

A. Measurements

G.L. c.175, §113H requires that CAR propose rules to govern the application of penalties for, among other things, the failure to meet the Performance Standards for the Handling and Payment of Claims by SCs.

The following Performance Standards, approved by the Commissioner of Insurance apply to the Commercial SC Program.

1. Measurements of performance and compliance with the standards are conducted through examinations of claims enhanced by relevant Statistical Plan data and procedures established by CAR. The completion of a questionnaire by the SCs prior to the biennial review provides background information on the claim handling programs established by the SC to comply with the Standards. This will be supplemented at the time of the examination by a review of company internal documentation including but not limited to claim manuals, reserving and claim settlement procedures, and internal audits. In addition to the Statistical Plan data, SCs are required to report savings brought about by SIU activities for physical damage, bodily injury, and personal injury protection claims.
2. SCs are evaluated on the effectiveness of their claim handling in meeting industry best practices as well as for their compliance with the Performance Standards and the NAIC Standards. SCs are measured against the benchmarks listed and industry averages as well as their own prior performance. Both quantitative and qualitative aspects of the claims process are evaluated. The most readily quantifiable standards are the ones that involve specific timeframes, averages, and counts. Other standards are qualitative such as reserving, medical management, evaluation, and settlement. The benchmark for compliance with the best practices and standards is 80%. The measurements for glass, re-inspections, and ICPIP are set at MA statutory levels.
3. If it is determined that a SC is not in compliance with the Performance Standards on ceded files the CAR Compliance Audit Department will then determine the degree to which the non-compliance exists in the following areas addressed by the Standards. Specifically, the areas are:

Standard I – Motor Vehicle Physical Damage & Property Damage  
Liability Claims

Standard II – Bodily Injury & Uninsured/Underinsured Motorist

Standard III – No-Fault Personal Injury Protection Benefits

Standard V – Expenses

4. For Standard IV-Voluntary/Ceded Claim Handling Differential, CAR will evaluate and compare the individual company performance on the handling of ceded and voluntary claims. Statistical testing will be performed to determine if there is any statistically significant difference in the handling of voluntary and ceded claims by the SC. If CAR determines that the company is in non-compliance with the Voluntary/Ceded Claims Handling Differential Standard a penalty will be assessed.
5. SIU referrals sampled for audit will be reviewed for compliance with policy provisions and applicable statutes, rules and regulations for the following Best Practices:
  - Quality of Investigation
  - Timeliness of Investigation
  - Resolution
  - Statutory Requirements
  - Accurate Savings

The benchmark for compliance with these Best Practices is 80%. The aggregate score for these Best Practices will be calculated. If the score is less than 80%, the SC will be required to address the reasons in its response and submit a remedial action plan.

#### B. Non Compliance Penalties

1. Minor non-compliance indicates that a SC is not in compliance with the Standards in one or more areas but the quality of claim handling is unaffected and no overpayments result from this situation.
2. Major non-compliance indicates that a SC has failed the Standards in one or more areas. Claim handling is affected and overpayments may be occurring as a result. The SC will be notified of the extent and areas in which non-compliance exists and will be warned that the subsequent review of the SC must reflect compliance in all of the cited areas to avoid penalty.

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3. If in the review subsequent to being warned of major non-compliance a SC remains in non-compliance but has improved its claim handling practices significantly, a Type I penalty will be assessed for the area in which this non-compliance exists.
4. If in the review subsequent to being warned of major non-compliance a SC fails to improve its claim handling practices, a Type II penalty will be assessed for the area in which this non-compliance exists.
5. One penalty will be assessed in each of the following sections of the Standards in which major non-compliance is found:

Standard I – Motor Vehicle Physical Damage & Property Damage  
Liability Claims

Standard II – Bodily Injury & Uninsured/Underinsured Motorist

Standard III – No-Fault Personal Injury Protection Benefits

Standard IV – Voluntary/Ceded Claim Handling Differential

Standard V – Expenses

6. The amount of the penalty will be determined by the type of penalty using the following Schedule of Penalties.

Schedule of Penalties			
Type I Penalty by Year			
1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	4 <sup>th</sup> Year
Warning	\$6,000	\$30,000	Governing Committee
Type II Penalty by Year			
1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	4 <sup>th</sup> Year
Warning	\$20,000	\$100,000	Governing Committee

7. In the event that non-compliance continues beyond two years, the penalties will increase for the third year according to the Schedule of Penalties. In the fourth year of non-compliance the SC would be referred to the Governing Committee for possible termination.
8. In the case of non-compliance pertaining to the SIU evaluations, the SC will be subject to the Schedule of Penalties for Type I Penalty by Year.

9. Should a SC achieve compliance after being penalized for non-compliance with the Standards, it must maintain compliance for two years before it is returned to pre-warning status.
10. Should a SC disagree with the findings of the CAR Compliance Audit Department, it will notify the Governing Committee and a meeting will be held to discuss the findings. If agreement cannot be reached, the SC may appeal the decision to the Commissioner of Insurance in accordance with Rule 20.
11. The compliance status of the Commercial SC's will be reported to the Compliance and Operations Committee, the Governing Committee, and the Division of Insurance.
12. The following benchmarks and measurements are used to compare the SCs performance to the Industry on commercial claims handling. Except where noted, the benchmark compliance is 80%.

