

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF PROPERTY AND CASUALTY

Basic Automobile Insurance Policy

Adopted Amendments: N.J.A.C. 11:3-3.2 and 3.3

Proposed: June 5, 2006 at 38 N.J.R. 2376(a)

Adopted: April 11, 2007 by Steven M. Goldman, Commissioner, Department of Banking and Insurance

Filed: April 12, 2007 as R. 2007 d.151, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:29D-1 and 39:6A-3.1

Effective Date: May 7, 2007

Expiration Date: June 7, 2011

Summary of Public Comments and Agency Responses:

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

1. New Jersey Manufacturers Insurance Group;
2. The Independent Insurance Agents and Brokers of New Jersey;
3. The Professional Insurance Agents of New Jersey;
4. The Insurance Council of New Jersey; and
5. The Property Casualty Insurers Association of America.

COMMENT: One commenter, while agreeing that the basic policy should be written through the Personal Automobile Insurance Plan (PAIP) through a limited assignment distribution (LAD) carrier, believed that the Department should require that all basic policies be written by LAD carriers through the PAIP.

RESPONSE: Upon review of the commenter's concerns, the Department has determined that no change is required. With respect to the comment that all basic policies should be written by LAD carriers through the PAIP, the Department does not believe that this would be appropriate. The purpose of the rule is to provide an optional alternative by which insurers may satisfy the requirement in N.J.S.A. 39:6A-3.1 to provide a basic automobile insurance policy as an option to their insureds or applicants. As was noted in the proposal Summary, the procedures established in these amendments, as well as those that will be included in the Plan of Operation of the PAIP, are designed to encourage private passenger automobile insurers to write basic policies through a servicing carrier. If an insurer wishes to maintain a separate rating system with the 1.35 percent rate cap and has sufficient actuarial experience to justify a basic policy rate, the insurer may continue to write its own basic policies.

COMMENT One commenter noted that carriers have the option to offer physical damage coverage (that is, collision and comprehensive coverage) on basic policies, but that these practices vary across the industry. In light of the fact that there are policies in existence that do include the optional coverage, it should be made clear that the LAD carriers will be required to offer all of the coverages allowable under a basic policy.

RESPONSE: The Department expects that under the plan of operation to be adopted by the PAIP, all allowable coverages would be required to be offered with respect to basic policies written through a servicing carrier. As a result, the Department believes that no change is required.

COMMENT: One commenter stated that the rules should specify that the PAIP will develop rates, rules and forms for the basic automobile insurance policy to be approved by the Department.

RESPONSE: Upon review, the Department has determined that no change is required. This requirement is already incorporated in the rules, insofar as automobile insurance policies cannot be written without filed policy forms, rates and rules. Indeed, this is noted in the proposal Summary.

COMMENT: One commenter suggested that physical damage coverage, where offered, should be limited to vehicles valued at less than \$60,000, consistent with current PAIP requirements, and that the minimum deductible be at least \$750.00.

RESPONSE: Upon review, the Department has determined that no change is required. The limitations noted by the commenter relate to residual market policies, and do not apply to voluntary market basic policies. Accordingly, the Department does not believe that the limitations suggested would be appropriate.

COMMENT: Several commenters stated that in order to prevent the basic policy program from costing more to administer under LAD carriers than under the present system, the rule should contain language that will ensure rate adequacy and require the program to operate on a break-even basis so that additional industry assessments are not necessary. One commenter further stated that, consistent with this goal, the rules should direct the PAIP to establish and maintain

separate rate levels or tiers for PAIP qualified basic policies as opposed to voluntary eligible basic policies, similar to the voluntary rating tier program. The commenter stated that in light of expense issues that have “plagued” the residual market in the past, the PAIP should be directed to utilize multiple LAD carriers and monitor their activities to maintain industry standards with respect to minimizing expenses. Another commenter specifically stated that rates should be closely monitored and promptly adjusted when necessary.

RESPONSE: The Department recognizes and agrees that the rates established for policies written by the basic policy servicing carrier should be adequate. Indeed, the purpose of the rules is to establish a framework by which sufficient credible actuarial experience may be obtained in order to develop appropriate rates for basic automobile insurance policies. As set forth below in a response to a subsequent comment, however, the Department does not believe that multiple servicing carriers are necessary to properly administer the program.

COMMENT: One commenter stated that the rules should provide for the orderly transfer of voluntary basic automobile insurance policies from individual carriers to PAIP LAD carriers when the program becomes operational. The commenter stated that Department oversight will be necessary because the transition will involve voluntary market policies that are outside of the purview of PAIP, particularly if the transition is to include a systematic non-renewal of such policies.

RESPONSE: The Department agrees that an orderly transition will need to be made in order to minimize any disruptions to policyholders. The Department will determine the appropriate

method to achieve such an orderly transition, which may include provisions in the PAIP Plan of Operation, notifications to policyholders, and/or such other means deemed appropriate to achieve an orderly transition from writing basic policies through a voluntary market insurer to writing such policies through a basic policy servicing carrier.

