



NATALIE A. HUBLEY
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

225 Franklin Street Boston, Massachusetts 02110

www.commauto.com

617-338-4000

RECORDS OF MEETING

CLAIMS PERFORMANCE STANDARDS SUBCOMMITTEE – AUGUST 18, 2015

Members Present

Mr. Steven Shiner – Chair	MAPFRE U.S.A. Corporation
Mr. John Almeida ⁽¹⁾	Safety Insurance Company
Mr. Donald F. Baldini	Liberty Mutual Group
Mr. Francis N. Delage	The Hanover Insurance Company
Ms. Elizabeth Kim	Arbella Insurance Group
Ms. Deborah Marini ⁽²⁾	Quincy Mutual Group
Mr. Joshua Terry	Amica Mutual Insurance Company
Ms. Marie-Armel Theodat	R. Theodat Insurance Agency, Inc.

Substituted for:

⁽¹⁾Mr. David E. Krupa

⁽²⁾Ms. Ann-Marie Kendall

Not in Attendance:

N/A

15.03 Claims Performance Standards

Chairman Steven Shiner advised that the Subcommittee was tasked to assist the Compliance Audit Committee with its biennial review of the Claim Performance Standards (the Standards). Specifically, the Subcommittee should review modifications to the Private Passenger Standards proposed by CAR staff and the Alliance of Automotive Service Providers (AASP). Mr. Shiner noted that MAPFRE developed an outline, which was distributed with the Notice of Meeting, to facilitate discussion with respect to each of the AASP proposed modifications. In addition, the outline included some suggested revisions to staff's proposal.

The Chairman noted that, in response to the request of the Compliance Audit Committee, the AASP submitted additional information relative to its proposed modifications, which was distributed in a letter dated August 18, 2015. The Subcommittee unanimously voted to waive the 10-day notice requirement and allow discussion of the AASP letter.

Mr. Peter D'Agostino, representing AASP, reviewed the recommendations individually and explained in detail AASP's rationale for each. Following the AASP presentation, Mr. Francis Delage noted that the Standards were originally adopted in 1989 and were developed to be consistent with statutory and regulatory requirements. He explained that, historically when the Standards have been modified, it was to correct outdated references, to clarify language to ensure consistency with statutory

and regulatory requirements, or to address a problem which has been considered in need of correction. Mr. Delage urged Subcommittee members to consider these criteria when evaluating each of the AASP and MAPFRE recommendations.

The Subcommittee discussed the AASP recommendations individually.

- With respect to Appendix A, AASP recommended elimination of references to “control” as relating to controlling costs and rates. AASP contends that such references inhibit the ability of insurers to negotiate in good faith with auto body shops and other third party vendors. However, the Subcommittee noted that Appendix A contains no references to controlling costs or rates, but rather only to controlling fraud. Accordingly, AASP withdrew its request.
- With respect to Standard I, Physical Damage and Property Damage Liability Claims, AASP recommended elimination of requirements to demonstrate efforts to pay less than full retail price for parts. AASP contends that such requirement removes the ability for ARCs to provide coverage for OEM parts, even if beneficial to the consumer. However, the Subcommittee disagreed, suggesting that payment of retail or other rates is not affected by the use of either OEM or after-market parts to repair damages. Further, the Subcommittee noted that the proposed modification would reduce opportunities to contain costs that would otherwise be passed on to consumers in rates.
- With respect to Standard I, Physical Damage and Property Damage Liability Claims, AASP also recommended adding language to allow for the consideration of safety in determining the applicability of aftermarket, rebuilt, or LKQ parts. Further, AASP requested that the Standards be amended to allow ARCs discretion to use aftermarket, rebuilt, LKQ, or OEM parts. However, the Subcommittee considered that a specific reference to safety is not required in the standard. As written the section requires that an ARC consider the applicability of aftermarket parts, and that together with Regulations 211 CMR 133.00 and 212 CMR 2.04, this encompasses safety. Further, the Subcommittee notes that many certification and testing standards are in place to monitor overall quality of aftermarket and LKQ parts, and that it is in every insurer’s best interest to only write for the safest and most economical parts. Finally, the Subcommittee added that requiring ARCs to consider aftermarket parts allows cost containment efforts that can pass savings on to consumers.
- The Subcommittee disagreed with AASP’s recommendation to require staff appraiser training programs to include training regarding the safety of aftermarket parts citing that it inappropriately places this responsibility with CAR Performance Standards. Instead, the Subcommittee notes that training, licensing, and oversight of all licensed appraisers is the responsibility of the Commonwealth, falling under 211 and 212 CMR.
- With respect to the handling of glass claims in Standard I, Physical Damage and Property Damage Liability Claims, AASP recommended modifications that allow ARCs to determine its own price and rate without the requirement to obtain reasonable discounts or to pay reasonable and competitive labor costs. However, the Subcommittee disagreed, noting the Standard establishes the requirement of a fair and competitive cost with no obligation to seek the lowest possible rate. Again, the Subcommittee noted that the proposed modification would increase costs associated with glass replacement that would now be passed on to consumers in rates.

