

## §4609. Assessments

**1. Assessments; collection.** For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. Assessments are due not less than 30 days after prior written notice to the member insurers and accrue interest at 10% annually on and after the due date.

[PL 2005, c. 346, §7 (AMD); PL 2005, c. 346, §16 (AFF).]

### **2. Classes of assessments.**

[PL 2005, c. 346, §7 (RP); PL 2005, c. 346, §16 (AFF).]

**2-A. Classes of assessments.** There are 2 classes of assessments, as set out in this subsection.

A. Class A assessments are authorized and called for the purpose of meeting administrative costs and other general expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer. [PL 2005, c. 346, §7 (NEW); PL 2005, c. 346, §16 (AFF).]

B. Class B assessments are authorized and called to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired or an insolvent insurer. [PL 2005, c. 346, §7 (NEW); PL 2005, c. 346, §16 (AFF).]

[PL 2005, c. 346, §7 (NEW); PL 2005, c. 346, §16 (AFF).]

### **3. Determination of assessments.**

[PL 2005, c. 346, §7 (RP); PL 2005, c. 346, §16 (AFF).]

**3-A. Determination of assessments.** Assessments must be determined as follows:

A. The amount of any Class A assessment, as described in subsection 2-A, for each account must be determined by the board of directors and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, it must be allocated in the same proportions as a Class B assessment under paragraph C, and the board has the power to credit it against future Class B assessments. [PL 2017, c. 382, §25 (AMD).]

B. [PL 2017, c. 382, §25 (RP).]

C. Class B assessments, as described in subsection 2-A, must be allocated as follows.

(1) Except for assessments related to long-term care insurance that are subject to allocation under subparagraph (2), the amount of the assessment must be allocated among the accounts pursuant to an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board of directors in its sole discretion as being fair and reasonable under the circumstances.

(2) The amount of any Class B assessment for liabilities arising out of long-term care insurance written by the impaired or insolvent insurer, if the impairment or insolvency is declared on or after July 1, 2018, must be allocated among the accounts according to a methodology included in the plan of operation and approved by the superintendent. The methodology must provide for 50% of the assessment to be allocated to member insurers that are health insurers and 50% to be allocated to member insurers that are life and annuity insurers.

(3) All Class B assessments must be allocated among member insurers within each account in the proportion that the premiums received by each assessed member insurer, on business in this State covered by the account, bears to premiums received on such business by all assessed member insurers, for the most recent calendar year for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, preceding the year in which the insurer became impaired.

(4) Health maintenance organizations are not subject to Class B assessments arising out of impairments or insolvencies declared before July 1, 2018. [PL 2017, c. 382, §25 (AMD).]

D. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2-A and computation of assessments under this paragraph must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. [PL 2005, c. 346, §7 (NEW); PL 2005, c. 346, §16 (AFF).]

E. This subsection may not be a factor in determining whether the protection provided by laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer is substantially similar to the protection provided by this chapter for residents of other states. [PL 2017, c. 382, §25 (NEW).]

[PL 2017, c. 382, §25 (AMD).]

**4. Abatement or deferral of assessments.** The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board of directors, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association. The total of all assessments upon a member insurer for each account may not in any one calendar year exceed 2% of the insurer's premiums in this State on the policies covered by the account. [PL 2005, c. 346, §7 (AMD); PL 2005, c. 346, §16 (AFF).]

**5. Additional assessment for abatements or deferrals.** In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection 4, the amount by which the assessment is abated or deferred must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. [PL 2005, c. 346, §7 (AMD); PL 2005, c. 346, §16 (AFF).]

**6. Refunds.** The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical. [PL 2005, c. 346, §7 (AMD); PL 2005, c. 346, §16 (AFF).]

**7. Consideration of assessments in determining premium rates and dividends.** It is proper for any member insurer in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter. [PL 2005, c. 346, §7 (AMD); PL 2005, c. 346, §16 (AFF).]

**8. Assessment shortfalls.** If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any one account an amount sufficient to make all necessary payments from that account, the shortfall must be assessed as an obligation of the other accounts of the association. Each member insurer's assessment must be in the proportion that its premium for the calendar year preceding the assessment on the kinds of insurance in the accounts to be assessed bears to the total premium of all member insurers for the same calendar year on the kinds of insurance in those accounts. The total of assessments against a member insurer for shortfalls under this section and section 4440 in any one calendar year may not exceed 2% of that member insurer's premiums in this State or for policies covered by the account.

[PL 2005, c. 346, §7 (AMD); PL 2005, c. 346, §16 (AFF).]

**9. Certificate of contribution.** The association shall issue to each insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the superintendent, for the amount of the assessment so paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue.

[PL 2005, c. 346, §7 (NEW); PL 2005, c. 346, §16 (AFF).]

#### SECTION HISTORY

PL 1983, c. 846 (NEW). PL 1989, c. 67, §§12-15 (AMD). PL 1989, c. 751, §12 (AMD). PL 2005, c. 346, §7 (AMD). PL 2005, c. 346, §16 (AFF). PL 2017, c. 382, §25 (AMD).

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