



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

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PROPERTY & CASUALTY COVERAGE
POLICY FILING GUIDANCE 2011-A

To: Insurers Writing or Intending to Write Commercial General Liability Policies in Massachusetts

From: Kevin Patrick Beagan, Director of State Rating Bureau

Date: July 13, 2011

Re: Commercial General Liability Policies Providing Coverage on a Claims-Made Basis

This Policy Filing Guidance informs insurers that write or intend to write commercial general liability policies in Massachusetts of changes to the Division of Insurance's ("Division") policy regarding the acceptance of filings for general liability policies that provide coverage on a claims-made basis.

Claims-made coverage means an insurance policy or an endorsement to an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay (including injury or damage occurring prior to the effective date of the policy, but after the retroactive date of the policy) arising only out of such incidents where the first notice of a claim is made during the policy period or any extended reporting period.

Prior to the issuance of this Policy Filing Guidance, the Division accepted only those filings for commercial general liability policies that were written on an occurrence, rather than on a claims-made, basis. Based upon a review of recent activity in the commercial general liability market and regulatory practices in other states, the Division is modifying its position and will accept filings for commercial general liability policies that provide coverage on a claims-made basis that meet the following requirements.

1. Policy Requirements

- a. Retroactive Date. The insurer must issue the policy with a mandatory endorsement that specifies a retroactive date for the policy. Retroactive date means: (i) a date concurrent with the effective date of the policy; or (ii) a specified date prior to the effective of the policy upon which the insurer and insured agree *in the policy* that coverage will be applicable. If a new operation or location is added to the policy, the retroactive date for that new operation or location shall be the effective date that such new operation or location was added to the policy.
- b. Termination of Coverage. Termination of coverage means, whether made by the insurer or the insured at any time: (1) cancellation or nonrenewal of the policy; or (2) decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the insured.
- c. Automatic Extended Reporting Period. The policy shall provide an *automatic* extended reporting period of at least thirty (30) days upon termination of coverage. Automatic extended reporting period means coverage for that period of time specified in the policy wherein claims first made after the termination date of the policy but within thirty (30) days of the termination date of the policy will be considered first made during the policy term.
- d. Additional Extended Reporting Period Coverage. Additional extended reporting period coverage means coverage for that period of time specified in the policy during which claims first made after the termination of the coverage under the policy for injury or damage that occurs on or after the retroactive date, but prior to the termination date of the policy, will be considered made during the policy term. The policy must include the following provisions:
 - i. Additional extended reporting period coverage shall be made available for purchase by the named insured at any time during the policy term, and not later than fifteen (15) days following termination of coverage, including termination for non-payment of premium. Such additional extended reporting period coverage shall apply only in regard to the coverage terminated, and shall be made available on the same terms and conditions as those specified in the policy.

The additional extended reporting period coverage will not take effect until the premium owed for the coverage is paid in full and unless the premium owed for the additional extended reporting period coverage is paid promptly when due.
 - ii. The insurer shall offer additional extended reporting period coverage where such reporting period is extended for no less than a three (3) year period following the termination date of the policy.
 - iii. The insurer shall offer the additional extended reporting period coverage without an aggregate liability limit if the policy has no aggregate liability limit. The insurer shall offer additional extended reporting period coverage with an aggregate liability limit at least equal to the aggregate liability limit specified in

the policy.

- iv. The named insured has the greater of thirty (30) days from the termination date of the policy, or fifteen (15) days from the date the named insured receives the insurer's offer of additional extended reporting coverage, to submit written acceptance of additional extended reporting period coverage to the insurer.
2. Format. The first page of the policy is to include a prominent notice that is at least equal to the size of the type used for policy captions, conspicuously displayed, stating that the policy is written on a claims-made basis.
 3. Insurer Requirements
 - a. Retroactive Date. Once a retroactive date is established with the named insured, it may be advanced only with the written consent of the named insured. The insurer also must obtain the written acknowledgment of the named insured that the named insured has been advised of the right to purchase additional extended reporting period coverage prior to any advancement of the retroactive date by the insurer.
 - b. Termination of Coverage.
 - i. Automatic Extended Reporting Period Coverage. The insurer must notify the named insured of the automatic extended reporting period coverage in writing. This notification must be sent to the named insured no earlier than the termination date of coverage and no later than fifteen (15) days after the termination date of coverage.
 - ii. Additional Extended Reporting Period Coverage. The insurer must notify the named insured regarding: (i) the availability of; (ii) the premium for; and (iii) the importance of purchasing additional extended reporting period coverage in writing. This notification must be sent to the named insured no earlier than the termination date of coverage and no later than fifteen (15) days after the termination date of coverage.

Where premium is due to the insurer for coverage, any monies received by the insurer from the insured as payment for additional extended reporting period coverage shall first be applied to such premium owed for the policy.

Pricing of Additional Extended Reporting Period Coverage. The premium charged for additional extended reporting period coverage shall be based upon the rates for such coverage in effect on the later of the date on which the policy was issued or was last renewed, whichever is later, and the insurer shall not charge a different premium for coverage due to any change in its rates, rating plans, or rating rules subsequent to issuance or last renewal of the policy.

If an insurer believes that waiving any of the required provisions set forth in this Policy Filing Guidance will improve the availability of commercial general liability coverage and will not be detrimental to policyholders, the insurer may seek a waiver from the Division regarding such provision(s) either prior to or simultaneous with the submission of the commercial general liability policy filing that offers coverage on a claims-made basis.

If you have any questions regarding this Filing Guidance, please contact Edward Charbonnier, Director of Policy Form Review at (617) 521-7481.