COMMONWEALTH AUTOMOBILE REINSURERS
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NATALIE A. HUBLEY
PRESIDENT

RECORDS OF MEETING

CLAIMS SUBCOMMITTEE – OCTOBER 25, 2018

Members Present

Mr. David DeLuca – Chair	Vermont Mutual Insurance Company
Mr. Gregory Favreau	Electric Insurance Company
Mr. Robert Hallinan	Plymouth Rock Assurance Corporation
Ms. Elizabeth Kim	Arbella Insurance Company
Mr. Robert Lucas [(1)]	MAPFRE U.S.A. Corporation
Mr. Paul Narciso	Safety Insurance Company
Ms. Marie-Armel Theodat	R. Theodat Insurance Agency, Inc.

Substituted for:
[(1)]Steven Shiner

Not in Attendance:

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 July 25, 2018. The Records have been distributed and are on file.

18.04 Claims Performance Standards

The Claims Subcommittee met to continue 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. Mark Alves provided an overview of the Subcommittee's efforts to date. Previously, the Subcommittee was considering changes to the Standard III No-Fault Personal Injury Protection (PIP) Benefits Handling that would include references to the use of medical fee databases and FAIR Health specifically. As part of the 2015 biennial review, the Claims Subcommittee provided a recommendation to the Compliance Audit Committee that also referenced both. At that time, the Compliance Audit Committee deleted the reference to FAIR Health, in particular, but recommended including a reference to the use of medical fee databases in general. After a public hearing, the Division of Insurance concluded that the current Performance Standards provided adequate tools for determining usual and customary charges and disallowed the reference to the use of 'medical fee databases' in the May 2016 Decision and Order.

In the current review, the Subcommittee determined it would continue to consider similar recommendations. In an effort to establish a record that answers questions posed during the January 2016

hearing, the Subcommittee directed staff to prepare a survey pertaining to the use of medical fee databases. Staff obtained questions from each of the Subcommittee members and then worked with the Chair to develop the survey. The survey was provided to private passenger companies included in quota share, all four commercial Servicing Carriers, and several of the larger market share voluntary only commercial Member Companies. Overall, 75% of the companies contacted provided a response to the survey request.

Mr. Peter Bertoni provided a summary of the responses received. In response to the first question, 70% of the survey respondents employed medical fee databases during the last six calendar years to review the 'usual and customary' charges for bills submitted under PIP and Medical Payment benefits. Of those that used medical fee databases, 37% used FAIR Health. The second question addressed frequency. Overall, 55% of the companies utilized medical fee databases for usual and customary considerations on all medical bills; 7% of the companies only on a case specific basis. Mr. Robert Lucas requested that staff recompile the survey and separate private passenger from commercial while identifying market shares to the responses.

The third question included multiple components. The first part considered the overall number and amount of bills submitted for usual and customary review compared to those that resulted in a savings and the amount of savings. The survey indicated that 30% of the bills submitted for usual and customary review contained a reduction. The savings for these bills was 27%. The second part of the question addressed the legal challenges by medical providers after a bill had been adjusted through the use of medical fee databases. Of these companies, 52% faced legal challenges by medical providers. Only 22% provided measurements of the defense costs arising from legal challenges. The remainder of the summarized survey included specific comments provided by various companies.

The Subcommittee's initial discussion referenced FAIR Health as the designated vendor. Mr. DeLuca indicated that he did not ask staff to request that FAIR Health attend the meeting because he wanted to first determine if the Subcommittee could support such a recommendation based on the surveys. He also noted that the survey results seem to indicate carrier usage varies widely from not using, to a visual review, to 100% review of all bills. The wide range of responses gave him concern about naming only one provider. Mr. Lucas noted that although the survey supports the use of multiple vendors, FAIR Health is the only provider. The underlying data source used by other vendors originates with FAIR Health. The Subcommittee agreed that this was accurate. Staff indicated that it had contacted FAIR Health per the Subcommittee's prior direction and the company was willing to attend a future meeting to answer Subcommittee questions.

After Subcommittee dialogue regarding the naming of only one specific provider, CAR counsel Mr. Steven Torres framed the overall discussion as two separate points for Subcommittee consideration. The first point is that the Subcommittee should analyze survey responses to determine if language supports a consensus for use of these databases. The survey responses clearly indicated that usage varies. The second consideration is distinct and separate from the first. Should the Subcommittee identify only FAIR Health? He noted that CAR does not typically endorse a specific vendor. He questioned how companies that use medical fee databases other than FAIR Health would be impacted. At this point, the Subcommittee determined that no reference would be made to FAIR Health in the proposed Standards language.

