

211 CMR: DIVISION OF INSURANCE

211 CMR 123.00: DIRECT PAYMENT OF MOTOR VEHICLE COLLISION AND COMPREHENSIVE COVERAGE CLAIMS AND REFERRAL REPAIR SHOP PROGRAMS

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123.01: Authority

211 CMR 123.00 is issued under the authority of M.G.L. c. 90, M.G.L. c. 175, and M.G.L. c. 176D.

123.02: Purpose and Scope

The purpose of 211 CMR 123.00 is to establish a procedure for approval of direct payment and referral repair shop plans by motor vehicle insurers for collision, limited collision and comprehensive insurance claims, and to establish the minimum requirements for such plans.

123.03: Definitions

As used in 211 CMR 123.00, the following words will have the meanings indicated:

Claimant means any person making a claim for motor vehicle damage or loss for first party damages.

Collision coverage means that optional coverage defined in M.G.L. c. 90, § 34O(1) offered as part of a motor vehicle liability policy or bond.

Commissioner means the Commissioner of Insurance appointed under the provisions of M.G.L. c. 26, § 6, or his or her designee.

Comprehensive coverage means that optional coverage defined in M.G.L. c. 175, § 113O as fire and theft coverage or comprehensive coverage, so-called, offered as part of a motor vehicle liability policy or bond.

Insurer means any insurance company authorized to write motor vehicle insurance in the Commonwealth.

Limited collision coverage means that optional coverage defined in M.G.L. c. 90, § 34O(2) offered as part of a motor vehicle policy or bond.

Motor vehicle insurance means motor vehicle liability policies or bonds as defined in M.G.L. c. 90, §§ 34A, 34O, and in M.G.L. c. 175.

Plan means a detailed proposal or filing describing a formal direct payment and referral program based on a written plan.

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Rating organization means an insurance rating organization licensed under M.G.L. c. 175A.

Repair shop means a motor vehicle repair shop as defined in M.G.L. c. 100A, § 1, but not including glass specialty shops and shops which primarily sell tires or audio equipment.

123.04: Procedure for Approval of Plans

(1) Who May File: Any insurer may file a direct payment plan for approval by the Commissioner. Any licensed insurance rating organization may file a direct payment plan on behalf of its members ("industry plan"), provided that each insurer member of the rating organization which intends to implement such plan shall individually file notice of its intention to adopt the industry plan before actively implementing the plan. Any insurer may file for approval a plan which adopts some provisions of an industry plan without adopting the entire plan, but to the extent such individual plan deviates from the industry plan by omitting, adding or changing any particular provision, it shall require separate approval by the Commissioner. Any insurer filing a plan which deviates from an industry plan shall specify in detail the differences between the plans.

(2) Time for Filing: Any plan which is intended to be effective on January 1, 1989, shall be filed on or before December 15, 1988. Any plan which is intended to be effective after January 1, 1989 shall be filed at least 60 days prior to its effective date. Any notice of an insurer's intention to adopt an industry plan shall be filed at least 14 days prior to the insurer's implementation of the said plan, but in no event shall the insurer's implementation of the plan take place prior to the effective date of the industry plan, provided such plan has been approved.

(3) Method of Filing: An insurer or rating organization seeking approval of a plan shall file five copies of the proposed plan with the Commissioner. Any form intended to be used in connection with a proposed plan and which is to be delivered to consumers shall be included in the filing.

(4) Consideration of Proposed Plan: Upon receipt of a proposed plan, the Commissioner shall promptly schedule a hearing to determine whether the plan is consistent with M.G.L. c. 90, § 34O and M.G.L. c. 175, § 113O, as amended, with 211 CMR 123.000, and with other applicable laws and regulations, and whether the plan would carry out the purposes of M.G.L. c. 90, § 34O and M.G.L. c. 175, § 113O. No hearing shall be required in connection with an insurer's plan which the Commissioner determines does not substantially deviate from a previously approved plan. The Commissioner may schedule more than one plan to be considered at any given hearing. The Commissioner may require an insurer or any other party to the hearing to submit other or further information for purposes of considering the plan. The insurer or rating organization which filed the plan, and any other interested person, may file written materials in support of or in opposition to the plan.

