

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Insurance Scenarios

Proposed New Rules: N.J.A.C. 11:3-47

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:29A-52

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

Proposal Number: PRN 2003 – 419

Submit comments by December 5, 2003 to:

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The agency proposal follows:

Summary

P.L. 2003, c. 89, (the “Act”) protects New Jersey consumers by providing a well-balanced approach to addressing the immediate automobile insurance availability crisis facing consumers, insurers and regulators in New Jersey. The Act includes consumer education initiatives designed to ensure that consumers understand their choices and purchase coverage consistent with their personal and financial circumstances. To that end, the Act includes a provision that encourages consumers to ask questions regarding the scope of coverage. N.J.S.A. 17:29A-52c requires every insurer writing private passenger automobile insurance in this State to provide each new applicant seeking automobile insurance, and any insured upon request, with

three insurance scenarios demonstrating the effect of different coverage choices. The statute further requires the Commissioner of Banking and Insurance (Commissioner) to establish by rule, the types of coverage examples for which insurers shall provide insurance scenarios and the time in which such scenarios shall be provided.

The Act intends that New Jersey auto insurance consumers be provided with timely, useful information about coverage options for their consideration in making choices on the Coverage Selection Form. As a result of discussions with consumers during 2002, the Department determined that many were unaware of available options they can choose to ensure they purchase appropriate levels of coverage that adequately protect their assets, despite existing information made available through the Buyers' Guide and Coverage Selection Form. According to data collected by the Department, most consumers purchase and pay for the standard or "default" coverages, many of which may exceed the consumer's coverage needs. The Department proposes these new rules pursuant to the statutory mandate in an effort to focus the attention of consumers on their ability to control their auto insurance expense and to promote informed discussion about coverage options between consumers and insurers' agents or representatives.

In accordance with N.J.S.A. 17:29A-52, the Department of Banking and Insurance (Department) is proposing these new rules to set forth the requirements applicable to private passenger automobile insurers and the Personal Automobile Insurance Plan (PAIP), and to insurance producers representing those insurers and the PAIP, regarding the provision of insurance scenarios to applicants and insureds in accordance with the Act.

Proposed N.J.A.C. 11:3-47.1 sets forth the purpose and scope of the subchapter. Since the purpose of N.J.S.A. 17:29A-52c is to alert consumers to cost-saving options, and because

both the “basic” and “special” policies include warnings about the limitations on coverage which already promote the desired consideration of alternatives, these proposed rules do not apply when the consumer specifically requests either of these limited coverage forms.

Proposed N.J.A.C. 11:3-47.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-47.3 sets forth the requirements for insurance scenarios. Specifically, this section requires every insurer writing private passenger automobile insurance in this State and all insurance producers representing such insurers to provide new applicants seeking automobile insurance, and each current insured upon request, with three insurance scenarios demonstrating the effect of different coverage choices. For new applicants, the insurance scenarios shall be provided in connection with a premium quotation or application. For existing insureds, the insurance scenarios shall be provided upon the consumer’s request. The three scenarios are set forth in 1 through 3 below.

1. Scenario 1, which shall reflect coverage choices related to the Bodily Injury Liability coverage under N.J.S.A. 39:6A-3 including: the limitation on lawsuit (commonly referred to as the verbal threshold) and no limitation on lawsuit (commonly referred to as the non-verbal or zero threshold) options; the “basic policy”; and policy limits and the uninsured/underinsured options.

2. Scenario 2, which shall reflect coverage choices related to Personal Injury Protection coverage under N.J.S.A. 39:6A-4, including: the medical coverage only option; the health care primary option; and policy coverage limits.

3. Scenario 3, which shall reflect coverage choices related to physical damage coverage options, including: the option not to purchase physical damage coverage; levels of policy deductibles; and the “named driver exclusion” option.

This section further provides that independent producers (producers who may represent more than insurer) are required only to provide three insurance scenarios as set forth in the proposed rules irrespective of the number of companies the producer may represent.

In order to comply with the requirements of the proposed rules, an insurer or agent may utilize either documents it develops that are specific to its needs or marketing plan, or a document developed by the Department. That document will be posted and updated periodically on the Department’s website.

In addition, the proposed rule provides that nothing set forth therein shall be deemed to prevent insurers or producers from providing additional insurance scenarios as they deem appropriate. The proposed insurance scenarios are not designed to be substitutes for the advice and assistance traditionally provided by producers to consumers, but are intended to make certain that all producers and insurers provide consumers with a minimum level of information consistent with the “best practices” of producers and insurers in this State. Further, the rule provides that insurance scenarios do not constitute a premium quote, and that the insurance scenarios may contain the following statement: “Insurance scenarios are intended to further educate consumers about the choices available to them, are not binding quotations for coverage, and do not necessarily represent the recommendation of the producer or insurer.”

