period.

RESPONSE: The Department does not agree with the commenter. The rule as proposed follows the statutory language of N.J.S.A. 39:6A-3.3 (P.L. 2003, c. 89, section 45), which does not require that the Department enact any rate change through the rulemaking process.

COMMENT: Several commenters urged the Department to permit public comment on the Special Policy plan of operation prepared by PAIP. One commenter noted particular interest in the issue of how PAIP assigns Special Policies. The commenter also indicated that PAIP should provide all insurers with an accounting of the Special Policy program on a regular basis to protect it from exceeding its premium base.

RESPONSE: The Department does not agree with the commenter. The PAIP Governing Committee has four insurer representatives, one from each of the three insurer trade associations and one from unaffiliated companies. PAIP member company concerns about the Special Assigned Risk Plan of Operation and requests for accounting should be directed to the PAIP administrator.

COMMENT: Several commenters suggested that the Department amend the proposed definition of "emergency personal injury protection coverage" so that, consistent with P.L. 2003, c. 89, the proposal includes a reference to pedestrian coverage.

RESPONSE: The commenter is correct. Part of the statutory text was inadvertently omitted and the rule has been amended upon adoption to add the missing language.

COMMENT: Several commenters sought clarification of the extent to which the two coverages listed in N.J.A.C. 11:3-2A.5 provide pedestrian coverage.

RESPONSE: The Emergency Personal Injury Protection Coverage provides coverage to the named insureds and dependent Medicaid enrolled members of the insured's household if they are injured as pedestrians. This ensures that persons who have a Special Policy receive the same benefits if they are injured in a car or as pedestrians. All other persons who sustain injury as pedestrians receive PIP benefits through the Unsatisfied Claim and Judgment Fund as provided by N.J.S.A. 39:6-86.7.

COMMENT: Several commenters stated that N.J.A.C 11:3-2A.5 appears to be at odds with the statutory provisions that exclude liability, collision, comprehensive, uninsured and underinsured

motorist coverage, and urged the Department to include the relevant statutory provisions in the proposal.

RESPONSE: The Department does not understand the commenter's concern. N.J.A.C. 11:3-2A.5(d) states that the coverages enumerated above are excluded from the Special Policy.

COMMENT: One commenter inquired how producers would confirm Medicaid eligibility for purposes of this proposal.

RESPONSE: The producer will use the Medicaid identification card provided by the applicant. The PAIP, the Department and the Division of Medicaid are working together to compile the information that will be necessary for producers to make the determination that the applicant is eligible.

COMMENT: One commenter expressed his opposition to the proposal because he opposes special rates for special groups.

RESPONSE: The proposal reflects the determination of the Legislature that provision needs to be made for persons with very low incomes to find a way to obtain automobile insurance.

Federal Standards Statement

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

Full text of the proposal follows (additions to proposal indicated in boldface with asterisks

thus*)

SUBCHAPTER 2A. SPECIAL AUTOMOBILE INSURANCE POLICY

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.

...

“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 an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or*** using the automobile of the named insured, with the permission of the named insured.

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