(5) Timing of Hearing: With respect to any plan for which a hearing is required and which is filed to be effective on January 1, 1989, the Commissioner shall schedule the hearing thereon for such date as will allow a full and fair consideration of the plan, and as will allow the issuance of a decision approving or disapproving the plan prior to January 1, 1989. With respect to any other plan for which a hearing is required, the Commissioner shall schedule the hearing thereon to begin no less than 21 days after the plan is filed. The party filing the plan and other persons affected shall be notified of the date of the hearing at least ten days in advance.

(6) Approval or Disapproval of Plan: After a hearing, the Commissioner shall approve or disapprove the plan in writing and if the plan is disapproved or modified, shall state the reasons for the decision. Approval of a plan may be conditioned upon its modification, including a change in its effective date. The Commissioner may, prior to approving or disapproving a plan, request the party filing it to supplement or modify it.

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(7) Effective Date of Plan: The benefits of an approved plan shall be made available to all claimants submitting claims arising from accidents or other losses occurring on or after the effective date of the plan, unless and until the approval of the plan is revoked or the plan is otherwise terminated in accordance with 211 CMR 123.04(9), or unless and until the insurer implementing such plan ceases to do so in accordance with 211 CMR 123.04(10).

(8) Reconsideration: Within ten days after the disapproval of a plan, any affected person may request reconsideration. Such request may be allowed only if the person submitting such request presents new and previously unavailable information which the Commissioner determines should be considered in evaluating the plan.

(9) Revocation of Approval: At any time after approval of a plan, the Commissioner may, after due investigation, commence proceedings to revoke or suspend such approval if he or she determines the insurer is not complying with the terms of the plan or that the plan does not carry out the intent of 108 CMR 123.00. He or she shall commence such proceedings by issuing an order to show cause why the approval of such plan should not be revoked or suspended, which shall briefly set forth the asserted grounds for revocation or suspension. The party which filed the plan, any insurer which has filed a notice that it intends to adopt or has adopted an industry plan, and any interested person may appear at the hearing. The Commissioner may schedule the revocation of more than one plan to be considered at any given hearing. After such hearing, the Commissioner shall issue a written decision, stating reasons for any determination to revoke or suspend approval of the plan. Non-revocation may be conditioned upon modification of the plan or other means of compliance with 211 CMR 123.00. Unless the Commissioner for good cause orders otherwise, the institution of revocation proceedings shall not act to enjoin or suspend the operation of the plan as originally approved. The Commissioner may, instead of or in addition to revocation or suspension, impose fines or other appropriate sanctions under M.G.L. c. 175 and 176D for any violations of law or of 108 CMR 123.00.

(10) Voluntary Withdrawal of Plan: Any party which has filed or adopted a plan may voluntarily withdraw such plan, or voluntarily withdraw its notice of intention to implement an industry plan, prior to the Commissioner's final approval of the plan. After that date, no insurer intending to implement or actively implementing such plan shall cease implementing the plan without first notifying the Commissioner of its intent to do so at least 60 days in advance. The Commissioner may make any orders reasonably necessary to prevent such cessation from causing undue hardship to consumers or disruption to the automobile repair market, but in no event shall such cessation be delayed, without the consent of the insurer, for more than six months, unless the insurer fails to comply with orders of the Commissioner relating to the cessation.

### 123.05: Direct Payment Plans: Required Provisions

No plan shall be approved unless it contains each of the following provisions:

(1) Payment to the claimant: The insurer shall offer to pay every claimant for the loss of or damage to the insured motor vehicle under collision coverage, limited collision coverage or comprehensive coverage the full amount, less any applicable deductible, of the cost of repair of the damage as described in an appraisal made by a licensed automobile damage appraiser employed or designated by the insurer, subject to the terms and conditions of the applicable insurance policy. In the case of property damage liability claims, the insurer may make such offer to the person to whom such liability payments are owed.

Unless such direct payment is refused by the claimant, the insurer shall make such payment at the time of, or within five business days after, the preparation of said appraisal. In no event shall payment be made prior to provision of a copy of the appraisal to the claimant. Nothing in 108 CMR 123.05 be construed to affect the right of any insurer to delay payment for a period of time reasonably necessary to investigate any claim before authorizing repair work or making payment on such claim.

