

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Notice to Policyholders of Consumer Insurance Rate Increases

Proposed New Rules: N.J.A.C. 11:1-45

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and P.L. 2003, c. 89, section 44

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

Proposal Number: PRN 2003-309

Submit comments by October 3, 2003 to:

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The agency proposal follows:

Summary

P.L. 2003, c. 89, effective June 9, 2003 (the "Act") provides a well-balanced approach to addressing the automobile insurance availability crisis facing New Jersey consumers, insurers and regulators. The Act includes numerous pro-consumer provisions, including notification to consumers when certain insurers file rate increase requests with the Department. Section 44b of the Act requires an insurer or rating organization that files for a consumer insurance overall rate increase to notify the public of the proposed rate change. A consumer insurance rate increase is defined at Section 44d of the Act to mean certain rate increases requiring prior approval for personal lines property/casualty coverages, and Medicare supplemental coverages. Under

Section 44b, a filer is not required to notify the public of a proposed rate increase if it pertains to: a limited prior approval rate filing made pursuant to N.J.S.A. 17:29A-46.6 or 17:36-5.35; rating system changes made pursuant to N.J.S.A. 17:29A-46.1 et seq.; or a rate filing made pursuant to any statutory change in coverage provided under a policy of private passenger automobile insurance.

Section 44c of the Act requires that, with respect to insurers, the notice be communicated by regular or electronic mail to the named policyholders who use the products and services subject to the rate increase, within 10 business days of the applicable filing, and to be in a form prescribed by the Department of Banking and Insurance (Department). With respect to rating organizations, the statute requires that the notice be communicated in a form and manner prescribed by the Commissioner by regulation.

In accordance with Section 44c of the Act, the Department is proposing these new rules to set forth the form of notice to be provided and the manner for rating organizations to communicate proposed consumer insurance rate increases.

Proposed N.J.A.C. 11:1-45.1 sets forth the purpose and scope of the subchapter.

Proposed N.J.A.C. 11:1-45.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:1-45.3 sets forth the form of notice required to be provided by insurers and rating organizations of proposed consumer insurance rate increases. The form of notice is set forth in the Appendix to the subchapter, incorporated therein by reference. The notice makes clear that requests for consumer insurance rate increases are subject to prior approval by the Department pursuant to law, and that the request ultimately may not be approved or may not be approved for the full amount requested. With respect to rating organizations, the

proposed new rule also provides that notice of the proposed rate increase shall be published in three newspapers of general circulation in this State and on the rating organization's website.

N.J.A.C. 11:1-45.3 also requires insurers to affirm, as part of any filing for a consumer insurance rate increase, their awareness of and intention to comply with the notice requirement.

Proposed N.J.A.C. 11:1-45.4 sets forth penalties for violations of the subchapter.

The proposed new rules thus implement the intent of the Legislature set forth in section 44 of the Act to provide notice to policyholders and the public of proposed consumer insurance rate increases filed for approval with the Department by insurers and rating organizations.

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

As noted in the Summary above, the proposed new rules implement Section 44 of the Act by setting forth the form and manner of notice to be provided to the public and policyholders of filings by insurers and rating organizations for consumer insurance rate increases. The proposed new rules, therefore, implement the intent of the Legislature to provide the public and policyholders with notice of proposed actions by insurers and rating organizations seeking a rate increase that may affect them. It is anticipated that affected policyholders will be better informed regarding these actions and as such, will have a better chance to shop around for better rates from a different carrier, or even influence the carrier's decision to continue with the rate request application. The notice, however, will make clear that these increases are only proposed,

are subject to prior approval by the Department, and ultimately may not be for the amount requested.

