

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Group Self-Insurance  
Joint Insurance Funds

Adopted Amendments: N.J.A.C. 11:15-2.6, 2.25, 3.6, 3.25, 4.6, 4.25, 5.6, 5.25 and 6.24

Proposed: April 7, 2003 at 35 N.J.R. 1487(a)

Adopted: August 15, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: August 15, 2003 as R. 2003 d.366, without change.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:49A-1 et seq., 18A:18B-1 et seq. and 40A:10-36 et seq.

Effective Date: September 15, 2003

Expiration Date: September 14, 2004

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received comments from the following:

1. Government Risk Management Associates, Inc.;
2. New Jersey Municipal Self-Insurers' Joint Insurance Fund; and
3. ReedSmith , on behalf of the Somerset County Joint Insurance Fund.

COMMENT: One commenter supported the proposed amendments eliminating the mandatory financial examinations every five years.

RESPONSE: The Department appreciates the support of its proposal.

COMMENT: One commenter noted that it supports passage of Senate Bill No. 1144, and also believed that costs relating to audits should be borne by the Department. The commenter stated that municipal joint insurance funds, pursuant to rules promulgated by the Department, are required to be audited annually by a certified public accountant or a registered municipal accountant. The commenter stated that all costs incurred for these outside audits are the responsibility of the Fund. Therefore, the commenter believed that any costs associated with Department examinations should be the sole responsibility of the Department.

RESPONSE: These comments are outside the scope of the proposal. The requirement that municipal joint insurance funds have an annual audit conducted by an independent certified public accountant or registered municipal accountant is set forth by statute at N.J.S.A. 40A:10-46. Further, the requirement that the expenses of any examination of a joint insurance fund be borne by the fund is expressly provided under N.J.S.A. 40A:10-47. The Department also notes that joint insurance funds, which provide property, liability, workers' compensation, and life and health coverages to their members, are not subject to premium taxes and are not subject to the fees that insurers are required to pay pursuant to law, including the special purpose apportionment imposed pursuant to N.J.S.A 17:1C-19 et seq., which is the primary funding source for the Division of Insurance in the Department, assessments to cover costs of implementation of the Fraud Prevention Act at N.J.S.A 17:33A-1 et seq., assessments to the Unsatisfied Claim and Judgment Fund, and assessments to the second injury fund for workers' compensation. Joint insurance funds only are required to pay a \$1,500 application fee to cover the costs of review of the application. The Department thus believes that it is reasonable and

appropriate that joint insurance funds pay for costs of examination, as is required of every other entity subject to licensure and regulation by the Department.

COMMENT: One commenter suggested that N.J.A.C. 11:15-2.6(f), 3.6(f), 4.6(g) and 5.6(g) be revised to provide (deletions in brackets; additions in boldface):

“[For purpose of] [t]The examination(.) shall be conducted by State employees; provided, however, that if State employees are not able to conduct an examination, the Commissioner may retain attorneys, ....”

The commenter stated that this language would bring the rules more in line with pending legislation (S-1144 and A-2499). The commenter believed that the examination of any joint insurance fund should be conducted internally by the Department, rather than referred to outside auditing firms or other specialists, which the commenter stated imposes significant costs on public entity joint insurance funds. The commenter stated that since municipal joint insurance funds are public entities and the members are public entities, the costs of examinations are borne by public entities and ultimately taxpayers. The costs to taxpayers could be reduced if the Department conducted examinations internally.

RESPONSE: Upon review, the Department has determined that no change is required. Initially, the Department notes that the comments are outside the scope of the proposal. Further, while the commenter states that significant costs may be imposed on public entities, the Department notes that it is a public entity as well. In addition, public entities are not required to form or join a joint insurance fund for the purpose of providing or maintaining various insurance coverages. The

costs associated with membership in a joint insurance fund may be evaluated by the member in determining its insurance coverage options. Moreover, as set forth in the response to the previous comment, joint insurance funds are not required to pay many of the fees and assessments that insurers, with which joint insurance funds compete, are required to pay to maintain the authority to provide the same coverage. In addition, the Department does not believe that it is appropriate to require that examinations be conducted solely by State employees. This provision would unreasonably limit the Department in determining the appropriate use of its resources. The Department is responsible for monitoring the financial solvency of a large number of regulated entities including, but not limited to, insurance companies, health maintenance organizations, organized delivery systems and joint insurance funds. The minimum frequency of the Department's examinations of such entities is typically prescribed by statute. However, in all cases the Department is also authorized to conduct an examination at any time deemed necessary. The purpose for such flexibility is to allow the Department to quickly respond whenever possible financial problems of a regulated entity are identified in order to avert potential insolvency and attendant disruptions. The Department's resources for monitoring financial solvency and conducting financial examinations of regulated entities are limited, both in terms of available expertise and the number of examiners on staff. To properly fulfill its financial oversight obligations, the Department must be able to prioritize financial examination efforts and utilize its resources as it deems appropriate.

Moreover, the Department believes that the elimination of the mandatory five-year examination as provided in these amendments will eliminate unnecessary costs to joint insurance funds, and ultimately taxpayers, as set forth fully in the Summary of the proposed amendments.

See 35 N.J.R. 1487(a). The Department thus believes that that the amendments address the commenter's concerns.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows:

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