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ADDITIONAL INFORMATION

TO MEMBERS OF THE CLAIMS PERFORMANCE STANDARDS SUBCOMMITTEE

FOR THE MEETING OF:

Wednesday, August 18, 2015 at 10:00 a.m.

CPS

15.03 Claims Performance Standards

The attached document provided by MAPFRE U.S.A. Corporation is developed as a discussion outline relative to the proposed changes to the Private Passenger Claims Performance Standards. The outline includes proposed modifications in addition to those suggested by Staff, as well as comments and discussion points regarding the Alliance of Automotive Service Providers suggested changes. (Docket #CPS15.03, Exhibit #3)

MARK L. ALVES
Administrator – Compliance Audit

Attachment

Boston, Massachusetts
August 10, 2015

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Review of the Updates Proposed by CAR Staff

The following discussion points are offered relative to the changes as recommended by CAR Staff –

MAPFRE is in agreement with the modifications to the Performance Standards and Appendices as proposed by CAR Staff, which were made to create consistency with other CAR manuals.

Additional Updates Proposed by MAPFRE Insurance

Section	Subsection & Page Number	Change Recommended by MAPFRE	MAPFRE Comments and Discussion Points
Performance Standards	CAR Standard I – Automobile Physical Damage & Property Damage Liability Claims – Page 6/7 of 8	<p>(1) MAPFRE recommends changing the language in Section C. Fraud Handling, subsection 1. Screening process for suspected fraudulent claims, caption d.</p> <p>To add clarity to the expectations of caption d., the verbiage “<u>...shall be referred for special investigation</u>” should be revised to “<u>...shall be considered for special investigation.</u>”</p>	<p>Section C. Fraud Handling, subsection 1. Screening process for suspected fraudulent claims states:</p> <p>d. Whenever a combination of minor discrepancies occur which cannot be resolved, the case <u>shall be referred for special investigation.</u></p> <p><u>Discussion Points:</u> we suggest rewording the underlined above with “<u>shall be considered for special investigation</u>” as often times a series of minor discrepancies arise in claims that cannot be resolved but do not necessarily indicate a fraudulent submission, requiring a referral for Special Investigation.</p>

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<p>CAR Standard II – Bodily Injury & Uninsured/Underinsured Motorist – Page 2 of 5.</p> <p>CAR Standard III – No-Fault Personal Injury Protection Benefits Handling – Page 1 of 3</p>	<p>MAPFRE recommends clarity is needed in both CAR Standard II, Section A. Normal Claim Handling, subsection 3. Contacts and CAR Standard III, Section B. Contacts such that “re-contact” with an insured/insured operator is required only in those situations where there are indicators of possible fraudulent activity (e.g. the injured party is neither identified by the insured/insured operator at the time of the initial contact nor on the operator/police report).</p>	<p>CAR Standard II - Section A. Normal Claim Handling, subsection 3. Contacts and CAR Standard III – Section B. Contacts</p> <p>CAR Standard II, subsections 3. Contacts b. and c. and CAR Standard III, section B. Subsections 2 and 3 require contact with the named insured (if not an injured party) as well as the insured operator (if not the named insured or an injured party) within 3 business days of receipt of notice of injury for the purposes of investigation and verification.</p> <p><u>Discussion Points:</u> the above-cited contact expectations have been defined by CAR so as to require multiple “re-contacts” with the named insured/insured operator upon notice of injury claims <i>subsequent</i> to the initial first notice of loss (FNOL). If the notices of injury are not received at the same time, under the CAR expectations, ARC’s Claim staff are obligated to make “re-contact” with the named insured/insured operator to validate the legitimacy of each <i>subsequently</i> reported injured claimant(s). It is understood that the context of this “re-contact” is in the interests of identifying fraudulent claim activity. However, this expectation is burdensome on our insured’s (e.g. being contacted multiple times on the same incident if injury claims are reported at different intervals) and rarely results in the identification of a potential “jump in” situation. MAPFRE recommends that “re-contact” is only required in those situations where there are indicators of possible fraudulent activity (e.g. the injured party is neither identified by the insured/insured operator at the time of the initial FNOL contact nor on the operator/police report).</p>
<p>CAR Standard III – No-Fault Personal Injury Protection Benefits Handling – Page 2 of 3</p>	<p>MAPFRE recommends changes in Section C. Medical Management, subsections 1 and 2 to include that the use of the FAIR Health, Inc. fee database modules constitutes compliance within the context of a</p>	<p>Section C. Medical Management, subsections 1 and 2.</p> <p><u>Discussion Points:</u> Under section C. Medical Management, subsections 1 and 2. ARC’s are required to establish medical cost containment plans in the handling of No-Fault Personal Injury Protection claims. Within subsection 1. “ARC’s must establish a plan to maintain a continuing awareness of the disability claimed, the medical treatment, and whether the treatment and medical expenses are reasonable, necessary, and related to the automobile accident.” Subsection 2. specifically states that said plan shall include “...historically utilized techniques such as timely independent medical examinations, medical bill reviews including but not limited to a determination of usual and</p>