The provision shall put downward pressure on rates. It is anticipated that affected policyholders will be better informed regarding these actions and, as such, will have a better chance to shop around for better rates from a different carrier, and competing carriers offering more attractive rates will have a better chance to attract new business. Lastly, if carriers know that awareness of large rate requests may encourage existing customers to begin shopping for coverage, the rate request disclosure provision may lead carriers to moderate the magnitude of their rate requests. In sum, requiring advance disclosure of potential rate increases will lead to a more informed consuming public and thereby contribute to the efficient operation of the insurance marketplace and competition among insurers.

Economic Impact

Insurers and rating organizations will be required to bear any costs associated with implementing systems necessary to provide the required notice under these proposed rules pursuant to Section 44 of the Act. The Department, however, does not believe that the proposed new rules should impose an undue burden on insurers or rating organizations. The underlying requirement that notice be provided to the public and policyholders is required by statute, and these rules merely set forth the form of the notice to be provided.

With respect to rating organizations, in order to fulfill the requirement of the Legislature that they notify the public of proposed rate increases, notice must be provided through publication in three newspapers of general circulation in this State and on the organization's website. Further, while there may be some additional costs in developing systems to provide the

notice to the public and policyholders as required by Section 44 of the Act and these proposed new rules, once the systems are in place, minimal if any additional costs should be imposed. Further, the Department does not believe that additional staff will need to be employed by insurers or rating organizations in order to comply with these proposed new rules. Existing systems and staff utilized to provide other notices could be utilized in providing the notices required under these proposed new rules. The costs ultimately imposed will be consistent with those associated with providing other notices in the normal course of business.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules relate to the provision of 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 the new rules 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 may 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 insurers domiciled in this State transacting personal lines property/casualty coverage or Medicare supplemental coverage, and rating organizations domiciled in this State. As noted above, small businesses will be required to bear costs in developing and implementing systems to provide notice to policyholders and the public with respect to filings seeking consumer insurance rate increases. As noted above, the Department does not believe that the hiring of any additional staff or professional services will be necessary to comply with these new rules.

The proposed new rules provide no different reporting, recordkeeping or other requirements based on business size. The proposed new rules implement section 44 of the Act, requiring insurers and rating organizations to provide notice to policyholders and the public of requests for rate increases filed with the Department so that the public and policyholders may be aware of these actions. The goal of the statute does not vary based on business size, and variation of compliance requirements based on business size will not be feasible or consistent with the intent of the Legislature as set forth in section 44. Moreover, while implementing the intent of the Legislature by specifying the form of the notice to be provided to policyholders and the public, the rules impose minimal burdens on insurers and rating organizations, and provide

flexibility with respect to the provision of such notice. 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 proposed new rules follows:

SUBCHAPTER 45. NOTICE TO POLICYHOLDERS OF CONSUMER INSURANCE
RATE INCREASES

11:1-45.1 Purpose and scope

(a) This subchapter sets forth the form and manner of notice to be provided to policyholders and the public when an insurer or rating organization files for a consumer insurance rate increase, in accordance with Section 44b of P.L. 2003, c. 89.

(b) This subchapter shall apply to all insurers and rating organizations that file for a consumer insurance rate increase, as required pursuant to Section 44b of P.L. 2003, c. 89. This subchapter shall not apply if the proposed rate change pertains to:

1. An expedited prior approval rate filing made pursuant to N.J.S.A. 17:29A-46.6 or 17:36-5.35;
2. Rating system changes made pursuant to 17:29A-46.1 et seq; or
3. A rate filing made pursuant to any statutory change in coverage provided under a policy of private passenger automobile insurance.

11:1-45.2 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.

“Consumer insurance rate increase” means a prior approval rate filing that:

1. For private passenger automobile insurance, would result in an increase in rates for any group of coverages, as defined in N.J.A.C. 11:3-16.2;

2. For homeowners' insurance, would result in an increase in rates for any policy form, that is, owners, tenants, or condominiums;

3. For personal lines property/casualty coverages, other than as set forth in 1 and 2 above, would result in a positive base rate change; and

4. For Medicare Supplemental coverages, would result in an increase for any of the standard coverage plans A through J or for any non-standard policy or certificate form used by the filer.

