



COMMONWEALTH OF MASSACHUSETTS

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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. C2020-01

Decision and Order

Introduction

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 that statute to create written performance standards for the handling and payment of motor vehicle insurance claims. After approval by its Governing Committee, CAR submits those standards, or amendments to them, to the Commissioner of Insurance (“Commissioner”) who, after a public hearing, may approve or modify them. By letter dated December 21, 2020, CAR submitted for the Commissioner’s approval proposed amendments to the two sets of performance standards, one for private passenger motor vehicle insurance claims and one for commercial motor vehicle insurance claims, that the Governing Committee had approved on December 4, 2020.

On January 22, 2021, the Commissioner issued a notice scheduling a hearing on the proposed amendments for February 23, 2021. Because of requirements imposed as a result of the pandemic that limited in-person gatherings, the hearing was held virtually using TEAMS, a digital internet program. The purpose of the hearing remained unchanged, to afford interested persons an opportunity to provide oral and written comments regarding the proposed

amendments. The current standards and a summary of the proposed amendments that CAR filed electronically with the Division of Insurance (“Division”) were entered into the docket of this proceeding and made available to those requesting access to them. CAR also submitted for the docket supplemental materials including the records of the CAR committee meetings at which the amendments were discussed and CAR Bulletin No. 1115 that advised its members of the hearing. The hearing notice instructed persons who intended to participate by speaking at the virtual hearing or who wished to have audio access to the hearing to notify the Division in advance. It also allowed written comments to be submitted through March 2, 2021.

Benjamin Hincks, Esq. and Stephen Torres, Esq. represented CAR at the hearing. Mark Alves, CAR’s Director of Compliance Audit, spoke on CAR’s behalf, addressing the scope of the proposed amendments and the discussions at CAR that resulted in those amendments. No other person made a statement at the hearing, and no post-hearing written commentary was submitted.

Discussion

CAR’s twelve proposals to amend the two sets of performance standards address three topics with the shared goals of strengthening precision and improving internal consistency. Six of the twelve amend Standards I, II and III in both the Private Passenger and Commercial Standards that relate to claims arising under specific insurance coverages: Physical Damage and Property Damage Liability, Bodily Injury and Under- and Uninsured Motorist Liability, and No-Fault Personal Injury Protection Benefits. A section titled Fraud Handling in each of these standards includes a subsection on Special Investigation Units (“SIUs”). The current language in that subsection now states that the CAR SIU Standards for investigation of suspicious claims, set out in Appendix A to each set of Standards, must be “consulted and considered” as part of the special investigation process. CAR, responding to an observation at a prior hearing that the current language is imprecise, now proposes to replace “consulted and considered” with “adhered to.”¹

The second set of amendments expands the reporting procedures that CAR uses as a basis for measuring Members’ adherence to the performance standards with the goal of improving the

¹ The amendment appears in the same sections of both the Private Passenger and Commercial Standards: I.C.3.b, II.B.2 (b) and III.D.2.b.

quality and completeness of each Member's logs of SIU activities and performance. Members are required to upload to an automated CAR system their Quarterly Activity Logs of cases referred to their SIUs. Appendix A to each set of standards currently requires reports of referrals based on claims handling. Mr. Alves pointed out that CAR's Rules of Operation, Rule 10.C of the rules applicable to commercial business and, for private passenger business, MAIP Rule 32.C, require SIUs to investigate suspicious circumstances connected to underwriting and rating premium issues and to audit a representative policy sample to verify garaging and policy facts. He noted that Appendix J to both sets of standards, the CAR SIU File Review Process, also refers to investigations of suspicious underwriting issues and audits of garaging and policy information.

CAR, concluding that underwriting referrals are as important to SIU evaluations as claims handling matters, therefore developed a template for reporting referrals based on underwriting issues that parallels the template for claims referrals. It is also designed to be uploaded into CAR's automated system for filing activity logs. The two templates will establish uniform formats for documenting both types of referrals and together will create a comprehensive SIU reporting system that, in accord with Appendix J, will include both claims and underwriting referrals in audit samples.

