COMMONWEALTH AUTOMOBILE REINSURERS
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NATALIE A. HUBLEY
PRESIDENT

RECORDS OF MEETING

CLAIMS SUBCOMMITTEE – JULY 25, 2018

Members Present

Mr. David DeLuca – Chair	Vermont Mutual Insurance Company
Ms. Kathleen Devericks	Bender Hatch Insurance, Inc.
Mr. Gregory Favreau	Electric Insurance Company
Ms. Elizabeth Kim	Arbella Insurance Company
Mr. Paul Narciso	Safety Insurance Company
Mr. Steven Shiner	MAPFRE U.S.A. Corporation
Ms. Marie-Armel Theodat	R. Theodat Insurance Agency, Inc.

Substituted for:

Not in Attendance:

Mr. Robert Hallinan	Plymouth Rock Assurance Corporation
Mr. Steven McNaney	Amica Mutual Insurance Company

18.01 Records of Previous Meeting

The Subcommittee unanimously voted to approve the Records of the Claims Subcommittee meeting of May 22, 2018. The Records have been distributed and are on file.

18.04 Claims Performance Standards

The Claims Subcommittee met to continue with its biennial review of proposed modifications to the Private Passenger and Commercial Claims Performance Standards (the Standards) as required by G.L.c.175, §113H. Mr. Peter Bertoni summarized the language modified by the Subcommittee at the prior meeting. The only requested change was to adjust the language in the Fraud Handling section of Standard III No-Fault Personal Injury Protection Benefits Handling. The Subcommittee unanimously agreed that the modification eliminated the redundancy found in the prior draft and correctly reflected the Subcommittee's direction.

At the prior meeting, a Subcommittee member inquired about the outcome of the 2015 review process that had proposed the addition of language to Standard III referencing medical fee databases. At that time, the Subcommittee discussed medical fee databases in general and FAIR Health in particular. FAIR Health is an independent nonprofit company that collects and manages a medical fee database of privately billed health insurance claims. For the next meeting, staff was asked to summarize CAR committee deliberations for the 2015 review and the subsequent Division of Insurance proceedings.

Mr. Mark Alves provided an overview of the history and timeline of the 2015 Performance Standards review. He noted that language had been included in drafts of proposed changes to the Standards referencing both FAIR Health and medical fee databases. Both related to the determination of 'usual and customary' charges in Standard III No-Fault Personal Injury Protection Benefits Handling. He cited that in August 2015, the Claims Subcommittee recommended to the Compliance Audit Committee that additional language be added that specifically referenced FAIR Health and the use of medical fee databases as acceptable sources to be utilized by ARCs or Servicing Carriers in the required medical management programs. The Subcommittee considered this recommendation to be useful in the determination of 'usual and customary' charges to avoid overbilling by medical providers and consequently prematurely exhausting the PIP benefit available to the insured. However, the specific language approved by the Governing Committee was reduced by the Compliance Audit Committee to eliminate the specific reference to FAIR Health, and replace it with a broader reference of 'medical fee databases'. Subsequent to the public hearing, the Order issued by the Division of Insurance (DOI) on May 31, 2016 removed the reference to medical fee databases entirely and concluded that the current Standards provide tools for investigating usual and customary charges that appear adequate for the purpose of negotiating PIP payments.

The Subcommittee considered the chronology distributed with the meeting materials, noting the questions raised by the Hearing Officer during the hearing and questioned whether it would be feasible to further address these issues to support refiling the proposed amendment. The Subcommittee engaged in extensive dialogue as to how best to define the issue. Several members discussed the practice of overbilling for medical services related to PIP claims. Subcommittee members also considered the language in Standard III that requires companies to establish a medical management plan that monitors the medical treatment while determining if 'reasonable, necessary and related to the automobile accident'. Companies use medical fee databases as a tool to gauge usual and customary charges which can lead to cost appropriate payments made to medical providers. However, medical providers have fought these types of cost containment efforts by filing lawsuits. Some Subcommittee members asserted that these complaints typically include bad faith allegations to increase the potential damages. Defense of such litigation has been unsuccessful and costly from an insurance industry perspective.

A Subcommittee member commented on the use of medical fee databases in the process of negotiating PIP claims, noting that all companies are expected to manage PIP and BI claims in accordance with the Standards, and that medical fee databases are the primary tool available when a submitted bill appears excessive. Additionally, the Subcommittee member noted that other states offer different controls not available in Massachusetts such as the ability to apply the worker's compensation fee schedule, the use of a repricing mechanism to combat excessive billing, or higher available PIP limits. As a result, carriers in Massachusetts are continually litigating the right to contain cost through the use of medical fee databases but without success. The Subcommittee opined that a specific reference in the Standards may strengthen their defense.

The Subcommittee then engaged in discussion regarding FAIR Health and the possible inclusion of FAIR Health directly into the recommended language for Standard III. One Subcommittee member advised of his research that FAIR Health is a not-for-profit company developed from the proceeds of a settlement between the state of New York and multiple health insurers. The objective was to create a transparent nationwide database in an effort to reform the consumer reimbursement system for out-of-network health care charges. Most Subcommittee members agreed that FAIR Health is a highly respected, independent data source used in other states for similar purposes and is therefore uniquely appropriate for specific reference in the Performance Standards. The Subcommittee considered the possibility of contacting FAIR Health to request that representatives attend an upcoming meeting to describe its product and comment on its experiences in litigation proceedings. Other considerations discussed were the possibility that discussions with FAIR Health may lead to further proposed amendments to Standard III, or may provide statistics to document the successful uses to contain costs.

After discussion, the Subcommittee unanimously voted to direct staff to conduct an industry survey addressing the questions raised during the January 2016 hearing and to contact FAIR Health regarding a presentation for the Subcommittee.

PETER BERTONI
Compliance Auditor

Boston, Massachusetts
August 30, 2018

ATTACHMENT LISTING

Docket #CLMS18.02, Exhibit #2 Attendance Listing

CLAIMS SUBCOMMITTEE MEETING
SIGN-IN SHEET
WEDNESDAY, JULY 25, 2018

Individual's Name **PLEASE PRINT**	Company / Agency
Elizabeth Kim	Arbella
Gregory Farneau	Electric Ins. Co.
[signature]	Bendes Hatch IAT
Paul Narcisa	Safety Insurance
Steven Shiner	MAPFRE Insurance
MARIE-AIMEL THEODAT	R. THEODAT INS. AGCY.
Wendy Browne	CAR
MARK ALVES	CAR
[signature]	Vermont Mutual Ins. Group
PETER BERTONI	CAR
Alison Ruggiero	C.A.R.