STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of amendments to the Plan of Operation of the Michigan Catastrophic Claims Association
_____/

ORDER NO. 07-001-M

Issued and entered
this 18th day of January 2007
by Linda A. Watters
Commissioner

ORDER APPROVING AMENDMENTS

By its letter of December 18, 2006, the Michigan Catastrophic Claims Association ("MCCA") submitted proposed amendments to the MCCA's Plan of Operation. The Commissioner has approval authority under MCL 500.3104(19).

As reported by the Association, the amendments were adopted by a unanimous vote of the MCCA's Board of Directors on September 13, 2006. They were subsequently ratified by a vote of the membership in which 75% of the membership voted in favor of the amendments.

There are two changes that would be brought about by the amendments. One would amend section 10.08 of the Plan of Operation to provide that members shall adjust claims with the same level of care, and using the same claims procedures and practices, both before and after the ultimate loss sustained reaches amounts specified by statute. This merely brings into the plan of operation long-standing expectations, if not standards, of the MCCA and furthers cost containment goals. It warrants approval without further discussion.

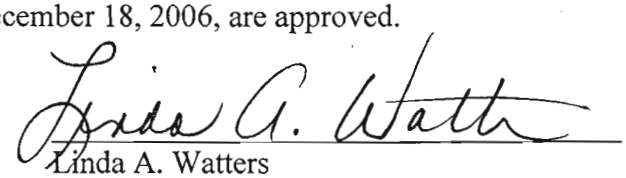
The other change would amend various sections of the Plan of Operation to provide that the MCCA shall reimburse medical bill re-pricing or other medical bill expense cost containment methods under certain circumstances. This reimbursement will encourage members to reduce ultimate costs by lower payments for medical expenses. While obviously desirable from a policy standpoint, there is some debate as to whether this change squares with MCL 500.3104, which provides:

> (2) The association shall provide and each member shall accept indemnification for 100% of the amount of ultimate loss sustained under personal protection insurance coverages in excess of the following amounts in each loss occurrence…
>
> (25) As used in this section:…
> (c) "Ultimate loss" means the actual loss amounts that a member is obligated to pay and that are paid or payable by the member, and do not include claim expenses. An ultimate loss is incurred by the association on the date that the loss occurs.

One plausible reading of this is that the MCCA shall pay an ultimate loss and shall not pay for any claim expenses (the "restrictive approach"). Another plausible reading is that the MCCA shall pay an ultimate loss and may pay for other expenses (the "discretionary approach").

The following considerations lead the Commissioner to adhere to the discretionary approach: 1. Reimbursing medical bill re-pricing promotes the affordability and the purchase of insurance, which is an overarching goal of the no-fault laws; 2. The discretionary approach is generally favored by courts where it furthers Legislative objectives; 3. The MCCA is empowered by MCL 500.3104(10)(g) to include in its Plan of Operation "any other matters required by or necessary to effectively implement this section"; and, 4. The amendments ensure that in no case could the reimbursement exceed the medical expenses absent re-pricing.

Therefore, it is ORDERED that the amendments to its Plan of Operation submitted by the MCCA with its letter of December 18, 2006, are approved.



Linda A. Watters
Commissioner