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		<p>Medical Management plan to determine usual and customary charges of medical bills.</p>	<p><i>customary charges, use of preferred provider organizations, managed care programs, and/or expert medical systems, as well as innovative approaches.”</i> It is within this framework that a national database of fees is clearly contemplated in the CAR Performance Standards. MAPFRE believes explicit language regarding the use of a fee data base; specifically, the use of the Fair Health, Inc. database should be included within the Performance Standards. To this end, in determining <i>usual and customary charges</i>, MAPFRE believes the language within Section C. Medical Management, subsection 2 should be modified by adding as a last sentence: <i>“In determining usual and customary charges, an ARC may utilize the Fair Health national medical fee data base for determination of usual and customary medical charges.”</i></p> <p>In further support of this request, reference is made to the provisions of the New Jersey Administrative Code 11:3-29. Specifically, New Jersey applies either a medical fee schedule for reimbursement rates under PIP coverage or ...<i>“the usual, customary and reasonable fee</i>, whichever is less.” New Jersey has approved the utilization of a national database of fees, such as those published by FAIR Health (www.fairhealthus.org) or Wasserman (http://www.medfees.com/), both of which are considered evidence of the reasonableness of fees for the provider’s geographic region or ZIP code. In similar fashion, New York also offers a reference with respect to what health plans will reimburse for out of network services and specifically states that <i>“FAIR Health may be used as the independent source to determine UCR.”</i></p> <p>Massachusetts insurers are in need of similar support to ensure compliance with both the mandates of the Automobile policy and CAR medical cost containment expectations to pay only those medical expenses which are reasonable at reimbursement rates which are considered usual and customary.</p>
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Review of the Updates Proposed by AASP

Section	Subsection & Page Number	AASP Recommendation	AASP Justification	MAPFRE Comments and Discussion Points
Appendix A	CAR Special Investigative Standards - Introduction Page 1	Amend description of Appendix A to remove the word “control”	In referencing the “Special Investigative Unit Standards” contained within a description of Appendix A in the Introduction, the CAR performance standards describe actions related to investigating fraudulent actions. While “resist[ing] fraudulent claims” and “deter[ing] fraud” are certainly reasonable actions related to fraud, the use of the word “control” would not appear related to fraud as much as general business practices. As AASP/MA firmly believes that every insurer should negotiate with auto body shops or other third party vendors in good faith, the term “control costs” and “control insurance rates” should be changed. In its current form, its connotation would appear to reference market “control” apart from investigating fraud or fair business practices.	MAPFRE recommends leaving the current wording of this CAR Performance Standard unchanged. The use of the word “control” in the context of the SIU Investigative Standards (Appendix A) speaks to the need for CAR to ensure that Servicing Carriers have the necessary programs (i.e. policies, practices and tools) in place to “control fraud”; meaning deter and eliminate fraud. Carriers without such programs would be found to have insufficient “controls” in place to effectively deter and eliminate fraud. Also, the applicable statute (G.L.c.175, §113H) requiring the creation of a SIU and Article III of the Plan of Operation include wording that specifically references fraud ‘control’ efforts.

