

# **MICHIGAN ASSIGNED CLAIMS PLAN**

## **Sec. 1. PURPOSES**

The Michigan Automobile Insurance Placement Facility (hereinafter referred to as "MAIPF") shall adopt, implement and maintain an assigned claims plan (hereinafter referred to as the "Plan") pursuant to MCL500.3171 et seq.

The purpose of the Plan is:

- A. to establish procedures for the initial determination pursuant to MCL 500.3171 et seq.;
- B. to establish procedures for the equitable distribution of claims and expenses among insurers, including self-insurers who are required to participate under the Plan. For the purposes of the Plan, "insurer(s)" shall include self-insurers.
- C. to establish procedures for servicing insurers to handle assigned claims.

### **Sec. 1.1 EFFECTIVE DATE/TRANSITION**

- A. Pursuant to MCL 500.3171, the MAIPF shall begin the process to adopt, implement and maintain the Plan effective June 27, 2012.
- B. The Michigan Secretary of State shall manage the assigned claims facility operation through December 31, 2012. All new claims for benefits through the Plan (MCL 500.3172) shall be filed with the MAIPF on or after January 1, 2013.
- C. Active claims that have been assigned under the assigned claims facility maintained by the Michigan Secretary of State will be transferred to the MAIPF no later than January 1, 2013.
- D. All other operational functions of the assigned claims facility maintained by the Michigan Secretary of State, with the exception of driver license and vehicle sanctions, will be transferred to the MAIPF no later than January 1, 2013.
- E. The transfer of all paper and electronic records for active claims from the assigned claims facility maintained by the Michigan Secretary of State to the MAIPF will be executed no later than January 1, 2013. The transfer and disposition of records for closed claims will be executed no later than June 30, 2013.
- F. The MAIPF will reimburse the Secretary of State for all reasonable expenses incurred
  - 1. to assist in the development of the Plan; and
  - 2. to transfer operations from the assigned claims facility to the MAIPF; and
  - 3. for operations performed by the Michigan Secretary of State on behalf of the MAIPF after the transfer of operations pursuant to F (2) of this section are complete.

Reimbursement will occur after insurer assessments are collected for the year in which the expenses were incurred.

## **Sec. 2. ADMINISTRATION**

The Plan shall be administered by the Board of Governors (hereinafter referred to as "the Board") of the MAIPF as set forth in MCL 500.3330.

## **Sec. 3. DUTIES OF THE BOARD REGARDING THE PLAN**

The Board shall meet as often as may be required to perform the general duties of administration of the Plan. Four members of the Board shall constitute a quorum.

The Board shall be empowered to hire legal counsel, budget expenses, levy assessments, disburse funds, develop manuals, and exercise all powers relating to the Plan which are not delegated to others.

Annually, the MAIPF shall prepare an operating budget in the prescribed manner for submission to the Board. Such budget shall be approved by the Board. Any expenditure in excess of, or not included in, the annual budget shall be subject to approval by the Board. The Board shall furnish a written report of operations to the Director of Insurance (hereinafter referred to as the "Director") pursuant to MCL 500.3178.

**Sec. 4 INDEMNIFICATION OF MEMBERS OF THE BOARD OF GOVERNORS AND OPERATIONS COMMITTEE**

- A. The MAIPF shall indemnify each member of the Board of Governors and Operations Committee against any and all losses, damages, judgments, post judgment interest, settlements, fines, court costs, and other reasonable costs and expenses, including attorney’s fees, and any other liabilities (hereinafter, “liability”) incurred by, imposed upon, or suffered by such member in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened (hereinafter, “claim”) arising out of, or in connection with, the performance of duties on any committee or on the Board or predecessor organization, or arising out of and in connection with the performance of duties as an officer or employee, or performance of its duties as a member, where the member:
1. . reasonably believed the performance of duties was in accordance with the objectives of the Plan; and
  2. . had no reasonable cause to believe the performance of duties was improper or illegal; and
  3. . shall have promptly provided written notification of any claim to the MAIPF at its main office.
- C. Indemnification as described in Section 4.B. shall be provided whether or not the member is still serving on the Board or on any committee or is still an officer or employee or is still acting as a servicing insurer at the time of the commencement of any claim, and whether or not any possible liability is incurred through the performance of duties prior to the adoption of this Section.

Any settlement of any member claim must be made with the prior approval of the Board or its designee in order for indemnification under this Section to be available.

Whenever a member seeks indemnification under this Section, entitlement to indemnification shall be determined by the Board which shall also determine the time and manner of indemnification including reimbursement with interest.

The MAIPF may elect to defend, pay, or otherwise dispose of any claim, at its own cost, and will promptly advise the individual, insurer or servicing insurer seeking indemnification whether it so elects.

