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STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105
File No. RH05048846 Date: December 21, 2006
Regulations Re: Law Enforcement Access to Insurance Claims Information
SECOND AMENDED FINAL TEXT OF REGULATION
~~TITLE 10. INVESTMENT~~
~~CHAPTER 5. INSURANCE COMMISSIONER~~
~~SUBCHAPTER 9. INSURANCE FRAUD~~
~~ARTICLE 6. AUTOMOBILE INSURANCE CLAIMS DEPOSITORY~~

~~§2698.80 Definitions:~~

- ~~(a) "Automobile Insurance Claims Depository" or "AICD" means the automobile insurance claims database within the California Department of Insurance Fraud Division.~~
- ~~(b) "Claims Analysis Bureau" (CAB) means a licensed, non-profit corporation, that receives, compiles and transmits insurance claims information pursuant to California Insurance Code (CIC) Sections 1875.10 et seq., and any regulations established pursuant thereto.~~
- ~~(c) "Commissioner" means the Commissioner of the Department of Insurance of the State of California.~~
- ~~(d) "Department" means the Department of Insurance of the State of California.~~
- ~~(e) "Depositor" means any insurer that is not submitting data to a licensed insurance Claims Analysis Bureau for the purpose of compliance with CIC Section 1876 et seq.~~
- ~~(f) "Direct Access" means database query capability.~~
- ~~(g) "Fraud Division" means the Department of Insurance of the State of California Fraud Division, formerly known as the Bureau of Fraudulent Claims.~~
- ~~(h) "Insurance Claims Information" means any bodily injury, medical payment or uninsured motorist claim made under a policy of automobile insurance.~~
- ~~(i) "Member/Subscriber" means any insurer that transmits to, and receives insurance claims information from, a licensed Insurance Claims Analysis Bureau for the purposes of complying with CIC Section 1876.2.~~
- ~~(j) "Insurer" shall have the same meaning as is given by CIC Section 1874.1.~~
- ~~(k) "Law Enforcement" shall have the same meaning as is given by Penal Code Section 830.1, 830.2, 830.3, 830.8, 830.37 and 830.39 and shall also include investigators for the Department of Consumer~~

~~Affairs Bureau of Automotive Repair.~~

~~(l) "Match Report" or "Matched Claims Data Format" means the manner in which data is provided to insurers by the Fraud Division as a result of a match between claims information submitted by one insurer and information previously submitted by another insurer.~~

~~(m) "Supplemental Information" means any claims information provided to the insurer after the initial claims information is filed.~~

~~— Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

~~§2698.81. Deposit of Information to the Automobile Insurance Claims Depository.~~

~~(a) Those insurers depositing directly to the AICD shall submit their reporting format to the Fraud Division, Sacramento Office, for approval.~~

~~(b) Insurance CABs shall not transmit data for members which are depositing directly to the AICD.~~

~~(c) Insurers shall report their selection of an insurance CAB, if any, to the Fraud Division, Sacramento Office, within twenty (20) calendar days of the selection.~~

~~(d) Insurers shall deposit claims information to a licensed insurance CAB or to the AICD within twenty (20) calendar days of receipt of that claims information.~~

~~(e) Any supplemental insurance claims information provided to the insurer during the life of the claim shall be reported within thirty (30) calendar days of receipt of that supplemental claims information. Only supplemental claims information regarding the categories set forth in CIC Section 1875.15 must be reported pursuant to this subsection.~~

~~(f) The Commissioner reserves the right to perform such audits as he or she may deem necessary to determine that appropriate claims information is deposited within the time frames specified in these regulations and CIC Sections 1876 et seq.~~

~~— Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

~~§2698.82. Output of information from the Automobile Insurance Claims Depository.~~

~~(a) Members/subscribers submitting claims information through an insurance CAB shall receive information from the AICD in the form of a match report generated by the AICD and transmitted to the insurer by the insurance CAB.~~

~~(b) Depositors submitting electronically to the Department shall receive claims information from the AICD through matched claims information transmitted electronically back to the depositor by the Department.~~

~~(c) The Department shall send electronic matched claims data to the member/subscriber via an insurance CAB within twenty-four (24) hours of the generation of the match. For depositors, matched claim data shall be returned electronically within 24 hours of the generation of the match.~~

~~—Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

~~§2698.83. Insurer Direct Access to the Automobile Insurance Claims Depository.~~

~~All applications for direct access to the AICD pursuant to CIC Section 1876 shall be submitted to the Department's Receiving Office located at the Fraud Division, Sacramento Office. The Department shall make available to those insurers or licensed insurance claims analysis bureaus deemed eligible, direct access to the AICD system.~~

~~(a) Insurers eligible for direct access shall meet the following criteria:~~

~~(1) At the time application is made, insurers shall be submitting claims information to the AICD either directly, or via a licensed insurance claims analysis bureau. Licensed insurance claims analysis bureaus shall be submitting claims information directly to the AICD.~~

~~(2) At least one employee in management capacity shall be the person designated to be responsible for the security of the information contained in the AICD, including proper use of the information.~~

~~(3) The insurer shall agree to the terms specified by the Commissioner for direct access to AICD.~~

~~(b) The Commissioner shall make all determinations regarding insurer eligibility for direct access within forty-five (45) calendar days of receipt of the application.~~

~~(c) Each application shall contain the following documents:~~

~~(1) The insurer's written policies regarding the SIU's claims handling, file management, claims investigation and security of claims information.~~

~~(2) The insurer's Special Investigative Unit (SIU) organizational chart.~~

~~(3) The name of the designated AICD contact person. For the purpose of these regulations, the name of the insurer's designated SIU contact person who will communicate with the Fraud Division shall not be made part of the public record and shall be released only pursuant to the provisions of CIC Section 1873.1 applicable to information acquired pursuant to Article 3 of the Frauds Prevention Act.~~

