



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION  
DIVISION OF INSURANCE  
280 FRIEND STREET, BOSTON 02114  
(617) 727-7189

TIMOTHY H. GAILEY  
COMMISSIONER OF INSURANCE

December 27, 1990

TO: Property & Casualty Insurance Companies Currently Licensed  
in the Commonwealth of Massachusetts

FROM: Timothy H. Gailey, Commissioner of Insurance *THG*

RE: Lead Paint Liability Insurance

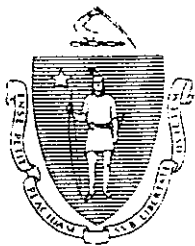
The enclosed bulletin regarding lead paint liability coverage is the result of a lengthy dialogue initiated by the Division of Insurance with the property and casualty insurance industry and other interested parties.

In the spring of 1990 a few companies submitted endorsements which excluded liability coverage for lead paint. The Division requested statistical evidence of the impact these types of claims have had on commercial and personal property business. To date, none has been submitted. However, by the summer of 1990, the industry started to decline to write new property liability policies on rental residential units, and some also began to non-renew existing policies insuring properties that were not deleaded or lead-free.

Based on this information, the Division initiated steps to negotiate with industry representatives to keep the voluntary property liability markets open for rental residential housing units. After a thorough analysis of the possible ramifications of various alternatives, I have decided that the best solution is to allow a limited exclusion with a buyback provision for lead paint liability in both commercial and homeowners policies.

The Division has several public policy reasons for providing for a voluntary market. Perhaps most importantly, the Division believes that coverage must be available to the group of children most at risk for lead paint poisoning. And because lead paint cannot be abated from the entire affected housing stock in a short length of time, some coverage should be available until such time as the lead can be removed.

Thus, it is with these concerns that I have, with input from the insurance industry and other interested groups, developed a program to provide stability in the marketplace. This program will be reviewed on an ongoing basis to verify if any further changes to the outline provided in the bulletin are warranted.



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BULLETIN SRB - 90-04

GUIDELINES FOR LEAD PAINT LIABILITY ENDORSEMENTS

Insurers who wish to exclude liability coverage for lead paint poisoning in residential rental units built prior to 1965 may do so with an exclusionary endorsement. Over the period of 1991 through 1995, however, insurers shall offer insureds the option to purchase, or buyback, this coverage for an additional premium charge. Insurers may also annually decrease the coverage offered over this five year period. During this time, the program shall be reviewed to verify whether or not any further changes are warranted.

Insurers shall submit to the Division of Insurance appropriate exclusion and disclosure forms and rates to conform with the terms described below for approval, prior to use. In addition to the insurance-specific disclosure requirements, the Division will also require insurers to issue a general disclosure statement on the Commonwealth's laws and regulations regarding lead paint, as well as information on lead paint abatement. This general statement will be standardized; it will be sent to insurers at the time of form and rate approval.

A. Exclusion language - Insurers shall submit language for an exclusionary endorsement with separate limits of liability which meets the following conditions:

1. Liability is excluded only for claims arising from lead poisoning of children who are under six years of age at the time of the poisoning.
2. Exclusions are not permitted on rental units which have a letter of compliance from a licensed lead paint inspector indicating lead-abated or lead-free units. Exclusions shall only apply to occurrences before the date of a letter of compliance.

For insurers writing new business, the exclusionary endorsement, buyback rates and the disclosure information shall be presented at the time of application. -

For existing business, the exclusionary endorsement, buyback rates and the disclosure information shall be stapled onto the front of the policy jacket at the time of renewal. Existing business may not be endorsed at mid-term during a policy year.

B. Buyback provisions - Insurers are required to provide the option to purchase lead paint liability coverage to existing or prospective policyholders in all situations where a lead paint exclusion is attached to the base policy. This offer must be made at the time existing or prospective policyholders are notified of the exclusionary endorsement.

