

FORMS – APPROVED

OCTOBER 27, 2020

COMMERCIAL AUTOMOBILE

LI-CA-2020-431

PENNSYLVANIA REVISED CHANGES ENDORSEMENTS FILED AND APPROVED

KEY MESSAGE

This circular announces the submission and approval of ISO Filing [CA-2020-OCH1](#), which was made in response to [Sayles v. Allstate Insurance Company](#), 219 A.3d 1110 (Pa. 2019).

BACKGROUND

In [Sayles v. Allstate Insurance Company](#), 219 A.3d 1110 (Pa. 2019), the Pennsylvania Supreme Court ruled, in part, that a provision which requires an insured seeking first-party medical benefits under the policy to submit to an independent medical exam whenever the insurer requires and with a doctor selected by the insurer conflicts with PA. CONS. STAT. § 1796(a), and is void against public policy.

ISO ACTION

In response to [Sayles](#), we have:

- Revised CA 01 57, Pennsylvania Changes – Auto Dealers Coverage Form, and CA 01 80, Pennsylvania Changes, to more closely track with the provisions of PA. CONS. STAT. § 1796(a).
- Filed this revision with the Pennsylvania Insurance Department under ISO Filing [CA-2020-OCH1](#).

Refer to the attached explanatory material for complete details about this filing.

INSURANCE DEPARTMENT ACTION

The Pennsylvania Insurance Department has approved this revision as filed.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies written on or after March 1, 2021.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number CA-2020-OCH1, not this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

New attributes being introduced with this revision:

- A new edition date of an existing form number is being introduced.
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POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2019-057](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 3-21 (or the earliest possible subsequent date), along with any new and/or revised forms.

REFERENCES

[LI-CL-2019-057](#) (12/10/2019) Revised Lead Time Requirements Listing

ATTACHMENT(S)

- Filing CA-2020-OCH1
 - Final copies of [CA 01 57 03 21](#) and [CA 01 80 03 21](#)
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Revised Pennsylvania Changes Endorsements

About This Filing

This filing is being made in response to Sayles v. Allstate Insurance Company, 219 A.3d 1110 (Pa. 2019).

Revised Forms

We are revising the following forms:

- ◆ CA 01 57 06 16 Pennsylvania Changes – Auto Dealers Coverage Form
- ◆ CA 01 80 06 16 Pennsylvania Changes

We have used a format of ~~striking through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes from the above-referenced editions to the 03 21 editions. Concurrent with implementation, the 03 21 editions will supersede the prior editions.

Background

Currently, paragraph C.1. of CA 01 57, Pennsylvania Changes – Auto Dealers Coverage Form, states the following:

C. Changes In Conditions

1. Paragraph **2.b.(5)** of the **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** Condition is replaced by the following:

(5) After we show good cause, submit to examination at our expense, by physicians of our choice.

Additionally, paragraph B.1. of CA 01 80, Pennsylvania Changes, states:

B. Changes In Conditions

1. Paragraph **2.b.(5)** of the **Duties In The Event Of An Accident, Claim, Suit Or Loss** Condition is replaced by the following:

(5) After we show good cause, submit to examination at our expense, by physicians of our choice.

In Sayles v. Allstate Insurance Company, 219 A.3d 1110 (Pa. 2019), the Pennsylvania Supreme Court ruled, in part, that a provision which requires an insured seeking first-party medical benefits under the policy to submit to an

independent medical exam whenever the insurer requires and with a doctor selected by the insurer conflicts with PA. CONS. STAT. § 1796(a), and is void against public policy.

PA. CONS. STAT. § 1796(a) provides the following:

"Whenever the mental or physical condition of a person is material to any claim for medical, income loss or catastrophic loss benefits, a court of competent jurisdiction or the administrator of the Catastrophic Loss Trust Fund for catastrophic loss claims may order the person to submit to a mental or physical examination by a physician. The order may only be made upon motion for good cause shown. The order shall give the person to be examined adequate notice of the time and date of the examination and shall state the manner, conditions and scope of the examination and the physician by whom it is to be performed. If a person fails to comply with an order to be examined, the court or the administrator may order that the person be denied benefits until compliance."

