

MASSACHUSETTS AUTOMOBILE RATING AND ACCIDENT PREVENTION BUREAU
40 Broad Street, Boston, Massachusetts 02109
(617) 542-5080
FAX: (617) 388-7582

January 6, 1989

CIRCULAR LETTER TO CLAIM PERSONNEL

Direct Payment Plan - Approval of Industry Plan

The Commissioner of Insurance has approved the Industry Plan of direct payment for the settlement of insured vehicle damage repairs under the auto physical damage coverages of collision, limited collision and comprehensive, excluding glass claims, effective January 1, 1989, as filed by the Bureau on December 15, 1988. A copy of the Decision and Order on the Application for Approval of the Massachusetts Automobile Rating and Accident Prevention Bureau Direct Payment Plan ("Industry Plan") is attached to this letter. An additional copy of the Industry Plan (Circular Letter to Claims Personnel, December 16, 1988) is enclosed for your convenience.

Company Options

With the approval of the Industry Plan each individual insurer writing automobile insurance in Massachusetts has the following four options for the method of payment for physical damage claims, beginning January 1, 1989.

Option 1 - Adoption of Industry Plan in Entirety

The insurer files a Form to Elect the Industry Plan with the Commissioner of Insurance stating the date on which the Industry Plan will be implemented in its entirety by that insurer. Three copies of Election Form 1 are enclosed with this letter. Insurers must also file at this time, and at such future times as are necessary, a petition for a waiver of the requirement for a minimum number of referral shops (Section 5(2) of the Plan) when the insurer is unable to provide at least two referral shops geographically convenient for each potential claimant. Six copies of the Industry Plan Waiver Form are enclosed, together with a listing of Insurance Company 1987 market shares for use in completing the Waiver Form. Insurers may begin implementation of the Industry Direct Payment Plan on receipt of approval from the Commissioner of Insurance.

Prior to the implementation date under this option, each insurer must have in place written guidelines for the determination of placement of referral repair shops on that insurer's referral shops lists (Plan Section 5(3)b). Insurers should also have a clear understanding of the nature and extent

of the guarantee of repairs which must be extended to all claimants receiving direct payments for repairs completed at the insurer's referral shops (Plan Section 5(5)).

Once the Industry Plan is implemented each claimant must be offered a direct payment by providing (1) a copy of the insurer's appraisal of damage repair costs, (2) a repair certification form (three prototype copies are enclosed), (3) a list of the insurer's geographically convenient referral shops, (4) a direct payment check for the appraisal cost of repair, less any applicable deductible and betterment, and (5) the insurer's own informational literature on the claim settlement process. The direct payment check may, if necessary, follow the other four items within five (5) business days (Plan Section 1). Some further claim processing for supplementals, the receipt of the repair certification form or the setting of a decrease in value, and the reinspection of repairs will be needed depending upon the circumstances of each claim. If the direct payment is refused by the claimant, the current process using a completed work claim form is to be followed.

Option 2 - Adoption of Modified Industry Plan

An insurer wishing to adopt all Industry Plan provisions, except for some provisions which do not substantially deviate from the Industry Plan, may file a form to elect a **Modified Industry Plan** (three (3) copies of Election Form 2 are enclosed) citing whatever differences from the Industry Plan are requested by the insurer. Modifications to the Industry Plan may be filed at any time subsequent to the effective date of the Industry Plan, January 1, 1989. Insurers may implement their Modified Industry Plan upon receipt of approval from the Commissioner of Insurance. Except for the possible modifications requested by the insurer, the requirements for referral shop guidelines, guarantees of repairs, and offers of direct payment outlined in Option 1 would apply to this option as well.

Option 3 - Insurance Company Direct Payment Plan

Each Insurer has the option now, or in the future, to file its own Direct Payment Plan. A copy of Regulation 211 CMR 123.00, prior to being amended by the Decision on the Industry Plan, governing the filing of all such plans is attached to the Industry Plan as Exhibit A in the enclosed copy of our December 16, 1988 Circular Letter to Claims Personnel.

Option 4 - No Direct Payment Plan

The implementation of any Direct Payment Plan is by statute at the option of the insurer. Although the opportunity for such plans has been found by the Legislature to provide overall savings in loss costs, there may be circumstances where savings would not be realizable by an individual insurer. In that event, an insurer need not adopt or file any Direct Payment Plan. No

further action is necessary. Future auto physical damage claims would be settled on the same basis, using a completed work claim form, as under the current system and regulations.

