# COMMONWEALTH OF MASSACHUSETTS
## Office of Consumer Affairs and Business Regulation
## DIVISION OF INSURANCE

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COMMISSIONER OF INSURANCE


**BULLETIN No. 02-18**

**To: All Property and Casualty Insurers Writing Commercial Lines Insurance Products**

**From: Julianne M. Bowler, Commissioner of Insurance** Julianne M Bowler

**Date: December 6, 2002**

**RE: Massachusetts Form and Rate Filing Requirements and Procedures under the Terrorism Risk Insurance Act of 2002.**

On November 26, 2002, the federal "Terrorism Risk Insurance Act of 2002" (hereinafter the "Act") became effective. The Act provides a federal backstop for losses arising from defined "acts of terrorism" and imposes certain obligations upon insurers. The Act defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States a) to be an act of terrorism; b) to be a violent act or an act that is dangerous to human life, property, or infrastructure; c) to have resulted in damage within the United States (or outside the United States in the case of certain air carriers or vessels, or on the premise of a United States mission); and d) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. However, an act will not be certified as an "act of terrorism" if it is committed as part of the course of a war declared by the Congress (except for worker's compensation insurance), or if the property and casualty insurance losses resulting from the act do not exceed $5,000,000 in the aggregate.

To the extent that any in-force property and casualty insurance policy covered by the Act currently excludes or limits the coverage for losses due to acts that are certified "acts of terrorism", those provisions and/or endorsements are nullified by the enactment of the Act. However, the Division of Insurance considers that the current in-force policies that contain terrorism exclusions or limitations are nonetheless considered approved and enforceable with respect to any coverage for losses due to acts that are not certified "acts of terrorism," and

with respect to those policyholders who have had the terrorism exclusion or limitation re-instated as provided by the Act.

Insurers shall file in a timely manner a new endorsement that more clearly distinguishes the coverage available or limited between certified and non-certified acts of terrorism. Pursuant to section 106(a)(2)(B) of the Act, the Division will not impose the statutory 30 day filing provisions for form filings (see G.L. ch. 175, §2B), but will subsequently review all forms. For the purposes of terrorism exclusions and/or limitations, the Division is waiving the usual filing requirements of 1) the lockbox form; 2) the filing fee; and 3) the checklist(s). All adoption letters and filing submissions should be made to the attention of Tom McCall, Massachusetts Division of Insurance, One South Station, Boston, MA 02110-2208.

Submissions of proprietary form filings shall comply with the following criteria. The following criteria only apply to provisions addressing losses arising from acts of terrorism that are not certified, and thus, not provided under the Act.

Consistent with Massachusetts law insurers are responsible for notifying their insureds of all policy changes and endorsements

Property Coverages

1. The exclusion will apply only when property damage from the terrorism incident exceeds some reasonable monetary threshold. A reasonable monetary threshold is considered to be $25,000,000.
2. The threshold in (1) is based on losses sustained by all individuals and/or entities affected by the terrorism incident.
3. The threshold in (1) relates to property coverage in the U.S., U.S. territories & possessions, and Canada.
4. The threshold in (1) will not apply to nuclear, biological or viral related terrorism events as coverage is excluded when resulting from these events.
5. This threshold is independent of any threshold for liability.
6. The definition of terrorism should include a single terrorism event resulting from multiple related incidents.
7. A direct fire loss resulting from an act of terrorism can't be subject to the terrorism exclusion under the standard fire insurance policy defined in MA law.
8. The definition of terrorism should clearly distinguish between terrorism, malicious mischief & vandalism, civil unrest, and other coverages typically obtained as property coverage. The definition should also distinguish between certified acts of terrorism as defined under the Act, and other (*i.e.* non-certified) acts of terrorism. An insurer may choose to use the following definition: A "non-certified act of terrorism" means violent act or an act that is dangerous to human life, property; or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the Federal Terrorism Risk Insurance Act of 2002.

