



MAURA HEALEY  
ATTORNEY GENERAL

# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

March 23, 2015

## VIA EMAIL AND FIRST CLASS MAIL

The Honorable Gary D. Anderson, Acting Commissioner of Insurance  
Massachusetts Division of Insurance  
1000 Washington Street, Suite 810  
Boston, MA 02118

Dear Acting Commissioner Anderson,

We are writing in regard to the changes proposed by Commonwealth Automobile Reinsurers ("CAR") to its Rules of Operation. Specifically, we urge that you reject CAR's effort to increase installment, late payment/cancellation, and returned check fees that apply to Massachusetts Automobile Insurance Plan ("MAIP") policyholders. In addition, we ask that you direct CAR to give MAIP policyholders access to the same electronic billing and payment methods as voluntary customers and establish associated fee discounts and waivers comparable to those received by voluntary market customers.

As you know, CAR is an industry-operated organization which, subject to your review, oversees the private passenger auto insurance market of last-resort, known as the MAIP.<sup>1</sup> Although risks in the MAIP are not written voluntarily by Massachusetts insurers, nearly one-third of vehicles insured through the MAIP are assigned to drivers with perfect or nearly perfect driving records (Merit Rating Score 99 or 98) according to CAR's data.<sup>2</sup> The same data indicates that many urban or low-income communities with significant minority populations are over-represented in the MAIP.<sup>3</sup> With this information in mind, we believe CAR's fee proposal is particularly inconsistent with sound public policy, as well as being contrary to statutory standards and inconsistent with accepted ratemaking practices. CAR's proposal would increase installment

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<sup>1</sup> See G.L. 175, § 113H.

<sup>2</sup> See Notice of MAIP Steering Committee Meeting (July 31, 2014), Exhibit 2, at 3. Over half of the vehicles insured in the residual market (54.5%) are assigned to drivers in the top three merit rating categories, 00 (no points), and the clean driving discount classes 98 and 99. A quarter of vehicles insured in the MAIP are assigned to drivers in category 99.

<sup>3</sup> While drivers in the following territories represent only about 15% of the voluntary market, they constitute about 40% of drivers insured in the MAIP: Brockton, Charlestown/East Boston, Chelsea, Dorchester, Everett/Malden/Randolph, Holyoke, Hyde Park, Jamaica Plain, Lawrence, Lowell, Lynn, Revere, Roslindale, Roxbury, Springfield and Winthrop/Worcester. See *id.*, at 2.

fees on MAIP policyholders from \$6 to \$8 per installment, late payment/cancellation fees from \$25 to \$29, and dishonored check fees from \$25 to \$29. This proposed fee structure circumvents pricing protections envisioned by our legislature, exceeds voluntary market norms, and lacks adequate supporting data and analysis.

Massachusetts law protects MAIP policyholders from pricing discrimination in G.L. c. 175, § 113H, which provides that:

*...[t]he premium charges filed by or on behalf of the plan shall provide that such premium charges for all vehicles rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual and all other nonfleet private passenger vehicles shall not exceed the premium charges which would be used by each risk's servicing carrier for that risk if such risk were not insured in the plan.*

The intent of G.L. c. 175, § 113H was to ensure that residual market policyholders were not charged more than what they would have been charged had they been written voluntarily. See Arbella Mutual Insurance Company v. Commissioner of Insurance, 456 Mass 66, 79 (2010). Accordingly, under CAR's Rules of Operation 28 and 29, insurance companies are required to charge MAIP policyholders *the lower* of the carrier's voluntary premium or the MAIP premium. CAR's proposal to charge fees that exceed voluntary market norms and its repeated assertions that MAIP fees should not be competitive with corresponding fees in the voluntary market<sup>4</sup> undermine the non-discriminatory intent of G.L. c. 175, § 113H.

CAR's July 31, 2014 survey of existing voluntary market fees<sup>5</sup> makes clear that CAR's proposed fees are outliers. Of the 34 insurance companies surveyed by CAR:

- not a single company reported charging a late payment fee above the MAIP's current late payment/cancellation fee \$25;<sup>6</sup>
- only three reported charging an installment charge above the MAIP's current \$6 per installment charge;<sup>7</sup> and

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<sup>4</sup> See, e.g., Notice of MAIP Steering Committee Meeting (July 31, 2014), at 2; Records of MAIP Steering Committee (February 18, 2015), at 1.

<sup>5</sup> Notice of MAIP Steering Committee Meeting (July 31, 2014), Exhibit 2, at 1.

<sup>6</sup> The Division of Insurance's Motor Vehicle Insurance Installment Payment Plan website confirms a late fee greater than \$25 exceeds market norms. Further, although the MAIP's "late/cancellation" fee is applied when an installment payment is not paid by its due date, the Division of Insurance's Motor Vehicle Insurance Installment Payment Plan website shows that some carriers have separate late and cancellation fees, that others apply a fee only when a statutory notice of cancellation is issued, and others charge a fee only after a stated grace period following an installment payment due date. CAR's survey does not appear to consider these issues.

<sup>7</sup> CAR's survey does not appear to have evaluated the frequency of the installment fee, the amount of the associated down payment, or fee waivers/discounts for e-bill and/or EFT payments.