COMMENT: One commenter suggested that the Department work closely with the PAIP governing board to structure the Plan of Operation for basic policies written through the PAIP to ensure that:

1. All companies electing to transfer the responsibility for servicing basic policies to PAIP share losses in an equitable manner based on voluntary market shares;
2. Rates are adequate to cover losses and expenses; and
3. The PAIP does not become a market of choice, and there is no overall increase in the number of basic policies based upon this change.

With respect to item 3 above, the commenter stated that the plan of operation should strictly limit the placement of basic policies in PAIP based upon the PAIP certified producer having a voluntary company writing automobile insurance who has elected to use a servicing carrier for these policies. The commenter believed that the PAIP should be limited to only those consumers with the most serious driving records who are unable to secure coverage in the voluntary market. The commenter, while recognizing that the Legislature provided for the basic automobile insurance policy in the “prior” marketplace, stated that it has always been concerned that the coverage afforded under the basic policy is so limited that consumers may find themselves in an extremely difficult financial position after a loss. The commenter further stated

that it will address these concerns to the Legislature to determine if the basic automobile insurance policy should continue to be an option.

RESPONSE: Upon review of the comments, the Department has determined that no change is required. The Department agrees that all companies electing to transfer the responsibility for servicing basic policies to a basic policy servicing carrier should share any losses in an equitable manner, and that rates should be adequate to cover losses and expenses. These issues will be addressed in the Plan of Operation, which is subject to review and approval by the Commissioner of Banking and Insurance.

With respect to the comment that the PAIP should not become the market of choice and that there should be no overall increase in the number of basic policies based upon this change, the Department notes that the basic policy may be an appropriate coverage alternative for some insureds. The purpose of the rule is not to limit the coverage options available to insureds, but to help ensure that these coverage options are provided in a cost-effective manner and at uniform, appropriate rates, by eliminating duplication in rating systems and developing credible experience to rate such policies. There has been and will continue to be disclosure of the limitations of the basic policy coverages to applicants.

COMMENT: One commenter, while understanding the Department's rationale for proposing the rule change, opposed the change on the basis that the Department lacks statutory authority to provide for the option of writing basic policies through a basic policy LAD carrier. The commenter stated that neither the statute authorizing the PAIP, N.J.S.A. 17:29D-1, nor the statute authorizing basic insurance policies, N.J.S.A. 39:6A-3.1, contains any provision for the

administration of basic automobile insurance policies by the PAIP. The commenter noted that the statute authorizing the special automobile insurance policy, N.J.S.A. 39:6A-3.3, specifically provides for administration of special automobile insurance policies through the PAIP. In addition, N.J.S.A. 17:29D-1 authorizes a voluntary rating tier to accommodate certain applicants in urban enterprise zones, as well as applicants denied coverage by insurers using alternate underwriting rules. The commenter stated that if the Legislature had intended for the PAIP to administer basic automobile insurance policies, it would have specifically so provided.

In addition, the commenter stated that the proposed rule conflicts with the statute authorizing the PAIP, which prohibits the PAIP from insuring eligible persons, except where specifically authorized. The commenter stated that, with respect to the PAIP, N.J.S.A. 17:29D-1e states that “except for risks written in automobile insurance urban enterprise zones pursuant to subsection i., or risks written pursuant to subsection j. of this section, it shall not provide coverage to an eligible person as defined pursuant to [N.J.S.A. 17:33B-13].”

RESPONSE: The Department believes that there is general authority for allowing basic policies to be written on an optional basis through a basic policy servicing carrier. The rules do not mandate that a basic policy servicing carrier be utilized, but rather merely provide an option to insurers as a means of complying with the statutory requirement to offer such coverage. Regarding the references to N.J.S.A. 17:29D-1e, which prohibits PAIP from insuring eligible persons except where specifically authorized, the Department notes that the basic policy risks are not being written through the PAIP. The losses for basic policies written through a servicing carrier will not be apportioned among all private passenger automobile insurers, but rather only among those transferring their obligation to write basic policies to the basic policy servicing

carrier. In this instance, the PAIP is being utilized as an administrative vehicle, not as the insurer. In this way, the rule helps ensure an efficient marketplace by cutting costs and promoting competition. The option to utilize a basic policy servicing carrier, therefore, is within the Commissioner's discretionary authority to provide for a competitive marketplace. Accordingly, the Department does not believe that the procedure conflicts with the limitations on the actions of the PAIP set forth in N.J.S.A. 17:29D-1e.

COMMENT: One commenter stated that the statutory authorization for the basic automobile insurance policy has expired. N.J.S.A. 39:6A-3.2b provides that the basic policy "shall be offered by every insurer ... for a period of five years after the effective date of [N.J.S.A. 39:6A-1.1 et seq.] ... The commissioner shall report to the Governor and the Legislature regarding the acceptance of the basic automobile insurance policy by the automobile insurance consumers of this State annually for the first four years the basic policy is sold. On or before January 1, 2003, the commissioner shall make a final, cumulative report which shall include recommendations as to the continuation of the basic policy to the Governor and the Legislature."