Liability Coverages

1. The exclusion will apply only when liability from a terrorism incident not involving injury or death exceeds some reasonable monetary threshold. A reasonable monetary threshold is considered to be $25,000,000.
2. The threshold for application of the exclusion for liability for injury or death should be based upon serious injury or death to a logically selected (reasonably large) number of persons.
3. The threshold in (1) relates to liability coverage worldwide.
4. The threshold in (1) will not apply to nuclear, biological or viral related terrorism events as coverage is excluded when resulting from these events.
5. This threshold is independent of any threshold for property.
6. The definition of terrorism should include a single terrorism event resulting from multiple related incidents.
7. Serious injury in (2) should be defined based upon 18 USC Section 1365 or other similar statutes.
8. The definition of terrorism should clearly distinguish between terrorism, malicious mischief & vandalism, civil unrest and the like. The definition should also distinguish between certified acts of terrorism as defined under the Act, and other (*i.e.* non-certified) acts of terrorism. An insurer may choose to use the following definition: A "non-certified act of terrorism" means violent act or an act that is dangerous to human life, property; or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the Federal Terrorism Risk Insurance Act of 2002.

Insurers shall submit, in a timely manner, and for informational purposes, all proposed rates accompanied by supporting documentation. The Division reserves the right, pursuant to section 106(a)(2)(B) of the Act, to subsequently review rate filings and invalidate a rate as excessive, inadequate, or unfairly discriminatory.

Insurers shall submit, in a timely manner, and for informational purposes, the disclosure notices required under the Act. The disclosures should comply with the requirements of the Act.

Please note that in Massachusetts, the requirements for fire coverage are established by law (see G.L. ch. 175, §99) and where applicable must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

# Massachusetts Division of Insurance
# 2002 BULLETINS

| BULLETIN NO. | SECTION/CONTACT | DATE ISSUED | SUBJECT | Sent to Mailing List |
|---|---|---|---|---|
| 02-01 | OGC/Victor A. Fanikos | 1/08/02 | Requiring Massachusetts Drivers' Licenses | X |
| 02-02 | OGC & BMC/ Abigail Morgan | 1/24/02 | Optional Enrollment Periods in Response to the Federally Required Medicare Supplement Open Enrollment Period Referenced in Bulletin 2001-18 | X |
| 02-03 | OGC & BMC/ Abigail Morgan | 1/24/02 | Portability of Health Coverage Underwritten by an Unlicensed Insurance Carrier | X |
| 02-04 | OGC & BMC/ Abigail Morgan | 1/24/02 | Adverse Determinations, Concurrent Review and Appeal Rights for Inpatient Stays under M.G.L. c. 1760 | X |
| 02-05 | OGC & BMC/ Abigail Morgan | 1/24/02 | Valid Waivers under 105 CMR 128.000 | X |
| 02-06 | OGC & BMC/ Abigail Morgan | 1/24/02 | Changes in Early Intervention Mandate | X |
| 02-07 | BMC / Kevin Beagan | 2/15/02 | Mental Health Benefits | X |
| 02-08 | Agents & Brokers | | Renewal of Individual Broker Licenses, Continuing Ed Requirements, Licensing of Corps and Surplus Lines Brokers | X |
| 02-09 | BMC / Kevin Beagan | 3/15/02 | Hormone Replacement Therapy and Contraceptive Services | X |
| 02-10 | Hearings/Jean F. Farrington | 6/13/02 | Implementation of amendments to 211 CMR 94.00 | X |
| 02-11 | James Keilty / SIU/Enforcement | 6/24/02 | Sale and Solicitation of Unapproved Health Plans in Massachusetts. | X |
| 02-12 | BMC / Kevin Beagin and Abigail Morgan | 9/12/02 | Dental & Vision Services Plans | X |
| 02-13 | BMC / Kevin Beagin and Abigail Morgan | 9/12/02 | Insurance Coverage of Qualified Clinical Trials | X |
| 02-14 | BMC / Kevin Beagin and Abigail Morgan | 9/12/02 | Open Enrollment Period To Be Held Pursuant to c. 176K | X |
| 02/15 | BMC / Kevin Beagin and Abigail Morgan | 9/12/02 | Addendum to "2002 Guide Health Plans – Medicare" | X |
| 02-16 | Not issued | n/a | n/a | |
| 02-17 | Not issued | n/a | n/a | |
| 02-18 | Susan Gormley Anderson | 12/6/02 | Massachusetts Form and Rate Filing Requirements and Procedures under the Terrorism Risk Insurance Act of 2002 | X |