The proposed rule also provides that the obligations under these rules do not affect any other obligations an independent producer may have by law or contract with respect to the insurers it represents. Finally, the proposed rule makes clear that insurance scenarios for new

applicants are to be provided in connection with a premium quotation or application, in a manner so as to be used when the applicant completes the coverage selection form.

Proposed N.J.A.C. 11:3-47.4 sets forth penalties for violations of the subchapter.

The proposed rules implement the intent of the Legislature, set forth in N.J.S.A. 17:29A-52, to provide applicants and insureds with information on the effect of different coverage choices on their premiums utilizing scenarios established by the Department. This demonstration of the effect of different coverage options on premiums will enable applicants and insureds to make more informed choices with respect to the automobile insurance coverage they should maintain under the options provided by law.

The Department will review the effect of these rules, including whether the data regarding coverage choices begins to reflect more diverse coverage choices. Should the Department find that these rules are not promoting appropriate coverage choice selections, it may consider future amendments.

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 the intent of the Legislature as set forth in N.J.S.A. 17:29A-52 by providing applicants and insureds with insurance scenarios demonstrating the effect of different coverage choices on premium amounts. This, in turn, will enable applicants and insureds to make more informed choices with respect to the automobile insurance coverage they wish to purchase under the options provided by law.

Purchasing automobile insurance can be a very confusing and stressful experience. Providing consumers with illustrative examples of how different levels of coverage can affect the total premium charged will improve that experience. As a result, consumers will be better informed and equipped with tools that will enable them to better understand their options as they shop for insurance. Moreover, the providing of this information to consumers will enhance their ability to purchase the right coverage for them, which may not necessarily be the most expensive coverage.

Economic Impact

The Department believes that the proposed new rules will have a significant, positive impact on New Jersey consumers. The proposed new rules are designed to increase consumer awareness of auto insurance options and assist consumers in determining which options are most suitable for them. As a result of being provided with the insurance scenarios, insureds will be better able to understand what their insurance dollar is paying for, and to make prudent, informed coverage choices.

The proposed new rules should have a positive economic impact on insureds who currently purchase unnecessary coverage. For example, the rules may facilitate the reconsideration of a decision by a retired senior citizen to purchase wage continuation benefits, or the affirmation by an insured with no substantial assets to protect of an inclination to purchase lower liability coverage. As a result of such decisions, insureds would realize a reduction in premium.

Alternatively, as a result of their receipt of the information contained in the insurance scenarios, certain applicants may decide to purchase additional coverage based upon what they

deem to be a minimal additional cost. Thus, the providing of the insurance scenarios will enhance the ability of consumers to tailor their policies based upon their assessment of the optimum level of coverage for the price they are willing to pay.

Insurers and producers will be required to bear any costs associated with implementing system modifications necessary to provide insurance scenarios as required under these proposed rules pursuant to N.J.S.A. 17:29A-52. The Department, however, does not believe that the proposed new rules will impose an undue burden on insurers or producers. While there may be some additional costs in developing the technology and system modifications necessary to provide the insurance scenarios as set forth in the proposed rules, once the enhanced systems are in place, minimal, if any, additional costs should be imposed. The costs ultimately imposed would be consistent with those associated with providing premium quotations in the normal course of business. Moreover, the rules provide flexibility in that insurers and producers may utilize either a document provided by the Department or develop their own document, consistent with their needs and practices.

Federal Standards Statement

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

Jobs Impact

Although the Department does not anticipate that the proposed new rules 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 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 will 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 private passenger automobile insurance and resident insurance producers representing private passenger automobile insurers in this State. As noted above, small businesses will be required to bear any costs incurred in developing and implementing system modifications to provide applicants and insureds with information on the effects on premium amounts of the various insurance scenarios set forth in the proposed new rules. The Department does not believe that any additional staff or professional services should be required to comply with these new rules, in that the same staff and basic systems currently utilized to provide premium quotations would be utilized in providing the insurance scenarios.

The proposed new rules provide no different compliance requirements based on business size. The proposed new rules implement N.J.S.A. 17:29A-52, which requires insurers to provide insurance scenarios to applicants and insureds demonstrating the effect of different coverage choices on premium amounts. The purpose of this section of the Act is to provide applicants and insureds with information regarding the effect on their premiums of various coverage choices based on multiple insurance scenarios. This goal does not vary based on business size, and variation of compliance requirements based on business size would not be feasible or consistent with the intent of the Legislature as set forth in N.J.S.A. 17:29A-52. 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 47. INSURANCE SCENARIOS

11:3-47.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the requirements for the provision by private passenger automobile insurers and insurance producers of insurance scenarios to new applicants and insureds pursuant to N.J.S.A. 17:29A-52.

(b) This subchapter shall apply to all insurers transacting personal private passenger automobile insurance in this State and licensed insurance producers.

