

211 CMR: DIVISION OF INSURANCE

211 CMR 56.00: REDUCTIONS IN PREMIUM CHARGES FOR PRIVATE PASSENGER MOTOR VEHICLE INSURANCE FOR INSUREDS ELECTING OPTIONAL PARTICIPATING REPAIR SHOP ENDORSEMENT PLANS

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56.01: Scope

211 CMR 56.00 is intended to implement the participating repair shop endorsement plan authorized in M.G.L. c. 175, § 113T. The provisions of 211 CMR 56.00 govern insurers, agents and auto damage appraisers notwithstanding the provisions of 212 CMR 2.00: *The Appraisal and Repair of Damaged Motor Vehicles* promulgated pursuant to M.G.L. c. 26, § 8G.

56.02: Purpose

The purpose of 211 CMR 56.00 is to establish a procedure for approval of a participating repair shop endorsement and plans submitted by motor vehicle insurers for collision, limited collision and comprehensive insurance coverages, and to establish the minimum requirements for such endorsement plans.

56.03: Definitions

As used in 211 CMR 56.00, 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 and 113C as fire and theft coverage or comprehensive coverage 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 participating repair shop program based on a written plan.

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

56.03: continued

Repair Shop means a motor vehicle repair shop as defined in M.G.L. c. 100A, § 1.

56.04: Procedure for Approval of Endorsement and Plans

(1) Method of Filing Notice of Intent. An insurer or rating organization seeking approval of a participating repair shop endorsement plan shall file the proposed plan with the Commissioner through the Division's electronic filing system. 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. A hard copy shall be made available upon request.

(2) Approval or Disapproval of Plan. 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.

(3) Effective Date of Plan. The benefits of an approved plan shall be made available to all insureds purchasing or renewing policies containing a participating repair shop endorsement, except for those in areas for which a waiver has been obtained under 211 CMR 56.05(12), 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 56.04(4).

(4) 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, that the plan does not carry out the intent of 211 CMR 56.00 or that the plan is otherwise in violation of existing law. 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 56.00. 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 M.G.L. c. 176D for any violations of law or 211 CMR 56.00.

56.05: Participating Repair Shop Endorsement Plans: Required Provisions

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

(1) Participating Repair Shop Endorsement. An insurer offering a participating repair shop endorsement shall use the endorsement language as follows:

If we offer a "participating repair shop endorsement", you may, at your option, agree to have this endorsement added to and incorporated as part of your policy, under the endorsement, we must, at the time you purchase your policy, reduce your premium for collision, limited collision and comprehensive coverages by \_\_\_\_% [between 5% and 15%, unless deviation is filed with Commissioner]. In exchange for this discount on your premium, you must agree that, in the event of a claim under any of these coverages, you will have your auto repaired at a participating repair shop designated by us. The participating repair shop must be geographically convenient for you and must perform repairs of comparable quality to those made by non-participating repair shops.

In order to receive the discount, you must have all repairs, except for emergency repairs, performed at the participating repair shop we designate. If you have repairs performed at a non-participating shop, we do not have to pay more than \_\_\_\_% [no less than 80%] of what we would have paid to one of our participating shops.

56.05: continued

(2) Claims Procedure. The insurer shall describe the appropriate claims mechanism for insureds who choose to have the endorsement added to their policy. Insureds may be instructed to proceed under a direct payment system, a completed work claim system, or to follow some other arrangement the insurer has developed for payment to its participating shops for repairs performed in accordance with the endorsement. In any case, the insured must retain the right of electing not to repair the vehicle, receiving a check for the amount of the damage and having the actual cash value of the vehicle reduced accordingly.

(3) Discount on Premium Charges.

(a) Except for those insureds residing in areas for which the insurer has obtained a waiver, the insurer shall make available to every proposed insured or insured an appropriate discount on collision, limited collision and comprehensive coverages to reflect the estimated savings through participation in the participating repair shop plan. If the discount falls within the range of 5% to 15% of the otherwise applicable premium for those coverages, the discount shall be presumed to be reasonable. If such discount deviates from the above-mentioned range of 5% to 15%, such deviation shall be allowed only if the Commissioner finds that the discount that the insurer desires to offer is adequate, not excessive, just, and reasonable. Every application for permission to so deviate shall be filed with the Commissioner, specifying the basis therefor and shall be accompanied by the data or other information upon which the applicant relies.