The Subcommittee then considered individually each of the three modifications proposed by MAPFRE.

- With respect to Standard I, Physical Damage and Property Damage Liability Claims, MAPFRE recommended changing the language regarding the handling of possible fraudulent claims

identified in the screening process. MAPFRE suggested reducing the expectation that in any instance where minor discrepancies occur that can't be resolved, the case be 'considered' for special investigation instead of requiring referral for special investigation. The Subcommittee noted the flexibility in the language of the Standards currently allowing for companies to use judgment as evidenced by HAP audit results. Accordingly, MAPFRE withdrew its request.

- With respect to Standard II, Bodily Injury & Uninsured/Underinsured Motorists and Standard III, No-Fault Personal Injury Protection Benefits Handling, MAPFRE suggested eliminating the requirement to contact the named insured or insured operator after each notice of injury subsequent to the initial first notice of loss. MAPFRE noted that the Standard obligates the ARC to 're-contact' the named insured or insured operator to validate the legitimacy of the injury for fraud purposes. However, this rarely supplies any information not already provided at the point of first contact. MAPFRE recommended that the language be changed to only require 're-contact' for those claims that already contain fraud indicators. The Subcommittee noted that follow up after each subsequent notice of injury is a valued Best Practice that promotes identification of potential fraud. The Subcommittee also noted the lack of findings in Hybrid Audit results relative to this suggested modification. Accordingly, MAPFRE withdrew its request.
- With respect to Standard III, No-Fault Personal Injury Protection Benefits Handling, MAPFRE recommends the inclusion of language that may allow for the use of FAIR Health, Inc. fee database by ARCs as a component of its medical management program. Fair Health is a national independent and not-for-profit corporation established specifically to develop a transparent data source to determine appropriate cost of care within geographical areas for the use of both consumers and insurers. MAPFRE also noted that the current Standard requires ARCs to establish medical cost containment plans in the handling of No-Fault PIP claims and specifically references the need for medical bill reviews that consider the determination of usual and customary charges. The Subcommittee discussed the problem of overbilling by medical providers that exhausts the PIP benefit available to the consumer and considered this to be a reasonable and measured solution to an existing issue. The Subcommittee also noted that the MAPFRE suggested modification would provide clarification to the existing Standard while allowing flexibility to those ARCs that choose alternative sources for this information.

In summary, the Subcommittee agreed that in all instances, the Standards enable sufficient ARC discretion to consider issues such as those raised by AASP. After discussion, the Subcommittee voted unanimously to recommend approval of the amendments to the private passenger Standards as proposed by CAR staff, with the additional language to Standard III regarding medical management as proposed by MAPFRE to the Compliance Audit Committee.

MARK ALVES
Administrator – Compliance Audit

Boston, Massachusetts
September 4, 2015

ATTACHMENT LISTING

Docket #CPS15.02, Exhibit #1

Attendance Listing

Docket #CPS15.03, Exhibit #4

Letter from Alliance of Automotive Service Providers

Docket #CPS15.03, Exhibit #5

Updated Standard III



August 18, 2015

Mr. Mark Alves, Administrator-Compliance Audit
Commonwealth Automobile Reinsurers
225 Franklin Street
Boston, Massachusetts 02110

Dear Mr. Alves,

The Alliance for Automotive Service Providers of Massachusetts (AASP/MA) appreciates the opportunity to submit the following comments to the Commonwealth Automobile Reinsurers (CAR) as they consider potential changes to the “Performance Standards for the Payment and Handling of Private Passenger Motor Vehicle Insurance Claims”. AASP/MA submits these comments to ensure that the interests of our shared customers and the auto body repair industry – which is intrinsically tied to the insurance industry – are appropriately reflected within these standards. Accordingly, please consider the following recommendations:

1. Amend Description of Appendix A to Remove the Word “Control”. (Introduction, Page 1).

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.