Explanation of Changes

In response to Sayles, we are revising paragraph C.1. of CA 01 57, Pennsylvania Changes – Auto Dealers Coverage Form, and paragraph B.1. of CA 01 80, Pennsylvania Changes, to more closely track with the provisions of PA. CONS. STAT. § 1796(a).

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PENNSYLVANIA CHANGES – AUTO DEALERS COVERAGE FORM

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Pennsylvania, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

1. Paragraph **2.b.(4)** of the **Who Is An Insured** provision is replaced by the following:

(4) Your customers. However, those customers are "insureds" up to the compulsory or financial responsibility law limits where the covered "auto" is principally garaged.

2. The following is added to Paragraph **3.a. Supplementary Payments**:

Prejudgment interest awarded against the "insured" on the part of the judgment we pay. Any prejudgment interest awarded against the "insured" is subject to the applicable Pennsylvania Rules of Civil Procedure.

B. Changes In General Liability Coverages

The following is added to Paragraph **E. Supplementary Payments**:

Prejudgment interest awarded against the "insured" on the part of the judgment we pay. Any prejudgment interest awarded against the "insured" is subject to the applicable Pennsylvania Rules of Civil Procedure.

C. Changes In Conditions

1. Paragraph **2.b.(5)** of the **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** Condition is replaced by the following:

(5) ~~After we show good cause, submit to examination at our expense, by physicians of our choice. Submit to an independent medical examination when required by a court order issued in accordance with PA. CONS. STAT. § 1796.~~

2. The following is added to Paragraph **5. Transfer Of Rights Of Recovery Against Others To Us** Condition:

If we make any payment due to an "accident" and the "insured" recovers from another party in a separate claim or "suit", the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid less reasonable attorneys' fees, costs and expenses incurred by the "insured" to the extent such payment duplicates any amount we have paid under this coverage.

3. Paragraph **5.a.** of the **Other Insurance** Condition is changed by adding the following:

Covered Autos Liability Coverage is excess for any covered "auto" you own if operated by a customer described in Paragraph **2.b.(4)** of the **Who Is An Insured** provision as amended by this endorsement.

4. The following paragraph is added to the **Other Insurance** Condition:

g. If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act 63 Pa. Stat. Ann. § 818.2, then:

- (1) For any "auto" you own, which is loaned to a customer as a temporary substitute for an "auto" insured under a "customer's private passenger automobile insurance policy" which is out of use because it is being transported, serviced, repaired or inspected, Physical Damage Coverage provided by this Coverage Form shall be excess in the event of a "loss".

(2) For any "auto" insured under your "customer's private passenger automobile insurance policy", while it is being transported, serviced, repaired or inspected by you or your "employee":

(a) Covered Autos Liability Coverage, but only with respect to damages because of "bodily injury";

(b) Comprehensive Coverage;

(c) Specified Cause Of Loss Coverage; and/or

(d) Collision Coverage;

provided by this form shall be primary in the event of an "accident" or "loss".

5. The following paragraphs are added to Paragraph **B. General Conditions**:

a. Constitutionality Clause

The premium for, and the coverages of, this Coverage Form have been established, in part, in reliance upon the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law. In the event a court, from which there is no appeal, declares or enters a judgment, the effect of which is to render the provisions of such statute invalid or unenforceable in whole or in part, we shall have the right to recompute the premium payable for the Coverage Form and void or amend the provisions of the Coverage Form, subject to the approval of the Insurance Commissioner.

b. Conformity Clause

If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, then whenever an "auto" that is insured under your "customer's private passenger automobile insurance policy" is being transported, serviced, repaired or inspected by you or your "employee":

(1) The provisions of the:

(a) Covered Autos Liability Coverage, but only with respect to damages because of "bodily injury";

(b) Comprehensive Coverage;

(c) Specified Cause Of Loss Coverage; and/or

(d) Collision Coverage;

provided by this Coverage Form are hereby amended to conform to 40 Pa. Stat. Ann. § 991.2007a; and

(2) Pursuant to 40 Pa. Stat. Ann. § 991.2007a, the Limits Of Insurance provided in the Schedule or in the Declarations are hereby increased as needed to an amount equal to the:

(a) Applicable limit(s);

(b) Actual cash value; and/or

(c) Amount necessary to repair or replace the property with other property of like kind and quality;

set forth in the "customer's private passenger automobile insurance policy".

