

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Group Self-Insurance

Proposed Readoption with Amendments: N.J.A.C. 11:15

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:49A-1 et seq., 34:15-77 et seq., 18A-18B-1 et seq., and 40A:10-36 et seq.

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

Proposed Number: PRN 2010-003

Submit comments by March 5, 2010 to:

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Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:15, which is scheduled to expire on March 10, 2010, in accordance with N.J.S.A. 52:14B-

5.1b. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extends the expiration date 180 days, to September 6, 2010.

The existing chapter contains rules that govern the formation of pooling mechanisms by groups of hospitals seeking to self-insure workers' compensation coverage; by local units of government or boards of education seeking to join together to insure against liability, property damage, workers' compensation, environmental impairment liability (local units only) and to provide group health and term life insurance; and by nonprofit corporations and Keys amendment facilities seeking to form a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation. The Department has reviewed these rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department is proposing to readopt these rules with two minor amendments.

N.J.A.C. 11:15 contains rules on the following subjects:

1. Hospital workers' compensation group self-insurance;
2. Joint insurance funds for local governmental units providing property and liability coverages;
3. Joint insurance funds for local governmental units providing group health and term life benefits;
4. Joint insurance funds for school boards providing property and liability coverages;
5. Joint insurance funds for school boards providing group health and term life benefits; and

6. Joint insurance funds for nonprofit corporations and Keys amendment facilities.

The rules in this chapter were promulgated to implement statutory requirements in Titles 17, 18A, 34 and 40A of the New Jersey Statutes.

Subchapter 1 was promulgated to implement N.J.S.A. 34:15-77 et seq., which authorizes 10 or more hospitals licensed in this State to pool their workers' compensation liabilities through the formation of a self-insurance group or pool. Subchapter 1 implements those provisions by establishing criteria for: the organization and administration of such groups; the obligations of the group and its members; the manner in which rates are established and profits and losses distributed; and methods to guard against insolvency or financial deterioration of the group.

Subchapters 2 and 3 authorize two or more local units of government to form a joint insurance fund for the purpose of insuring against claims for liability, property damage, and workers' compensation, insuring against loss or theft of money or securities, providing blanket bond coverage of certain county municipal officers and employees for faithful performance in discharge of their duties, insuring against environmental impairment liability, and providing contributory or noncontributory group health or group term life insurance. Subchapter 2 provides the standards governing the establishment, operation, oversight, modification, and dissolution of property and liability joint insurance funds. Subchapter 3 essentially reflects the requirements set forth in Subchapter 2, with appropriate modifications, to address the provision of group health and term life coverages.

Subchapters 4 and 5 authorize two or more boards of education to form a joint insurance fund to insure against liability, property damage, losses from liability for a members' acts or omissions, workers' compensation, and expenses of defending any claim against the school

board, county college, officer, or servant arising out of the course of performing their duties (Subchapter 4); and for the provision of group health and group term life benefits (Subchapter 5). Subchapters 4 and 5 set forth the requirements for the establishment, operation, oversight, modification, and dissolution of a school board joint insurance fund, and essentially reflect the requirements set forth in Subchapters 2 and 3, respectively, with appropriate modifications to address specific statutory requirements related to school boards and school board insurance funds.

Subchapter 6 permits two or more nonprofit corporations or two or more Keys amendment facilities, as applicable, to form a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation. Subchapter 6 similarly sets forth the requirements for the establishment, operation, oversight, modification and dissolution of a joint insurance fund formed for that purpose. The general requirements set forth in Subchapter 6 essentially reflect those set forth in Subchapters 2 and 4, with appropriate changes to reflect that these joint insurance funds are formed by entities other than public entities with taxing authority.

The Department believes that the readoption of these rules will continue to provide a regulatory framework by which the Department may ensure that hospital workers' compensation self-insurance groups and joint insurance funds formed by local units of government, school boards, nonprofit corporations, and Keys amendment facilities are operating in compliance with applicable statutory requirements. In addition, the readoption of the rules will continue to enable the Department to assess the financial condition and viability of these entities, thus lessening the likelihood of group or fund insolvencies. This, in turn, will help ensure that these entities will be in a position to pay their obligations, thus protecting the interest of claimants as well as taxpayers of this State.

The Department is proposing to amend the definition of “local unit of government,” “local unit” or “member” in N.J.A.C. 11:15-3.2 to reflect that boards of education may be considered local units under N.J.S.A. 40A:10-36.1 as amended by P.L. 2007, c. 18, effective January 26, 2007 for purposes of providing contributory and non-contributory health and life coverages. In addition, a technical amendment is made to the definition to correct a statutory citation.

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

Readoption of N.J.A.C. 11:15 will continue to provide the Department with an appropriate regulatory framework by which it may monitor the operations of insurance pools formed by hospitals, local units of government, school boards, nonprofit corporations, and Keys amendment facilities, to ensure that they are in compliance with applicable statutory requirements, and monitor these entities’ financial position and operations, thereby helping ensure that these entities will be in a position to pay covered claims. This, in turn, will continue to benefit claimants as well as taxpayers. Failure to readopt these rules would eliminate the existing regulatory framework that both the Department and the regulated entities have relied upon for procedures governing formation and approval of these self-insurance pools, as well as the guidelines for their operation. Failure to readopt N.J.A.C. 11:15 thus would result in disruptions to the Department, as well as claimants, taxpayers of this State, and the regulated

entities. Through readoption of N.J.A.C. 11:15, these entities will continue to be regulated in a uniform, consistent manner and with cost-effective flexibility.

Further, the proposed amendments will conform the definitions in N.J.A.C. 11:15-3.2 to the current statutory framework and correct a statutory reference.

