



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation DIVISION OF INSURANCE

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Proposed Amendments to Performance Standards for the Handling and Payment of Private Passenger Motor Vehicle Insurance Claims by Assigned Risk Companies and to Performance Standards for the Handling and Payment of Commercial Motor Vehicle Insurance Claims by Servicing Carriers

Docket No. C2019-01

Decision and Order

Commonwealth Automobile Reinsurers (“CAR”), established pursuant to Massachusetts General Laws c. 175, §113H to administer the residual market for motor vehicle insurance, is required by statute to create written performance standards for the handling and payment of motor vehicle insurance claims. After obtaining approval of its Governing Committee, CAR then submits those standards to the Commissioner of Insurance (“Commissioner”) who, after a public hearing, may approve or modify them. Since 2007, CAR has prepared separate performance standards for commercial and for private passenger motor vehicle claims; since 2013 both have been submitted to the Commissioner contemporaneously and heard in one proceeding. By letter dated February 26, 2019, CAR submitted for the Commissioner’s approval proposed amendments to the performance standards for private passenger motor vehicle insurance claims and for commercial claims that the Governing Committee had approved on February 13, 2019.

On March 13, 2019, the Commissioner issued a notice scheduling a hearing on April 12, 2019 to afford interested persons an opportunity to provide oral and written comments regarding the proposed amendments. The notice invited those who intended to make statements at the

hearing to notify the Division of Insurance in advance. CAR and FAIR Health, an organization that collects nationwide data relating to the health care industry, including, among other things, insurance claims, submitted advance notices of intent to speak.¹

CAR's 2019 proposed amendments, to both sets of performance standards, are in large measure technical changes that reflect revisions to CAR's internal operations, conform the standards to revised CAR Rules, and replace obsolete documents with current versions. Similarly, formatting revisions improve clarity and internal consistency. As examples, CAR changed references to its Audit Committee to its new name, the Compliance and Operations Committee, replaced the current procedures for transmitting quarterly Special Investigation Unit activity reports from Assigned Risk Companies to CAR with a single uniform electronic process, and added specific requirements for handling suspected fraudulent claims under Personal Injury Protection ("PIP") claims. A question was added to the Compliance Audit Claim Questionnaire for commercial claims to collect information needed to evaluate compliance with new CAR standards for writing commercial business.

CAR proposed to amend private passenger and commercial claim Performance Standard III, the handling of PIP claims, making both technical and substantive changes to Subsection C, Medical Management, ¶ 2, a list of "historically utilized techniques" for investigating the medical expenses components of those claims. The listed techniques have now been individually numbered, i through iv. In item iv, "innovative approaches," CAR replaced the preliminary phrase "as well as" with the word "other." The substantive change is made to item ii, "medical bill reviews, including but not limited to a determination of usual and customary charges." CAR proposes to add, after the word charges, the phrase "with or without the use of medical fee databases."

At the April 12 hearing, Thomas Swift, Esq., representing FAIR Health, spoke in support of CAR's proposed amendment to Performance Standard III, Subsection C, ¶ 2 (ii). Mark Alves, CAR's Administrator of Compliance Audit, presented a prepared statement of the proceedings at CAR that resulted in the proposed amendments and responded to questions from the presiding officers. He confirmed that the amendment to Standard III, C, ¶ 2 (ii) links the use of medical fee databases specifically to the review of medical bills for the purpose of determining usual and

¹ The Alliance of Automotive Service Providers filed a notice of intent to make a statement but withdrew it before the hearing.

customary charges. In response to questions, Mr. Alves also affirmed that the amendment is consistent with language in Appendix I, Compliance Audit Claim Review Process, that defines Medical Bill Review as including, among other things, the use of a “computerized/expert system.” He indicated that the referenced systems have included medical fee databases for a long time. We find that CAR’s proposed changes to Standard III, C, ¶ 2 (ii) appropriately connect the use of medical fee data bases to the task of reviewing medical bills to determine whether they are within the range of usual and customary charges.

No other person submitted written commentary or made a statement at the hearing. The record was kept open until April 23, 2019. The Division received no further comments.

After a review of CAR’s proposed amendments and the statements at the hearing, we hereby approve the Performance Standards for the Handling and Payment of Private Passenger Motor Vehicle Insurance Claims by Assigned Risk Companies and for the Handling and Payment of Commercial Claims by Servicing Carriers approved by the CAR Governing Committee on February 13, 2019.

April 26, 2019

Kristina A. Gasson
Presiding Officer

Jean F. Farrington
Presiding Officer

Affirmed:

April 26, 2019

Gary D. Anderson
Commissioner of Insurance