Discussion then resumed regarding the use of medical fee databases in general. Mr. Gregory Favreau noted that the language in the Standards doesn't currently preclude the use of databases in the determination of usual and customary medical bill charges. He continued that the concern is whether the vendor can substantiate the validity of its underlying data when facing a legal challenge. He indicated that past challenges have not been successfully defended. He further stated that even by adding language to the Performance Standards specifically allowing for the use of medical fee databases, providers would continue to challenge and carriers would continue to defend. However, he believed that by including this specific

reference in the Standards, it would strengthen its acceptance by the courts. Companies would then be able to make an independent determination to use all of the tools and existing techniques or just a subset.

Mr. DeLuca agreed with this statement. He referenced the dual purpose of adding additional language. First, this would strengthen the insured's ability to extend PIP and Medical Payment benefits while allowing coverage limits to reach maximum benefit. Secondly from the carrier's perspective, the company's indemnity would be reduced as evidenced by the savings included in survey responses. He further stated that even with the usual and customary reductions, the industry is still paying significant amounts through medical provider overbilling. Inserting language into the Standard that includes use of medical fee databases could be a mutual benefit to the consumer and the industry. Mr. Torres discussed CAR's overall objective in relation to the perspective change and whether the Subcommittee should consider this to be in the best interest of the motoring public. The purpose of this statutory biennial review is to promote the best interests of the residual market and is not necessarily a tool for a subsequent legal proceeding.

Mr. Robert Hallinan agreed that the Standards don't currently preclude the use of medical fee databases and believes that the survey supports this. Ultimately, this becomes a matter of defending industry practices in court. He further stated that court decisions particularly as of 2012 have been unfavorable regarding use of these databases. Also, it appears that the court's recent position hasn't changed nor has any progress been made towards the validation of the underlying data and how the industry uses it. Recent appellate level results have been to the contrary including decisions with FAIR Health as the provider. He commented that including a line in the Standards may not provide any benefit to shoring up support for how FAIR Health presents information regarding the reduction of medical bills. He also noted that the courts have not endorsed FAIR Health or any other usual and customary process either. However, Mr. Hallinan emphasized that his company does not object to other companies using medical fee databases or including a specific reference in the Standards but would object to any mandatory requirement.

Focus then transitioned to the current wording in the Standards that 'any plan shall include' and whether this wording becomes a mandate that all companies must use medical fee databases. However, Mr. Torres stated that medical fee databases would become just one of multiple tools and the proposal would not be a requirement. Essentially, the databases would be one of several options. The Subcommittee agreed with counsel's interpretation. Mr. Paul Narciso asked staff if any company not using medical fee databases as a component of the determination of usual and customary charges would then be considered not compliant during an audit. Staff responded that companies are currently allowed to use medical fee databases and the proposed language would have no impact to staff's current audit procedures.

Mr. Favreau made a recommendation to insert the medical fee database language as an acceptable technique in the process of determining usual and customary. The recommended language would be consistent with the prior recommendation. The Subcommittee voted unanimously to recommend approval of the amendments to the private passenger and commercial Standards including additional language to Standard III regarding medical fee databases to the Compliance and Operations Committee.

PETER BERTONI
Compliance Auditor

Boston, Massachusetts
November 6, 2018

ATTACHMENT LISTING

Docket #CLMS18.02, Exhibit #3 Attendance Listing

CLAIMS SUBCOMMITTEE MEETING
SIGN-IN SHEET
THURSDAY, OCTOBER 25, 2018

PLEASE PRINT

Individual's Name	Company / Agency
Liz Kim	Arbella
Robert Hallinan	Plymouth Rock
Gregory Farnum	Electric Ins.
Paul Narcisu	Safety Insurance
Bob Lucas for Steve Shinoff	MAPFRE Ins.
Marie-Armel Theodat	R. Theodat Insurance.
Stu Torres	TSHD - Counsel
Wendy Browne	CAR
David DeLuca	Vermont Mutual
Aaron Wheaton	Plymouth Rock
Barry Tasker	Pilgrim
Patricia Avery	Pilgrim
Michael Merriam	Plymouth Rock
James Hughes	Pilgrim
Peter Bertoni	CAR
Alison Ruggiero	CAR
Virginia Pease	CAR
Robert Jones	CAR
Mark Alves	CAR