The cost of fulfilling the MAIPF’s obligations under this Section shall be a cost of administration as provided in Section 7.

**Sec. 5. APPLICATION AND CLAIM PROCESS**

**Sec. 5.1 APPLICATION**

- A. A claim for personal protection insurance benefits under the Plan must be made on an application prescribed by the MAIPF.
1. The application for benefits must be complete and signed by the claimant.
    - a. Claimant means a person suffering accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle in this state.
    - b. If the claimant is a minor, the application shall be signed by a parent or legal guardian.
  2. The completed application for benefits must be received by the MAIPF not more than 1 year after the date of an accident.
- B.
1. An application for benefits under the Plan must be accompanied by reasonable proof of loss, and documentation supporting that due diligence was exercised to establish the claimant is entitled to claim benefits through the Michigan Assigned Claims Plan.
  2. Upon receipt of a claim for benefits, the MAIPF shall make an initial determination of the claimant’s eligibility for benefits. The claimant shall reasonably cooperate with MAIPF in the investigation of any claim, including furnishing medical records and submitting to an examination under oath.

3. Reasonable proof of loss is any documentation or evidence establishing with reasonable certainty that the claimant is a person entitled to claim benefits through the MACP. Some examples of reasonable proof of loss may include, but are not limited to, a police report or an emergency medical services report that was authored at the scene of the accident.
4. Due diligence is exercised when the claimant or his or her representative has investigated and exhausted all avenues of any other available coverage. This may include, but is not limited to, contact attempt with the claimant, the claimant's resident relatives or spouse, the involved vehicle owner(s), the involved vehicle driver and any other actions that the MAIPF deems necessary for the claimant or their representative to determine that the claimant is a person entitled to claim benefits through the MACP.
5. If the claim is assigned, the servicing insurer will make the final determination of eligibility.
6. If the claimant does not qualify for benefits under MCL 500.3171, et seq., the claim will be denied by the MAIPF or the servicing insurer.
7. If the claim is denied by the MAIPF, the claimant shall be notified promptly, in writing, of the denial and the reason(s) for the denial.

#### **Sec 5.2 ASSIGNMENT**

- A. An initially eligible claim shall be assigned by the MAIPF to a servicing insurer. Claims will be allocated to servicing insurers in reasonable relation to their volume of automobile liability and personal protection insurance for their voluntary business pursuant to MCL 500.3175(1) except when the Board suspends assignments to a servicing insurer under Section 6.E.4.
- B. The MAIPF shall notify the claimant of the identity and contact information of the servicing insurer to which the claim is assigned.

#### **Sec 5.3 INVESTIGATION, DENIAL OR PAYMENT**

- B. A servicing insurer to whom a claim has been assigned shall investigate the claim for benefits and make a final determination of a claimant's eligibility to claim benefits under the Plan.
  1. A servicing insurer may require additional documentation to complete the investigation of the claim, including but not limited to: written verification of salary and wages, disability documentation, or medical examination of a claimant.
  2. The claimant shall reasonably cooperate with the servicing insurer in the investigation of any claim, including but not limited to, furnishing medical records and submitting to an examination under oath.
  3. Failure of a claimant to comply with the request may be cause for denial of benefits under the Plan.
  4. A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim is ineligible for payment or benefits under the Plan If the misrepresentation is made and/or discovered after the claim has been assigned, the servicing insurer shall notify the claimant of the ineligibility, and deny the claim.
- C. A servicing insurer shall process the claim in accordance with the Michigan No Fault Act.

#### **Sec. 5.4 NOTIFICATIONS**

Notifications of the acceptance of an application, requests for additional documentation and /or denial shall be made in writing. These notices may be provided via fax or email if the claimant or their representative has agreed to receive electronic communications.

## Sec. 6. AUDITS

- A. The books of account, records, reports, and other documents of the MAIPF as they pertain to the administration and maintenance of the Plan and the claims shall be open and free for examination to the Director at all reasonable hours.

The books of account, records, reports, and other documents of the MAIPF as they pertain to the administration and maintenance of the Plan and the claims shall be open to inspection by insurers at such times and under such conditions and regulations as the Board shall determine.

The MAIPF shall provide for the making of detailed reports and for the rendering of accounts to each insurer at least every 12 months.

The books of account of the MAIPF shall be audited at least every 12 months by a firm of independent public accountants designated by the Board.

The books of account of servicing insurers relating to their administration of the MAIPF business shall be audited in the manner designated by the Board.

The servicing insurer financial controls and claim records for MAIPF assignments shall be reviewed annually by the insurer in accordance with the guidelines established by the Board.

