

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Renewal and Nonrenewal of Automobile Insurance Policies  
Tier Rating Plans and Underwriting Rules

Proposed Amendments: N.J.A.C. 11:3-8.3 and 19A.7

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:29A-46.1

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

Proposal Number: PRN 2003-277

Submit comments by September 19, 2003 to:

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The agency proposal follows:

Summary

P.L. 2003, c. 89 (the "Act") provides a well-balanced approach to the immediate auto insurance availability crisis facing New Jersey consumers, insurers and regulators. A symptom of this crisis is the difficulty faced by insureds finding new or replacement coverage. With the proposed amendments, the Department is seeking to reduce the number of insureds who are compelled to enter the market because of a break in the relationship with their existing insurer. Complaints received at the Department have indicated that many insureds are losing their coverage because renewal payments were received a day or two late. Some insurers that had not

strictly enforced their rules about late payments are now doing so and terminating the policies of their insureds who may have relied upon past practice or expected similar treatment. These lapses and cancellations unnecessarily add to the number of insureds seeking new coverage in the marketplace and create unwarranted expense for insurers since they each must re-underwrite and issue new policies for the insureds of other companies that have terminated coverage.

The Department is proposing amendments to the rules governing the renewal of automobile insurance policies and the underwriting and tier rating rules to make it easier for an insured to maintain coverage with his or her current insurer.

N.J.A.C. 11:3-8.3(b) is being proposed for amendment to refer only to the notice of renewal and the advance notice required for payment of the renewal premium.

The proposed amendment to N.J.A.C. 11:3-8.3(b) includes moving the text of subsection (d) to new paragraph 1 of subsection (b) since it concerns the same subject.

The proposed amendments to N.J.A.C. 11:3-8.3(b)2 requires the inclusion of additional information on the billing notice to help insureds get the renewal payment to the insurer on time. First, the due date for the premium must be expressed as 11:59 p.m. of the due date rather than 12:01 a.m. of the next day. From complaints received, it appears that many insureds do not understand that a bill that is due on 12:01 a.m. on January 1 must actually be received by the insurer on December 31. Second, the proposed amendments require that the notice clearly state the consequences of a late payment of the renewal premium, including any late fees the insurer may impose. Finally, the proposed amendments require that if the insured can make a payment to their insurance producer, the notice shall so state.

Insureds should make every effort to get their renewal premium to the insurer by the expiration date of the policy and the amendments to N.J.A.C. 11:3-8.3 described above should

make it easier to do this. However, the Department recognizes that sometimes the renewal premium does not arrive before the due date even though the insured put the payment in the mail in advance. The Department is proposing amendments to the tier rating rules to require insurers to provide a little leeway in the acceptance of such mailed renewal payments. Proposed N.J.A.C. 11:3-19A.7(g) requires insurers to file underwriting rules that deem renewal payments to have been made timely if they are mailed prior to the due date and received within three business days of the due date. Insurers can determine the date of payment by examining the postmark on the envelope or they can simply deem timely mailed payments that are received within three business days of the due date.

The insured should be encouraged to get the renewal payment in on time so it is appropriate to allow insurers to charge a penalty fee for handling the late payments. In addition, the Department recognizes that processing late payments will involve a cost to the insurer. The amendments, therefore, also permit insurers to file rating rules for the charging of late fees not to exceed \$25.00. The late fees are similar to those charged by credit card companies for late payments. Providing for late payment fees will avoid adding these costs into the rates paid by insureds that make timely responses, and should deter late payments in the first instance.

Currently, pursuant to N.J.A.C. 11:3-8.3(f), notices of nonrenewal must be sent by insurers at least 60 days prior to expiration of the policy. As amended, N.J.S.A. 17:29C-9 permits the Commissioner to extend the advance notice period up to an additional 30 days. Subsection (f) (recodified as (e)) is proposed to be amended to make reference to the Commissioner's authority to extend that time for up to 30 days, through the issuance of an order, when deemed necessary.

This proposed amendment will permit the Commissioner, on a case-by-case basis, to

require that insurers provide more than the 60-day minimum notice of the nonrenewal of an automobile insurance policy when, due to market conditions or other special circumstances, additional time for consumers to secure replacement coverage is needed.

This rule proposal provides for a comment period of 60 days. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, it 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 have a beneficial social impact by clarifying the requirements for renewing an automobile insurance policy. The proposed amendments make it easier for insurers and insureds to comply with the requirements and avoid a lapse in insurance coverage. As a result, insureds will avoid being placed in a position where they must secure replacement coverage in difficult market conditions.

The proposed amendments to N.J.A.C. 11:3-8.3(f) (recodified as (e)) will also have a positive impact on consumers by better enabling non-renewed insureds who need to secure replacement coverage during periods of difficult market conditions to do so prior to a lapse of coverage occurring. The recent market conditions, evidenced by the extraordinary relief requested by one of the largest carriers to be exempt from the “Take All Comers” requirement imposed by N.J.S.A. 17:33B-15, and the fact that, for the first time in its history, the Department received more consumer complaints concerning the unavailability of auto insurance than the affordability of auto insurance, indicate that such flexibility will have a positive social impact on policyholders.

The proposed amendments to N.J.A.C. 11:3-8.3(f) (recodified as (e)) would apply to all New Jersey insurers who write automobile insurance. The amended rule will give discretion to the Commissioner to require that insurers provide consumers with earlier notice that their automobile insurance policy will not be renewed, thereby giving them more time to obtain replacement coverage. Insurers will not be adversely affected by being required to give up to an additional 30 days notice of their intended actions. These amendments therefore should not have a detrimental social impact on the industry.