Response to MAPFRE’s discussion Points:

AASP/MA appreciates MAPFRE clarifying that its interpretation of the term “control” within the context of the SIU Investigative Standards (Appendix A) concerns controls only with respect to deterring and eliminating fraud, however, AASP/MA respectfully requests that the language be amended to remove the current. To that end, AASP/MA recommends that Appendix A be amended as follows: “SIU Investigative Standards were developed by CAR to help ARCs resist payment of fraudulent claims, deter fraud, control costs *related to fraud*, and ultimately help control insurance rates.” This additional language is consistent with MAPFRE’s stated interpretation of the current language, which in and of itself, could otherwise be interpreted to reference market “control”.

2. Amend Language Relative to “Parts Cost” to Reflect that an Assigned Risk Company (ARC) Has the Discretion to Determine its Threshold for Pricing. Auto Physical Damage & Property Damage Liability Claims, (Section A(3), Page 4).

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.

Response to MAPFRE's discussion Points:

Maintaining the current requirement removes the ability for ARCs to provide coverage for OEM parts, regardless of the benefit to the consumer. By providing ARCs with the opportunity to pay retail for parts in cases where neither the insured nor ARC is harmed by such action, the consumer benefits through optimizing his/her vehicle's repair. Especially where the consumer and the ARC agree to use a certain part that can only be obtained through retail pricing, the CAR Standards should not preclude this outcome. This recommended change provides more flexibility for the benefit of our shared customers and does not patently eliminate ARCs' opportunities to contain costs in a manner that would be inconsistent with this section of the CAR Performance Standards.

3. **Amend Language under "Parts Cost" to Reflect ARCs Consideration of Safety in Determining the Applicability of Aftermarket, Rebuilt and LKQ Parts. Auto Physical Damage & Property Damage Liability Claims, (Section A(3)(b), Page 5).**

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, including safety, of aftermarket, rebuilt and like kind quality (LKQ) parts on all appropriate appraisals." (Amendment underlined).

Response to MAPFRE's discussion Points:

While AASP/MA acknowledges the industry-standard Certified Automotive Parts Association (CAPA) certification for aftermarket and LKQ parts, CAPA certification only ensures that parts meet quality standards for fit, component materials, and corrosion resistance—such parts are not tested for safety. Given that it is in every insurer, auto body repair shop, and consumer's best interest that the safest and more economical parts be used in a repair, AASP/MA respectfully urges that the CAR standards be updated to include a specific reference to "safety" in ARCs' considerations on all appropriate appraisals. Specifically considering the safety of aftermarket, rebuilt or LKQ parts as part of an appraisal, as contemplated by this amendment, does not eliminate an opportunity to contain costs.

4. **Amend Language under "Parts Cost" to Reflect that ARCs Discretion to Determine Use of Certain Parts. Auto Physical Damage & Property Damage Liability Claims, (Section A(3)(c), Page 5).**

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 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.

Response to MAPFRE's discussion Points:

In accordance with our recommendation, AASP/MA respectfully requests that Section A (3)(c), of the Performance Standards be removed, and that A(3)(b) be amended to read "Carriers must comply with the requirements of 211 CMR 133.04." It appears from their response that MAPFRE would agree with our recommendation.

5. Strike Section on Labor Rates and Times. Auto Physical Damage & Property Damage Liability Claims, (Section A(4), Page 5).

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.

Response to MAPFRE's discussion Points:

While AASP feels the industry would be best served with the removal of the entire section, the current language, as amended by the Division of Insurance on September 4, 2014, is sufficient.

6. Amend Language Under "Appraisal of Damage and Reinspections" to Reflect ARCs Consideration of Safety in Continuing Education of Staff Appraisers. (Section A(7)(b), Page 6).

ARCs 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 education requirement for staff appraisers in addition to "fraud awareness".

Response to MAPFRE's discussion Points:

Although 212 CMR 2.00 contains standards for licensed appraisers, the continuing education requirements are established in these CAR standards. AASP would encourage the committee to consider adding "safety" training specifically related to safe repair processes and the selection of safe parts to the continuing education requirement. Insurers should demonstrate to CAR and their consumers, their commitment to safety and education in the same way auto repair shops do (i.e., many shops are trained through I-CAR on an ongoing basis).

ARCs are insuring the vehicle itself, but are also insuring liabilities including injuries sustained in an accident. Accordingly, safety of the vehicle is paramount at the outset and also in repairs, after an accident. It goes without saying that auto-damage appraisers play an integral role in the sequence following an accident. Appraiser knowledge of safety considerations would be beneficial not only to consumers, but also to ARCs, which ultimately rely on minimizing damage and injury to remain profitable. To that end, AASP/MA resubmits its recommendation that safety considerations be included as part of any continuing education program required of appraisers.

