

§2325-B. Mandatory property and casualty insurance market assistance program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Basic property and casualty insurance" means policies that insure against loss or damage to real property that is used for residential purposes, is owner-occupied and consists of not more than 4 apartments, and that may also insure against loss or damage to tangible personal property and the legal liability of a natural person or persons for loss of, damage to or injury to persons or property. "Basic property and casualty insurance" may include standard homeowners package property and liability insurance, functional replacement homeowners package insurance, dwelling fire policies and extended coverage policies. "Basic property and casualty insurance" does not include automobile insurance, workers' compensation insurance or insurance primarily covering risks arising from the conduct of a commercial or industrial enterprise. [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. "Governing committee" means the committee established to operate the program pursuant to subsection 5. [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. "Member insurer" means an authorized insurer who is required to be a member of the program in accordance with subsection 3. [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. "Modified policy form" means any new or amended policy form developed by member insurers for risks written through the program. [PL 2003, c. 671, Pt. B, §2 (NEW).]

E. "Modified rate" means any new or amended rate or rating rule developed by member insurers for risks written through the program. [PL 2003, c. 671, Pt. B, §2 (NEW).]

F. "Modified policy form and rate filing" and "modified filing" mean any modified policy form and modified rate filed with the superintendent under subsection 9. [PL 2003, c. 671, Pt. B, §2 (NEW).]

G. "Net direct premiums" means gross direct written premiums on basic property and casualty insurance in this State less return premiums upon cancelled contracts, irrespective of reinsurance assumed or ceded. [PL 2003, c. 671, Pt. B, §2 (NEW).]

H. "Program" means the mandatory property and casualty insurance market assistance program described in this section. [PL 2003, c. 671, Pt. B, §2 (NEW).]

I. "Underserved areas or risk types," "underserved areas" and "underserved risk types" mean specific geographic areas or property risk types in this State that the superintendent designates by rule as not having reasonable access to basic property and casualty insurance. [PL 2003, c. 671, Pt. B, §2 (NEW).]

[PL 2003, c. 671, Pt. B, §2 (NEW).]

2. Authority to establish program. If the superintendent establishes a voluntary market assistance plan in accordance with section 2325-A to increase the availability of basic property and casualty insurance in this State and the superintendent determines after a public hearing that the number of insurers participating in the voluntary market assistance plan is insufficient or that a sufficient number of risks has not been written through the plan, then the superintendent may establish a mandatory property and casualty insurance market assistance program in accordance with this section. The superintendent shall adopt rules regarding the level of insufficient participation in the voluntary market assistance plan that is necessary for the establishment of a program under this section. The provisions in the rules governing a determination of insufficient participation in the voluntary market assistance plan must take into account the length of time the voluntary market assistance plan is operational.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

3. Mandatory insurer participation. All insurers, except eligible surplus lines insurers, authorized to write and engaged in writing in this State, on a direct basis, basic property and casualty insurance shall cooperate in organizing a program as required by subsection 4. Every such insurer must be a member of the program and remain a member as long as the insurer has net direct premiums on basic property and casualty insurance in this State.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

4. Required action by superintendent. If the superintendent determines that a program under this section should be established in accordance with the requirements of subsection 2, the superintendent shall:

A. Order member insurers to cooperate in the organization of the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Appoint the members of the governing committee in accordance with subsection 5; [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. Order the governing committee to develop a proposed plan of operation for the program in accordance with subsection 6, including a deadline for the submission of the plan; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. Initiate rulemaking in accordance with subsection 8. [PL 2003, c. 671, Pt. B, §2 (NEW).]
[PL 2003, c. 671, Pt. B, §2 (NEW).]

5. Governing committee. The governing committee of the program consists of 8 members as follows:

A. Five members appointed by the superintendent who are full-time employees of member insurers; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Two members appointed by the superintendent who are licensed producers with property and casualty authority; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. The superintendent or the superintendent's designee, who serves as an ex-officio, nonvoting member. [PL 2003, c. 671, Pt. B, §2 (NEW).]

The terms of members of the governing committee and process for filling vacancies must be established in the plan of operation pursuant to subsection 6.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

6. Plan of operation. The program must be operated by the governing committee established under subsection 5 pursuant to a plan of operation approved by the superintendent. The governing committee shall develop a plan of operation and submit the plan to the superintendent for approval. If the superintendent disapproves the proposed plan of operation, the governing committee must, within 30 days, submit for review an appropriately revised plan of operation and, if the governing committee fails to submit such a plan or if the revised plan is also disapproved by the superintendent, the superintendent must develop a plan of operation consistent with this section. The governing committee may, on its own initiative or at the request of the superintendent, amend the plan of operation with the approval of the superintendent.