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<p>Performance Standards</p>	<p>Physical Damage & Property Damage Liability Claims Section (A) 3 a. "Parts Cost" Page 2 of 8</p>	<p>Amend language relative to "parts cost" to reflect that an Assigned Risk Company (ARC) has the discretion to determine its threshold for pricing.</p> <p>Auto Physical Damage and Property Damage Liability claims.</p>	<p>As written, the CAR performance standards require an ARC to demonstrate its programs and procedures allow for it to "pay less than retail price for parts". If an ARC determines it desires to pay retail and neither the ARC or, most importantly, the insured is not harmed by such action, the ARC should be allowed to pay retail, if it so chooses.</p>	<p>MAPFRE recommends no change to the existing language.</p> <p>This section of the Performance Standards provides an opportunity to contain costs that would otherwise be passed on to the consumer in the rates.</p>
<p>Performance Standards</p>	<p>Physical Damage & Property Damage Liability Claims Section (A) 3 b. "Parts Cost" Page 2 of 8</p>	<p>Amend language under "parts cost" to reflect ARCs consideration of safety in determining the applicability of aftermarket, rebuilt and LKQ parts.</p> <p>Auto Physical Damage and Property Damage Liability claims.</p>	<p>Again, auto body shops and insurers have a mutual interest in their shared customers. As some aftermarket, rebuilt and like kind and quality (LKQ) may have safety implications for an insured's vehicle, the CAR performance standards should reference the consideration of "safety" in determining the appropriate part for replacement. Accordingly, AASP/MA respectfully requests that this section state "ARCs must consider the applicability, <u>including safety</u>, of aftermarket, rebuilt and like kind quality (LKQ) parts on all appropriate appraisals." (Amendment underlined).</p>	<p>MAPFRE recommends no change to the current language as we believe the word "applicability" in that section is sufficient to address all applicable considerations including "safety". There are many certification and testing standards in place to monitor the overall quality of aftermarket and LKQ parts. To single out these parts groups and suggest that some may have safety implications is not necessary. It is in every insurer's best interest to only write for the safest and most economical parts to be used in a repair.</p> <p>This section of the Performance Standards provides an opportunity to contain costs that would otherwise be passed on to the consumer in the rates.</p>
<p>Performance Standards</p>	<p>Physical Damage & Property Damage Liability Claims</p>	<p>Amend language under "parts cost" to reflect that ARCs discretion to</p>	<p>Put simply, if an ARC has determined – whether for safety, customer services or some other reason – that it chooses not to seek aftermarket, rebuilt or</p>	<p>MAPFRE recommends making no change to the current language. The standard already allows for insurer discretion in the use of aftermarket, rebuilt</p>

