Just a quick update on the status of auto insurance and TNC (Transportation Network Companies) who offer phone apps to people who want to offer their services as transportation providers to local consumers.

**2008 MAP (Massachusetts Personal Auto Policy)**

Parts 4-12 include an exclusion for public or livery conveyance.

While your auto is being used as a public or livery conveyance. This does not apply to the use of your auto in a share-the-expense car pool arrangement or in an expense reimbursement program either as a volunteer or at work.

*Does this include being signed into the TNC APP such as UBER or LYFT and awaiting a call? Most probably.
Does this include receiving the call and travelling towards the prospective rider? Absolutely.
Does this include the second the passenger touches the door handle until they arrive at their destination? Absolutely.
Where will the driver find insurance coverage? Hopefully under the UBER/LYFT …whoever policy.
Can a “mandatory” coverage such as Part 4 have exclusions? Absolutely!

**Some coverage under the 2008 MAP**

The “good news” is that there is no public or livery exclusion under Part I Bodily Injury to Others. The bad news is that Part I doesn’t cover injury to guests.

PIP has no exclusion for public or livery conveyance so the driver and the guest could “enjoy” the PIP benefits. Part 3 Bodily Injury Caused by an Uninsured Auto does not have a public or livery conveyance exclusion but DOES contain a restriction to mandatory offer limits:

The most we will pay for damages to or for anyone injured in the following situations is $35,000 per person and $80,000 per accident or the limits you purchased, whichever is less:

1. Anyone injured while occupying your auto while it is being used as a public or livery conveyance. This does not apply to the use of your auto in a share-the-expense car pool arrangement or in an expense reimbursement program either as a volunteer or at work.

In 2014, AIB (Automobile Insurers Bureau) also created a Vehicle Sharing exclusion (Personal Vehicle Sharing Exclusion M-0108s) to remove coverage for transportation sharing APPs such as relayrides.com and flightcar.com:

We will not pay any claim for injury or property damage under the policy, while your auto is being used in a personal vehicle sharing program. Such programs allow the use of your auto by a person other than you or a household member under an agreement and with payment to you. This exclusion does not apply to Personal Injury Protection (Part2).

Most companies utilized this exclusion or created their own to exclude the vehicle renting to others TNC APP activity. So, the transportation providing activity (whether providing vehicles for renting or riding in) is NOT covered well under the 2008 MAP.
2016 MAP (Massachusetts Personal Auto Policy)
The updated MAP, as written by AIB, has taken a tip or two from ISO in expanding the exclusionary language regarding ride and vehicle sharing APP activity. Now Parts 1-12 or the ENTIRE MAP has an exclusion for this business activity.

Yes, Part 1 Bodily Injury to Others, Part 2 Personal Injury Protection, Part 3 Bodily Injury Caused by an Uninsured Auto and Part 4 Damage to Someone Else’s Property have a FLAT and COMPLETE exclusion under the 2016 MAP.

There is also an exclusion applicable to ALL the optional coverages Part 5-12. The language for each part will vary based on the actual coverage part but below see exclusion applicable to all the optional coverages.

Transportation Network APP Exclusion 2016:

1. If the accident happens while your auto is being used as, or is available for use as, a public or livery conveyance, including a vehicle for hire through a ride-sharing program, car-sharing program, and transportation network service which operate under an agreement and for compensation. This does not apply to the use of your auto in a share-the-expense car pool or an expense reimbursement program either as a volunteer or at work. This does not apply to the use of your auto in providing volunteer transportation service at the direction of a charitable group.

The new exclusion combines BOTH the “vehicle sharing” exclusion and the “ride-providing/public or livery conveyance” exclusion into one.

Under the 2016 policy, there will be absolutely NO coverage for vehicle sharing, ride sharing, car sharing or whatever you want to call it. Whether one drives for UBER/LYFT/whoever or offers the vehicle for rental through such apps as RelayRides/Flightcar, etc., the MAP will NOT provide one SPECK of coverage. I hope whatever coverage the Transportation Network Company offers on their website works for the vehicle owner/driver as the MAP won’t.

The exclusion does provide coverage in certain limited situations:

The new and comprehensive exclusion does NOT apply to (i.e., there will be coverage for):
- Share-the-expense car pool
- Expense reimbursement for work or as volunteer
- Voluntarily (for free) providing transportation for charitable organizations

(For more information on the 2016 MAP, consider attending our 2016 MAP change course ... coming soon!)

Are there any endorsements available to cover the exposure?
Not as filed by AIB. In the “rest of the real world” ISO has filed two transportation network driver endorsements providing some coverage for the personal auto policy.