New Business - The prospective property owner, notified at the time of application of the exclusionary endorsement and buyback rates, shall be offered coverage limits which comply with the following:

1. In 1991, insurers shall offer lead paint liability coverage limits of at least \$300,000 for homeowners insurance, and \$500,000 for commercial property insurance. The purchaser, at his or her option, may buy less. Coverage shall begin as of the effective date of the policy.
2. In 1992, and for the subsequent three years, the level of lead paint liability coverage an insurer is required to offer to new property owners may decrease by no more than \$100,000 per year, down to a minimum coverage of \$100,000 for homeowner policies and \$300,000 for commercial policies.

Examples: Homeowners (rental units): In 1991, an insurer must offer a minimum of \$300,000 coverage, and in 1992, an insurer may decrease that coverage by \$100,000 to \$200,000. In 1993, coverage may be decreased by another \$100,000 to \$100,000, but must be maintained at that level of \$100,000 in both 1994 and 1995.

Commercial Property: In 1991, an insurer must offer a minimum of \$500,000 coverage, and in 1992, an insurer may decrease that coverage by \$100,000 to \$400,000. In 1993, an insurer may decrease that coverage by \$100,000 to \$300,000, but must maintain that coverage in both 1994 and 1995 at \$300,000 each year.

3. New property owners initially declining lead paint liability buyback coverage have the option to purchase coverage later, subject to the limitations described above regarding annual minimum coverages and allowed decreases. The effective date of buyback coverage will be the date of receipt of payment by the insurer.

## Renewal Business

1. Notified of the exclusionary language, rates and disclosure statement at the time of renewal, the insured has 30 days to decide whether or not to maintain lead paint liability coverage, and the amount of coverage desired.

If the insured decides to maintain lead paint liability coverage, this coverage shall be retroactive to the policy renewal date. The insured shall notify the company in writing within 30 days of receipt of the above notice (the exclusionary language, rates and disclosure statement) of his or her decision.

2. Following the expiration of the 30 day period, insureds have the option to purchase lead paint liability coverage, subject to the limitations described below regarding allowed annual coverage decreases. The effective date of coverage will be the date of receipt of payment by the insurer.

3. For the initial 12 month policy renewal period, including the 30 day period during which the insured may decide to continue coverage, companies shall offer as a minimum the same amount of liability coverage as an insured maintains under the base policy.

Example: If an insured has \$400,000 liability coverage currently on his or her homeowners policy, at the 1991 renewal date, the insurer must offer \$400,000 of lead paint liability coverage to the insured.

However, if an insured has over \$500,000 in liability coverage, the insurer has the option to offer (a) a minimum of \$500,000 for lead paint liability coverage or (b) the same amount of liability coverage as the insured maintains under the base policy.

4. For each subsequent 12 month policy period during 1992-1995, the level of lead paint liability coverage an insurer is required to offer may decrease by no more than \$100,000, down to a minimum coverage of \$100,000 for homeowner policies and \$300,000 for commercial policies.

Examples: At the renewal date in 1992, an insurer could decrease lead paint liability coverage by \$100,000 from the prior policy year. If an insured had \$400,000 coverage in 1991, the insurer could reduce the amount offered to \$300,000 at renewal in 1992. Similarly, the insurer could reduce the coverage level each subsequent policy year during 1993, 1994, and 1995, but no lower than \$100,000 for homeowners and \$300,000 for commercial property policies.

5. For insureds who change insurance companies during this 1991-1995 period, the new carrier is not obligated to offer a prospective insured coverage at a higher level than that provided by a prior carrier under this buyback provision.

C. Disclosure - The following points should also be included in a disclosure notice sent to the policyholder at the time of issuance of the exclusionary endorsement and buyback option:

New and Renewal Business:

1. That the policy now contains a lead paint poisoning exclusion which removes liability coverage for claims arising out of the lead poisoning of children who are poisoned when under the age of six. Exclusions, however, are not permitted on rental units which have a letter of compliance from a licensed lead paint inspector indicating lead-abated or lead-free units.

