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**Commonwealth Automobile Reinsurers  
Proposed Revisions to the Performance Standards  
For the Handling and Payment of Private Passenger  
Claims by Servicing Carriers**

**Docket No. C2009-05**

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**Procedural History**

Commonwealth Automobile Reinsurers (“CAR”), established pursuant to G.L. c. 175, §113H to administer the residual market for motor vehicle insurance, is required by that statute to prepare performance standards for the handling and payment of motor vehicle insurance claims by servicing carriers. It then submits those standards to the Commissioner of Insurance (“Commissioner”) who, after a public hearing, may approve or modify them.

On September 16, 2009 the CAR Governing Committee approved proposed modifications to the Performance Standards for the Handling and Payment of Private Passenger Claims by Servicing Carriers (“Performance Standards”) and submitted them to the Commissioner for approval.<sup>1</sup> On October 5, 2009 the Acting Commissioner issued a notice scheduling a hearing on November 5, 2009 to afford interested persons an opportunity to provide oral and written comments regarding the proposed modifications. Four people spoke at the hearing.<sup>2</sup> After completion of the oral statements, the record was left open until the close of business on November 12, 2009.<sup>3</sup>

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<sup>1</sup> Beginning in 2007, CAR elected to prepare separate performance standards for commercial and for private passenger motor vehicle claims.

<sup>2</sup> Speakers included Valerie Gedziun, CAR’s vice-president of compliance audit, and Thomas Colo, an automobile damage appraiser, both of whom had filed notices of intent to make statements. Representatives of the Central Massachusetts Auto Rebuilders Association and the Alliance of Automotive

## Summary of the Proposed Changes

CAR proposes five modifications to the text of the Performance Standards and several revisions to the documentary appendices to those Standards. The first modification, in the introduction to the standards, was proposed in response to the implementation of competitive rating. It states that in the event of a “conflict” between the Performance Standards and coverages offered by a servicing carrier, the policy coverage would supersede the Standard. The second relates to payments for automobile physical damage claims; it substitutes the word “appraisal” for “inspection” of damage, and removes the phrase “at drive-in locations or in the field.” CAR states that the change responds to 212 CMR (2)(i) which does not require physical inspection of the vehicle in connection with expedited supplemental appraisals.

In connection with the Standard for providing forms to consumers for handling PIP benefits, CAR proposes substituting the word “sent” for the word “mailed,” to permit electronic communication. CAR also proposes to modify the Standard relating to insurer handling of PIP claims to state that carriers “must,” rather than “should,” establish plans for continuing awareness of the claimed disability and oversight of the claimant’s medical treatment. It substitutes the word “may” for the word “must” in the section of the Performance Standard that addresses the specific techniques to be included in the content of such plans. Finally, CAR updated the penalty schedule for non-compliance to reflect 2008 total market shares and penalty provisions.

CAR modified the Appendices to the Performance Standards, first by deleting Appendix E, 211 CMR 93.00, the regulation on the Cost and Expense Containment Standards for Motor Vehicle Insurers, because it was repealed as of October 17, 2008. It updated Appendices F and M to include current versions, respectively, of 212 CMR 2.00, the regulation relating to the Appraisal and Repair of Damaged Motor Vehicles and the Questionnaire about claims handling programs that CAR distributes to its members. Revisions to the Questionnaire added inquiries about coverages or endorsements offered by servicing carriers in the competitive rating environment that would affect compliance

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Service Providers of Massachusetts and Rhode Island did not comment on the proposed modifications but raised questions about the procedures for developing the performance standards and regulations relating to motor vehicle insurance.

<sup>3</sup> The Attorney General submitted a statement.

with the Performance Standards. CAR added, as Appendix P, Division of Insurance Bulletin No. 2008-12, which relates to the coordination of benefits under G.L. c. 90, §34A and the interrelationship of PIP, Health Insurance and medical payments coverage.

**Discussion**

CAR's proposed modifications, in summary, reflect implementation of competitive rating in the market for private passenger motor vehicle insurance, changes in communications technology, and regulatory changes. To avoid the potential for ambiguous interpretations of its modifications, at the hearing CAR agreed to substitute the word "exceed" for the phrase "conflicts with" to describe the relationship between a particular policy coverage and the specific approved Performance Standards in the introduction, and to revise the next sentence to clarify that, in the event of such a difference, the policy coverage will supersede the Standard. CAR also agreed to revise the Standards relating to the handling of PIP benefits to clarify that the carrier will send the necessary forms by mail unless the consumer states a preference to receive the documents electronically at an address that the consumer specifies, and that carrier plans to oversee PIP claims should continue to identify techniques that have historically been shown to be useful tools to manage medical cost containment, as well as include innovative approaches. On November 9, 2009 CAR submitted a revised version of the Performance Standards that incorporates these modifications.

As revised, the Performance Standards for the Handling and Payment of Private Passenger Claims by Servicing Carriers approved by the CAR Governing Committee on September 16, 2009, are hereby approved.

November 13, 2009

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Jean F. Farrington  
Presiding Officer