"Department" means the New Jersey Department of Banking and Insurance.

"Insurer" means an entity authorized or admitted to transact insurance in this State pursuant to Titles 17 or 17B of the New Jersey Statutes.

"Medicare supplemental coverage" means coverage under a Medicare supplement policy, as defined in N.J.S.A. 17B:26A-1e.

"Personal lines property/casualty coverages" means insurance issued for personal, family or household purposes, as set forth at N.J.A.C. 11:13-1.2(a)2.

"Private passenger automobile insurance" means direct insurance on an "automobile," as defined in N.J.S.A. 39:6A-2.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers, and licensed as such pursuant to N.J.S.A. 17:29A-2.

11:1-45.3 Form of notice required

(a) Subject to N.J.A.C. 11:1-45.1(b), insurers shall provide notice, in the form set forth in Exhibit A in the Appendix to this subchapter, incorporated herein by reference, of any

filing for a consumer insurance rate increase, as defined in Section 44b of P.L. 2003, c. 89, filed directly by the insurer or on its behalf by a rating organization. The notice shall be communicated through either regular or electronic mail to the named policyholders who use the products and services subject to the consumer insurance rate increase, and shall be provided within 10 business days of the filing with the Department. In the case of regular mail, the notice shall be sent to the last known address of the named policyholder. The insurer may request policyholders to supply their electronic mail address, if they have one. If the policyholder does not have an electronic mailing address, then the insurer shall use regular mail. Insurers shall, as part of any filing for a consumer insurance rate increase, affirm that they are aware of and will comply with this notice requirement.

(b) Insurers shall not be responsible to assure receipt of the notice by all policyholders, provided the insurer has complied with N.J.A.C. 11:1-45.3. The failure of any policyholders to receive the notice shall not impact the effectiveness of any rate change that may subsequently be approved.

(c) Rating organizations shall publish notice, in the form set forth in Exhibit A in the Appendix to this subchapter, of any filing for a consumer insurance rate increase, in three newspapers of general circulation in this State, and on the rating organization's website, within 10 business days of the filing with the Department.

(d) Nothing in this rule prevents the insurer from supplementing its notice with any other explanatory information that it may wish to supply to its policyholders with respect to the rate increase.

11:1-45.4 Penalties

Failure to comply with this subchapter shall result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized pursuant to N.J.S.A. 17:33-2.

APPENDIX

Dear Policyholder:
(Salutation may be omitted by rating organizations.)

This is to provide notice as required pursuant to Section 44 of P.L. 2003, c. 89 that (COMPANY NAME) filed on (DATE) with the New Jersey Department of Banking and Insurance a request for a rate increase in the amount _____% for (TYPE OF COVERAGE(S)).

[For PPA only] Under the proposed filing, the average liability-only policy would see a rate change of ____%. The average Full Coverage policy (includes comprehensive and collision coverage) will see a rate change of ____%. The impact of the filing on your rates may vary substantially, depending on the terms of your policy and your individual circumstances.

[For homeowners' only] Under the proposed filing, the average Owners policy will see a rate change of ____%. The average Tenants policy will see a rate change of ____%. The average Condominiums policy will see a rate change of ____%. The impact of the filing on your rates may vary substantially, depending on the terms of your policy and your individual circumstances.

[For Medicare Supplemental coverages only, list the increase for each of the standard plans A through J, and the increase for each non-standard coverage policy or certificate form used by the filer to which a requested rate increase applies]. The impact of the filing on your rates may vary substantially, depending on the terms of your policy and your individual circumstances.

The request for a rate increase is subject to review and approval by the Department of Banking and Insurance pursuant to law, and the request ultimately may not be approved or may

not be approved for the full amount requested. If approved in whole or in part, the rate change will not affect existing policies until they come up for renewal.

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