7. Amend the Language under "Glass" to Reflect an ARCs Ability to Make its Own Business Determinations with Respect to Price and Rate. (Section D, Page 9).

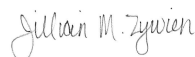
As referenced above, an ARC should have the ability to decide whether it can best serve its insureds without being required to obtain “reasonable discounts on market price lists” or “have a plan to pay for labor costs which are reasonable and competitive”. It is not necessarily harming an insured if 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.

Response to MAPFRE’s discussion Points:

AASP stands behind its original position in regards to this section. We respectfully request that the committee consider striking these types of clauses from the Performance Standards.

The AASP/MA looks forward to offering its assistance to CAR in considering potential changes to the CAR performance standards. Working together, insurance companies and auto body shops can serve the interests of our shared customers today and tomorrow. I appreciate your consideration of the aforementioned recommendations. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Jillian Zywiec, Executive Director

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A. Screening Reports and Initial Investigation

1. All new notices shall be screened by a person with sufficient experience and training to be able to identify warning signs requiring special inquiry or investigation or by an appropriate expert software system designed for fraud screening, and thereafter assigned by a person with sufficient experience and training.
2. Initial investigation shall confirm that coverage is appropriate:
 - a. Date of loss within policy period and all policy coverage is in order.
 - b. Injured persons are eligible for no-fault benefits.
 - c. Private health insurance availability shall be verified and documented.
 - d. Injuries arise from use of an automobile.
 - e. Massachusetts statute applies.
 - f. No exclusions apply, such as drunk driving, stolen car, or workers compensation.
3. The setting of initial and subsequent reserves shall be timely, reasonable, and follow documented company policy.

B. Contacts

1. Injured persons or their legal representative making a claim shall be contacted within 2 business days of the ARC's receipt of notice of injury for purposes of investigation and verification.
2. The named insured, if not an injured party, shall be contacted within 3 business days of the ARC's receipt of notice of injury for purposes of investigation and verification.
3. The insured operator, if not identified in B.1 or B.2, shall be contacted within 3 business days of receipt of notice of injury for purposes of investigation and verification.
4. Necessary forms shall be mailed or, if preferred by the injured party, electronically sent to the address specified within 5 business days after notice of injury.

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C. Medical Management

1. ARCs must establish a plan to maintain a continuing awareness of the disability claimed, the medical treatment, and whether the treatment and medical expense are reasonable, necessary, and related to the automobile accident.
2. Any 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 customary charges, use of preferred provider organizations, managed care programs, and/or expert medical systems, as well as innovative approaches. In determining usual and customary charges, an ARC may utilize the Fair Health national medical fee database for determination of usual and customary medical charges.

D. Fraud Handling

Screening Process for Suspected Fraudulent Claims

If in the course of the screening process or initial investigation discrepancies develop of a sufficiently serious nature or indications of potential fraud exist (such as accident of unusual circumstances, severity of accident, unusual number of injured passengers, prior index history, recognition of a pattern related to prior cases of fraud), the case shall be referred for special investigation and consideration given to referring the claim to IFB, NICB, or appropriate law enforcement agency for prosecution. (See Appendix A for other indicators)

E. Subrogation

1. The initial contact and investigation shall determine other parties involved in the accident, the probable extent of liability on each party, and the carrier against which subrogation may be directed. If applicable, a preliminary notice of subrogation shall be sent to the other carrier.
2. In cases of injury serious enough to exceed the tort threshold, the no-fault carrier shall alert the tort carrier immediately.

F. Claim Payment

1. No payment shall be made until the reported loss has been verified and:
 - a. The deductible applied if applicable.

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- b. Benefits coordinated in conjunction with existing health carrier and wage continuation plans.
 - c. Medical bills verified prior to payment and reviewed for reasonableness, medical necessity, and relationship to the accident.
 - d. Wage rate/working hours verified with employer, using wage/salary verification forms.
 - e. Lost wages confirmed by employer's statement as to time missed and by physician's statement verifying disability for that period of time.
 - f. Investigations promptly conducted. Upon agreement to pay, checks shall be issued within 10 business days.
 - g. A litigation management program designed to bring cases to the earliest conclusion at a reasonable value.
 - h. Legal expenses incurred are itemized, monitored, and related to the claim being paid.
2. In the normal course of claim handling, a file shall be referred for special investigation when discrepancies exist that are unresolved (see list of indicators in Appendix A).
3. Evaluation and Settlement

After a special investigation is complete, a decision must be made to pay the claim or resist. The file shall clearly document the basis for the decision and result.