



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

1000 Washington Street, Suite 810 • Boston, MA 02118-6200  
(617) 521-7794 • FAX (617) 521-7475  
TTY/TDD (617) 521-7490  
<http://www.mass.gov/doi>

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

GREGORY BIALECKI  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

BARBARA ANTHONY  
UNDERSECRETARY

JOSEPH G. MURPHY  
COMMISSIONER OF INSURANCE

August 25, 2010

Ralph Iannaco, President  
Governing Committee  
Commonwealth Automobile Reinsurers  
225 Franklin Street  
13th Floor  
Boston, MA 02110

RE: Changes Needed Following Approval of Chapter 237 of the Acts of 2010

Dear President Iannaco:

On August 4, 2010, Governor Patrick signed into law Chapter 237 of the Acts of 2010 ("Chapter 237"), formerly H 4476, which makes several changes to Section 113H of Chapter 175 of the Massachusetts General Laws. As a result of this legislation, Commonwealth Automobile Reinsurers ("CAR") needs to amend its Plan of Operation ("Plan of Operation") and the Rules of Operation of the Massachusetts Automobile Insurance Plan ("MAIP Rules"). In addition to other changes that the Governing Committee may determine are appropriate following a close review of the Plan and MAIP Rules, you are instructed to make the following changes.

1. Article I of CAR's Plan of Operation

Article I of CAR's Plan of Operation must be amended to conform to the changes made by Section 2 of Chapter 237, which modifies representation on the CAR Governing Committee. Chapter 237 replaces the first paragraph of M.G.L. c. 175, § 113H(B) with the following paragraph:

(b) The plan shall be prepared and administered by a governing committee appointed by the commissioner for terms of 6 years, consisting of 6 members from insurance companies participating in the plan and 1 additional representative from a domestic insurer in the commonwealth whose annual motor vehicle policy premiums amount to less than 2 and one-half per cent of the private passenger insurance market and unaffiliated with any other insurance company represented on the governing committee, and 6 members

from associations of insurance producers, 2 of whom shall be producers who are assigned risk producers who write private passenger automobile insurance exclusively through the Massachusetts automobile assigned risk plan pursuant to the provisions of the plan approved under this section. Effective as of July 1, 1982, the governing committee shall consist of 3 members from insurance companies participating in the plan and 2 members from associations of insurance producers appointed for terms of 6 years, 2 members from insurance companies participating in the plan, 2 members from associations of insurance producers appointed for terms of 4 years, 2 members from insurance companies participating in the plan and 2 members from associations of insurance producers for terms of 2 years. This section shall not be construed to alter or amend the terms of the present governing members. The governing committee shall be responsible for the hiring of the employees of the plan.

Chapter 237 changes the membership of the CAR Governing Committee in two ways. Prior to enactment of Chapter 237, seven insurers had seats on the Governing Committee, one of which was reserved for a domestic insurance company that wrote \$20 million or less in annual motor vehicle policy premiums. This seat has been vacant for several years because no company fit this criterion. Chapter 237 replaces the old criterion with a new one, which allocates this seat to a domestic insurance company whose annual motor vehicle policy premiums amount to less than two and one half (2.5%) of the private passenger insurance market.

The second way Chapter 237 changes the makeup of the CAR Governing Committee concerns the six seats reserved for producers. Prior to passage of Chapter 237, one of the producer seats was reserved for a producer who wrote private passenger motor vehicle business exclusively through one servicing carrier to which the producer was assigned by the provisions of the Section 113H plan. Chapter 237 states that two, rather than one, of the producer members of the CAR Governing Committee must write private passenger motor vehicle insurance *exclusively* through the MAIP; *i.e.*, must not have a voluntary appointment.

## 2. MAIP Rules 29 and 30

MAIP Rules 29 and 30 need to be amended to conform to the changes made by Section 1 of Chapter 237, which alters the rules relating to the obligations and responsibilities of companies newly writing private passenger motor vehicle insurance in the Commonwealth. Chapter 237 added the following two sentences to the second paragraph of M.G.L. c. 175, § 113H(A):

Notwithstanding any law, rule, regulation, order, ruling or decision to the contrary, on and after January 1, 2011 every insurance company writing private passenger auto insurance in the commonwealth shall accept assignments of risks and any apportionment of premiums, losses or expenses, pursuant to the plan, and no exemption from those assignments, or from the apportionment of premiums, losses or expenses, shall thereafter be permitted; provided, however, that any exemption from the assignment of risks

previously afforded any such insurance company shall be allowed to continue to be used until its expiration, but in no event shall the exemption continue beyond December 31, 2012. Assignments of risks and the apportionment of premiums, losses and expenses shall equal the proportion that each company's voluntary business bears to all companies' voluntary business and as adjusted for any credits calculated by the plan.

