

APPENDIX New Jersey Automobile Insurance Premium Comparison Survey

SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN

11:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Personal Automobile Insurance Plan and any private passenger vehicle that is owned by or driven by a person who meets the definition of an eligible person pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34;

2. To provide for the apportionment of insurance coverage for eligible applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market; and

3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks eligible for coverage under the provisions of this subchapter.

Amended by R.1996 d.58, effective February 5, 1996.
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).
Amended by R.1996 d.502, effective October 21, 1996.
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

11:3-1.2 Definitions

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

“CAIP” means the Commercial Automobile Insurance Plan pursuant to this subchapter.

“CAIP manager” means the entity employed by the Governing Committee to manage and conduct the administrative affairs of the CAIP on a daily basis.

“Commissioner” means the Commissioner of the New Jersey Department of Insurance.

“Eligible applicant” means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is unable to obtain automobile insurance in New Jersey in the voluntary market and is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute other than the CAIP. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver’s license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

“Emergency type vehicle” means any land vehicle, used to respond to distress calls, fires, or rescue, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars and ambulances.

“Gross participation” means a participant’s Voluntary All Other Automobile Direct Written Premiums derived from information contained in the annual statement times a fraction, the numerator of which is the sum of the plan’s total written premiums for that year and the Statewide total Voluntary All Other Automobile Direct Written Premiums which are eligible for depopulation credit for that policy year, and the denominator of which is the Statewide total Voluntary All Other Automobile Net Direct Written Premiums of all participants for that second prior year.

“Light truck” means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

“Motor vehicle” means any land vehicle propelled otherwise than by muscular power including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

“Net participation” means a participant’s gross participation for that policy year less its business eligible for depopulation credit for that policy year.

“Net participation percentage” means a participant’s net participation for that policy year in proportion to the comparable Statewide total net participation for all participants.

“Operating headquarters” means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive offices are, corporate decisions are made and corporate functions are performed.

“Participant” means an insurer licensed and authorized to write motor vehicle liability and physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

“Policy year” means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

“Private passenger automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any voluntary or residual market mechanism created by statute, and is owned by an individual or husband and wife; or owned jointly by two or more relatives other than husband and wife; or owned jointly by two or more resident individuals; or owned by a corporation, partnership and unincorporated association, governmental agency, or registered to a professional designation (that is, T/A, PA or P.C.) where such autos are furnished to individuals and not used for business purposes.

“Private passenger type automobile” means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership or any other entity except an individual or husband and wife.

“Voluntary All Other Automobile Direct Written Premiums” means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

1. CAIP direct written premiums included in the figures which the participant wrote as a service carrier for CAIP;
2. Any direct written premiums included in the figures from insureds who are eligible applicants for any residual market mechanism created by statute other than the CAIP.
3. Any reinsurance premiums assumed from other insurers included in the figures; and
4. Any premiums for Death and Disability coverage included in the figures.

Amended by R.1991 d.45, effective February 4, 1991.

See: 22 N.J.R. 1678(a), 23 N.J.R. 306(b).

Deleted definition of NJAFIUA and references to it; added text to definitions for “Private passenger automobile” and “Voluntary All Other Automobile Direct Written Premiums.”

Amended by R.1996 d.502, effective October 21, 1996.

See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

11:3-1.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of automobile insurance for qualified applicants to be known as the Commercial Automobile Insurance Plan hereafter referred to as “CAIP.”

(b) CAIP shall be administered by the governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) Every insurer admitted to transact and transacting motor vehicle insurance in the State of New Jersey shall

participate in CAIP to the extent required by this subchapter and the plan of operation.

Amended by R.1996 d.502, effective October 21, 1996.
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

11:3-1.4 Governing committee

(a) CAIP shall be administered by a governing committee of 14 members.

1. Eight members shall be salaried employees of an insurer which is a participant of CAIP.

2. Three members shall be licensed producers.

3. One member shall be public representative who is knowledgeable about automobile insurance matters but who is not employed by, or otherwise affiliated with, insurance producers, or other entities of the insurance industry.

4. One member shall be a salaried employee of a servicing carrier for the CAIP, provided that neither the servicing carrier nor any affiliate of the servicing carrier otherwise serves as a member of the governing committee.

5. The Commissioner or his or her designee shall be an ex-officio member of the committee.

(b) The following organizations shall each nominate two members to represent participants of CAIP:

1. The Alliance of American Insurers;
2. The American Insurance Association; and
3. The National Association of Independent Insurers.