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If the claimant refuses such direct payment, the insurer shall comply with applicable laws and regulations relating to such payments without regard to the plan.

(2) Form of Payment: The payments described in 211 CMR 123.05(1) shall be in cash or a negotiable instrument payable to the claimant, and the lienholder, if applicable.

(3) Repair certification: Each claimant shall receive, with the appraisal and direct payment check, a repair certification form, the form for which shall be included as part of the filed plan. The repair certification form shall at a minimum contain the following:

- (a) An explanation of the claimant's rights and obligations with respect thereto.
- (b) Certification that the repair work has been completed.
- (c) Identification of the repair shop or individual who performed the repair work.
- (d) An agreement that the claimant will permit the insurer to reinspect the repaired vehicle within a reasonable period of time after the return of the repair certification form.

The claimant shall return the repair certification form to the insurer upon completion of the repairs. If the claimant elects not to repair the vehicle or if the repair certification form is not returned to the insurer, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible, unless and until such time as the insurer or any successor insurer receives a repair certification form.

(4) Resolution of Consumer Disputes: If the claimant disputes the accuracy of the appraisal or the amount of the payment based thereon, the insurer shall resolve such dispute as follows:

- (a) The claimant, or the claimant's representative or repair shop at the direction of the claimant, must notify the insurer by telephone or in writing if the cost of repairs is expected to exceed the amount of the payment plus any applicable deductible and the claimant is seeking to have the insurer pay any part of the difference. Such notice must be prior to, or in the course of, the repair work.
- (b) The insurer shall promptly evaluate the source of any differences between the insurer's appraisal and the cost of repairs and either authorize or deny a supplemental payment within three business days after the notification of such difference and inspection of the vehicle. During such three-day period, the insurer may inspect the vehicle, and if it so requests, the claimant or repair shop shall make the vehicle available for inspection by the insurer. The insurer shall not delay such inspection for more than three days without the consent of the claimant. If the insurer makes a timely request for inspection the insurer will either authorize or deny a supplemental payment within three business days after the inspection. The claimant may direct the insurer to make any supplemental payment to the repair shop, provided the repair shop is registered under M.G.L. c. 100A. Otherwise, any supplemental payment must be made directly to the claimant.
- (c) If the claimant and the insurer are unable to reach agreement as to any dispute as to the amount of the payment by the insurer, either party may demand arbitration of the dispute. The demand for arbitration must be in writing and it must include an appraisal of the cost of the repair prepared by a licensed automobile damage appraiser and an itemized bill for the actual cost of the repair, if the repair has been completed. The arbitration will be conducted pursuant to General Provision Section 11 of the Massachusetts Standard Automobile Insurance Policy and the applicable provisions of M.G.L. c. 175, § 191A. Notwithstanding this provision, the claimant may, without prejudice, pursue any other remedy which may be available.
- (d) If the repair is made at a registered repair shop which is an insurer referral shop as provided in 211 CMR 123.06, neither the repair shop nor the insurer shall require the claimant to pay more than the amount of the direct payment plus the amount of any applicable deductible to have the repair work completed, and any dispute as to the amount of the appraised damage shall be resolved between the referral repair shop and the insurer.

(5) Repair Shop Referral: The plan must provide for referral insurer referral repair shops as provided in 211 CMR 123.06.

(6) Disclosures to Consumers: The plan must provide for full and accurate disclosures to consumers as provided in 211 CMR 123.07.

123.06: Referral Repair Shop Programs

(1) Consumer's Choice of Shop: No direct payment plan approved under 211 CMR 123.000, and no insurer in implementing such plan, shall require a claimant to have repairs made at any specific repair shop.

(2) Number of Shops:

(a) Every plan must provide that every claimant will be given a single list containing the names and locations of all registered repair shops as defined in 211 CMR 123.03 that appear on the list of registered repair shops maintained by the Division of Standards pursuant to M.G.L. c. 100A, § 6. The insurer may indicate by clearly marking with an asterisk or other means of highlighting on the list of all registered repair shops at least five repair shops geographically convenient for the claimant which will perform the repairs on referred claims without undue delay. An insurer shall not provide a separate list containing only its referral shops. A repair shop may not be an insurer's referral shop unless that repair shop appears on the list of all registered repair shops maintained by the Division of Standards and complies with the provisions of M.G.L. c. 100A. The claimant may or may not choose to use an insurer's referral shop.