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<p>Section (A) 3 c. "Parts Cost" Page 2 of 8</p>	<p>determine use of certain parts.</p> <p>Auto Physical Damage and Property Damage Liability claims.</p>	<p>LKQ in lieu of new parts, the ARC should not be penalized. To suggest that an ARC must, in all cases, "insist on" the use of aftermarket, rebuilt or LKQ parts is a disservice to consumers. Accordingly, the AASP/MA respectfully requests that this section be amended by striking the phrase "and insist on" to account for ARCs who, for whatever reason, may decide not to "insist on" or require the use of these parts.</p>	<p>or LKQ parts through the use of the words "whenever appropriate" which is already part of the language within A 3. c.</p> <p>In addition, the "discretionary" portion of the language is supported by 211 CMR 133:04 which reads in part:</p> <p>(1) Appraisers shall specify that damaged parts be repaired rather than replaced unless: the part is damaged beyond repair, or the cost of repair exceeds the cost replacement with a part of like kind and quality, or the operational safety of the vehicle might otherwise be impaired. When it is determined that a part must be replaced, a rebuilt, aftermarket or used part of like kind and quality <u>shall be</u> used in the appraisal <u>unless</u>:</p> <p>(a) the <u>operational safety</u> of the vehicle might otherwise be impaired;</p> <p>(b) reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful;</p> <p>(c) a new original equipment part of like kind and quality and will result in the lowest overall repair cost;</p> <p>(d) for vehicle insured under policies written on or before December 31, 2003, the vehicle has been used no more than 15,000 miles unless the pre-accident condition warrants otherwise; or</p> <p>(e) for vehicles insured under policies written or renewed on or after January 1, 2004, the vehicle</p>
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				<p>has been used no more than 20,000 miles unless the pre-accident condition warrants otherwise.</p> <p>A part is of like kind and quality when it is of equal or better condition than the pre-accident part.</p> <p>This section of the Performance Standards provides an opportunity to contain costs that would otherwise be passed on to the consumer in the rates.</p>
Performance Standards	Physical Damage & Property Damage Liability Claims Section (A) 4 c. "Labor Rates and Times" Page 2 of 8	Strike section on labor rates and times. Auto Physical Damage and Property Damage Liability claims.	The AASP/MA appreciates CAR's amendment to this section last year. Upon further consideration, the section itself seems contrary to an ARC's ability to manage its business practices in the manner it deems best for insureds. Requiring an ARC to demonstrate that it has a plan to essentially drive prices down to third party vendors, such as body shops, seems inappropriate. The deletion of this section will not take away from the rest of the performance standards' emphasis on value for insureds and the overarching interest to prevent premium increases.	<p>MAPFRE recommends no change to the existing language.</p> <p>This section of the Performance Standards provides an opportunity to contain costs that would otherwise be passed on to the consumer in the rates.</p>
Performance Standards	Physical Damage & Property Damage Liability Claims Section (A) 7 b. "Appraisal of Damage and Reinspections"	Amend language under "Appraisal of Damage and Re-inspections" to reflect ARCs consideration of safety in continuing education of staff appraisers.	ARC's benefit from safety considerations as much as their insureds. In fact, many, if not all, ARCs would agree that increased safety means a reduction in claims and, in the event of an accident, the severity of the damage financially and physically. Accordingly, the AASP/MA respectfully request that "safety" is included as part of the continuing	MAPFRE recommends that no change is made to the current language. The training, licensing, and oversight of all licensed appraisers in the Commonwealth should fall under the auspicious of 211 and 212 CMR. If there is a need to establish criteria for mandatory continuing education for all appraisers, it should be articulated in modifications

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	Page 3 of 8		education requirement for staff appraisers in addition to “fraud awareness”.	to the controlling regulations and be established by the Auto Damage Appraisers Licensing Board.
Performance Standards	Physical Damage & Property Damage Liability Claims Section (D) “Glass” Page 7 of 8	Amend the language under “Glass” to reflect an ARC’s ability to make its own business determinations with respect to price and rate.	As referenced above, an ARC should have the ability to decide whether it can best serve its insureds without being required to obtain “reasonable discounts on market price lists” or “have a plan to pay for labor costs which are reasonable and competitive”. It is not necessarily harming an insured if his or her ARC decides it will pay for a new replacement part at a rate higher than the lowest possible rate in a region. While at their face, these clauses may appear innocuous to some, the AASP/MA’s membership has seen these same types of clauses used to justify actions against body shops that ultimately harm our shared customer, the insured. Accordingly, the AASP/MA respectfully requests that these types of clauses are stricken from the performance standards.	MAPFRE recommends making no changes to the current language as written the section D. Glass 1. “ ARC’s must establish a program to effect prompt repair or replacement of damaged or broken glass covered under auto physical damage coverage , at a <u>fair and competitive cost</u> “. Nothing in this standard or others should be interpreted to suggest there is a requirement for ARCs to seek the “lowest possible rate in the region “. This section of the Performance Standards provides an opportunity to contain costs that would otherwise be passed on to the consumer in the rates.