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COMMENTS OF THE MASSACHUSETTS INSURANCE FEDERATION TO THE DIVISION OF INSURANCE IN CONNECTION WITH THE REVIEW OF ITS EXISTING REGULATIONS

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As the leading advocate for the property and casualty industry in Massachusetts, the Massachusetts Insurance Federation (the "Federation") offers the following comments and recommendations to the Division of Insurance (the "Division") in connection with the Division's review of its existing regulations.

By way of background, the Federation focuses exclusively on Massachusetts issues and consists of 24 insurance company members, including 9 carriers who are domiciled in the Commonwealth. Our members account for 60% of the total property casualty insurance business written in the Commonwealth; including 80% of the private passenger auto market, 60% of the homeowners market and 50% of the workers compensation segment. Four national insurance trade associations are also associate members of the Federation.

Our comments and recommendations on specific Division regulations are as follows:

- **Accreditation-Related Regulations – 211 CMR 7.00 (Insurance Holding Company System), 211 CMR 130.00 (Credit for Reinsurance), and 211 CMR 132.00 (Actuarial Opinion and Memorandum): These regulations should be updated.**

  These three regulations are critical to the Division maintaining its accredited status with the National Association of Insurance Commissioners ("NAIC"). Accordingly, they should be updated and repromulgated. The updates should take into account the statutory revisions that were enacted in 2014 to make the Massachusetts insurance laws consistent with the most recent versions of the NAIC model laws, specifically: Chapter 430 of the Acts of 2014, which amended G.L. c. 175, § 20A (relating to 211 CMR 130.00); Chapter 445 of 2014, which added G.L. c. 175, § 227 (relating to 211 CMR 132); and Chapter 456 of 2014, which amended G.L. c. 175, §§ 1 and 206C (relating to 211 CMR 7.00). The regulations should also be made consistent with the most recent versions of the applicable NAIC model regulations.

- **Workers' Compensation Rate Filings and Hearings – 211 CMR 110.00: The rate review process should be streamlined.**

  The Federation has, along with the national insurance company trade associations (the American Insurance Association, the National Association of Mutual Insurance Companies and the Property Casualty Insurers Association of America), submitted

separately a statement urging the Division to streamline the rate review process under this regulation. The Federation incorporates that statement into these comments.

- **Electronic Filing of Required Financial Statements – 211 CMR 26.00: This regulation should be modernized to allow for electronic submission of the required financial statements.**

  The Massachusetts Division of Insurance is one of the few state insurance departments that does not allow for the electronic filing of annual and quarterly financial statements that are required to be filed with the Division. This is a very antiquated and cumbersome process and is not in keeping with current electronic technology. The Division of Insurance should revise its regulatory processes to provide for the filing of required financial statements electronically. Here is suggested language:

  > 211 CMR 26.00: ANNUAL FINANCIAL REPORTING FOR YEARS ENDING 2010 AND AFTER
  > 26.05: General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment
  > …
  > **(3) Any filing required to be submitted to the Division under 211 CMR 26.00 may be made electronically.**

- **Audits of Insurers by Independent Certified Public Accountants for the Years 1991 and After – 211 CMR 23.00: The Regulation is outdated and should be repealed.**

  This regulation has been supplanted by 211 CMR 26.00 and is no longer needed. We understand that 211 CMR 26.00 was first promulgated in 2010, the rules under 211 CMR 23.00 were still applicable for examinations that were undertaken during the ensuing five-year period. Insofar as five years have elapsed (or soon will) since the adoption of 211 CMR 26.00, the rules under 211 CMR 23.00 are no longer applicable. Therefore, the entire regulation should be repealed. It continued presence creates creates confusion for insurers and auditors.

- **Safe Driver Insurance Plan – 211 CMR 134.00: The Regulation needs to be updated to properly distinguish the applicable requirements for safe driver insurance plans under a "fix and establish" system from the merit rating plans used under managed competition.**

  This regulation prescribes requirements for the Safe Driver Insurance Plan ("SDIP") required by the statute (G. L. c. 175, § 113B) under which the Commissioner of Insurance may, under certain circumstances, fix and establish auto insurance rates, as well as for merit rating plans that auto insurers may adopt under the system of managed competition pursuant to the auto insurance competitive rating statute (G. L. c. 175E) and the regulations thereunder (211 CMR 79.00) which has been in effect since 2008. This regulation does not clearly separate the requirements for the SDIP from the

provisions applicable to the managed competition permissive merit rating plans. As a result, the inclusion of requirements for merit rating plans in the regulation designed for the state-mandated and restrictive SDIP creates confusion and uncertainty. Any requirements that should apply to merit rating plans generally under managed competition should be deleted from 211 CMR 134 and included in a separate regulation focused only on those plans. At the same time, the revised SDIP-related regulation should be updated to reflect the changes prescribed by SECTION 14 of Chapter 46 of the Acts of 2015.

- **Coordination of Benefits – 211 CMR 38.00: Revisions to the regulation which would make Med Pay coverage excess to PIP and health insurance coverage should be finalized and formally adopted.**

  The Division of Insurance has been working on revisions to 211 CMR 38.00 to clarify the rules for coordination of benefits when an individual is covered by more than one insurance policy, in order to reduce the duplication of payments and to simplify the administration of claims. The Division has consulted with the auto insurers through the Automobile Insurers Bureau of Massachusetts ("AIB") and the health insurers to clarify the order of payments for person covered by health insurance, personal injury protection ("PIP"), and medical payments benefits ("MedPay"). The AIB has recommended that Med Pay coverage should only be secondary to, or excess of, both PIP and health insurance coverage, in accordance G. L. c. 90, §§ 34A and 34M. That is, PIP will pay the first $2,000 of medical expenses incurred in a motor vehicle accident, and then be secondary to health coverage and coordinate benefits with the health plan for additional payments, while MedPay remains an excess coverage for payments not covered by health insurance or PIP. The Federation concurs with this approach as it will permit the proper coordination between PIP and health insurance mandated by the PIP statute and help to control the costs of health care and the administrative burdens of the inefficient mechanisms currently in place.

Thank you for the opportunity to offer our comments and recommendations. I would welcome the opportunity to meet with Division staff to further discuss these proposals.

Respectfully submitted,

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Executive Director