



COMMONWEALTH AUTOMOBILE REINSURERS

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RALPH A. IANNACO
PRESIDENT

SUPPLEMENTAL AGENDA ITEM

TO MEMBERS OF THE MAIP STEERING COMMITTEE

FOR THE MEETING OF:

Tuesday, April 6, 2010 at 1:00 p.m.

MSC

10.10 Cancellation for Material Misrepresentation

Attached is correspondence from the Commissioner of Insurance Joseph Murphy, addressing the cancellation of MAIP assigned policies for material misrepresentation. The Commissioner is requesting that CAR consider amending MAIP Rules to prohibit an ARC from cancelling a policy for misrepresentation unless the ARC has clear and specific evidence that the applicant made a material misrepresentation as to a material fact with the actual intent to deceive the insurer. Modifications to Rules 26, 28, 30, and 31 are included in the attachment. (Docket #MSC10.10, Exhibit #1)

PAMELA WALLACE
Vice President – Residual Market Services

Attachment

Boston, Massachusetts
March 31, 2010



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

March 26, 2010

Mr. Ralph A. Iannaco
President
Commonwealth Automobile Reinsurers
225 Franklin Street
Boston, MA 02110

Dear Mr. Iannaco:

Certain changes to the MAIP rates that become effective on April 1, 2010 explicitly require an assigned insurer to verify the applicability of some discounts prior to recognizing them in the MAIP premium of an assigned risk. The current MAIP Rules of Operation ("MAIP Rules"), however, do not align cleanly with this new verification process. For example, they do not state clearly who bears the burden of completing or correcting information in the application in the event that some of the information initially provided is either incomplete or incorrect. Indeed, it is possible that one could infer from the MAIP Rules that if an assigned insurer cannot verify the accuracy of a representation in the application, the insurer may cancel the policy for misrepresentation. This inference is wholly inconsistent with the goals of our residual market.

The purpose of the residual market is to ensure the availability of motor vehicle insurance for high risk drivers that are unable to secure such insurance in the voluntary market. An insurer can reject and/or cancel an assigned risk only under very limited circumstances. Such a rejection or cancellation in the residual market has a very different effect than if it were to occur in the voluntary market, where a backstop exists for these risks. For this reason, it is imperative that insurers fulfill their residual market responsibilities in good faith so as to avoid a surge in the number of uninsured drivers.

Incomplete or inaccurate information in an initial application for motor vehicle insurance in the residual market should not be presumed to be a “material misrepresentation” without additional facts. The phrase “material misrepresentation,” under G.L. c. 175, Section 186, means a misrepresentation that is made with the actual intent to deceive, or a misrepresentation that increases the insurer’s risk of loss. Although an applicant for insurance is required to provide all pertinent and material information in an application for insurance, the producer and the insurer are in the best position to know what information is material to the insurer’s risk of loss and how best to verify such information. Indeed, MAIP Rule 30.B.4 places the responsibility of verification squarely on the shoulders of the assigned insurer and MAIP Rule 30.B.3 similarly places such burden on the producer. If the applicant, therefore, fails to provide complete and accurate information in an application for motor vehicle insurance in the residual market, it is the duty of the producer and/or the insurer to obtain such information prior to issuing the policy. If a producer or an insurer determines that certain information in an application is incomplete or incorrect, the assigned insurer cannot automatically cancel the policy based on the assumption that the representation was a “material misrepresentation.” The assigned insurer must have independent evidence that the applicant had “the actual intent to deceive” the insurer or it must be able to demonstrate to a third party that the misrepresentation increased its risk of loss.