(b) An insured who chooses not to add the participating repair shop endorsement at the time of purchase of the policy may elect to add it at any time prospectively, at which time the insured shall receive a *pro-rata* discount on collision, limited collision and comprehensive coverages. An insured who chose to add the endorsement at the time of purchase of the policy may have it removed at any time prospectively, upon repayment of the *pro-rata* amount of the discount initially received.

(4) Designation of Participating Repair Shop(s). At least one geographically convenient participating repair shop must be designated at the time of purchase or renewal of the policy, to be updated at the time of any claim arising under the policy. At regular intervals no less than quarterly, the insurer shall notify its insured of any changes in the list. Upon request of the insured, the insurer shall make available a current list of participating repair shops. All participating repair shops shall be listed in the same manner in any directory distributed to insureds.

(5) Disclosure Statement and Acknowledgement. Each insured shall receive, at the time of purchase or renewal of a policy, a disclosure statement describing the rights and duties under the participating repair shop plan, and the premium discount available, as required by 211 CMR 56.07. If the insured agrees to participate in the plan, the insurer shall add the participating repair shop endorsement to the policy and obtain a written acknowledgment that the insured understands his or her rights and duties under the plan. Samples of the disclosure statement and acknowledgment form shall be included as a part of the filed plan.

(6) Limitations on Consumer's Choice of Shop. Once an insured has agreed to have a participating repair shop endorsement added to his or her policy, his or her selection among shops may be limited in accordance with the terms of the plan. A claimant who chooses to have the vehicle repaired at a non-participating repair shop will be subject to a limitation of benefits as provided in 211 CMR 56.05(10).

(7) Access. The participating repair shop plan must make available a sufficient number and range of repair shops to provide claimants with adequate access to and availability of participating repair shops for repairs offered on a participating basis. As an alternative, insurers may meet this requirement by providing transportation of the damaged vehicle to and from participating repair shops at the insurer's expense. Failure by an insurer to provide access to a participating repair shop within five business days shall be considered a violation of 211 CMR 56.05(7) and grounds for revocation of the plan or for other action by the Commissioner.

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(8) Emergency Repairs. If an insured needs to obtain emergency repairs and cannot reasonably reach a participating repair shop, payment for such repairs shall be a matter for negotiation between the insurer and the non-participating repair shop. Under no circumstances shall the insured be charged more than the applicable deductible for such emergency repairs.

(9) Grievances. An adequate complaint and grievance system must exist which permits insureds to appeal coverage decisions, including a mechanism to appeal utilization review decisions which result in denial of payment or denial of access to repairs or which concern alleged poor quality repairs by a participating repair shop.

(10) Limitations on Coverage of Repairs Performed at Non-participating Shops. A plan may provide that the insurer may limit payment for non-emergency repairs performed at a non-participating repair shop to no less than 80% of what the insurer would otherwise have paid to one of its participating repair shops.

(11) Insurer's Choice of Shops.

(a) An insurer's participating repair shop(s) must:

1. be registered under M.G.L. c. 100A; and
2. have entered into an agreement satisfactory to the insurer to promptly repair vehicles brought or directed to be brought to its premises by the insurer.

(b) In determining which registered repair shop(s) will be named as a participating shop, the insurer's selection shall be based primarily on 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 customers' 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 pre and post-repair inspections and the shop's compliance with applicable laws and regulations. The form of agreement between the participating shop(s) and the insurer may provide adequate assurances that the repair shop will continue to satisfy the insurer as to such criteria.

(c) No insurer may refuse to enter into a participating repair shop contract on the basis of religion, race, color, national origin, sex, marital status, or sexual orientation.