(b) The list of all registered repair shops maintained by the Division of Standards pursuant to M.G.L. c. 100A, § 6 shall be updated quarterly. The Automobile Insurers Bureau of Massachusetts or any successor thereto shall maintain a separate list containing the names and locations of all registered repair shops as defined in 211 CMR 123.03 that appear on the list maintained by the Division of Standards. For the purposes stated in 211 CMR 123.06(2)(a), every insurer with an approved Direct Payment Plan shall reproduce the listing of all registered repair shops maintained by the Automobile Insurers Bureau of Massachusetts or any successor thereto. The list given to the claimants by the insurers pursuant to 211 CMR 123.06(2)(a) shall not exceed 12 standard size (8½ by 11 inches) pages unless the Commissioner has given a written waiver of this requirement.

(c) Any individual insurer wishing to implement a plan which does not contain at least five repair referral shops geographically convenient for the claimant which will perform the repairs on referred claims may petition the Commissioner for a waiver of this requirement. The insurer seeking such a waiver shall set forth the specific facts regarding market share, geographic location, availability of repair shops, or other circumstances in support of its petition. No insurer may implement a plan which does not meet this requirement unless and until the Commissioner has granted a petition for waiver.

(3) Insurer's Choice of Shops:

(a) Insurer's referral shops shall include only shops:

1. which are registered repair shops; and
2. which have entered into an agreement satisfactory to the insurer, to complete repairs for claimants referred by the insurer without undue delay, for the amount of the direct payment to the insured plus any applicable deductible, plus any supplemental payment authorized by the insurer.

(b) In determining which registered repair shops will be referral shops, the insurer shall consider all of the following criteria, and only the following criteria: the quality and cost of repairs at a particular shop, the quality of the service given the customer, the responsiveness of the shop to the customer's needs, the ability of the shop to perform repairs without undue delay, the geographic convenience of the shop for the claimant, cooperation of the shop with the pre- and post-repair inspections and the shop's compliance with applicable laws and regulations.

Each individual insurer shall maintain written guidelines incorporating these criteria as applied by the insurer in implementing its plan; such guidelines shall be deemed to be a part of the individual insurer's plan. While individual insurers which have adopted an industry plan shall maintain such written guidelines, under no circumstances shall a rating organization which files an industry plan propose or maintain such guidelines. Individual insurers' guidelines shall be made available to the Commissioner upon his or her request and shall also be made available to any repair shop in the event the insurer denies that shop's request to be a referral shop or revokes the referral shop agreement of any referral shop.

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A repair shop shall be included as an insurer's referral shop if the shop agrees in writing to comply fully with the plan, unless the shop's request is denied or the shop's referral shop agreement is revoked pursuant to 211 CMR 123.06(4), and is determined by the insurer not to satisfy one or more of the criteria listed above. The form of agreement between the insurer and the insurer's referral shops may provide adequate assurances that the repair shop will continue to satisfy the insurer as to such criteria.

(4) Development and Changes of Referral Shops: An insurer may deny a repair shop's request to be a referral shop or revoke a referral shop's agreement, provided the insurer files a statement with the Commissioner specifying the nature of the shop's failure to comply with the plan or with the agreement or proposed agreement between the insurer and the repair shop. A repair shop which claims that it has been improperly denied as a referral shop or whose referral shop agreement has been revoked may demand arbitration. Such binding arbitration shall be conducted by a neutral arbitrator jointly agreed to by the insurer and the repair shop, or, in the absence of such agreement, within 21 days of submission of the request for arbitration to the insurer, by an arbitrator selected by the Commissioner. The parties to the arbitration shall bear the costs of the arbitration equally, but the losing party shall be liable to the prevailing party for its costs, unless the arbitrator orders otherwise. If the arbitrator finds that the losing party acted in bad faith, he or she may also award the prevailing party attorney's fees, if any. The arbitrator shall determine whether the repair shop was improperly denied, but shall make no finding or order as to any damages other than the award of costs and/or attorney's fees, if any. The decision of the arbitrator shall be final.