Quarterly Activity Logs also include the insurer's estimate of the amount saved as a result of the SIU investigation. The accuracy of that value is one of the five best practices that is measured in evaluating the SIU's performance. CAR staff developed a standard methodology for evaluating and reporting saved amounts in the activity logs, by coverage, that will provide consistent measurements for estimating company and industry savings attributable to SIU efforts.

The amendment creating the expanded system for reporting both cases relating to claims and those relating to underwriting is found in Appendix A, section B.3 that addresses quarterly activity logs. Appendix A is attached to both the Private Passenger and Commercial Standards. It notes that the templates for reporting both types of cases are located on the CAR website. The methodology for estimating claims savings is set out in Appendix J.

The third focus of CAR's proposed amendments is the Measurement and Penalties section included in each set of Performance Standards. Unlike the Commercial Standards, the current Private Passenger Standards do not impose penalties for continued noncompliance with

SIU standards. In the course of conducting audits of Assigned Risk Companies, CAR discovered that several were not compliant with those standards; subsequently CAR conducted focused audits to verify that the companies had modified their procedures. Focus in additional audits on compliance with the SIU standards continued to identify recurrent issues. CAR, concluding that a documented penalty program for failure to meet the standards for SIU audits could serve as a deterrent to future noncompliance, proposed to amend the Private Passenger Standards by adding to the Measurements and Penalties section a tiered penalty provision for persistent noncompliance with the SIU standards that mirrors that now in the Commercial Standards Measurements and Penalties. It adds to the latter a provision that conforms the benchmark for assessing compliance with SIU Best Practices in both sets of standards.

Conclusion

The amendments that CAR proposes focus on issues related to the SIUs that, pursuant to Article III of the CAR Plan of Operation, each CAR Member must maintain as support for its efforts to control fraud. The amendments to Standards I, II and III of the Private Passenger and Commercial Standards clarify and strengthen the relationship of the published standards to the SIU operations, by now requiring SIU staff to “adhere to” those standards rather than simply “consult” them. A uniform requirement to follow the standards also ensures a consistent basis for CAR audits of SIU performance.

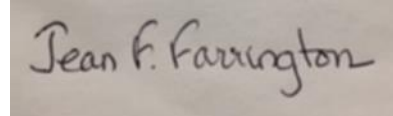
The amendments that expand the scope of Quarterly Activity Logs to include SIU cases that are referred for suspected irregularities related to underwriting and rating as well as those related to insurance claims reflect language in the CAR Rules. The changes will conform the scope of SIU responsibilities now in Appendix A to the scope now in Appendix J. They will ensure that the reported SIU activities encompass the full range of their responsibilities and create a more comprehensive basis for evaluating insurer efforts to control fraud.

CAR’s proposed amendments to the Measurements and Penalties section of both sets of Standards serve the salutary purposes of creating parity in the consequences for persistent noncompliance with the SIU standards and serving as a deterrent to that noncompliance. On the record of this proceeding, the rationale for those amendments was not challenged.

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

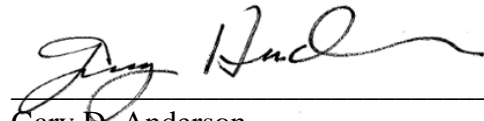
Motor Vehicle Insurance Claims by Assigned Risk Companies and for the Handling and Payment of Commercial Claims by Servicing Carriers approved by the CAR Governing Committee on December 4, 2020.

Dated: April 6, 2021

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Jean F. Farrington
Presiding Officer

Affirmed:
April 6, 2021

A handwritten signature in dark ink, appearing to read "Gary D. Anderson", written over a horizontal line.

Gary D. Anderson
Commissioner of Insurance