The commenter stated that a statutory reauthorization of the basic policy was never affected in 2003, and it is unaware if the Department ever filed a report to the Legislature with its recommendations as to whether the basic policy should be continued. The commenter stated that if the Department is concerned about inefficiencies and the accuracy of rates based upon the diffuse and sparse data produced by the low number of basic policies being purchased by automobile insurance consumers, a better approach would be to allow the basic policy option to expire rather than trying to make it more appealing by allowing companies to offer it through PAIP.



RESPONSE: The Department disagrees that the basic policy option was not “reauthorized” by the Legislature. N.J.S.A. 39:6A-3.3b, which was enacted as part of the comprehensive statutory reforms to the private passenger automobile insurance market set forth in P.L. 2003, c.89, effective June 9, 2003, provides: “[a]s an additional option to the mandatory coverage provided in [N.J.S.A. 39:6A-3 and 39:6A-4] or the alternative coverage provided in [N.J.S.A. 39:6A-3.1], an owner or registered owner of an automobile registered or principally garaged in this State, who is an eligible low income individual, may elect a special automobile insurance policy ....” (emphasis added). Accordingly, the Legislature, in authorizing the special automobile insurance policy as an additional option, referenced the basic automobile insurance policy provided in N.J.S.A. 39:6A-3.1 as an alternative coverage currently “provided.” Accordingly, the Department construes this provision as a recognition of, and reauthorization by, the Legislature of the basic automobile insurance policy authorized in N.J.S.A. 39:6A-3.1.

COMMENT: One commenter stated that it is concerned that the proposed rule will increase the burden placed upon PAIP-certified insurance producers who now will be the sole outlet for consumers to obtain basic policies. The commenter stated that writing a basic policy is very time consuming. By allowing only PAIP-certified producers to offer these policies, PAIP producers will be deprived of the opportunity afforded to non-PAIP producers to pursue the sale of other types of insurance. The commenter stated that it is not reasonable to continue to “give insurance companies a break” at the expense of PAIP producers. The commenter further stated that all insurers that write private passenger automobile insurance in this State have done so with the expectation and knowledge that they are required to offer basic automobile insurance policies. It

is not unfair to continue to require insurers to provide the product in the manner originally authorized. Conversely, the commenter stated that it is unfair to ask PAIP producers to pick up the administrative burden of offering these policies on behalf of all insurers, including direct writers, which was not contemplated when the basic policy was originally authorized.

The commenter also stated that if the Department determines to implement the proposed rule, basic policies should be available through all properly licensed producers in the State, not only through PAIP-certified producers that have a contract to write automobile insurance with a voluntary market insurer actively writing new policies, as the PAIP Plan of Operation proposes. The commenter stated that if the Department intends to allow consumers to be able to easily obtain a basic policy, it should not limit the sales channels through which consumers can purchase the policy to just PAIP-certified producers with a company contract.

RESPONSE: Upon review, the Department has determined not to change the provisions. The Department reiterates that the use of a servicing carrier in accordance with the procedures set forth in the amendments and that will be in the PAIP Plan of Operation is optional. It is speculative whether the utilization of the basic policy servicing carrier by direct writers will significantly increase the burdens imposed on PAIP certified producers, as the commenter asserted. The Department also believes that it is appropriate that the PAIP require PAIP-certified producers be utilized when presenting policies to the basic policy servicing carrier, insofar as it facilitates the oversight by the PAIP (as the administrator of the program) of the producers submitting the risks to ensure that such producers are qualified to do so. The Department does not believe that this should impose any undue burden on producers. The Department will, however, monitor the operations of the program, and will propose changes to the rule or require

that the PAIP make modifications to the Plan of Operation if the Department determines that an unfair burden is imposed on producers.

COMMENT: One commenter agreed with the goals of the proposed amendment, but believed the Department's objectives would be better achieved by a statutory change that would make it mandatory that basic policies be administered by PAIP. The commenter believed that this change would benefit consumers by establishing uniform pricing for the basic policy and would make it more accessible to New Jersey policyholders.

Another commenter expressed a similar comment and requested that the Department support such a statutory change.

RESPONSE: The Department does not believe it is necessary to require insurers to write basic policies through a basic policy servicing carrier. However, as noted above and in the proposal Summary, the framework established is designed to encourage insurers to utilize these procedures.

COMMENT: One commenter believed that additional issues will need to be addressed statutorily and by the PAIP Governing Committee in the future.

RESPONSE: The commenter does not specify those additional issues that will need to be addressed. The Department will monitor the operations of the program by which basic policies may be written through a basic policy servicing carrier, and will seek or propose amendments as deemed necessary in the future.

COMMENT: One commenter stated that there have been problems in similar programs that were limited to only one carrier or vendor. The commenter requested that the Department clarify that the amendments will permit more than one LAD carrier to operate. The commenter stated that this would help to move the market to be more competitive.

The commenter further stated that if only one LAD carrier is utilized, there should be an audit process to ensure the company is handling claims appropriately.

RESPONSE: Upon review, the Department believes that no change is required. As noted in the proposal Summary, the number of basic policies being written is relatively small. To the extent that additional basic policy servicing carriers are deemed to be necessary in order to properly administer the program, such carriers may be utilized.

#### 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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