D. Changes In Definitions

For motor vehicle dealers as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, the following definition is added:

"Customer's private passenger automobile insurance policy" means a private passenger automobile insurance policy that:

1. Is currently in effect; and

2. Lists your "customer's auto" in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PENNSYLVANIA CHANGES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

The following is added to Paragraph 2.a. **Supplementary Payments:**

Prejudgment interest awarded against the "insured" on the part of the judgment we pay. Any prejudgment interest awarded against the "insured" is subject to the applicable Pennsylvania Rules of Civil Procedure.

B. Changes In Conditions

- Paragraph 2.b.(5) of the **Duties In The Event Of An Accident, Claim, Suit Or Loss** Condition is replaced by the following:

(5) ~~After we show good cause, submit to examination at our expense, by physicians of our choice. Submit to an independent medical examination when required by a court order issued in accordance with PA. CONS. STAT. § 1796.~~

- The following is added to Paragraph 5. **Transfer Of Rights Of Recovery Against Others To Us** Condition:

If we make any payment due to an "accident" and the "insured" recovers from another party in a separate claim or "suit", the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid less reasonable attorneys' fees, costs and expenses incurred by the "insured" to the extent such payment duplicates any amount we have paid under this coverage.

- The following paragraph is added to the **Other Insurance** Condition:

If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, then:

- For any "auto" you own, which is loaned to a customer as a temporary substitute for an "auto" insured under a "customer's private passenger automobile insurance policy" which is out of use because it is being transported, serviced, repaired or inspected, Covered Autos Liability, but only with respect to damages because of "bodily injury" and Physical Damage Coverage provided by this Coverage Form shall be excess in the event of an "accident" or "loss".
- For any "auto" insured under your "customer's private passenger automobile insurance policy", while it is being transported, serviced, repaired or inspected by you or your "employee":
 - Covered Autos Liability, but only with respect to damages because of "bodily injury";
 - Comprehensive Coverage;
 - Specified Cause Of Loss Coverage; and/or
 - Collision Coverage;provided by this Coverage Form shall be primary in the event of an "accident" or "loss".

4. The following is added to Paragraph **B. General Conditions:**

a. Constitutionality Clause

The premium for, and the coverages of, this Coverage Form have been established in reliance upon the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law. In the event a court, from which there is no appeal, declares or enters a judgment, the effect of which is to render the provisions of such statute invalid or unenforceable in whole or in part, we shall have the right to recompute the premium payable for the Coverage Form and void or amend the provisions of the Coverage Form, subject to the approval of the Insurance Commissioner.

b. Conformity Clause

If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, then whenever an "auto" insured under your "customer's private passenger automobile insurance policy" is being transported, serviced, repaired or inspected by you or your "employee":

- (1) The provisions of the:
- (a) Covered Autos Liability, but only with respect to damages because of "bodily injury";
 - (b) Comprehensive Coverage;

(c) Specified Cause Of Loss Coverage; and/or

(d) Collision Coverage;

provided by this Coverage Form are hereby amended to conform to 40 Pa. Stat. Ann. § 991.2007a; and

- (2) Pursuant to 40 Pa. Stat. Ann. § 991.2007a, the Limits Of Insurance provided in the Schedule or in the Declarations are hereby increased as needed to an amount equal to the:

(a) Applicable limit(s);

(b) Actual cash value; and/or

(c) Amount necessary to repair or replace the property with other property of like kind and quality;

set forth in the "customer's private passenger automobile insurance policy".