#### Economic Impact

These proposed amendments will have an economic effect on private passenger automobile insurers. Insurers will have to adjust their premium processing systems to retain envelopes or to process payments received after the due date. In addition, insurers will have to revise billing notices to include the information required in the amendments. However, these costs should be offset by the ability to collect late penalties from insureds. Insureds will experience an economic effect if they are required to pay penalty fees for late payments. However, the amendments to the rules for renewal of policies should make it easier for insureds to get their renewal premiums in on time. In addition, for many insureds paying a late fee to retain their current insurer may be preferable to expending the time and effort involved in trying to get new insurance coverage. Depending on the insurer's method of doing business, this fee may not totally cover its cost to process the late payment.

The Department expects that the proposed amendments to N.J.A.C. 11:3-8.3(f) (recodified as (e)) will have a positive economic impact on insureds. Non-renewed insureds will be favorably impacted. By increasing the time during which a non-renewed insured can shop for

replacement coverage subsequent to the receipt of a non-renewal notice, the likelihood of securing such coverage at a favorable rate will increase. The Department does not expect these amendments to have a detrimental economic impact on insurers. Sending out non-renewal notices earlier should not cost insurers any more than the current cost of sending the notices.

#### Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments relate to the business of insurance and are not subject to any Federal requirements or standards.

#### Jobs Impact

Although the Department does not anticipate that the amendments alone will result in the generation or loss of jobs, it believes that the package of statutory and regulatory amendments of which it is 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 amendments with their written comments.

#### Agriculture Impact

The Department does not anticipate any impact from the proposed amendments upon agriculture and related industries.

#### Regulatory Flexibility Analysis

These proposed amendments impose compliance requirements upon private passenger automobile insurers, some of which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Pursuant to N.J.A.C. 1:30-3.1(f)4, the Department provides the following regulatory flexibility analysis regarding those small businesses upon which the proposed amendments impose compliance requirements. The few affected auto insurers who are small businesses and all other auto insurers will be required to change their policy issuing systems and billing notices. These costs may include the cost of computer programming, systems consultants and other professional services if such services are not available to the insurer in-house. These costs cannot be accurately estimated by the Department at this time since they vary greatly by insurer. These rules provide no different compliance standard for small business insurers. All auto insurers are required to offer to renew the policies of their insureds in accordance with the standards of these rules. These rules are intended to prevent market disruption from “unintended” nonrenewals where the insured wants to renew the policy but the insured just misses the renewal payment deadline. In addition, it permits the Commissioner to give insureds that are nonrenewed more time to find a replacement policy. In order to assure that procedures are uniform across the market, no differing compliance requirements for automobile insurers based on business size is appropriate.

#### Smart Growth Impact

The proposed amendments would have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in

brackets [thus]):

SUBCHAPTER 8. RENEWAL AND NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES

11:3-8.3 General provisions

(a) (No change.)

(b) Each renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill. [With respect to payment of the renewal premium, notice shall be given not more than 45 days nor less than 30 days prior to the expiration of the existing policy or the due date of the premium, whichever is later, and shall clearly state the effect of not paying the renewal premium by the due date.] **A renewal bill shall indicate the date by which the renewal premium is due. The insured must receive the renewal bill not more than 45 days and not less than 30 days prior to the date the renewal premium is due.**

**1. Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the renewal offer by the insured.**

**2. Where acceptance of the renewal is made by mailing payment of the renewal bill, the renewal notice shall state the following in a clear and conspicuous manner:**

**i. The due date for receipt of the renewal premium, which shall be expressed as 11:59 PM of the due date, rather than as 12:01 AM of the next day;**

**ii. The consequences to the insured if the insurer does not receive the renewal premium by the due date, including any late payment penalties for receipt of**



the premium by the insurer after the due date pursuant to N.J.S.A. 11:3-19A.7(g); and

iii. A statement advising whether the insured has the option to make payment to the insurance producer.

(c) (No change.)

[(d) Payment by the insured in accordance with the terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the renewal offer by the insured.]

[(e)] **(d)** (No change in text.)

[(f)] **(e)** A notice of nonrenewal shall not be valid unless it is mailed or delivered by the insurer to the insured named policyholder no less than 60 days and no more than 90 days prior to the expiration of the current policy, [setting] **except that the Commissioner may direct by Order that a notice of nonrenewal must be mailed or delivered up to 90 days prior to the expiration of the current policy. A notice of nonrenewal shall set** forth the reason(s) for such nonrenewal.

1. - 3. (No change.)

Recodify existing (g) - (i) as **(f) - (h)** (No change in text.)

## SUBCHAPTER 19A. TIER RATING PLANS AND UNDERWRITING RULES

### 11:3-19A.7 Underwriting rules for eligible persons

(a) - (f) (No change.)

**(g) All affiliated insurers shall file for approval underwriting rules that state that where acceptance of the policy renewal is made by payment of the renewal premium, the premium shall be deemed to have been received timely if it was mailed prior to the due**

**date and received by the insurer within three business days after the due date. The date of mailing may be determined by the postmark on the envelope.**

**1. As an alternative to keeping the payment envelope, an insurer can file for approval underwriting rules that provide that if the insurer receives the renewal premium payment in the mail within three business days after the due date, the payment shall be presumed to have been mailed prior to the due date.**

**2. Insurers may file for approval underwriting rules that permit the insurer to charge a late fee of not more than \$25.00 when the renewal premium was received after the due date but is deemed timely as provided in (g) above. The rules shall specify how such a late fee shall be collected.**