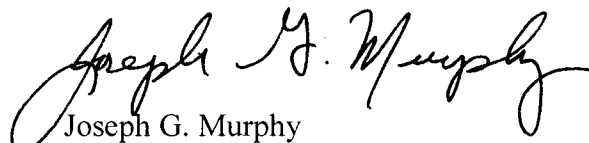
It is for these reasons that I ask CAR to amend certain MAIP Rules to prohibit insurers from rejecting or cancelling assigned policies in the event that the applicant either incompletely or incorrectly provides information in the application regarding operator classifications, discounts, credits, and vehicle usage. The rules should clearly define the responsibilities of insurers and producers in the event that information contained in the application is incomplete or inaccurate, and explicitly require assigned insurers to charge the appropriate premium based on the additional or corrected information. To this end, I ask CAR to consider amending the MAIP Rules in the following manner:

- Add language to MAIP Rule 26.E.3 that expressly prohibits an assigned insurer from cancelling a policy for misrepresentation on an insurance application based solely on inaccurate information as to the operator’s driving experience or record, eligibility for discounts or credits or the operator’s customary use of the insured vehicle. This new language also should allow cancellations for material misrepresentation only if the insurer has clear and specific evidence that the applicant made a material misrepresentation as to a material fact with the actual intent to deceive the insurer.
- Add language to MAIP Rule 30.B.2 that expressly requires an assigned insurer to bill a premium for the policy based on information contained in the application that is verified by the insurer.
- Modify MAIP Rule 26.A.1.b to provide: “An application shall be considered in good faith if the applicant reports all information of a material nature and does not intentionally make misleading statements in the prescribed application, or does not fall within any of the prohibitions or exclusions pursuant to Section A.3 of this Rule.”

- Modify the second paragraph of MAIP Rule 28.A to state: “ARPs must assure that the application for insurance through the MAIP is submitted on the prescribed form and that each application is completed thoroughly and accurately. An incomplete application will be returned to the producer for remedy. Once the application for coverage through the MAIP is received and all required information for the assignment of the policy is provided, the MAIP will assign a certification number to the application.”
- Modify MAIP Rule 30.B.4.c to state: “Verify that information contained in the application for insurance is accurate as to classification, garaging, discounts, credits, other rating factors, vehicle used and vehicle description.”
- Modify MAIP Rule 31.B.3 to state: “The ARP must ensure that the application for insurance through the MAIP is submitted on the prescribed forms and that each application is filled out accurately and in its entirety. An incomplete application will be returned to the producer for remedy. Steps that the ARP must take in order to complete an application correctly include the following:”

Your review of this matter and anticipated cooperation is greatly appreciated. It would be most helpful if you could make any such changes by April 16, 2010.

Sincerely,



Joseph G. Murphy
Commissioner of Insurance

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Rule 28	Application Process
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A. Submitting an Application to the MAIP

To obtain MAIP coverage for an Eligible Risk an Assigned Risk Producer (ARP) must submit an electronic application for private passenger motor vehicle insurance coverage to the MAIP.

ARPs must assure that the application for insurance through the MAIP is submitted on the prescribed form and that each application is completed accurately and thoroughly. An incomplete ~~or incorrect~~ application will be returned to the producer for remedy. Once the application for coverage through the MAIP is received and all required information for ~~issuance of~~ the assignment of the policy is provided, the MAIP will assign a certification number to the application.

B. Assignment of Application to a Member

An application with a certification number will be randomly assigned to a Member based on its Quota Share as specified in Rule 29 – Assignment Process. The MAIP will notify the ARC of the policy assignment. The MAIP will notify the ARP of the identity of the ARC which will issue the policy and the effective date of the coverage.

Once the policy has been assigned to an ARC, after receiving such notice, the ARP is responsible for providing the ARC with the following items within two working days as specified in Rule 31.B.2:

1. The original application form, signed by the applicant and the ARP; and
2. The required deposit premium as specified below.

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- e. Maintain a special investigative unit to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud;
- f. Report all required information to the MAIP in an accurate and timely manner;
- g. Adopt and maintain a plan approved by the Commissioner providing for direct payment by the insurer to the insured under collision, limited collision, comprehensive, and fire and theft coverages; and
- h. Use the policy forms, endorsements, new business application and renewal questionnaire filed by the MAIP with and approved by the Commissioner for use in private passenger motor vehicle insurance.