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Best Practices	NAIC Standard	Measurement	Benchmark
Physical Damage/Property Damage			
Assignment/Contact	NAIC 1	<ul style="list-style-type: none"> <li>• Appropriate assignment and contact to establish loss fact</li> </ul>	
Coverage	NAIC 3, 7	<ul style="list-style-type: none"> <li>• Coverage verified, garaging and operator issues resolved if applicable</li> </ul>	
Appraisal	NAIC 6	<ul style="list-style-type: none"> <li>• Appraisal assignment within 2 business days</li> <li>• Transmittal of appraisal within 2 business days</li> <li>• Quality of appraisal - Aftermarket/LKQ, betterment, screening for fraud, photos, recognition of fraud, and cause and origin.</li> </ul>	
Reserving	NAIC 10	<ul style="list-style-type: none"> <li>• Timely, reasonable, follow documented company policy</li> </ul>	
Screening and Investigation	NAIC 2, 3, 6	<ul style="list-style-type: none"> <li>• Screening for fraud, recognition of fraud indicators</li> <li>• Timely investigation</li> <li>• Liability apportioned correctly</li> </ul>	
Settlement	NAIC 3, 6	<ul style="list-style-type: none"> <li>• Depreciation and ACV calculations appropriate</li> <li>• Salvage disposal proper</li> <li>• On property damage, comparative negligence recognized</li> <li>• Payment within 5 days under Direct Payment Plan; 7 days CWCF</li> </ul>	
Subrogation/Recovery	NAIC 8	<ul style="list-style-type: none"> <li>• Subrogation recognized and pursued</li> <li>• Reimbursement of deductible is timely and accurate when and where appropriate</li> </ul>	

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Best Practices	NAIC Standard	Measurement	Benchmark
Reinspections	NAIC 6, 9	<ul style="list-style-type: none"> <li>Compliance with Regulation 212 CMR 2.04</li> </ul>	75%>\$4,000; 25%<\$4,000
Glass	NAIC 6	<ul style="list-style-type: none"> <li>Program for repair of glass in place</li> <li>Carrier tracks percent of repair</li> </ul>	100%
Litigation Management	NAIC 13	<ul style="list-style-type: none"> <li>Bring cases to the earliest conclusion at a reasonable value</li> </ul>	
<b>No Fault Personal Injury Protection Claims</b>			
Contact	NAIC 1, 9	<ul style="list-style-type: none"> <li>Injured party - 2 days</li> <li>Uninjured party - 3 days</li> <li>PIP form mailing - 5 days</li> </ul>	Contact
Reserving	NAIC 10	<ul style="list-style-type: none"> <li>Initial and subsequent reserves timely and appropriate; follow documented company policy</li> </ul>	
Medical Management	NAIC 4, 5, 6, 11	<ul style="list-style-type: none"> <li>Claims warranting IME referral vs. claims referred for IME</li> <li>Appropriate utilization of IME results to cut off claim, reduce bills</li> <li>Appropriate utilization of Medical Bill Review program</li> </ul>	
Loss Management/Special Investigation	NAIC 4, 11	<ul style="list-style-type: none"> <li>Claims warranting special investigation vs. claims referred for special investigation</li> </ul>	
Subrogation/Recovery	NAIC 8	<ul style="list-style-type: none"> <li>Subrogation recognized and pursued</li> <li>Reimbursement of deductible is timely and accurate when and where appropriate</li> </ul>	
<b>Bodily Injury/Uninsured Motorist Claims</b>			
Contact	NAIC 1	<ul style="list-style-type: none"> <li>Injured party - 2 days</li> <li>Uninjured party - 3 days</li> </ul>	
Reserves	NAIC 10	<ul style="list-style-type: none"> <li>Initial and subsequent reserves timely and appropriate; follow documented company policy</li> </ul>	

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Best Practices	NAIC Standard	Measurement	Benchmark
Loss Management/Special Investigation	NAIC 4, 11	<ul style="list-style-type: none"> <li>• Claims warranting special investigation vs. claims referred for special investigation</li> </ul>	
Litigation Management	NAIC 7, 13	<ul style="list-style-type: none"> <li>• Reservation of Rights and Excess letters used when and where appropriate</li> </ul>	
Settlement	NAIC 3, 5, 6	<ul style="list-style-type: none"> <li>• Evaluation range documented and appropriate</li> <li>• Settlement within range or documented why exceeded</li> </ul>	
Subrogation/Recovery	NAIC 3	<ul style="list-style-type: none"> <li>• Recovery potential recognized and pursued</li> <li>• Contribution from joint tortfeasor obtained</li> </ul>	
Expenses	NAIC 14	<ul style="list-style-type: none"> <li>• Reported properly as defined in the Statistical Plan</li> </ul>	
<b>Voluntary/Ceded Claim Handling Differential</b>			
Claim Handling	NAIC 6	<ul style="list-style-type: none"> <li>• A comparison of the compliance results for each of the resolution standards in the Ceded and Voluntary claims will be calculated</li> <li>• Statistical testing will be performed on the aggregate results of each of the three applicable sections: Physical Damage/Property Damage, PIP, and BI</li> <li>• If the difference is statistically significant, the carrier will be required to address the reasons in response</li> <li>• Following the response, CAR will make a determination on whether the Voluntary/Ceded Standard was in compliance</li> </ul>	