H 3760 - - JUA Modernization Legislation

SOUTH CAROLINA
DEPARTMENT of INSURANCE

History of JUA and PCF

JUA formed in 1975:

To address lack of liability coverage availability for physicians.

PCF formed in 1976:

To offer higher limits of coverage beyond JUA limits.

Both entities accumulated substantial deficits prior to 2004, due to inadequate rates. Present size and membership of each entity inhibits the likelihood of complete deficit elimination.

Weaknesses this legislation was attempting to address

- Substantial remaining deficits in both JUA and PCF.
- JUA assessment method unclear and awkward.
- Both entities need to become true “Market of Last Resort”.
- No longer a need for two separate entities.

H 3760 Addresses each of the Stated Weaknesses

Merges JUA and PCF into one entity:

South Carolina Medical Malpractice Association ("SCMMA") effective January 1, 2020.

Clarifies industry assessment mechanism to address accumulated deficits.

Includes strategy to reduce number of SCMMA insureds over time, transition to market of last resort.

Creates workable methods for assessments to provide necessary funding to pay down the accumulated deficits of both JUA and PCF over time.

Key Features of Legislation

01

Merger of two entities into one.

02

Changes to composition of governing board.

03

Creates mechanisms for transition to “market of last resort”.

04

Creates workable approaches to fund accumulated deficits by assessments on industry participants **and** remaining SCMMA policyholders.

What is “size” of JUA and PCF as of 12/31/2018?

JUA

- Approximately 2,600 insureds
- Annual premium approx. $12.4M
- Deficits approx. $47.5M
- Total assets approx. $17M

PCF

- Approximately 2,600 insureds
- Annual premium approx. $9M
- Deficits approx. $40.6M
- Total assets approx. $10M

Note: Not all JUA policyholders are PCF members but vast majority have coverage from **both**.

Merger of Entities – Highlights

Effective January 1, 2020

- PCF and JUA merge, and the combined entity is renamed SCMMA.
- All obligations and liabilities of PCF and JUA become responsibility of SCMMA.
- PCF wind down activities to be supervised by Department of Insurance.
- Superseded PCF law (Article 5 of Chapter 79) is repealed.

New SCMMA Board – Highlights

New Board has 11 voting members - - appointed by the Governor

- 4 from Insurance Industry (after consultation with 3 largest liability writers)
- 4 from Healthcare Providers (SCMA, SCHA, SCDA, SCNA have input)
- 2 Consumer Representatives
- 1 Agent or Broker
- Director to serve as Board Chairman (non-voting)
- Goal is to have new board members appointed by early Fall of 2019 - - allow them time to “shadow” two existing boards.
- New Board takes control on January 1, 2020.

Transition to Market of Last Resort

38-79-120 (2):

“The intent of the General Assembly is … to transition the association over time to a market of last resort…”

“Specifically, the General Assembly does not intend that [the association] offer rates that are competitive to the private market.”

38-79-180:

Subjects association to follow same rate making process as all other insurers - - with same criteria (i.e., may not be “excessive, inadequate or unfairly discriminatory”).

Market of Last Resort (Continued)

38-79-190 (4):

[After accumulated deficits eliminated] “rates for association must be adequate and established at a level that permits the association to operate as a self-sustaining mechanism.”

38-79-220 (2):

Association policyholders are subject to same percentage assessment as is assessed to private insurance carriers in any given year.

38-79-230:

In addition, beginning in 2021, association policyholders are surcharged an additional 1% per year (not to exceed a maximum of 10%).

There are Four (4) Sources of Funding to Address Accumulated Deficits

1. Assessments against non-healthcare liability writers. (a/k/a the "Exit Tax")

2. Assessments against healthcare liability writers (including surplus lines, brokers, captives and RRG's).

3. Assessments against association in same percentage as healthcare liability writers.

4. Additional 1% per year surcharge on association policyholders (i.e., 1% each year, maximum of 10%).

Assessment against non-healthcare liability writers (a/k/a the "Exit Tax")

- Governed by new Section **38-79-125.**
- Insurers may submit "application to withdraw" to Department.
- Insurers receive assessment equal to percentage of premium in certain commercial liability lines (i.e., CMP, CGL, Boiler/Machinery, Product Liability).
- Personal Lines Writers and those insuring churches are excluded from assessment (i.e., homeowner's, farm owners, automobile liability, etc.)
- Assessments intended to reduce JUA's accumulated deficits by 20%.
- These assessments are only applied to JUA's deficits, not PCF deficits.

Assessments against Healthcare Liability Writers

- Can be 2-6% of net direct written premium for the previous year - - as determined by association board.
- Assessment notice will be sent to each affected insurer (including captive and RRG's writing healthcare liability coverage) 60 days before year end.
- Same percentage is charged to all surplus lines brokers and self procuring insureds.
- Assessment payment due 30 days after end of each calendar quarter.
- Law requires 1% of assessment to be "recovered" from policyholders.
- Initial assessment will be based on 2018 premium writing (approximate market size = $70M, excluding JUA and PCF).
- 2% = $1.4M; 6% = $4.2M

Assessments and Surcharges against SCMMA Policyholders

Once assessment percentage for healthcare liability writers is determined for each year (2%-6%), the same percentage is surcharged to all SCMMA policyholders.

In addition, an additional surcharge of 1% per year (not to exceed 10% maximum) is imposed on SCMMA policyholders) after 2021.

Goal is to reduce SCMMA policyholder count over time.

Also helps create “separation” in rate between SCMMA and private market over time.

Next Steps

Identify
- Identify candidates for “new” SCMMA board of directors.

Inventory
- Inventory all assets, obligations and liabilities of both PCF and JUA in anticipation of merger in January 2020.

Develop
- Develop “application to withdraw” for non-healthcare liability writers.

Obtain
- Obtain most current financial statements from both JUA and PCF before June 30, 2019.

Develop
- Develop assessment notification/ calculation documents for healthcare liability writers.

Questions ?

Contact Us

doi.sc.gov/consumers

south_carolina_doi

(803) 737-6180

@scdoi

consumers@doi.sc.gov

SC Department of Insurance

SOUTH CAROLINA DEPARTMENT of INSURANCE