(c) Participants which are not members of the organizations in (b) above shall nominate two members to represent participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;
2. Insurance Brokers Association of New Jersey; and
3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner and shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) The governing committee of the existing Commercial Automobile Insurance Plan shall act as the governing committee for CAIP until the CAIP governing committee is appointed pursuant to this section.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(h) Pursuant to this subchapter and the plan of operation, the governing committee shall have the following duties:

1. To assume the assets and liabilities of the Commercial Automobile Insurance Plan on behalf of the member insurers;

2. To assume the rights and obligations of the Commercial Automobile Insurance Plan on behalf of the member insurers;

3. To develop and submit for approval by the Commissioner.

i. A plan of operation; and

ii. A rating system, including rates, rules and forms;

4. To appoint, conditionally appoint or terminate:

i. A CAIP manager subject to approval by the Commissioner, which shall be located in this State;

ii. At least two servicing carriers; and

iii. Other employees, professionals, and contractors required to administer CAIP.

5. Enter into and/or negotiate contracts as are necessary or proper to carry out the provisions of this subchapter;

6. Sue or be sued in the name of the CAIP, including taking any legal actions measuring or proper for recovery of any assessments for, on behalf of or against members. A judgment against the CAIP shall not create any direct liability against the governing committee or its individual members, or the individual participating members of the CAIP.

7. To budget expenses, levy assessments, and disburse funds;

8. To investigate complaints and hear appeals from applicants, insureds, producers, servicing carriers or participants about any matter pertaining to the proper administration of the CAIP;

9. To arrange for an independent audit of CAIP each year which shall include all servicing carriers;

10. To furnish all participants with:

i. An annual written operations report;

ii. The approved annual budget upon request;

iii. A copy of the annual audit upon request;

iv. A copy of the plan of operation, and all amendments;

v. A copy of all rates, rules and manuals upon request; and

vi. A copy of the minutes from all meetings upon request;

11. To audit the records of any participant relating to the subject matter of CAIP and establish such policies, records, books of account, documents and related material which shall be maintained for the proper administration of CAIP;

12. To perform such other functions as may be necessary and proper to administer CAIP in accordance with this subchapter and the approved plan of operation;

13. To indemnify on behalf of the member insurers each member of the governing committee, and employees for any and all claims, suits, costs of investigations, costs of defense, settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. CAIP shall refuse to indemnify if it determines that the act or failure to act was due to actual fraud, willful misconduct or actual malice.

14. Appoint from among its members or from qualified nonmembers appropriate legal, actuarial, claims, and other committees as necessary to provide technical assistance in the operation of the CAIP, policy and other contract design, and any other function within the authority of the CAIP;

i. The Commissioner or his or her designee may serve as an ex-officio, non-voting member of any committee (except the appeals subcommittee) established pursuant to this section.

Amended by R.1996 d.502, effective October 21, 1996.
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Case Notes

Commissioner lacked authority to create Appeals Subcommittee composed of industry employees to hear premium disputes under policies issued pursuant to Commercial Automobile Insurance Plan. *Chopper Exp., Inc. v. Department of Ins. of State of N.J.*, 293 N.J.Super. 536, 681 A.2d 1226 (A.D.1996).

11:3-1.5 Participation

(a) At the end of each fiscal period, CAIP's operating profit or loss shall be determined separately for each policy year. Profit shall be credited or distributed to each participant and loss shall be charged against each participant in proportion to each participant's "net participation percentage" for the second prior year which resulted in the profit or loss.

(b) All data necessary to comply with the foregoing participation procedures shall be reported to the CAIP's central statistical agent in the manner described in the approved statistical plan.

(c) Groups of participants under the same ownership and management shall be treated as a single participant. Groups of participants under either the same ownership or

management, but not both, may elect to be treated either separately or as a single company.

(d) In the event a participant discontinues writing motor vehicle liability or physical damage insurance in this State and retains its certificate of authority to write such business, it shall continue to pay assessments, provided, however, that if the automobile liability or physical damage business of a participant discontinuing the writing of automobile liability or physical damage insurance in this State has been purchased by, transferred to, or reinsured by another company, the latter shall receive the assessments of the former.

(e) In the event a participant is merged with another company or there is a consolidation of companies, the continuing company shall receive the assessments of the company merged or consolidated, provided, however, the continuing company may be relieved from such obligations if another company has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(f) Participation shall be suspended upon order of the Commissioner of Insurance if he or she finds that such action is required by the financial condition of that participant.

(g) All participants in CAIP shall participate in the business written by the Commercial Automobile Insurance Plan pursuant to an approved plan of operation.