B. Responsibilities

Nothing in this Rule shall be construed to affect the rights of any Member to enter into any third party contractual agreement for the purpose of servicing its voluntary business. Nothing in this Rule shall be construed so as to relieve any Member of its Quota Share or its share of the administrative expenses of the MAIP, as required by G.L. c. 175, § 113H. A Member appointed as an ARC is required to perform the following responsibilities in its capacity as an ARC:

- 1. An ARC must provide quality service to policyholders assigned through the MAIP by maintaining the standards established as a condition of appointment under Section A.1 of this Rule. Policies and other forms mailed to policyholders shall be the same as those filed by the MAIP and approved by the Commissioner for private passenger motor vehicle business. An ARC shall provide the same level of service to policies assigned to it through the MAIP as it provides to policies it issues voluntarily.

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2. An ARC shall bill the premium for a policy issued through the MAIP based on information contained in the application that is verified by the ARC that is the lesser of the premium calculated using the ARC's rates applicable to that policy if the ARC or its affiliates had issued the policy in the voluntary market and the premium calculated using the MAIP rates on file with the Commissioner. For the purposes of this comparison:
 - a. The ARC, though its affiliated companies, shall quote risk-specific premiums based on the rates applicable to its voluntary policies for any eligible risk obtaining insurance through the MAIP.
 - b. The ARC must use voluntary private passenger motor vehicle insurance rates that are based primarily on actual loss and expense experience for risks voluntarily insured.
3. No companies within an insurer group under the same management or ownership or both may provide a different level of service through a company within the group that is not an ARC than is provided to policyholders insured by a company with the group that is an ARC.

4. General Duties

ARCs shall perform the following general duties.

- a. Confirm operator driving licenses and records in order to administer the MAIP merit rating plan and its own merit rating plan accurately;
- b. Verify eligibility criteria;
- c. Verify that ~~representations~~information contained in the application for insurance ~~are~~is accurate as to classification, garaging, discounts, other rating factors, credits, vehicle use and vehicle description;
- d. Assure that a policy has been issued for each RMV-1 and/or RMV-3 certificate and that the policy effective date and the certification date are the same;

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- e. Implement procedures to assure collection of premiums billed;
- f. Comply with the terms and conditions of premium finance notes and/or agreements submitted to the ARC on behalf of applicants for insurance, by the producer or by a premium finance company licensed under the laws of the Commonwealth of Massachusetts;
- g. Ensure that there is communication among the ARC's Underwriting, Claims, and SIU Departments and that any discrepancies in information are shared promptly among the departments and documented;
- h. Maintain and forward to the MAIP a copy of all written complaints filed with the ARC regarding the service provided by the ARC or any ARP; and
- i. Monitoring of Assigned Risk Producers

ARCs will be responsible for notifying the MAIP of ARP infractions that may result in the revocation of the ARP's MAIP certification as follows:

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance;
- (2) Willful misappropriation of premium due an ARC in accordance with the provisions of the MAIP Rules of Operation;
- (3) The entry of a finding, by a court of competent jurisdiction that the producer has engaged in fraudulent activity in connection with the business of motor vehicle insurance;
- (4) Failure to remit payments to an ARC on a timely basis in accordance with the MAIP Rules of Operation;
- (5) Failure to notify the ARC of any suspected fraud in the application for insurance or in the underwriting or rating process or in the payment of premium obligations or surrounding a loss;

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- (6) Failure to assist the ARC during any audit or investigation;
- (7) Failure to report all coverages bound within two (2) working days of the effective date of coverage;
- (8) Failure to comply with reasonable procedures as required by the MAIP for processing claims, remitting premiums and requesting coverages;
- (9) Failure to adhere to a directive issued by the Commissioner relative to the charging of service fees;
- (10) Failure to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
- (11) Failure to comply with applicable agency requirements and procedures, as prescribed in the MAIP Rules of Operation; and
- (12) Failure to comply with all of the provisions of the Rules of Operation and Manual of Administrative Procedures.

45. Reporting Requirements

On a monthly basis, ARCs must report all premiums written, and any other information that may be required by the Plan, Rules or Manual of Administrative Procedures.