Filing Direct Payment Plan Forms

A package of forms has been provided with this letter. When applicable, one copy should be filed for approval with the Commissioner of Insurance (attention Mary Wiatr), one copy should be sent to the Bureau (attention Richard A. Derrig), and one copy retained for the company records.

Questions pertaining to the governing Regulation 211 CMR 123, or the various Division of Insurance approval processes, may be directed to Mary Wiatr (617/727-7189, Ext. 411) at the Division of Insurance. Questions pertaining to the Industry Plan may be directed to Richard A. Derrig at the Bureau (617/542-5080, Ext. 215).

GEORGE D. MORISON
President

RAD/jkj

Enclosures

DECISION AND ORDER ON
THE APPLICATION FOR APPROVAL OF THE
MASSACHUSETTS AUTOMOBILE RATING AND ACCIDENT
PREVENTION BUREAU DIRECT PAYMENT PLAN

In accordance with Chapter 90, §340, Chapter 175, §1130 of the Massachusetts General Laws, as amended by Sections 24 and 51 of Chapter 273 of the Acts of 1988, and 211 CMR 123.00, a consolidated hearing, Docket No. 88-57, was held on December 22, 1988.

The purpose of the hearing was to afford all interested persons an opportunity to provide testimony regarding several plans for the direct payment to consumers by insurers for motor vehicle collision and comprehensive claims. The Massachusetts Automobile Rating and Accident Prevention Bureau ("MARB"), filing the plan addressed in this order (the "Industry Plan"), was represented by Richard A. Derrig and E. Michael Sloman. The Massachusetts Auto Body Association ("MABA"), the Massachusetts Glass Dealers Association ("MGDA"), the Attorney General ("AG"), Liberty Mutual Insurance Company, and representatives of three individual automobile repair shops participated as interested persons.

The Industry Plan submitted in final form on December 15,

1988 by the MARB is hereby APPROVED under 211 CMR 123.04(6).

Although this regulation does not require that the reasons for this approval be set forth in this Order and Decision, because this plan is among the first three plans approved under the provisions of the recently enacted automobile insurance reform legislation (Chapter 273 of the Acts of 1988), a number of additional issues are addressed in this order.

1. AMENDMENTS TO DIRECT PAYMENT REGULATIONS

The approved Industry Plan differs in two respects from 211 CMR 123.00 as originally promulgated on an emergency basis on December 8, 1988. However, for the reasons set forth below, the regulations will be amended. The Industry Plan conforms with and is approved under the regulations as amended.

(a.) Exclusion of Glass Claims:

The Industry Plan excludes glass specialty shops from the definition of "repair shop." This contravenes 211 CMR 123.03 as originally promulgated. The MARB argues, however, that glass claims should be excluded from the scope of the regulation. According to the MARB, there already exists an active and efficient system of insurer referral shops for glass claims, and subjecting insurers to 211 CMR 123.00 for glass claims would not only increase costs but also would pose a threat to safe driving. The Executive Director of the Massachusetts Glass Dealers Association, representing approximately 80 percent of the glass dealers in Massachusetts,

testified essentially that some measure of consumer choice is desirable under any referral system, but expressed no specific position as to whether or not 211 CMR 123.00 should apply to glass claims. The Attorney General maintained that glass repairs do fall within the scope of repairs the statute and regulation were designed to cover. MABA concurred with the AG. The AG claimed that not all insurers now have glass referral programs. He proposed that an insurer be allowed an exemption from 211 CMR 123.00 for glass claims only if it could demonstrate that it has an effective glass referral system already in place. The MARB responded that such a proposal would only delay the implementation of the plans, and might well discourage some companies from participating at all.

In the interest of consumer safety, direct payment plans shall be permitted to exclude glass claims. Moreover, while no thorough examination of the glass specialty shop referral system currently in place has been conducted, it has not been shown that subjecting glass claims to the requirements of 211 CMR 123.00 would contribute to cost containment.