Economic Impact

Insurance pools formed pursuant to N.J.S.A. 17:49A-1 et seq., 18A:18B-1 et seq., 34:15-77 et seq., or 40A:10-36 et seq., and entities that seek to join together to form such insurance pools pursuant to those statutes, will continue to be required to file required information, obtain required actuarial certifications, bear the cost of examinations, and bear any costs associated with operating a joint insurance fund or pool pursuant to the guidelines set forth in the rules, including the payment of applicable filing fees. The general guidelines established by these rules have been utilized for, in some cases, as long as 20 years, as modified from time-to-time. Moreover, as noted in the Social Impact above, the Department, as well as the regulated entities, have relied on the guidelines set forth in the rules for their formation as well as for general operating guidelines and other regulatory requirements. Accordingly, the readoption of N.J.A.C. 11:15 will continue to provide a mechanism for the creation and operation of these insurance pools, pursuant to applicable statutes, and thus avoid any disruptions and attendant costs to the Department, claimants, taxpayers, and the regulated entities resulting from the elimination of the existing regulatory framework. Therefore, hospitals, local units of government, school boards, nonprofit corporations, and Keys amendment facilities may continue to stabilize insurance costs and may experience premium savings through the formation of self-insurance groups and pools. The rules also will continue to provide appropriate regulatory oversight for these entities to help

ensure their solvency, adequacy of reserving, and compliance with applicable statutory requirements. This will help ensure that these entities will be in a position to pay covered claims, thus benefiting both claimants and taxpayers of this State. The continued viability of local unit and Board of Education joint insurance funds allows those entities to stabilize insurance costs and focus attention on loss prevention thereby reducing the level of expenditures funded by local property taxes.

The proposed amendments will conform the definitions in N.J.A.C. 11:15-3.2 to the current statutory framework and correct a statutory reference, and will result in no economic impact.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe that any jobs should be generated or lost by the rules proposed for readoption with amendments. The rules proposed for readoption continue existing regulatory requirements regarding the establishment, operation, modification, and dissolution of a joint insurance fund formed by hospitals, local units of government, school boards, nonprofit corporations, and Keys amendment facilities, pursuant to applicable statutes. The Department anticipates that the existing professional services and staffing required to comply with these rules will continue to be utilized. Accordingly, the rules proposed for readoption with amendments will continue the need for jobs and services currently required under the existing regulatory

schemes, including, but not limited to, the following areas: actuarial, auditing, claims administration, safety and loss prevention, brokerage, underwriting, and treasury.

To the extent that entities permitted to join together to form a joint insurance fund experience efficiencies and stabilization of insurance costs the corresponding need for revenue by those entities may continue to be stabilized. This stability contributes to a healthy business climate in New Jersey.

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

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

N.J.A.C. 11:15 may impose reporting, recordkeeping or other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. With the exception of N.J.A.C. 11:15-6, the chapter directly applies only to hospitals and public entities composed of member local units of government or school boards. The Department believes that many, if not all, licensed hospitals that may form a self-insurance group employ more than 100 full-time employees. In certain circumstances, the rules proposed for readoption with amendments will impose indirect reporting, recordkeeping and other compliance requirements on other entities that have contracted with the self-insurance group or joint

insurance fund to provide specific services - for example, the reporting by fund administrator to the fund commissioner and the Commissioner pursuant to N.J.A.C. 11:15-2.4, 2.17, 2.18 etc. These entities are likely to be “small businesses” as that term is defined in the Act, and they will continue to bear any compliance costs. Similarly, there will continue to be an indirect impact on small businesses within the context of joint insurance funds formed by nonprofit corporations or Keys amendment facilities that must bear costs associated with the reporting and recordkeeping requirements.

With respect to indirect costs on entities with which a fund contracts, these entities have contracted with the self-insurance group or joint insurance fund to provide specified services. The information required to be reported is intended to ensure that the fund or group is fully apprised of the status of the various services being provided. Accordingly, the information required to be reported should be readily available, and indeed would undoubtedly be required by the fund itself in the absence of specific regulatory requirements by the Department. Finally, any costs to the entity would be reflected in the compensation provisions voluntarily entered into between the entity and the fund or group.

Accordingly, the Department does not believe that the requirements set forth in the rules proposed for readoption with amendments impose any undue burden on these entities or that different reporting, recordkeeping or compliance requirements are feasible. Any professional services required to comply with the rules proposed for readoption will be those routinely utilized by entities engaged in the business of insurance, including actuarial services. Therefore, for the reasons discussed above, and to continue to ensure consistency and uniformity in the regulation of joint insurance funds and in the data reported to the funds themselves and to the Commissioner, no differentiation in compliance requirements is provided based on business size.

Further, the proposed amendments merely conform the definition of “local of unit of government,” etc. to the current statutory framework to reflect that boards of education may be considered local units of government for purposes of joining together with other local units to provide contributory and non-contributory health and life coverage, and correct a statutory reference.

Smart Growth Impact

The rules proposed for readoption with amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will not have an impact on housing affordability in this State because the rules proposed for readoption with amendments relate to the formation and regulation of insurance pools and joint insurance funds formed by hospitals, local units of government, Boards of Education, non-profit corporations and Keys amendment facilities.

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that the rules proposed for readoption with 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 rules proposed for readoption with amendments relate to the formation and

regulation of insurance pools and joint insurance funds formed by hospitals, local units of government, Boards of Education, non-profit corporations and Keys amendment facilities.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:15.

Full text of the proposed amendments follows (additions indicated in boldface **thus**):

11:15-3.2 Definitions

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

...

“Local unit of government,” “local unit” or “member” means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A:~~64A~~-25.40 and 40A:10-51), **board of education** or any contracting unit as defined in N.J.S.A. 40A:11-2.

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