Amended by R.1996 d.502, effective October 21, 1996.
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

11:3-1.6 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient provision of automobile insurance to eligible applicants. The plan of operation shall provide for, among any other matters:

1. The internal organization and proceedings of the governing committee;
2. Standards and procedures for the appointment, compensation, and termination of and performance standards for servicing carriers, the CAIP manager, other employees, professionals and contractors required to administer CAIP along with a producers certification program;
3. The extent of coverage to be offered by CAIP to eligible applicants;
4. Procedures to apply for coverage;
5. Premium rules, surcharges and minimum premiums;
6. Procedures for handling premium charge-offs;
7. Procedures for the performance of preliminary premium audits on certain risks identified by the governing committee and approved by the Commissioner;
8. Procedures for a servicing carrier performance audit program;

9. Establishment of a Producer Compliance Unit which shall report directly to the CAIP manager;

10. The amount of commissions to be paid producers;

11. Provisions for the cancellation or the nonrenewal of policies;

12. Methods and means for the collection, investment and disbursement of funds;

13. Development and maintenance of a statistical plan, and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation;

14. A voluntary depopulation credit program which shall be used in calculating a participant's net participation for the CAIP;

15. Procedures for the provision of coverage to good faith applicants where a producer has violated plan rules; and

16. Development of a basic servicing carrier contract and procedures for making modifications to that contract.

(b) For the purpose of conformance with the amendments to this chapter effective October 21, 1996, the governing committee shall, by January 19, 1997, submit to the Commissioner, for his or her review and approval, proposed revision to the plan of operation. The governing committee may propose amendments to the plan of operation at any time.

(c) The proposed plan and any amendments shall be reviewed by the Commissioner and approved by him or her if he or she finds it fulfills the purposes provided by this subchapter. If approved, the Commissioner shall certify approval to the governing committee and the plan of operation or amendments shall take effect 10 days after such certification.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment he or she shall return same to the governing committee with a statement, that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation by 90 days from the effective date of these amendments or a new plan which is acceptable to the Commissioner within 90 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee.

3. Any such plan approved by the Commissioner shall take effect 10 days after the certification to the governing committee; provided, however, that until a plan of operation is in effect pursuant to the provisions of this subchapter, the existing Commercial Automobile Insurance Plan temporary placement facility shall be continued in effect. Each participant shall continue to comply with the Commercial Automobile Insurance Plan with respect to all business written under the procedure prior to the effective date of the CAIP plan of operation.

(d) The Commissioner may propose an amendment to the plan of operation by communicating the proposed amendment to the governing committee. If the governing committee does not adopt amendments acceptable to the Commissioner within 30 days, the Commissioner may certify amendments with an effective date to the governing committee. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposed amendments are provided to the governing committee.

Amended by R.1996 d.502, effective October 21, 1996.
See: 27 N.J.R. 4489(a), 28 N.J.R. 4586(a).

Case Notes

Former New Jersey assigned risk scheme in automobile liability coverage mentioned in discussion of methods available to a state to deal with the social consequences of adverse risk selection. *Owens v. Aetna Life & Casualty Co.*, 654 F.2d 218 (3rd Cir.1981), certiorari denied 102 S.Ct. 657, 454 U.S. 1092, 70 L.Ed.2d 631 (1981).

Broker who mailed application for automobile insurance after expiration of prior policy was not de facto agent of servicing insurer under assigned risk plan and lacked authority to bind servicing insurer. *Rodriguez v. Hudson County Collision Co.*, 296 N.J.Super. 213, 686 A.2d 776 (A.D.1997).

11:3-1.7 Coverage

(a) CAIP shall provide to eligible applicants, bodily injury liability and property damage liability coverages as follows:

1. CAIP shall provide basic combined single limit of \$35,000 and statutory uninsured motorist coverage except:

i. When limits in excess of the basic combined single limit of \$35,000 are required by law, the plan shall offer limits adequate to comply with the minimum requirements of that law, except with respect to limits over \$5 million in which case excess coverage is conditioned upon the plan being able to secure facultative reinsurance. CAIP shall provide a policy for limits less than the minimum requirements of the law when evidence of adequate excess insurance is provided by the producer or the insured.

ii. CAIP shall provide limits adequate to comply with the provisions of the financial responsibility law of any state in which the motor vehicle will be operated, but only while the vehicle is being operated in that state.

iii. CAIP shall also offer the optional limits of liability as specified in the plan of operation.

(b) CAIP shall offer to eligible applicants, additional uninsured or underinsured motorist coverage as follows:

1. Additional uninsured and underinsured motorist coverage shall be provided as an option to the named insured up to the limits set forth in N.J.S.A. 17:28-1.1b and subject to the deductibles specified in the plan of operation. The limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage respectively.