2. That for an additional premium charge, the policyholder can purchase liability coverage for lead paint poisoning.

New Business only:

3. In 1991, insurers shall offer lead paint liability coverage limits of at least \$300,000 for homeowners insurance, and \$500,000 for commercial property insurance. The purchaser, at his or her option, may buy less. Coverage shall begin as of the effective date of the policy.

4. In 1992, and for the subsequent three years, the level of lead paint liability coverage an insurer is required to offer to new property owners may decrease by no more than \$100,000 per year, down to a minimum coverage of \$100,000 for homeowner policies and \$300,000 for commercial policies.

5. New property owners initially declining lead paint liability buyback coverage have the option to purchase coverage later, subject to the limitations described above regarding annual minimum coverages and allowed decreases. The effective date of buyback coverage will be the date of receipt of payment by the insurer.

Renewal Business only:

6. That the policyholder has 30 days from receipt of the exclusionary endorsement and rates for the buyback coverage to notify the company to elect lead paint liability coverage and the level of coverage he/she wishes to purchase. If purchased, this coverage shall be retroactive to the policy renewal date. If the policyholder does not respond within this timeframe, the insurer can assume the policyholder does not wish to purchase the buyback, and there is no lead paint coverage during the 30 day period.

7. That for the period 1991-1995, insurers are obligated to offer an existing level of liability coverage for the initial 12 month renewal policy period, but that should the level of coverage exceed \$500,000, an insurer has the option to limit the liability to \$500,000 or provide the same amount of liability coverage as the insured maintains under the base policy.

8. That for each subsequent 12 month period during 1991-1995, the level of lead paint liability coverage an insurer is required to offer may decrease by no more than \$100,000, down to a minimum coverage of \$100,000 for homeowner policies and \$300,000 for commercial policies.

9. That for policyholders electing to purchase lead paint liability coverage after the initial 30 day period, the effective date of coverage will be the date of receipt of the payment for the buyback by the insurer, and liability levels will be subject to annual allowed coverage decreases.

10. For insureds who change insurance companies during this 1991-1995 period, the new carrier is not obligated to offer a prospective insured coverage at a higher level than that provided by a prior carrier under this buyback provision, but is obligated to offer that which the prior carrier was, under this bulletin, obligated to offer.

D. Rate structure - Submitted rates for the buyback provision shall be accompanied by all actuarial data used in their formulation, including:

1. Actual premium and loss experience, expenses, claim counts, incurred amounts, including incurred allocated loss adjustment expenses, and loss ratios, for the past five years.
2. Additional analysis of loss experience, such as the percentage of lead paint claims which are closed with and without indemnity payments.
3. An explanation of actuarial assumptions used in developing the rate structure.

Insurers may, on a voluntary basis, include in their rate structure a percentage of expenses no greater than 15% to be contributed to a publicly-managed lending fund for the purpose of providing financial assistance for the deleading of rental property.

Insurers providing coverage in excess of \$500,000 may submit a separate schedule of decreasing coverage for approval, subject to the minimum levels of \$100,000 for homeowner policies and \$300,000 for commercial policies.

The Division will review changes in the rate structure for the base policy, including credits issued for the reduction in liability afforded by the exclusion and buyback.

The Division will also review rates and credits for policies which provide coverage for deleaded properties.

E. Tracking of Data - Insurers shall also begin to track their existing and new homeowner and commercial property business for the following information on a calendar year basis:

1. The number of policies issued with a lead paint liability exclusion and buyback coverage.
2. The number of policies issued with a lead paint liability exclusion, but without buyback coverage.
3. The number of policies issued without a lead paint liability exclusion or buyback.

Claims shall be tracked by the above three categories, including the following information:

1. The child's age, at time of poisoning and at time of claim.
2. The limits of liability on the policy, and the paid and incurred amounts for each claim.
3. The incidence of double or treble damage settlements and the amounts.

For comparison purposes, insurers shall also track the limits of liability on each policy sold in the aforementioned three categories.

This information and any future data requirements shall be kept in the insurer's files, and pursuant to M.G.L. Chapter 175 Section 4, shall be made available for examination by the Commissioner upon request.