The plan of operation must:

A. Adopt a mechanism for the equitable apportionment of risks under the program, including the equitable distribution among member insurers of applications for basic property and casualty insurance to cover underserved areas or risk types from eligible applicants who are in good faith entitled to but who are unable to procure basic property and casualty insurance through ordinary methods in the voluntary admitted market; [PL 2003, c. 671, Pt. B, §2 (NEW).]

- B. Establish a methodology for the calculation and the payment of fees or commissions to producers with respect to eligible risks written through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- C. Require that member insurers write basic property and casualty insurance for eligible applicants to cover underserved areas or risk types in accordance with each member insurer's underwriting guidelines and rating rules applicable to risks written through the program to the extent not inconsistent with reasonable underwriting and rating rule limitations contained in rules adopted by the superintendent under subsection 8; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- D. Permit the use of rate filings and policy forms by member insurers, including:
- (1) The ability for member insurers to use existing forms and rates to write basic property and casualty insurance in the program;
 - (2) The authority for member insurers to file modified policy forms and modified rates in accordance with subsection 9, including permissible surcharges on those policies in accordance with limits established by the superintendent by rule; and
 - (3) The authority for the program to develop uniform policy forms and rates for use by member insurers subject to approval of the superintendent and the requirements of subsection 9; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- E. Establish a procedure for the possible future creation of a risk pooling arrangement or reinsurance program for the distribution of the losses and expenses of basic property and casualty insurance written through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- F. Provide that a member insurer is entitled to receive credit for voluntarily writing basic property and casualty insurance in underserved areas or on underserved risk types and that the participation in the program of an insurer who does so must be reduced in accordance with the mechanism of apportionment and distribution established under paragraph A; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- G. Establish a grievance process for applicants for insurance, insureds and member insurers with the program and a right to appeal those grievances to the superintendent after an initial decision by the governing committee; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- H. Establish procedures for the inspection of properties by or on behalf of member insurers; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- I. Establish a uniform process to inform owners of property in underserved areas or of underserved risk types of the specific circumstances and property characteristics that affect the insurability of the property including recommendations for improving the insurability of the property; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- J. Require that in order for an applicant to purchase basic property and casualty insurance through the program, the applicant must produce proof of 2 declinations from authorized insurers other than eligible surplus lines insurers, to write insurance on the property. The plan of operation must allow one of the declinations to be in the form of a cancellation or nonrenewal notice unless coverage has been ordered to stay in effect pending the outcome of a hearing before the superintendent, in which case the cancellation or nonrenewal notice may only be used as a declination in the person's application to the program if the decision in the hearing is in favor of the insurer; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- K. Establish a finite list of reasons a policy issued through the program may be cancelled, which may include nonpayment of premium, fraud or material misrepresentation; [PL 2003, c. 671, Pt. B, §2 (NEW).]

L. Stipulate that cancellation of policies issued through the program may not be effective less than 20 days after receipt by the insured of the notice of cancellation or, if the cancellation is for nonpayment of premium, may not be effective less than 10 days after receipt by the insured of the notice of cancellation and that a postal certificate of mailing to the named insured at the insured's last known address is conclusive proof of receipt on the 5th calendar day after mailing; [PL 2003, c. 671, Pt. B, §2 (NEW).]

M. Establish eligibility criteria for policies issued through the program, except that any eligibility criteria may not be inconsistent with the purposes for establishing the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

N. Establish the limits of liability a member insurer is required to assume, except that for any policy issued through the program, the maximum amount of coverage for a dwelling on a residence premises does not exceed \$300,000, the maximum limit for any liability coverage does not exceed \$300,000 and any limits of liability for additional coverages, including coverage for loss or damage to other structures or tangible personal property or for loss of use, may not count toward the maximum coverage limits applicable to the dwelling or any liability coverage; [PL 2003, c. 671, Pt. B, §2 (NEW).]

O. Establish procedures for the efficient, economical, fair and nondiscriminatory administration of the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

P. Authorize the governing committee to assess member insurers for reasonable expenses incurred in administering the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

Q. Establish procedures to govern a member insurer's withdrawal from the program; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

R. Include any other procedures or operational matters considered necessary by the governing committee with the approval of the superintendent. [PL 2003, c. 671, Pt. B, §2 (NEW).]

[PL 2003, c. 671, Pt. B, §2 (NEW).]