- B. The MAIPF may audit the records of any servicing insurer relating to the subject matter of the Plan and may establish what policies, records, books of account, documents, and related material it deems necessary to carry out its functions. Such material shall be provided by insurers in the form and with the frequency reasonably required by the MAIPF.

## Sec. 7. PARTICIPATION RATIOS— ASSESSMENT—RECOUPMENT

- A. MAIPF claims and anticipated expenses for operation and administration of the Plan shall be assessed on insurers and self-insurers according to this Section.
- B. Losses, expenses, and gains shall be determined on the basis of insurance accounting principles as incorporated in the Annual Statement blank.
- C. For purposes of establishing a basis for allocation of expenses plus losses or minus gains, each company licensed to write automobile insurance in Michigan shall permit its statistical agencies to report the statistical information to the MAIPF.
- D. Each insurer will be liable for that proportion of the annual assessment that its total automobile written premiums for the prior calendar year bear to the total premiums that year. Each self-insurer will be liable for that portion of the annual assessment that its Michigan imputed premium for the prior calendar year bears to the total premiums that year. Average per-vehicle imputed premiums are calculated by dividing the total automobile written premium for the prior year by the total number of exposures for private passenger auto for the second prior year. The average per-vehicle imputed premium is then multiplied by the number of self-insured vehicles reported by the self-insurer.

“Automobile written premiums” means the automobile premiums, including policy membership fees, less return premium and premium on policies not taken, shown on the Exhibit of Premiums and Losses (Statutory Page 14 Data) of each insurer’s Annual Statement for Private Passenger Auto No-Fault, Other Private Passenger Auto Liability, Commercial Auto No-Fault, and Other Commercial Auto Liability. It shall exclude premiums for physical damage coverage and premiums for death and disability coverage written by the insurer. Such premium shall be gross direct premiums, without including reinsurance assumed and without deducting reinsurance ceded, but including premiums for other than private passenger excess of loss policies, except in the case of an insurer which writes no basic limits automobile liability insurance.

“Total premiums” as used in this subsection means the statewide total of all automobile written premiums of all insurers and all imputed premium for all self-insurers.

- E. All of the data necessary to comply with the foregoing distribution procedures shall be reported to the appropriate statistical agency by each insurer or by the statistical agencies designated by such companies and each company agrees to permit its statistical agent to release such data to the MAIPF and agrees that its statistical agent shall be permitted to furnish the MAIPF with statements of its experience.
- F. The Board may periodically, but not less than annually, assess insurers for claim and operating expenses of the MAIPF arising from the assignment of claims under the Plan. Such assessment shall be allocated among insurers in accordance with this Section.
- G. Any assessments paid by insurers under this Section may be recouped in the insurance rates filed with the Director for automobile policies issued by the insurer and/or on behalf of the MAIPF.
- H. In the event an insurer discontinues writing automobile insurance in this state, it shall continue to pay assessments until its proportionate share established by its writings prior to discontinuance of business has been determined and paid; provided, however that if the automobile insurance in this state has been purchased by, transferred to, or reinsured by another company, the latter shall receive the assessments of the former until the proportionate share of the former as established by its writings prior to such transfer has been determined and paid, unless another company has agreed, in manner satisfactory to the Board, to assume such obligation.  
  
No assessments shall be levied nor shall any be made to an insurer that has written no automobile insurance during the period for which the proportionate shares are based. Groups of companies under both the same ownership and management must be treated as a single company under these provisions. Groups of companies under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.
- I. Assessments levied under this Section shall be paid in full by insurers and self-insurers within such period of time as the Board may establish, after the assessment charge is billed by the MAIPF.
- J. Any assessment amount under the Plan not paid by the due date shall bear interest at the rate of 20% per annum.

#### **Sec. 8. AMENDMENT TO PLAN**

Amendment of the Plan may be made by a majority vote of the Board subject to the approval of the Director.

#### **Sec. 9. RIGHT OF APPEAL**

- A. Any participating insurer or applicant for benefits under the Plan may request a formal hearing and ruling by a representative of the Board of the MAIPF for any of the following:
  - 1. An alleged violation of the Plan.
  - 2. A participating insurer’s application to service risks; or
  - 3. The termination of a servicing insurer.
- B. A request for hearing must be filed within 30 days after the date of the alleged act or decision. Such hearing shall be held within 30 days after the request is received by the MAIPF.
- C. A right to a hearing under subsection A. shall not apply to any claim assigned to or serviced by any participating insurer.
- D. Any formal ruling by the representative of the Board may be appealed to the Director by filing notice of appeal with the MAIPF and Director within 30 days after issuance of the ruling.
- E. The Director shall issue an order approving the action or decision, disapproving the action or decision, or directing the Board to reconsider the ruling.