(b.) Timing of Direct Payment:

The provisions of 211 CMR 123.05(1) as originally promulgated allowed an insurer two days to issue a direct payment check following an appraisal. The MARB asserted that because of diverse claim department check-writing and accounting systems among the companies, a two-day limit was unrealistic and that a limit of five days would accommodate all

operational forms in a direct payment plan. No evidence was presented nor argument made that five days is an unreasonable period of time within which to require an insurer to provide a consumer with a direct payment check following an appraisal. The plan provisions to that effect are therefore approved.

2. REGISTRATION OF REPAIR SHOPS

The Industry Plan provides that only registered repair shops be included on a company's referral list and that only registered shops qualify for supplemental payments sent directly from the insurer. Unavoidable delay in the registration process being administered by the Division of Standards under M.G.L. c. 100A, however, will preclude the immediate use of registered repair shops. In the interest of assuring consumers the greatest possible savings as anticipated by the Legislature, the requirement contained in 211 CMR 123.06(3)(i), that shops appearing on insurers' referral lists be registered shops, and the prohibition contained in 211 CMR 123.05(3)(b), that no insurer may make any supplemental payment directly to an unregistered shop, are therefore waived until such time as shops are legally able to acquire registered status. It is expected that by March 1, 1989, the delay in registration of shops will have been eliminated. Therefore, the provisions in the Industry Plan limiting participation to registered repair shops are suspended during January and February, 1989. Insurers will thereafter be expected to revise

or modify their referral lists to comply with the regulation as written.

3. EXCLUSION OF SO-CALLED "BETTERMENT" FROM COST OF REPAIR

The MARB excludes so-called "betterment," i.e., the replacement of used or depreciated components (tires, batteries, sheet metal parts) with new components, from the "cost of repair," as that term is used throughout the Industry Plan. Because of the use of this term, MABA argued that the Industry Plan should be disapproved. MABA argued that approval of the plan would in effect give regulatory approval to a concept that may not be legally valid in many instances. The AG joined MABA in noting that the term "betterment" itself does not appear in the Standard Massachusetts Automobile Insurance Policy, and both were concerned that the MARB's proposal could operate as a subtle policy coverage change, limiting insurers' liability.

As pointed out by the MARB, however, 211 CMR 123.05(1) requires that direct payments be made "subject to the terms and conditions of the applicable insurance policy." It was not the intent of the Division to expand or contract the legal liability of insurers for the "cost of repair," only to administer a new method by which such liability may be discharged. The Industry Plan's use of the term "betterment" should not be construed as changing in any respect the determination of such liability. The definition of "cost of

repair" remains a question to be resolved by the parties in accordance with their contract.

4. NUMBER OF SHOPS ON REFERRAL LISTS, SUPPLEMENTAL PAYMENTS AND DISCOUNTS

MABA also questioned the propriety of the number of shops to be on insurers' referral lists, the right of insurers to make supplemental payments to their referral shops, and the propriety of repair shops offering discounts to insurers. All these issues turn on the statutory construction of the enabling statute. Only a strict, literal interpretation of the statute might prohibit the transitional rule governing the number of shops as set forth in 211 CMR 123.06(2), the allowance of supplemental payments in appropriate circumstances as set forth in 211 CMR 123.05(3)(b), and the clarification of the statute's conflict of interest provisions set forth in 211 CMR 123.06(8). The Legislature could not have intended such an application of the statute.

Direct payment plans, as contemplated by the statute, are to be implemented at the option of the insurers. If the plans are too stringently regulated, their appeal to insurers, and thus their value to consumers, will be lost. The Division has been granted authority to promulgate regulations which will promote such plans in order to achieve savings in insurance costs, the ultimate goal of the legislation. To the extent that that goal may be realized through flexibility and the

exercise of some discretion in regulating the plans, the regulations, and the approval of the plans in accordance with the regulations, must focus on that goal. Therefore, without a convincing argument as to the need for such a strict reading of the statute which, as a practical matter, would undermine the spirit and intent of the law as a whole, MABA's recommendations are not adopted.

5. PROCEDURAL OBJECTIONS

MABA objected to the hearing on procedural grounds, arguing that it was not given ten days' notice of the hearing on the plan, and that the plan on which the hearing was held was not timely filed with the Division.