7. Operation of program contingent upon approval. The program may not become operational until rules have been adopted as required by this section and the superintendent has approved the plan of operation in accordance with subsection 6.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

8. Rulemaking. In accordance with subsection 4, the superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A. Rules adopted under this section may include:

A. The designation of underserved areas or risk types; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Reasonable limitations on underwriting guidelines applicable to all member insurers for the issuance of basic property and casualty insurance through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. A writing level based on net direct premiums under which an insurer may seek to limit its participation or seek exemption from participation in the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. Maximum allowable caps on rating surcharges and limitations on rating rules for risks written through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

E. The process by which the superintendent may suspend or terminate the program; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

F. Any other provisions necessary to implement the requirements of this section. [PL 2003, c. 671, Pt. B, §2 (NEW).]

[PL 2003, c. 671, Pt. B, §2 (NEW).]

9. Modified policy form and rate filings. A modified policy form and modified rate developed by a member insurer must be filed with the superintendent. A modified rate to be used in connection with an existing policy form that consists solely of a permissible surcharge not in excess of the maximum allowable cap contained in rules adopted under subsection 8 may be used by a member insurer immediately upon filing that modified rate with the superintendent. For any other modified filings, a modified policy form and modified rate must be filed with the superintendent not less than 30 days in advance of the stated effective date. A modified rate filing subject to the 30-day advance filing requirement must include any supplementary rating information to be used in conjunction with a rate and, to the extent available, sufficient supporting information to support a rate. A modified rate may not be excessive, inadequate or unfairly discriminatory with respect to risks written through the program. A modified policy form may only be disapproved for the grounds specified in section 2413. All modified policy form and rate filings are confidential until approved in accordance with applicable law.

[PL 2011, c. 320, Pt. A, §9 (AMD).]

10. Immunity from liability for inspections. There is no liability on the part of, and a cause of action does not arise against, member insurers, the program or the governing committee or agents or employees of any of them or the superintendent or the superintendent's authorized representatives with respect to any inspections to be undertaken by this section or for any acts or omissions in connection with those inspections or for any statements made in a report or communication concerning the insurability of the property.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

11. Superintendent's authority to suspend. In the event of impairment or serious financial difficulty of a member insurer, the superintendent may suspend the application of the provisions of this section from applying to the financially distressed member insurer.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

12. Expiration of program. A program established by the superintendent pursuant to this section expires 2 years from the date the program becomes operational unless terminated earlier by the superintendent or unless, after a public hearing, the superintendent determines, based on clear and convincing evidence, that continued operation of the program is necessary to address the unavailability of basic property and casualty insurance for underserved areas or risk types. For purposes of this subsection, the program becomes operational on the effective date of the first policy issued through the program. If the superintendent finds that continued operation of the program is necessary, then any person insured under the program must reapply for coverage as new business under the program at the next renewal date occurring after the date of the superintendent's order to continue the program. Any policy written through the program that is in force when the program is terminated continues in force until its stated expiration date in accordance with the terms and conditions of the policy and the provisions in the plan of operation.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

13. Powers of superintendent. In addition to any powers conferred upon the superintendent by this or any other law, the superintendent has authority to supervise the program and may:

A. Examine and investigate the operation of the program and member insurers through free access to all the books, records, files, papers and documents relating to their operation and may summon, qualify and examine as witnesses all persons having knowledge of such operations, including the governing committee and its officers, employees and agents; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Require reports from the program, the governing committee and member insurers concerning risks insured through the program as the superintendent considers necessary; [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. Approve or disapprove modified policy forms, modified endorsements, modified rates and modified rating and rule manuals for use by member insurers; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. Suspend or terminate the program in accordance with subsection 12 and any process established by rule. [PL 2003, c. 671, Pt. B, §2 (NEW).]
[PL 2003, c. 671, Pt. B, §2 (NEW).]

14. Penalties for violations. The superintendent may take any action permitted under section 12-A against a member insurer or any other person required to be licensed under this Title who violates this section or any other applicable law or rule.
[PL 2003, c. 671, Pt. B, §2 (NEW).]

15. Annual report. On or before March 31st of each year, the governing committee shall submit a report detailing the program's operations for the previous calendar year to the superintendent and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters. The annual report is a public record within the meaning of Title 1, chapter 13, subchapter 1.
[PL 2003, c. 671, Pt. B, §2 (NEW).]

16. Applicability of provisions. Insurance provided through the program is subject to all other laws relating to that type of insurance, except policies issued through the program are not subject to section 3007 or to chapter 41, subchapter 5. In the event there is a conflict between any express provision in this section and any other applicable law, then the provisions of this section control. Notwithstanding sections 2162 and 2303, a member insurer may utilize underwriting guidelines, modified policy forms, modified rates and rating rules that differ from its voluntary business with respect to insurance issued through the program, as long as the program underwriting guidelines, modified policy forms, modified rates and rating rules comply with this section, the plan of operation and the rules adopted by the superintendent.
[PL 2003, c. 671, Pt. B, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 671, §B2 (NEW). PL 2011, c. 320, Pt. A, §9 (AMD).

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