C. Changes In Definitions

For motor vehicle dealers as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, the following definition is added:

"Customer's private passenger automobile insurance policy" means a private passenger automobile insurance policy that:

- 1. Is currently in effect; and
- 2. Lists an "auto" owned by your customer or a "customer's auto" in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PENNSYLVANIA CHANGES – AUTO DEALERS COVERAGE FORM

For a covered "auto" licensed or principally garaged in, or "auto dealer operations" conducted in, Pennsylvania, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

1. Paragraph **2.b.(4)** of the **Who Is An Insured** provision is replaced by the following:

(4) Your customers. However, those customers are "insureds" up to the compulsory or financial responsibility law limits where the covered "auto" is principally garaged.

2. The following is added to Paragraph **3.a. Supplementary Payments:**

Prejudgment interest awarded against the "insured" on the part of the judgment we pay. Any prejudgment interest awarded against the "insured" is subject to the applicable Pennsylvania Rules of Civil Procedure.

B. Changes In General Liability Coverages

The following is added to Paragraph **E. Supplementary Payments:**

Prejudgment interest awarded against the "insured" on the part of the judgment we pay. Any prejudgment interest awarded against the "insured" is subject to the applicable Pennsylvania Rules of Civil Procedure.

C. Changes In Conditions

1. Paragraph **2.b.(5)** of the **Duties In The Event Of Accident, Claim, Offense, Suit, Loss Or Acts, Errors Or Omissions** Condition is replaced by the following:

(5) Submit to an independent medical examination when required by a court order issued in accordance with PA. CONS. STAT. § 1796.

2. The following is added to Paragraph **5. Transfer Of Rights Of Recovery Against Others To Us** Condition:

If we make any payment due to an "accident" and the "insured" recovers from another party in a separate claim or "suit", the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid less reasonable attorneys' fees, costs and expenses incurred by the "insured" to the extent such payment duplicates any amount we have paid under this coverage.

3. Paragraph **5.a.** of the **Other Insurance** Condition is changed by adding the following:

Covered Autos Liability Coverage is excess for any covered "auto" you own if operated by a customer described in Paragraph **2.b.(4)** of the **Who Is An Insured** provision as amended by this endorsement.

4. The following paragraph is added to the **Other Insurance** Condition:

g. If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act 63 Pa. Stat. Ann. § 818.2, then:

- (1) For any "auto" you own, which is loaned to a customer as a temporary substitute for an "auto" insured under a "customer's private passenger automobile insurance policy" which is out of use because it is being transported, serviced, repaired or inspected, Physical Damage Coverage provided by this Coverage Form shall be excess in the event of a "loss".

(2) For any "auto" insured under your "customer's private passenger automobile insurance policy", while it is being transported, serviced, repaired or inspected by you or your "employee":

(a) Covered Autos Liability Coverage, but only with respect to damages because of "bodily injury";

(b) Comprehensive Coverage;

(c) Specified Cause Of Loss Coverage; and/or

(d) Collision Coverage;

provided by this form shall be primary in the event of an "accident" or "loss".

5. The following paragraphs are added to Paragraph **B. General Conditions**:

a. Constitutionality Clause

The premium for, and the coverages of, this Coverage Form have been established, in part, in reliance upon the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law. In the event a court, from which there is no appeal, declares or enters a judgment, the effect of which is to render the provisions of such statute invalid or unenforceable in whole or in part, we shall have the right to recompute the premium payable for the Coverage Form and void or amend the provisions of the Coverage Form, subject to the approval of the Insurance Commissioner.

b. Conformity Clause

If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, then whenever an "auto" that is insured under your "customer's private passenger automobile insurance policy" is being transported, serviced, repaired or inspected by you or your "employee":

(1) The provisions of the:

(a) Covered Autos Liability Coverage, but only with respect to damages because of "bodily injury";

(b) Comprehensive Coverage;

(c) Specified Cause Of Loss Coverage; and/or

(d) Collision Coverage;

provided by this Coverage Form are hereby amended to conform to 40 Pa. Stat. Ann. § 991.2007a; and

(2) Pursuant to 40 Pa. Stat. Ann. § 991.2007a, the Limits Of Insurance provided in the Schedule or in the Declarations are hereby increased as needed to an amount equal to the:

(a) Applicable limit(s);

(b) Actual cash value; and/or

(c) Amount necessary to repair or replace the property with other property of like kind and quality;

set forth in the "customer's private passenger automobile insurance policy".