56. Continuation of Eligibility as an ARC

An ARC must maintain a viable book of voluntarily written private passenger motor vehicle insurance policies. The Commissioner may terminate any ARC if he or she finds that disruptive reductions in voluntarily issued motor vehicle policies are in violation of this section.

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- d. has not been convicted of a crime related to his occupation as an insurance producer;
- e. has not had his license to engage as an insurance producer revoked or suspended;
- f. has not been involved in a material and substantial breach of a contract between an ARC and a producer;
- g. is not in default in the remittance of any motor vehicle premiums due a Member;
- h. agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative Procedures, the MAIP's certification requirements, and the applicable regulations of the Division of Insurance;
- i. agrees to notify the MAIP of an agreement to sell the agency 15 days in advance of the proposed closing of any such sale; and
- j. has not had an ARP certification revoked by the MAIP as provided in these Rules, the revocation not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

B. Ongoing Assigned Risk Producer Requirements and Responsibilities

It will be the ongoing responsibility of an ARP to fulfill the following requirements as well as the producer certification requirements in Section A. above. Failure to do so will be grounds for revocation of certification.

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1. The ARP must use the policy forms, endorsements, new business application and renewal questionnaire that are filed by the MAIP and approved for use by the Commissioner for Private Passenger Motor Vehicle Insurance.
2. The ARP must require that all Eligible Risks applying for insurance coverage by the MAIP complete a new business insurance application in its entirety.
3. The ARP must ensure that the application for insurance through the MAIP is submitted on the prescribed forms and that each application is filled out accurately and in its entirety. An incomplete ~~or incorrect~~ application will be returned to the producer for remedy. Steps that the ARP must take in order to complete an application correctly include the following:
 - a. The ARP must list all licensed operators in the household, including those not used for classification purposes, on the application;
 - b. The ARP must verify through the Registry of Motor Vehicle Inquiry System the driver's license for each listed operator who holds a Massachusetts driver's license. The ARP must submit a photocopy of the license of any operator holding an out-of-state or an out-of-country driver's license with the new business application.
 - c. The ARP must supply documentation supporting the deferral for rating purposes of any household member;
 - d. The ARP must confirm each licensed operator's driving record for rating and statistical data collection purposes;
 - e. The ARP must verify that the Eligible Risk has not been and is not now in default in the payment of any Motor Vehicle Insurance premiums in the past 24 months;
 - f. The ARP must certify, pursuant to Rule 26.A.1.a., that the risk has made an attempt to obtain Private Passenger Motor Vehicle Insurance within 15 days of the application to the MAIP and has been turned down for such insurance;

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- g. The ARP must include the full and complete address of the Eligible Risk. A post office box will not be accepted for the determination of garaging town;
 - h. The ARP must verify eligibility for premium discounts through the Registry of Motor Vehicles or other appropriate sources;
 - i. The ARP must order only those coverages from the ARC requested by the Eligible Risk, for which he may be eligible through the MAIP;
 - j. The ARP must quote the proper MAIP premium based on information provided by the Eligible Risk for the coverage desired. The ARP must inform the Eligible Risk that the final premium billed by the ARC may be less than the MAIP premium quoted, but it may not be more;
 - k. The ARP must notify the Eligible Risk that he has the option of utilizing an installment payment plan;
 - l. The ARP must verify that the Eligible Risk has signed the new business application before it is submitted to the MAIP; and
 - m. The ARP must sign the new business application before it is submitted to the MAIP.
4. The ARP must submit an electronic application for Private Passenger Motor Vehicle Insurance coverage to the MAIP to obtain MAIP coverage for an Eligible Risk.
5. Once the MAIP has notified the ARP of the certification number assigned to the application, of the ARC to which the policy is assigned and of the effective date of the coverage, the ARP is responsible for providing the ARC with the following items within two business days:
- a. The original application form, signed by the Eligible Risk and the ARP; and
 - b. The required deposit premium pursuant Rule 28.