An Industry Plan was originally submitted on November 15, 1988, at which time no regulations had yet been issued. Conceivably, even in the absence of regulations, that initial plan could have been the subject of the hearing since Sections 24 and 51 of Chapter 273 of the Acts of 1988 require only that a hearing be held prior to approval of any such plan; the statute is permissive as to the Commissioner's authority to promulgate regulations. As a practical matter, however, the Division made every effort to obtain the input of "persons affected," including MABA, in the review of the plans as they were submitted and in the preparation of the regulations. When the regulations were issued, on December 8, 1988, all persons affected were provided a better idea of the conditions under

which a plan would be approved. This afforded MABA adequate notice in that it was able to submit a thorough and comprehensive analysis of the plan on the day of the hearing.


MABA also questioned the need for emergency regulations and an expedited hearing process. However, Chapter 273 was enacted with an emergency preamble, demonstrating the clear intent of the Legislature that direct payment plans be in place for policy year 1989. The promulgation and amendment of the regulations on an emergency basis, as well as special provisions within those regulations for plans expected to be effective on January 1, 1989, are therefore necessary and appropriate actions for the Division to have taken.

6. RECORDKEEPING REQUIREMENTS

As noted above, the AG participated in the hearing as an interested person. The AG supported the emergency regulations and immediate approval of the plan in light of the legislative mandate compelling prompt action. However, the AG also recommended establishing clearly-defined, uniform recordkeeping requirements and standards by which the plan could be monitored. MABA agreed with the AG on this point. The MARE countered that this was neither the time nor the forum for development of such data requirements and that to demand that additional data be kept as part of the regulation might increase the costs of implementing the system and would surely delay the proposed January 1, 1989 effective date. The AG


agreed that the prompt implementation of the plan was his paramount concern. Therefore, notwithstanding the importance of data collection and plan monitoring, initiation of the plan will not be postponed and uniform recordkeeping will not be mandated at this time. This ruling should not be interpreted, however, as relieving the industry of any obligations pursuant to Chapter 622 of the Acts of 1986, or any other provision of law, which require that adequate records be kept in the ordinary course of business.

Any individual insurer intending to adopt the Industry Plan may implement the plan immediately upon notice to the Commissioner.



Peter S. Rice
First Deputy Commissioner
of Insurance
Presiding Officer

Approved:



Roger M. Singer
Commissioner of Insurance

Date: Dec. 30, 1988

Industry Direct Payment Plan Forms

Contents

1. Three (3) copies of Election Form 1 to file to adopt the Industry Direct Payment Plan in its entirety.
2. Three (3) copies of Election Form 2 to file to adopt a Modified Industry Direct Payment Plan.
3. Six (6) copies of Industry Plan Waiver Form to request a waiver from the requirement for a minimum number of geographically convenient referral repair shops. A listing of 1987 company automobile insurance market shares is included for help in completing the Waiver Form.
4. Three (3) copies of the Industry Plan Repair Certification Form prototype. Insurers adopting the Industry Plan may reproduce this form with their own company identification and information added.

January 6, 1989

Election Form 1

**NOTICE OF ELECTION
OF
INDUSTRY DIRECT PAYMENT PLAN**

The Honorable Roger M. Singer
Commissioner of Insurance
The Commonwealth of Massachusetts
Department of Banking and Insurance
280 Friend Street
Boston, MA 02114

Dear Commissioner Singer:

Please be advised that the undersigned auto insurance company(s) elects to implement the Industry Direct Payment Plan in its entirety, as filed by the Massachusetts Automobile Rating and Accident Prevention Bureau in accordance with 211 CMR 123 and approved by you. If approved, the date of our implementation of the industry plan will be _____.

Company Name(s)

Company Officer

Name

Signature

Title

Telephone Number

Date

Please send copy to:

Richard A. Derrig
Vice President - Research
Massachusetts Rating Bureau
40 Broad Street
Boston, MA 02108

**NOTICE OF ELECTION
OF
INDUSTRY DIRECT PAYMENT PLAN**

Election Form 2
Page 1

The Honorable Roger M. Singer
Commissioner of Insurance
The Commonwealth of Massachusetts
Department of Banking and Insurance
280 Friend Street
Boston, MA 02114

Dear Commissioner Singer:

Please be advised that the undersigned auto insurance company(s) elects to implement a modification of the Industry Direct Payment Plan as filed by the Massachusetts Automobile Rating and Accident Prevention Bureau in accordance with 211 CMR 123 and approved by you. If approved, the effective date of our implementation of the modified industry plan will be _____.