D. Changes In Definitions

For motor vehicle dealers as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, the following definition is added:

"Customer's private passenger automobile insurance policy" means a private passenger automobile insurance policy that:

1. Is currently in effect; and

2. Lists your "customer's auto" in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PENNSYLVANIA CHANGES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

The following is added to Paragraph **2.a. Supplementary Payments:**

Prejudgment interest awarded against the "insured" on the part of the judgment we pay. Any prejudgment interest awarded against the "insured" is subject to the applicable Pennsylvania Rules of Civil Procedure.

B. Changes In Conditions

1. Paragraph **2.b.(5) of the Duties In The Event Of An Accident, Claim, Suit Or Loss** Condition is replaced by the following:

(5) Submit to an independent medical examination when required by a court order issued in accordance with PA. CONS. STAT. § 1796.

2. The following is added to Paragraph **5. Transfer Of Rights Of Recovery Against Others To Us** Condition:

If we make any payment due to an "accident" and the "insured" recovers from another party in a separate claim or "suit", the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid less reasonable attorneys' fees, costs and expenses incurred by the "insured" to the extent such payment duplicates any amount we have paid under this coverage.

3. The following paragraph is added to the **Other Insurance** Condition:

If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, then:

a. For any "auto" you own, which is loaned to a customer as a temporary substitute for an "auto" insured under a "customer's private passenger automobile insurance policy" which is out of use because it is being transported, serviced, repaired or inspected, Covered Autos Liability, but only with respect to damages because of "bodily injury" and Physical Damage Coverage provided by this Coverage Form shall be excess in the event of an "accident" or "loss".

b. For any "auto" insured under your "customer's private passenger automobile insurance policy", while it is being transported, serviced, repaired or inspected by you or your "employee":

(1) Covered Autos Liability, but only with respect to damages because of "bodily injury";

(2) Comprehensive Coverage;

(3) Specified Cause Of Loss Coverage; and/or

(4) Collision Coverage;

provided by this Coverage Form shall be primary in the event of an "accident" or "loss".

4. The following is added to Paragraph B. General Conditions:

a. Constitutionality Clause

The premium for, and the coverages of, this Coverage Form have been established in reliance upon the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law. In the event a court, from which there is no appeal, declares or enters a judgment, the effect of which is to render the provisions of such statute invalid or unenforceable in whole or in part, we shall have the right to recompute the premium payable for the Coverage Form and void or amend the provisions of the Coverage Form, subject to the approval of the Insurance Commissioner.

b. Conformity Clause

If you are a motor vehicle dealer as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, then whenever an "auto" insured under your "customer's private passenger automobile insurance policy" is being transported, serviced, repaired or inspected by you or your "employee":

(1) The provisions of the:

- (a) Covered Autos Liability, but only with respect to damages because of "bodily injury";**

(b) Comprehensive Coverage;

(c) Specified Cause Of Loss Coverage; and/or

(d) Collision Coverage;

provided by this Coverage Form are hereby amended to conform to 40 Pa. Stat. Ann. § 991.2007a; and

(2) Pursuant to 40 Pa. Stat. Ann. § 991.2007a, the Limits Of Insurance provided in the Schedule or in the Declarations are hereby increased as needed to an amount equal to the:

(a) Applicable limit(s);

(b) Actual cash value; and/or

(c) Amount necessary to repair or replace the property with other property of like kind and quality;

set forth in the "customer's private passenger automobile insurance policy".

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For motor vehicle dealers as defined in the Pennsylvania Board of Vehicles Act, 63 Pa. Stat. Ann. § 818.2, the following definition is added:

"Customer's private passenger automobile insurance policy" means a private passenger automobile insurance policy that:

- 1. Is currently in effect; and**
- 2. Lists an "auto" owned by your customer or a "customer's auto" in the Declarations.**