(12) Waiver. Any individual insurer wishing to implement a participating repair shop plan, but who is unable to reach agreements with a repair shop(s) in a particular geographic location, may petition the Commissioner for a waiver of the otherwise mandatory offer of this plan to all its proposed insureds. 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 offer or implement a plan with respect to less than all of its insureds unless and until the Commissioner has granted a petition for waiver.

(13) Insurer's Guarantee. If a claimant's vehicle is repaired at one of the insurer's participating repair shops, then the insurer shall guarantee the duration and nature of the guarantee shall be the same as the manufacturer's warranty or any other warranty or guaranty covering the vehicle prior to the date of the accident or claim. No insurer may petition the Commissioner for a waiver of 211 CMR 56.05(13). 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.

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### 56.06: Conflicts of Interest

(1) No employee or agent of an insurer with responsibility for creating, managing, or maintaining a list of one or more participating repair shops as prescribed in 211 CMR 56.04(4) shall receive or ask for any payment, gift or any other thing of value from any repair shop included, or seeking to be included, on the insurer's list of participating repair shops. No repair shop, or employee or owner thereof, shall give, pay or offer to give or pay, anything of value to any employee or agent of an insurer with responsibility for creating, managing or maintaining a list of participating repair shops. No repair shop, or employee, owner or agent thereof, shall give or pay, or offer to give or pay, anything of value to any person in exchange for being included, or as an inducement for being included, on an insurer's list of participating repair shops. For purposes of 211 CMR 56.06, the words "employee", "owner" and "agent" shall also include any spouse or child of an employee, owner or agent.

(2) A discount on parts, glass, labor rate or other item, customer service, or any other agreement reducing or limiting the cost of repairs offered by a participating repair shop to an insurer shall not constitute a "payment, gift or any other thing of value" for purposes of 211 CMR 56.06(1).

### 56.07: Disclosures to Consumers

Every insured under a plan shall be given full and adequate disclosure at the time of the purchase or renewal of the policy. The disclosure statement shall, at a minimum, contain the following:

- (a) An explanation of the insured's rights and obligations under the plan, including a brief description of the appropriate claims procedure as described above in 211 CMR 56.05(2);
- (b) Identification of the repair shop(s) or individual(s) who shall perform the repair work in the event of a claim;
- (c) A statement that if the repair is made at a registered repair shop which is one of the insurer's participating repair shops, neither the repair shop nor the insurer shall require the claimant to pay more than 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 participating repair shop and the insurer;
- (d) A statement that the insured may elect to participate in the plan and receive a list of participating repair shops, which may be updated at the time of any claim, or, should a claim arise under the policy, the insured may choose to pursue the claim without regard to the plan, but that the claim will be subject to the permissible benefit limitations imposed in accordance with 211 CMR 56.05(10);
- (e) Disclosure of the dollar amount or percentage discount offered in conjunction with the participating repair shop endorsement;
- (f) Disclosure, if applicable, of the fact that the insurer's participating repair shops are contractually bound to install used or non-OEM parts instead of new or OEM parts whenever available, are appropriate and safe;
- (g) A statement that if the claimant agrees to participate in the participating repair shop plan, he or she receives the appropriate discount on the premium charges, and at the time of a claim, in fact has repairs performed at a participating repair shop, 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 any applicable deductible;
- (h) The procedure for resolving claimants' disputes concerning access and quality of repairs under the plan; and
- (i) Such other information as will aid the claimant in exercising his or her rights under the plan, including provisions regarding emergency repairs and criteria used in determining which shops shall be listed among the insurer's participating shops.

### 56.08: Penalties

(1) A violation of any provision of 211 CMR 56.00 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 56.00 by any insurance agent, insurance broker, 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.

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(3) Nothing in 211 CMR 56.00 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 100A.

56.09: Severability

If any section or portion of 211 CMR 56.00 or the applicability thereof to any person, entity or circumstance is held invalid by any court, the remainder of 211 CMR 56.00 or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 56.00: M.G.L. chs. 90, 175; 176D, and c. 175, § 113T.

(PAGES 325 AND 326 ARE RESERVED FOR FUTURE USE.)