

**Manual of Administrative Procedures**

**Chapter IV - Claims**

**A. Records**

Upon request, Servicing Carriers shall deliver to CAR:

1. individual claim files to support the payment or recovery of loss or expense,
2. underwriting files related to the issuance, rating, and endorsement of policies, including, but not limited to, evidence of the types and limits of coverage applicable to payments of loss or expense,
3. copies of records of internal audits performed in compliance with Rule 10 A (5), and
4. copies of records of complaints maintained in compliance with Rule 10 A (6).

Servicing Carriers shall preserve for at least three years records required by Rules 10 A (5) and 10 A (6).

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#### B. Fraud

The reduction of insurance fraud, by monitoring and coordinating the investigation of suspicious claims, is an important goal of Commonwealth Automobile Reinsurers. It seeks the achievement of three beneficial results:

1. successful resistance to the payment of fraudulent claims,
2. the establishment of a deterrent to fraud, and
3. the reduction of losses, with the consequent improvement in insurance rates.

In order to achieve these results, Servicing Carriers must pursue the investigation of fraud by establishing a commitment to support and encourage the activities of their Special Investigative Units.

1. Each Servicing Carrier, in addition to maintaining a Special Investigative Unit to investigate suspicious claims, shall report to CAR, at least monthly, all suspicious motor vehicle claims referred to its Special Investigative Unit. These reports, on cards provided by CAR, will contribute to a central index system for the use of the Servicing Carriers. The following information shall be reported:
  - a) name and address of policyholder
  - b) date of birth
  - d) policy number
  - c) date of loss
  - e) claim number
  - f) license number
  - g) type of loss
  - h) year, make and model of vehicle
  - i) vehicle identification number
  - j) reasons for suspicion

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**B. Fraud (continued)**

2. Each Servicing Carrier shall report quarterly to CAR:
  - a) number of cases assigned to its S.I.U.
  - b) number of cases in which payment denied or compromised for physical damage, bodily injury, and personal injury protection claims
  - c) dollars saved during the period through denials or compromises
3. Each Servicing Carrier shall, in addition, report to CAR such information as it may request with respect to the operation of its Special Investigative Unit.

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#### C. Statistical Evaluation

One way in which the CAR Claim Department will monitor the performance of Servicing Carriers, both collectively and individually, is by comparative analyses of selected statistical data reported in compliance with the statistical plans. Such analyses identify trends and deviations which may warrant reviews of claim files in search of explanations.

The CAR Claim Department will supply annually to each Servicing Carrier a report of its average cost per claim for each coverage and a comparison of its averages with those of other Servicing Carriers with similar volumes of business and with the combined averages of all Servicing Carriers. The report will also cover salvage and subrogation.

The continuity and adequacy of reserves will be monitored by programs which record and follow them from quarter to quarter and which ultimately compare the reserve to the payment.

Other programs permit the analyses of claim frequencies, allocated expense, and other indicia of the effectiveness of claim department operations.

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#### D. Claim Files

The Commonwealth Automobile Reinsurers' Claim Department will review as necessary a representative selection of the claim files of each Servicing Carrier.

Claims for review will not be selected at random with the intent of producing data which can be extrapolated. Rather, they will be selected manually from monthly lists of payments and credits of loss and expense to provide a variety of claims, both large and small, involving liability and physical damage coverages.

The review will monitor compliance with Rule of Operation 10 - Claim Practices - and will consider whether the claims were handled in a lawful and timely manner consistent with The Performance Standards for the Handling and Payment of Claims by Servicing Carrier. The review will also cover the quality of investigation and the imagination applied to it, and the adequacy of documentation.

At the conclusion of the review, the Claim Department will send to the Servicing Carrier a written report detailing their compliance with the Performance Standards. Non-compliance will be addressed as outlined in the Measurements and Penalties portion of the Performance Standards.

In addition to routine annual reviews, the Claim Department may conduct special reviews to seek explanations of undesirable statistical trends or significant deviations from averages.

The Claim Department may request a Servicing Carrier to correct arithmetical errors, to offset overpayments, and to absorb the cost of a claim which it handled improperly. A Servicing Carrier shall promptly take the action requested or provide a written explanation of why it believes that it should not take such action. Disagreements that cannot be resolved shall be considered by the Claims Advisory Committee.