(5) Insurer's Guarantee: If a claimant has repairs performed at a repair shop included on the insurer's list, then the insurer shall guarantee the quality of the materials and workmanship used in making the repairs. No insurer may petition the Commissioner for a waiver of this requirement. This guarantee by the insurer shall be in addition to all other guarantees which may be made by the manufacturer and the repair shop. The agreement between the insurer and the repair shop may provide for indemnification of the insurer by the repair shop for any costs associated with such guarantee under such terms and conditions as the parties to the agreement shall specify.

(6) Reinspection Requirements: Every plan shall provide that the insurer shall have a licensed automobile damage appraiser reinspect vehicles following completion of repairs as follows:

- (a) with respect to repairs as to which the appraisal indicates that the cost is expected to exceed \$4,000, at least 75% of such vehicles shall be reinspected;
- (b) with respect to repairs as to which the appraisal indicates that the cost is not expected to exceed \$4,000, at least 25% of such vehicles shall be reinspected.

In no event shall the selection of vehicles for reinspection be based on the age or sex of the policyholder or of the customary operators of the vehicle, or on the principal place of garaging the vehicle, or on whether the repairs were performed at a repair shop that is not a referral repair shop.

(7) Conflicts of Interest:

(a) No employee or agent of an insurer with responsibility for entering into referral shop agreements as prescribed in 211 CMR 123.06(3) shall receive or ask for any payment, gift or any other thing of value from any repair shop seeking to be a referral shop or from any referral shop. No repair shop, or employee or owner thereof, shall give, pay or offer to give or pay, any thing of value to any employee or agent of an insurer with responsibility for creating, managing or maintaining a list of repair shops. No repair shop, or employee, owner or agent thereof, shall give or pay, or offer to give or pay, or offer to give or pay, any thing of value to any person in exchange for being included, or as an inducement for being included, as an insurer's referral shop. For purposes of 211 CMR 123.08(7)(a), the words "employee", "owner" and "agent" shall also include any spouse or child of an employee, owner or agent.

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(b) A discount on parts, glass, labor rate or other item or customer service in connection with the repair of motor vehicles offered by a repair shop to an insurer shall not constitute a "payment, gift or any other thing of value" for purposes of 211 CMR 123.06(7)(a).

### 123.07: Disclosures to Consumers

Every claimant under a plan shall be given full and adequate disclosure on a form approved by the Commissioner. The disclosure form shall be given to the claimant prior to, or at the same time as, any payment being made. The disclosure form shall be given with the appraisal and at such other times as the insurer may determine, and shall state, with the appraisal and at such other times as the insurer may determine, and shall state that:

- (1) the claimant may elect to accept direct payment under the plan and receive a list of all registered repair shops pursuant to 211 CMR 123.06(2), or he or she may choose to pursue the claim without regard to the plan;
- (2) if the claimant accepts direct payment, he or she may choose to have repairs made at any repair shop, whether or not the shop is an insurer's referral shop;
- (3) if the claimant accepts direct payment, the claimant may choose a shop that is an insurer's referral shop in which case the insurer will guarantee the materials and workmanship of the repair, and the cost of the repair to the claimant will not exceed the amount of the insurer's direct payment to the claimant plus any applicable deductible;
- (4) the procedure for resolving claimants' disputes under the plan; and
- (5) such other information as will aid the claimant in exercising his or her rights under the plan.

### 123.08: Penalties

- (1) A violation of any provision of 211 CMR 123.00 shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D.
- (2) A violation of any provision of 211 CMR 123.00 by any insurance producer, insurer or employee or representative of an insurer, or motor vehicle damage appraiser shall be grounds for suspension or revocation of the license of such person or persons.
- (3) Nothing herein shall be deemed to preclude the claimant or policyholder, the Commissioner, the Attorney General or the Director of the Division of Standards from pursuing any other remedy or penalty provided by law including any remedy provided under M.G.L. c. 93A or M.G.L. c. 100A.

### 123.10: Severability

If any section or portion of a section of 211 CMR 123.00 or the applicability thereof to any person, entity or circumstance is held invalid by any court, the remainder of 211 CMR 123.00 or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.

## REGULATORY AUTHORITY

211 CMR 123.00: M.G.L. c. 90; M.G.L. c. 175; M.G.L. c. 176D

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