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COMMISSIONER OF INSURANCE

BULLETIN 99-02

To: **Automobile Insurers, Agents, Producers, and other Interested Persons**

From: **Insurance Commissioner Linda L. Ruthardt**

Date: **February 26, 1999**

RE: **Unauthorized Modifications to Private Passenger Automobile Insurance Policy Applications**

The Division of Insurance ("Division") has been made aware of instances where some automobile insurers are making inappropriate modifications to private passenger automobile policies by unilaterally substituting information obtained from sources other than the insured's application ("third-party information") without the prior consent of the insured. The purpose of this bulletin is to remind companies that such practices are not legally permissible.

Reportedly, this practice has resulted in coverage problems for some drivers. For instance, use of such third party information, which typically relates to the applicant's principal place of garaging or the identity of other operators of the vehicle, can change the total premium amount due and, consequently, the required down payment. As a result, some insureds have been issued cancellation notices for non-payment on the grounds that the initial down payment calculated by the agent and paid by the applicant had become insufficient after different third-party information was substituted by the insurer.

In other instances, an insurer's use of third party information (such as outdated Registry of Motor Vehicle information) as evidence of the "principal place of garaging", has led to an improper mailing address resulting in the insured not receiving relevant notice(s) concerning premium payments, cancellation, etc. The policy is subsequently wrongfully cancelled for non-payment of the adjusted premium amounts without the insured first receiving actual notice or an opportunity

to address any alleged errors in the information provided to the insurer. The Massachusetts Automobile Policy requires that notice be sent to the last address appearing on the insured's Coverage Selections Page. As to new insureds for whom a Coverage Selections Page may not have yet issued, notice should be sent to the last address known to the insurer (i.e., the address provided on the application).

Due to the potential unreliability of such third party information, in order to prevent wrongful cancellations, if during the underwriting process an insurer discovers *third-party* information that appears inconsistent with the information provided on the application for insurance, the insurer shall 1) initiate an inquiry either directly with the insured or through the producer of record to resolve any alleged factual errors[1]; and 2) obtain the insured's consent before issuing a notice of adjustment to the down payment and/or total premium[2].

This Bulletin is not meant in any way to restrict an insurer's legal rights of cancellation. If, after inquiring with an applicant, an insurer believes (based upon third party information) that the applicant has materially misrepresented the facts, and the applicant is unwilling to consent to the insurer's proposed modifications, the insurer may, in accordance with the provisions of the Massachusetts Automobile Policy and applicable law, issue a notice of cancellation on the grounds of material misrepresentation.[3] In cases where an insurer has reliable information of its own that is *independent* of the third-party information sources described herein, and such information shows that a clear material misrepresentation was made on the application, the above inquiry is not required and the insurer may cancel the policy in accordance with the provisions of the Massachusetts Automobile Policy and applicable law.

Please Note: If an insurer has grounds to believe that a misstatement of fact was made by an agent, with or without the insured's knowledge or consent, it should refer the matter to the Division of Insurance or the Insurance Fraud Bureau for investigation.

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[1] The term "Producer" is meant to be inclusive of all agents, brokers and Exclusive Representative Producers as defined by Commonwealth Automobile Reinsurers. If the inquiry is made directly to the applicant, the producer of record should be copied.

[2] The inquiry by the company and consent/refusal to make modifications by the insured may be verbal provided that the insurer follows up promptly with a letter that confirms the inquiry and describes its outcome.

[3] Under the Cancellation provisions of the Massachusetts Automobile Policy, if an insurer believes that an applicant has made a fraudulent or material misrepresentation when the insured applied for the policy, then the insurer has the option to initiate a cancellation of that policy.