



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF INSURANCE

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**Proposed Amendments to Performance Standards for the Handling
and Payment of Private Passenger Motor Vehicle Insurance Claims
by Assigned Risk Companies and to Performance Standards for the Handling
and Payment of Commercial Motor Vehicle Insurance Claims by Servicing Carriers**

Docket No. C2023-01

Decision and Order

Introduction

Commonwealth Automobile Reinsurers (“CAR”), established pursuant to Massachusetts General Laws c. 175, §113H to administer the residual market for motor vehicle insurance, is required under that statute to create written performance standards for the handling and payment of motor vehicle insurance claims. After approval by its Governing Committee, CAR submits those standards, or amendments to them, to the Commissioner of Insurance (“Commissioner”) who, after a public hearing at which interested persons have an opportunity to provide oral and written comments on the amendments, may approve or modify them. On February 22, 2023, CAR submitted for the Commissioner’s approval proposed amendments to the performance standards for private passenger motor vehicle insurance claims and to the standards for commercial motor vehicle insurance claims that the Governing Committee had approved on February 15, 2023.

On April 5, 2023, the Commissioner issued a notice scheduling a virtual hearing on the proposed amendments for May 2, 2023. The notice advised interested persons of the procedures

for viewing the text of the proposed amendments to the standards and for commenting on them by providing oral or written statements at or after the May 2 hearing. They were also invited to register in advance for audio access to that hearing.

The hearing was held using TEAMS, a digital internet program. The proposed standards, redlined to identify the proposed changes, and a summary of those proposed amendments that CAR had filed electronically with the Division of Insurance (“Division”) were entered into the docket, together with supplemental materials including records of three CAR committee meetings at which the amendments were discussed and CAR Bulletin No. 1151 that advised its members of the hearing.

Benjamin Hincks, Esq. and Stephen Torres, Esq. appeared at the hearing on behalf of CAR. Mark Alves, CAR’s Director of Compliance Audit, spoke on CAR’s behalf, addressing the scope of the proposed amendments and the discussions at CAR that resulted in those amendments. No other person made a statement at the hearing, and no written commentary was submitted.

Discussion

CAR proposes to amend Standards II and III as they now appear in both the Private Passenger and Commercial rules for claim payments. Standard II affects the handling of claims for bodily injury, including those arising under uninsured or underinsured motorist coverages. Currently it requires insurers, as part of the initial screening process, to inquire about any prior history relating to the particular claim or claimant from a particular industrywide claims data base, the Central Index Bureau (“CIB”). After Standard II was last approved, the CIB was purchased by another entity and no longer exists independently. The proposed amendment to Standard II retains the screening obligation but, rather than prescribe a specific vendor, allows the inquiry to be made to any industrywide claim data base.

Standard III applies to claims for no-fault personal injury protection (“PIP”) benefits, including the coordination of benefits for accident related medical claims among a claimant’s fully insured health insurance plan, their PIP coverage, and any available MedPay coverage. Division Bulletin 2017-06, attached to the Performance Standards as Appendix N, also addresses coordination of benefits. Standard III has not specifically linked the two sources. The proposed amendment adds the specific requirement that the information in Appendix N be considered

before any personal injury medical claim involving those multiple sources of benefit payments is paid.

CAR also proposes to amend Appendix H and Appendix M attached to both the Private Passenger and Commercial Standards. Appendix H now includes M.G.L. c. 175, § 24D, a statute that requires insurers, before paying pending claims, to ensure that the claimant does not owe past due child support or is not subject to a child support lien. A 2003 amendment to M.G.L. c. 175 added a new § 24E that places additional responsibility on insurers, before issuing third party settlement payments to a claimant, to check with the state Division of Medical Assistance and the Department of Transitional Assistance for liens relating to medical or public benefit payments received by that claimant. The proposed amendment adds the text of § 24E to Appendix H and revises its title.

Appendix M includes standards issued by the National Association of Insurance Commissioners (“NAIC”) that define unfair claims settlement practices. In addition to the state statute defining unfair claims settlement practices codified at M.G.L. c. 176D, §3, the NAIC, in its Market Regulation Handbook, sets claim standards that are based on two model acts, one addressing unfair claims settlement practices and the other unfair property and casualty claims settlement practices. CAR Rule 32 incorporates both the Massachusetts statute and the relevant NAIC standards. The NAIC recently reduced the number of standards in the current Market Regulation Handbook from 14 to 11. CAR’s proposed changes to Appendix M update its content to reflect changes to the Market Regulation Handbook as well as applicable references to the Performance Standards and CAR’s Rules of Operation.

Appendix J, attached to both the Private Passenger and Commercial Standards, addresses CAR’s procedures for reviewing its member insurers’ SIU files. The proposed amendments to Appendix J differ because those procedures are not identical for private passenger and commercial business. Appendix J to the Private Passenger Standards applies to MAIP policies and reflects recent changes to CAR Rule 32 and the Assigned Risk Companies (“ARC”) Procedures Manual. CAR periodically performs a hybrid audit of all ARCs writing private passenger business. In 2022 it adjusted the hybrid audit frequency from every three years to every five years because of the increased number of companies writing that business since CAR implemented those audits and a greater need to perform focus audits that require auditing data affecting the quota share of new entrants to the private passenger market and follow-up audits of

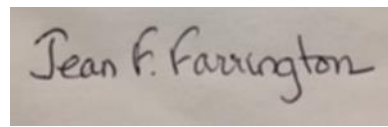
companies that had been found to have statistical reporting issues exceeding the thresholds in the ARC Procedures Manual. A second proposed amendment to Appendix J will require ARCs, when reporting their internal SIU audits of procedures for verifying policy facts and garaging to CAR, to use a template developed by CAR.

Appendix J of the Commercial Standards now refers to the sample size for audits of Servicing Carrier SIUs at “approximately” 25. The proposed amendment deletes the word “approximately” and fixes the sample size at 25. Consistent with the proposed amendment to Appendix J to the private passenger standards, Appendix J to the commercial standards now requires Servicing Carriers to report their internal SIU audits of procedures for verifying garaging and other policy facts to CAR using a standard template.

In summary, the proposed 2023 amendments to the Performance Standards applicable to Private Passenger and Commercial Vehicle claims respond to four areas: 1) changes to CAR procedures that affect the audit process, such as frequency and sample size; 2) clarifying practices relating to claim screening and resolution; 3) statutory changes that affect the obligations of insurance companies to ensure that payments to claimants are not subject to liens; and 4) revised NAIC standards for claims handling changes.

Based on our review of CAR’s proposed amendments and the statements at the hearing, we hereby approve the Performance Standards for the Handling and Payment of Private Passenger Motor Vehicle Insurance Claims by Assigned Risk Companies and for the Handling and Payment of Commercial Claims by Servicing Carriers that were approved by the CAR Governing Committee on February 15, 2023.

August 28, 2023

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Jean F. Farrington
Presiding Officer

Affirmed:
August 29, 2023

A handwritten signature in dark ink, appearing to read "Gary D. Anderson", written over a horizontal line.

Gary D. Anderson
Commissioner of Insurance