The extent of our modifications to the industry plan are detailed on the attached page(s).

Company Name(s)

Company Officer

Name

Signature

Title

Telephone Number

Date

Please send copy to:

Richard A. Derrig
Vice President - Research
Massachusetts Rating Bureaus
40 Broad Street
Boston, MA 02108

NOTICE OF ELECTION
OF
INDUSTRY DIRECT PAYMENT PLAN

Election Form 2
Page 2

Differences from the Industry Direct Payment Plan

Company Name _____

1. Effective Date _____

2. Payment to Claimant

3. Repair Certification Form (Attach Modified Form)

4. Resolution of Consumer Disputes

5. Repair Shop Referral Lists

6. Disclosure to Consumers

PETITION FOR WAIVER OF MINIMUM
NUMBER OF SHOPS ON REFERRAL SHOP LISTS

The Honorable Roger M. Singer
Commissioner of Insurance
Department of Banking and Insurance
Commonwealth of Massachusetts
280 Friend Street
Boston, MA 02114

Dear Commissioner Singer:

Please be advised that the undersigned auto insurance company(s) petitions for a waiver from the requirements of 211 CMR 123.06 (2), the minimum number of geographically convenient referral repair shops to be provided claimants, under the Industry Direct Payment Plan. For the reasons set forth on the attached page(s), we will be unable to comply with the Regulation minimum of 2 repair shops after January 1, 1989, 3 repair shops after May 1, 1989, 4 repair shops after September 1, 1989 and 5 repair shops after January 1, 1990. Our Massachusetts Auto Market Share for 1987 was _____%.

Company Name(s)

Company Officer

Name

Signature

Title

Telephone Number

Date

Please send copy to:

Richard A. Derrig
Vice President - Research
Massachusetts Rating Bureaus
40 Broad Street
Boston, MA 02108

**PETITION FOR WAIVER OF MINIMUM
NUMBER OF SHOPS ON REFERRAL SHOP LISTS**

Company Name _____

1987 Market Share _____

We request a waiver from the minimum number requirement for referral repair shops on our referral shop list under 211 CMR 123.06 (2) for the following reasons:

[Individual Company Identification and Information may be added]

REPAIR CERTIFICATION FORM
 (to be returned to your insurance company upon completion of repairs)

Company Information

Insured _____
 Claim Number _____
 Date of Accident _____

Policyholder Information

I. Explanation of Your Rights and Duties for Repairing Damaged Vehicle

1. It is your right to shop around and to obtain repairs at the repair shop of your choice for the amount of our appraisal.
2. It is your right to be given a list of geographically convenient repair shops which will provide quality repairs for the amount of the payment made directly to you plus any applicable deductible plus any increase in value due to the repairs. We guarantee the quality of the materials and workmanship used in making the repairs at any shop on our list.
3. It is your duty to notify us, by phone or in writing, prior to or in the course of repairs, if the cost of repairs is expected to exceed our payment plus any applicable deductible and increase in value and you wish us to pay any part of that excess cost. We have the right to inspect the vehicle within three (3) business days of your notification and we have the duty to authorize or deny any supplemental payments within three (3) business days after inspection.
4. It is your right to pursue resolution of any differences in repair costs through contact with us and the procedure established in General Provision Section 11 of the policy.
5. It is your duty to complete and to return this Repair Certification Form when the vehicle is repaired. If the completed Repair Certification Form is not returned to us, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.
6. It is your duty to allow us, upon request, to reinspect the repaired vehicle after receipt of the Repair Certification Form. If the repaired vehicle is not made available for reinspection within a reasonable amount of time, the actual cash value of the insured vehicle will be reduced by the amount of the claim payment plus any applicable deductible.

II. Certification of Repair

I certify that my damaged vehicle has been repaired by:

Repair Shop Name _____
 Address _____
 Telephone _____

Policyholder Name: _____
 Policyholder Signature: _____
 Date: _____

Company Reinspection

(check one) Repair work completed in accordance with appraisal
 Other (explain) _____

Licensed Appraiser _____
 Date _____