The new sentences added by Chapter 237 state that on or after January 1, 2011, every insurance company that enters the Massachusetts private passenger motor vehicle insurance market will be required to write risks assigned through the MAIP immediately upon entry into the market and to accept thereby an apportionment of premiums and losses, as well as expenses, associated with the MAIP. Currently, a 24-month delay exists in the assignment of MAIP applications (with associated assigned risk plan premiums or losses) to a company newly writing private passenger motor vehicle insurance in the Commonwealth. See *Arbella Mutual Insurance Co. v. Commissioner of Insurance*, 456 Mass. 66, 74 (2010) ("MAIP apportions to a newly writing company a percentage of MAIP expenses based on its voluntary market share, and zero per cent of MAIP losses or premiums for two years. This represents one possible combination of expenses, losses, and premiums: some, none, and none.") Chapter 237 allows a company that enters the Massachusetts market before January 1, 2011, to receive an exemption from MAIP assignments for a 24-month period (MAIP Rule 30.A) ending no later than December 31, 2012 (Chapter 237).

### 3. MAIP Rule of Operation 30.C

MAIP Rule 30.C needs to be amended to acknowledge the new paragraph that Section 3 of Chapter 237 adds to M.G.L. c. 175, § 113H(D):

A duly licensed insurance producer, certified to place business in the plan, shall own and have an exclusive right, as the insured's producer of record, to use certain insurance information of the insured embodying the records of the insurance agency which shall include, but not be limited to, the name of the insured, the policy inception date, the amount of insurance coverage, the policy number and the terms of insurance. If a policyholder, insured through the plan with an assigned risk carrier, is offered voluntary coverage by that carrier and the policyholder accepts the offer, the insured's producer of record shall continue to represent the insured written or renewed in the voluntary market, and the policy shall be continued to be serviced through the producer of record, unless: (1) the producer is decertified or suspended by the plan or the commissioner; (2) at the insured's request, the insured terminates the producer as its producer of record; or (3) the producer of record is precluded from dealing with other insurance companies pursuant to an exclusive agency contract; provided, however, that if a policy is written or renewed on a voluntary basis, the assigned risk carrier shall pay the

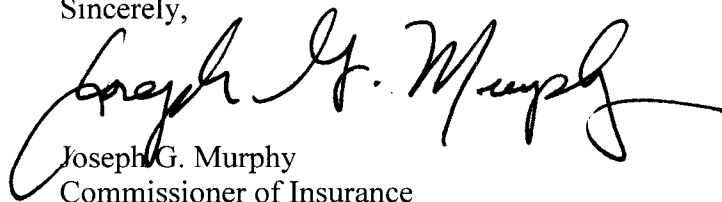
Ralph Iannaco, President  
Governing Committee  
Commonwealth Automobile Reinsurers  
August 25, 2010  
Page 4 of 4

insured's producer of record the commission rate as set forth in the first paragraph, regardless of whether the producer of record has an agency agreement with that assigned risk carrier.

Chapter 237 adds language to Section 113H(D) stating that producers who are certified to write business through the assigned risk plan "shall own and have an exclusive right, as the insured's producer of record, to use certain insurance information of the insured embodying the records of the insurance agency" in the event that the company that writes the insured in the residual market writes the policy voluntarily. If a policyholder insured through the plan accepts an offer of voluntary insurance from his assigned company, the producer will continue to represent and service the insured, and the assigned company will continue to pay commissions to the producer, unless the producer is decertified or suspended by the Section 113H plan, the insured terminates his relationship with the producer, or the producer is contractually prevented from dealing with the assigned company because of an exclusive agency contract. Formerly, an assigned company that took a policy out of the MAIP and wrote it in the voluntary market had no obligation to the producer of record after March 31, 2011. Depending on how the Governing Committee makes the changes necessitated by Chapter 237, the reference to MAIP Rule 30.C.1.d in MAIP Rule 21.E ("The producer's commission and the term of commission payments are governed by Rule 30.C.1.d.") also may need revision.

As is provided by Articles X and XI of CAR's Plan of Operation, I look forward to reviewing the amendments to the Plan of Operation and MAIP Rules that are proposed by the Governing Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph G. Murphy". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Joseph G. Murphy  
Commissioner of Insurance