(c) The requirements of this subchapter shall not apply to transactions where a new applicant for insurance specifically requests to purchase a basic policy as provided in N.J.S.A. 39:6A-3.1 or a special policy as provided in N.J.S.A. 39:6A-3.3.

11:3-47.2 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.

“Department” means the New Jersey Department of Banking and Insurance.

“Insurer” means an entity authorized or admitted to transact insurance business in this State pursuant to N.J.S.A. 17:17-1 et seq. or 17:32-1 et seq., as applicable. “Insurer” includes the Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 et seq. and N.J.A.C. 11:3-2.

“Insurance producer” means a person licensed under the laws of this State to sell, solicit or negotiate insurance.

“Personal private passenger automobile insurance” means direct insurance on automobiles as defined in N.J.S.A. 39:6A-2.

11:3-47.3 Insurance scenarios

(a) Pursuant to N.J.S.A. 17:29A-52, insurers and insurance producers shall provide insurance scenarios in accordance with this subchapter.

1. Every insurer writing private passenger automobile insurance in this State as a direct writer or through insurance producers employed by that insurer or retained to represent that insurer exclusively shall provide each new applicant seeking automobile insurance, and each insured upon request, with a document or documents that describe at least three insurance scenarios demonstrating the effect of different coverage choices. For new applicants, the insurance scenarios shall be provided in connection with a premium quotation or application and prior to execution of the Coverage Selection Form required by N.J.A.C. 11:3-15. For existing insureds, the insurance scenarios shall be provided upon request. The types of coverage to be utilized in providing the scenarios shall be as set forth in this section.

2. Every insurance producer that is not employed by an insurer or retained to represent one insurer exclusively (that is, an independent insurance producer) shall provide each new applicant seeking automobile insurance, and each insured upon request, with a document or documents that describe at least three insurance scenarios as set forth in (a)1 above. An independent insurance producer shall provide a minimum of three insurance scenarios under this rule irrespective of the number of insurers it may represent. Nothing in this subchapter is

intended to affect or modify the duties of an independent insurance producer with respect to any obligations he or she may owe to one or more insurers as a result of any agency relationship or contract with an insurer.

(b) Coverage limits included in each insurance scenario shall meet the minimum limits of coverage as required by law, and may be modified as required to satisfy coverage requirements for leased or financed vehicles for which coverage is sought. Insurance scenarios shall reflect the approximate cost of purchasing such limits of coverage, and shall not be deemed to be binding quotes.

(c) The three insurance scenarios shall be as follows:

1. Scenario 1 shall reflect choices of Bodily Injury Liability coverage under N.J.S.A. 39:6A-3, for example, the basic policy established by N.J.S.A. 39:6A-3.1 the limitation on lawsuit and no limitation on lawsuit options pursuant to N.J.S.A. 39:6A-8; and policy limits options, including options on uninsured and underinsured motorist coverage;

2. Scenario 2 shall reflect choices related to the Personal Injury Protection coverage under N.J.S.A. 39:6A-4, for example, the medical coverage only option; the healthcare primary option; and policy limits options; and

3. Scenario 3 shall reflect choices related to Physical Damage coverage options, for example, the option not to purchase Physical Damage coverage; various deductible options; and the named driver exclusion option.

(d) The insurance scenarios provided may contain the following statement: “Insurance scenarios are intended to further educate consumers about the choices available to them, are not binding quotes, and do not necessarily represent the recommendations of the producer or insurer.

(e) An insurer or producer shall satisfy the requirements of this subchapter by either:

1. Providing the applicant or insured with three applicable generic insurance scenarios, as set forth in (c) above, from among a selection of at least nine scenarios that reflect coverage choices appropriate to certain kinds of applicants, for example, three that are applicable to families; three that are applicable to single drivers; and three that are applicable to senior citizens, or three that are applicable to households with one, two or three or more drivers, or with one, two or three or more vehicles to be insured. The premium amounts associated with each scenario may be expressed either in an approximate dollar amount or as a percentage difference;

2. Providing the applicant or insured with three insurance scenarios, as set forth in (c) above, which are produced by an electronic data system based upon the individual characteristics and circumstances of the applicant or insured as indicated in information they provide to the insurer or producer. The premium amounts associated with each scenario may be expressed either in an approximate dollar amount or as a percentage difference; or

3. Providing the applicant or insured with three insurance scenarios, as set forth in (c) above, on a document developed by the Department and available on the Department's website, www.nj.dobi.org, and entering appropriate premium amounts where indicated.

(f) The document developed by the Department may be revised from time to time in order to reflect current market conditions, prevalent consumer choices and the cost-saving features of particular coverage options. The Department shall notify insurers and producers of any changes to its document by Bulletin, which also will be posted on the Department website.

(g) Nothing in this subchapter shall be deemed to prevent an insurer or producer from offering additional insurance scenarios to consumers as the insurer or producer deems appropriate.

11:3-47.4 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.

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