

# **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 MCL 500.3171 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 guidelines for servicing insurers who handle assigned claims on behalf of the MAIPF as set forth in this Plan and applicable law.

### **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. 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.

## **Sec. 2. ADMINISTRATION**

- A. 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.
- B. The Board shall form an MACP Operations Committee, hereafter referred to as the "committee." The committee shall be responsible for collaboration between the MAIPF and Servicing Insurers.

## **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. A majority of the members of the Board shall constitute a quorum.

The Board and/or its designee 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 and Financial Services (hereinafter referred to as the "Director" of "DIFS") pursuant to MCL 500.3178.

## **Sec. 4. INDEMNIFICATION OF MEMBERS OF THE BOARD OF GOVERNORS AND COMMITTEES**

- A. The MAIPF shall indemnify each member of the Board of Governors and/or any 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 action, suit, or proceeding, actual or threatened (hereinafter, "event") 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 "event" to the MAIPF at its main office
- B. 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 "event", 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 "event" 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 event, at its own cost, and will promptly advise the individual, insurer or servicing insurer seeking indemnification whether it so elects. Sec. 4 does not apply to any individual claim for Personal Injury Protection benefits.

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

## **Sec. 5. CLAIMS PROCESS**

### **Sec. 5.1 ELIGIBILITY PROCEDURES**

- 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 completed in accordance with applicable law.
  2. The MAIPF must receive written notice of the claim within one year from the date of the accident pursuant to MCL 500.3174. The elements of notice must be provided pursuant to MCL 500.3145.
  3. An application for benefits under the Plan must be accompanied by reasonable proof of loss, and documentation supporting that all statutory requirements have been satisfied.
  4. 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 pursuant to applicable law.

5. Failure of a claimant to comply with the request of the MAIPF pursuant to its authority under Michigan Law may be cause for suspension of benefits under the Plan.
6. Reasonable proof of loss may be 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.
7. If the claim is assigned, the servicing insurer will make the final determination of eligibility.
8. 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.
9. 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.
10. Pursuant to MCL 500.3173a(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 to the Michigan automobile insurance placement facility, or to an insurer to which the claim is assigned under the assigned claims plan, for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under MCL 500.4503 that is subject to the penalties imposed under MCL 500.4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment of personal protection insurance benefits under the assigned claims plan. A servicing insurer shall process the claim in accordance with the Michigan No Fault Act.

#### **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 applicable law except when the Board or its designee suspends assignments to a servicing insurer pursuant to the Servicing Insurer Agreement.
- 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**

- A. 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: reasonable proof of loss, authorizations, written verification of salary and wages and/or disability documentation.
  2. The claimant shall reasonably cooperate with the servicing insurer in the investigation of any claim, including but not limited to, recorded statements, furnishing medical records, a medical examination of a claimant and submitting to an examination under oath.
  3. Failure of a claimant to comply with the request of a servicing insurer may be cause for suspension of benefits under the Plan pursuant to applicable law.

#### **Sec. 5.4 RIGHTS TO INDEMNITY AND REIMBURSEMENT AGAINST THIRD PARTIES**

- A. Pursuant to MCL.500.3175(2), An insurer assigned a claim by the Michigan automobile insurance placement facility under the assigned claims plan or a person authorized to act on behalf of the plan may bring an action for reimbursement and indemnification of the claim on behalf of the Michigan automobile

insurance placement facility. The insurer to which the claim has been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties and account to the Michigan automobile insurance placement facility for the rights and shall assign the rights to the Michigan automobile insurance placement facility on reimbursement by the Michigan automobile insurance placement facility. This section does not preclude an insurer from entering into reasonable compromises and settlements with third parties against whom rights to indemnity or reimbursement exist. The insurer shall account to the Michigan automobile insurance placement facility for any compromises and settlements. The procedures established under the assigned claims plan of operation must establish reasonable standards for enforcing rights to indemnity or reimbursement against third parties, including a standard establishing an amount below which actions to preserve and enforce the rights need not be pursued. The following procedures to enforce rights to indemnity and reimbursement against third parties include:

1. Servicing Insurers must obtain a judgment against the responsible party unless the MAIPF agrees not to pursue the judgment if it is determined that it is not economically justified.
2. Servicing Insurers shall obtain a judgment against the responsible party within the timeline required by applicable law when benefits paid exceed \$2,500.
3. Terms of the judgment secured will be determined by the Servicing Insurer on behalf of the MAIPF.
4. Settlements and monthly payment agreements must be approved by the MAIPF.
5. Once the judgment is obtained, the Servicing Insurer shall provide a copy of the necessary file documents to the MAIPF's designated collections company.
6. The designated collections company will manage the collections of the reimbursement owed.
7. Claims for which less than \$2,500 in benefits have been incurred, Servicing Insurers shall provide a file copy to the MAIPF's designated collections company. Non-litigated collections will be pursued by the MAIPF's designated collections company.

## **Sec. 5.5 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 electronically to the claimant or their representative unless the claimant or their representative objects in writing to the MAIPF regarding the use of 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 of DIFS during reasonable business hours.
- 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.
- C. Servicing Insurers have reasonable access to all claim documentation for claims assigned to that insurer.

## **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 and pursuant to applicable law.
- B. Losses, expenses, and gains shall be determined on the basis of insurance accounting principles as incorporated in the Annual Statement.

- 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 available 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.
  - i. "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.
  - ii. "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 DIFS and the MAIPF and agrees that its statistical agent shall be permitted to furnish DIFS and/or 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 of DIFS 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.
  - 1. 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 or its designee 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**

#### **Sec. 9.1 SERVICING INSURER APPEAL**

- A. Any Servicing Insurer under the Plan may request a formal hearing and ruling by the Board of the MAIPF for any of the following:
  - 1. An alleged violation of the Plan.
  - 2. A Servicing insurer's assignment allocation; 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 60 days after the request is received by the MAIPF and may be held before the Board or its designee.
- C. Any formal ruling or determination by the designee of the Board may be appealed to the Director of DIFS by filing notice of appeal with the MAIPF and Director within 30 days after issuance of the ruling.
- D. The Director of DIFS shall issue an order approving the action or decision, disapproving the action or decision, or directing the Board to reconsider the ruling.

#### **Sec. 9.2 PARTICIPATING INSURER APPEAL**

- A. An insurer or self-insurer who is subject to assessment under the Plan (participating insurer) may request a formal hearing and ruling by the Board of the MAIPF for any of the following:
  - 1. An alleged violation of the Plan.
  - 2. A participating insurer's assessment amount
- 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 60 days after the request is received by the MAIPF and may be held before the Board or its designee.
- C. Any formal ruling or determination by the designee of the Board may be appealed to the Director of DIFS by filing notice of appeal with the MAIPF and Director within 30 days after issuance of the ruling.
- D. The Director of DIFS shall issue an order approving the action or decision, disapproving the action or decision, or directing the Board to reconsider the ruling.

#### **Sec. 9.3 CLAIMANT APPEAL**

- A. A claimant or their representative may request a formal hearing and ruling by the Board for any alleged violation of the Plan.
- B. A request for a formal determination must be filed within 30 days after the alleged violation of the Plan. Such a hearing shall be held within 60 days after the request is received by the MAIPF and may be held before the Board or its designee.

C. A claimant shall not have a right to appeal a claims determination by a Servicing Insurer to the MAIPF Board.