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#### E. Reporting

1. General

Each Servicing Carrier shall report losses on policies ceded to the Commonwealth Automobile Reinsurers as a normal function of statistical reporting in accordance with the reporting instructions contained in the Massachusetts Automobile Statistical Plans.

2. Reporting Policies With Non-Cedable Limits or Coverages

For losses which exceed the cedable limits or coverages, the portion of the loss which exceeds the limit of coverage must be reported on a separate record using the special non-cedable classification codes listed in the Special Rating and Adjustment Classification Code Tables of the Massachusetts Automobile Statistical Plans. The CAR ID Code for these records should always be voluntary. Consult the decision tables of Special Rating and Adjustment Classes for the codes to be used in other data fields. The loss portion that falls within the cedable limits or coverage must be reported in accordance with the normal statistical requirements.

3. Verification of Loss Coverage by the Commonwealth Automobile Reinsurers

The Commonwealth Automobile Reinsurers processes each Servicing Carrier's monthly detail ceded losses against the premium and cessions on the Master File to ensure that there is an in-force cession and in-force premium for each policy on which a loss is reported and that the loss occurred on or after the cession effective date and on or before the cession expiration or cancellation date. Losses which do not meet these criteria will be listed on accounting error listings. If the situation is not corrected within three listing cycles, the loss will be written-off, meaning that the Commonwealth Automobile Reinsurers will recoup any reimbursement made to the Servicing Carrier for that loss (for further details on CAR's verification of loss coverage, refer to Chapter X of this Manual).

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#### E. Reporting (continued)

##### 4. Outstanding Losses

Each Servicing Carrier shall establish, maintain, and report, as provided in the Massachusetts Automobile Statistical Plans, adequate reserves for the payment of outstanding losses.

As required by the Massachusetts Automobile Statistical Plans, losses are reported on a paid-outstanding basis (as opposed to a closed-open basis). Outstanding losses, reported on a quarterly basis, must be valued at the close of each quarter. If a payment has been made on a claim, the Servicing Carrier must reduce the value of the reserve by that amount. If the projected loss for a claim has been increased, the Servicing Carrier should increase the reserve amount. Reserves for the allocated loss adjustment expense portion of a claim should be reported as a separate record using the code for outstanding allocated loss adjustment expenses listed on the Transaction Type Code pages of the Massachusetts Automobile Statistical Plans.

Note that although no reimbursement is made for the reserve portion of a claim, the outstanding losses are reflected in the Members' Participation Reports each quarter and are also utilized in the process of projecting incurred but not reported (IBNR) losses each quarter.

##### 5. Allocated Loss Adjustment Expense

Allocated Loss Adjustment Expense should be reported as a separate record using the codes for allocated loss adjustment expense listed on the Transaction Type Code pages of the Massachusetts Automobile Statistical Plans. Note that although it is optional to report allocated loss adjustment expense on claims for non-ceded business, it is necessary to report it for ceded business in order to secure reimbursement for that portion of a loss.

Allocated loss adjustment expenses are the following types of expenses of a Servicing Carrier in connection with claim settlements which can be directly allocated to a particular claim. The following are allowable allocated loss adjustment expenses:

- a. External Attorney's fees for claims in suit.
- b. House counsel fees for claims in suit (excluding subrogation claims, see Section 7, A).

These fees may be reported provided that:

1. the fees are computed at the same rate and by the same method as non-ceded claims, and
2. the fees reflect the total operational cost, including labor, on an individual suit basis and are substantiated by time statistics.

**NOTE:** Operational costs are defined as expenses which are normally contained in company overhead, such as rent, heat, electricity, benefits, etc., but exclude any items of profit.

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#### E. Reporting (continued)

- c. Arbitration, court, and other specific items of expense such as:

- Examinations under oath
- Accident reconstruction services
- Medical examination (to determine the extent of the company's liability)
- Preferred Provider Network/Organization expenses incurred on a particular claim
- Expert medical or other evidence
- Laboratory and x-ray
- Autopsy
- Stenographic
- Witnesses and summons
- Copies of documents
- Public record/police/fire reports (to the limit provided for by law)
- Motor vehicle registration search fees
- Appraisals of property (excluding motor vehicles)
- Special investigation of a claimant's background (including asset/credit reports)
- Engine oil, fluid analysis

- d. Allocated Legal Expenses in Multiple PIP Lawsuits

The following procedures should be followed in the reporting of legal expenses on claims involving multiple PIP claims. Bulk billings received from counsel must be proportionally distributed across all claimants involved in the lawsuit. This distribution should be performed whenever a billing is received throughout the life of the suit.