There is a limited benefit endorsement that only covers the driver while “signed into” the TNC APP but coverage ends the second the “call/request” comes in. This is the “limited” benefit endorsement. According to UBER and LYFT this is “phase/period 1” of the exposure where they only offer the driver $25/50/25 liability limits.

The second ISO endorsement provides broader coverage. It will provide the transportation network driver with coverage while signed into the TNC APP and when called to provide a ride. Coverage will continue until the second the passenger touches the door handle. This broader coverage responds to what UBER and LYFT refer to as Phase/period 1 signed into the TNC APP as well as Phase/period 2 – responding to the call. According to the UBER and LYFT websites these TNC organizations provide $1 million of liability coverage in this Phase/period 2.

Does the driver need his/her own coverage? Personally, I don’t trust MY insurance needs to ANYONE else. But, that’s just me.
Will AIB file MA versions of these endorsements? I don’t know.
Could a particular company make their OWN filing? Absolutely.
Some companies across the country have "risen" to the market. If one already insures these drivers and they are good drivers, some companies make a personal auto filing to charge these drivers MORE to just KEEP the policy. And, as an added benefit, an additional charge can be levied depending on the endorsement chosen by the driver. After all, insurance IS a for-profit business, isn't it?

**Business auto policy and the ride-sharing public or livery conveyance exposure**

Historically, there is NO public or livery conveyance exclusion in ANY edition of the ISO BAP. Massachusetts uses the ISO BAP and modifies it for MA law requirements with various MM endorsements.

> Are there some UBER/LYFT drivers using their vehicles that are insured under a BAP for their public or livery activity? Yes. Have these drivers/owners declared themselves as providing this activity? Quite often not. Has the BAP had to pay claims that it never intended to pay when the public or livery activity has not been adequately rated? Most probably.

**New public or livery conveyance exclusion endorsements filed and approved in Massachusetts:**

**CA 23 44 11 16 Public or Livery Conveyance Exclusion**

Exclusions added to Liability, Medical Payments, Physical Damage, UM and UIM

**The language applicable to Liability is:**

This insurance does not apply to any covered “auto” while being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered “auto” is being used by an “insured” who is logged into a “transportation network platform” as a driver, whether or not a passenger is “occupying” the covered “auto”.

The language for the other parts of the policy and the coverages provided by MM 99 11 Mandatory Endorsement varies somewhat, but bottomline charging for a ride will NOT be covered under the BAP once this endorsement has been added.

There is a second more comprehensive exclusionary endorsement if the driver/owner is an on-demand provider of rides to passengers or property. Some businesses are utilizing UBER/LYFT to deliver their products such as restaurants and grocery stores.

**CA 23 45 11 16 Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion**

This more comprehensive endorsement excludes coverage for such activities under Liability, Physical Damage, Medical Payments and UM/UIM.

**The exclusionary language for liability is as follows:**

> Public Or Livery Passenger Conveyance And On-demand Delivery Services

This insurance does not apply to any covered “auto” while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered “auto” is being used by an “insured” who is logged into a “transportation network platform” as a driver, whether or not a passenger is “occupying” the covered “auto”; or
2. By an “insured” who is logged into a “transportation network platform” or “delivery network platform” as a driver to provide “delivery services”, whether or not the goods, items or products to be delivered are in the covered “auto”.

This endorsement removes coverage for carrying passengers or property for hire from the second the driver is “logged” into the TNC APP through the delivery of person or product.

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The language for the other parts of the policy and the coverages provided by MM 99 11 Mandatory Endorsement varies somewhat, but bottomline charging to deliver a person OR property will NOT be covered under the BAP once this endorsement has been added. If the insured conducts these activities, they must inform the agent/company so that the policy can be properly rated and insured and the exclusionary endorsement removed.

Currently, the only option the BAP carrier has is to deny a claim caused when the vehicle is used in a transportation network activity, would be to invoke the concealment or misrepresentation provision. This provision only works if the insured lied on the original application or on a renewal application. If there is no lying on the original application and there is no renewal application to pick up changes in exposure - than the company is paying the claim.

**MM 99 11**

B.2 Concealment, Misrepresentation Or Fraud is replaced by the following:

Except with respect to the coverages you are required to purchase in order to register your auto in Massachusetts, we may refuse to pay claims if any oral or written misrepresentation or warranty made in the negotiation of this policy by you, or on your behalf, was made with an actual intent to deceive or if the matter misrepresented or warranted increased the risk of loss.

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As usual, if I can be of service to you, please call me, Irene Morrill, Vice President of Technical Affairs, at 508.634.7356 or email me at imorrill@massagent.com.

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