- only three reported charging a dishonored check fee above of the MAIP's current \$25 fee.

The Division of Insurance's "Motor Vehicle Insurance Installment Payment Plan" website<sup>8</sup> also demonstrates that CAR's proposed fees exceed the fees charged by the vast majority of carriers in the Massachusetts auto insurance market. Further, according to the Division's website, nearly every insurance company in Massachusetts will eliminate or reduce installment fees for voluntary customers who sign up for electronic billing and/or electronic funds transfer ("EFT") payments. Since CAR does not require carriers to make EFT payment options available to MAIP policyholders,<sup>9</sup> MAIP customers are often locked out of the installment fee waivers and discounts that voluntary market customers receive. For example, the chart below from Quincy Mutual's website<sup>10</sup> demonstrates how MAIP policyholders are prevented from using the so-called "best option" and are not provided with EFT and e-billing discounts:

Payment Plan Charges		
Are you signed up for E-Bill?	Are you signed up for EFT?	Your Installment Charge is:
✓ Yes	✓ Yes	Our best option! You pay \$0.00 per installment fee. Congrats!
✓ Yes	No	You pay \$2.00 per installment charge. Reduce this to \$0.00 by signing up for EFT.
No	✓ Yes	You pay \$2.00 per installment charge. Reduce this to \$0.00 by signing up for E-Bill.
No	No	You pay \$5.00 per installment charge. Reduce this to \$0.00 by signing up for EFT and E-Bill.
For our MAIP customers		\$6.00 per installment fee.

We also have concerns about CAR's Billing Fee Study, which attempts to justify the increased fees proposed by CAR. The study lacks explanation of its methods, procedures, assumptions, and data. Indeed, it only provides the following explanation for the source of the information presented: "Costs estimated based on aggregated estimates provided by companies participating in the study."<sup>11</sup> That is, CAR's proposal is based upon estimates on top of estimates, with no explanation of how any of those estimates were derived.<sup>12</sup>

CAR's Billing Fee Study attempts to justify increased fees based on the expenses associated with routine policy servicing functions, such as issuing invoices, generating notices of cancellation and reinstatement, and handling returned payments. However, CAR's analysis does

<sup>8</sup> [www.mass.gov/ocabr/insurance/vehicle/auto-insurance/mv-insurance-payment-plans/](http://www.mass.gov/ocabr/insurance/vehicle/auto-insurance/mv-insurance-payment-plans/)

<sup>9</sup> See Records of MAIP Steering Committee Meeting (April 6, 2010), at 1.

<sup>10</sup> [www.quincymutual.com/payment-plan-options.htm](http://www.quincymutual.com/payment-plan-options.htm)

<sup>11</sup> Notice of MAIP Steering Committee Meeting (February 18, 2015), Exhibit 3, at 1 (emphasis added).

<sup>12</sup> CAR's analysis does not explain how the participating insurers determined their purported expenses, what procedures the insurers used to ensure the accuracy of their estimates, whether consistent procedures were used by the estimating carriers, or how CAR derived its estimates based on the insurers' estimates.

not address the extent to which these expenses are already contemplated in the expense provision underlying CAR's filed MAIP rates. Rather, CAR seems to conclude that increased fees are warranted simply due to the extra expense allegedly associated with servicing MAIP policies. By contrast, in its 2013 MAIP rate filing, in which CAR adopted use of a total market expense provision for MAIP rates, CAR stated that "[t]he expense of servicing a policy is basically the same regardless of whether it is written voluntarily or through the residual market."<sup>13</sup>

If CAR now believes that its adopted expense provision is inadequate, CAR should thoroughly analyze the expense provision underlying its current rates and the actual MAIP expenses to determine the adequacy of its current expense provision. While it may be that there are some higher costs associated with servicing MAIP policies, there may also be offsetting higher voluntary expenses, such as advertising, which are not applicable to MAIP business. If after thorough analysis, CAR determines that a higher (or lower) overall expense provision is justified, CAR should submit a new rate filing to the Division and go through the normal rate filing process, including providing all underlying data and analysis so that reviewers can determine the reasonableness of CAR's analysis. CAR's current proposal does not allow for such a determination. CAR should not be permitted to collect expenses through fees without also considering the expense provisions currently in its rates, as this could result in the unlawful double-counting of expenses for MAIP policyholders. Furthermore, collecting expenses through fees which are normally considered as part of the rate making process raises significant issues in terms of compliance with the pricing protections in G.L. c. 175, § 113H.

We urge you to reject CAR's proposal to increase fees for residual market consumers.<sup>14</sup> In the interest of fairness and equality, we further recommend that you direct CAR to help lower costs for residual market policyholders by giving MAIP policyholders access to the same billing and payment methods as voluntary customers, along with comparable EFT and e-bill discounts.

Thank you for your consideration of this important matter. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Glenn Kaplan, Chief  
Insurance & Financial Services Division  
(617) 963-2453  
[Glenn.Kaplan@state.ma.us](mailto:Glenn.Kaplan@state.ma.us)

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<sup>13</sup> CAR Filing for MAIP Private Passenger Automobile Insurance Rates, filed May 14, 2013, at 63.

<sup>14</sup> If you have approved CAR's proposal by the time this letter reaches you, we ask that you reconsider your decision based on the information provided in this correspondence.