In the event of any recovery of indemnity payments or expenses made as a result of a judgment or settlement of the suit reimbursement should be made on a prorated basis to the individual claim files involved in the suit.

CAR will conduct audits periodically of Servicing Carriers' allocated legal expenses in multiple PIP lawsuits to insure that the reporting of these expenses follow the above procedures and the requirements of the Claims Performance Standards, Sections III and V regarding Litigation Management.

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#### 6. Unallocated Loss Adjustment Expenses

The following items are unallocated expenses and shall not be reported:

- a. Overhead, salaries, and traveling expenses of company employees (other than amounts allocated as attorney's fees for claims in suit).
- b. Special investigations (concerning the facts of the loss).
- c. Adjuster's fees (including those paid to independent adjusters and/or attorneys for adjusting claims).

**NOTE:** The term "adjusting" includes the investigation and adjustment of claims, the disposition of salvage, and the recovery of subrogation claims not in suit.

- d. Fees for appraisals of motor vehicles (including preinspections and intensified appraisals).
- e. Salvage pool expenses - to be reported under transaction Code 25, indicating salvage recovery.
- f. Fees for retrieval of preinspection reports.

Unallocated expenses are not reported as detailed statistical records. Servicing Carriers are reimbursed for unallocated expenses via an interim expense allowance factor applied to the premium reported each month. Refer to Chapter V for further explanation of expense allowances.

#### 7. Subrogation Recoveries/Expenses

Certain expenses incurred in effecting recovery, not to exceed the original loss amount, may be reported separately using a subrogation transaction code or deducted from the recovered amount.

- a. Subrogation expenses that may be reported or deducted from the recovered amount:
  1. attorney's fees and associated costs for claims in suit
  2. court costs
  3. location/address reports
- b. Subrogation expenses that are not to be reported or deducted from the recovery amount:
  1. cost of company employees
  2. collection agency fees
  3. subrogation recovery services

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8. Salvage Recoveries/Expenses

The following salvage expenses with a salvage transaction Code 25 may be reported as separate records or netted from the recovery amount:

1. Original towing and storage charges - excluding losses resulting from towing and labor
2. Haul fee (to salvage yard)
3. Pool fee or commission
4. Auction fee
5. Salvage title fee (to the limit provided by law). Fees charged by independent services/salvors to obtain title shall not be reported.

9. Taxicab Index

To enable CAR to continue to monitor collision and comprehensive claims submitted by taxicabs, Servicing Carriers are required to:

- a. Submit policy information to the Index concurrent with the cession of a policy insuring a taxicab, and
- b. Obtain from the Index a history of prior physical damage claims before payment of a claim under the collision and comprehensive sections of the policy.

Servicing Carriers will be assessed a penalty where either requirement has not been met.

10. Servicing Carrier S.I.U. Investigatory Expense

As approved by the Governing Committee on May 20, 1987, CAR will reimburse Servicing Carriers for costs incurred by their S.I.U.s which relate to unusual facets of investigating potential fraud which falls outside those expenses allowable under allocated expenses. The pre-approval of these expenses by CAR is necessary.

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#### **F. Performance Standards for the Handling and Payment of Claims by Servicing Carriers**

Automobile Insurance Reform Legislation, Chapter 273 of the Acts of 1988, Section 41 and 44, require Commonwealth Automobile Reinsurers (CAR) to establish Performance Standards for Servicing Carriers designed to contain costs, ensure prompt customer service and payment of legitimate claims, and resist inflated, fraudulent, and unwarranted claims.

The Performance Standards which CAR has developed require Servicing Carriers to establish various plans and programs. In many instances, this may only require formalizing and/or enhancing current practices and procedures. In other instances, detailed plans and programs will need to be developed by the Servicing Carriers to comply with the Standards. In some situations, time frames have been established to ensure prompt customer service.

Measurements of performance and compliance with the Standards will be conducted through periodic surveys of closed claims, enhanced by relevant Statistical Plan data and procedures established by CAR. In addition to Statistical Plan data, Servicing Carriers are required to report savings brought about by S.I.U. activities for physical damage, bodily injury, and personal injury protection claims.

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