~~(4) Those insurers who have entered into contracts for the purpose of compliance with CIC Sections 1875.20 et seq. and CCR Sections 2698.40 et seq., shall include a copy of the contract and shall specify the manner in which the contract is monitored.~~

~~(d) All costs associated with the acquisition and installation of software and hardware and use and access to the Department's AICD Database will be borne by the insurer.~~

~~(e) Direct access to information contained within the AICD shall be by express written approval of the Fraud Division only. The Commissioner reserves the right to withdraw approval for direct access at any time.~~

~~—Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

~~§2698.84. Law Enforcement Access to the Automobile Insurance Claims Depository.~~

~~(a) Direct access to claims information shall be made available to law enforcement solely for the purpose of detection and investigation of insurance fraud.~~

~~(b) Upon request from the Fraud Division, law enforcement shall provide reports detailing AICD contribution to arrests and convictions.~~

~~(c) Direct access to information contained within the AICD shall be by express written approval of the Fraud Division only. The Commissioner reserves the right to withdraw direct access at anytime.~~

~~—Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

~~§2698.85. Report to the Commissioner.~~

~~(a) Annually thereafter, every insurer having direct access to the AICD database shall submit a written report to the Fraud Division, Sacramento Office, specifying how the AICD system contributed to the reduction of fraud and to cost savings, including the number of suspected fraudulent claims reported, the~~

~~number of arrests (if known) and the number of convictions (if known).~~

~~(b) The Commissioner reserves the right to audit the insurer's records relative to the access and use of data pursuant to these regulations.~~

~~—Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

~~§2698.86. Penalties.~~

~~(a) The Commissioner may suspend or revoke the license of any insurer if the insurer fails to comply with any provision of Division 1, Part 2, Chapter 12, Article 5.5, of the Insurance Code or with any Order of the Commissioner.~~

~~(b) Penalties for noncompliance are cumulative and shall be in addition to any other penalties or remedies provided by the Insurance Code.~~

~~(c) The Commissioner may perform such audits or reviews of data transmitted to the AICD as he or she may deem necessary and shall have access to all reports, working papers, correspondence, or other documents, including audit reports and audit working papers relating to the insurer's receipt, compilation and transmission of data.~~

~~—Note: Authority cited: Sections 1876(c) et seq., Insurance Code. Reference: Sections 1875.11, 1875.12, 1875.14 and 1876 et seq., Insurance Code.~~

Regulations Re: Law Enforcement Access to Insurance Claims Information

File No. RH05048846 Date: December 6, 2006

§2698.80 Definitions.

(a) "Claims Analysis Bureau" (CAB) means a licensed, non-profit corporation, organized for the purpose of fraud prevention or is a corporation that has made the filings required by Section 1855.2 that receives, compiles and transmits insurance claims information pursuant to California Insurance Code (CIC) Sections 1875. 14.

(b) "Commissioner" means the Commissioner of the Department of Insurance of the State of California.

(c) "Department" means the Department of Insurance of the State of California.

(d) "Fraud Division" means the Department of Insurance of the State of California Fraud Division, formerly known as the Bureau of Fraudulent Claims.

(e) "Insurance claims information" means any bodily injury, medical payment or uninsured motorist claim made under a policy of automobile insurance.

(f) "Insurer" shall have the same meaning as is given by CIC Section 1874.1.

(g) "Law Enforcement" shall have the same meaning as is given by Penal Code Section 830.1, 830.32, 830.3, 830.8, 830.37 and 830.39 and shall also include investigators for the Department of Consumer Affairs Bureau of Automotive Repair.

(h) "Match Report" or "Matched Claims Data Format" means the manner in which data is provided to

insurers by the Claims Analysis Bureau as a result of a match between insurance claims information submitted by one insurer and information previously submitted by another insurer.

(i) "Supplemental Information" means any insurance claims information provided to the insurer after the initial insurance claims information is filed.

NOTE: Authority cited: Section 1875.18 (d) (2), Insurance Code.

Reference: Section 1875.18, Insurance Code.

§2698.81 Prior Approval of Plan of Operation for Claims Analysis Bureau

(a) Every CAB shall obtain the prior approval of a plan of operation as a CAB from the Insurance Commissioner before it may perform any of the functions described in California Insurance Code Section 1875.11.

(b) Every plan of operation as a CAB submitted to the Insurance Commissioner for approval pursuant to Section 2698.81 shall:

- (1) set forth written procedures and physical controls to: prevent the unauthorized access to its system of records, to prevent unauthorized disclosure of records and to prevent physical damage to or destruction of records. At a minimum the administrative policies and procedures and physical controls shall fully comply with the requirements set forth at Section 2698.87(a) (1)-(5);
- (2) set forth written procedures regarding the use of subcontractors to perform any function described in CIC 1875.11 (b). At a minimum, such administrative policies and procedures and physical controls shall fully comply with the requirements set forth at Section 2698.87(c) (1)-(2).

NOTE: Authority cited: Section 1875.18(d) (2), Insurance Code

Reference: Section.1875.18 (d), Insurance Code

§2698.82 Deposit of Information to Claims Analysis Bureaus

(a) Insurers shall deposit insurance claims information to a licensed insurance CAB within *sixty (60)* calendar days of receipt of that insurance claims information.

(b) Any supplemental insurance claims information provided to the insurer during the life of the claim shall be reported within *sixty (60) calendar* days of receipt of that supplemental insurance claims information. Only supplemental insurance claims information regarding the categories set forth in CIC Section 1875.15 must be reported pursuant to this subsection.

(c) No Claims Analysis Bureau shall charge any fee to any insurer for depositing the information required by this section including supplemental insurance claim information.

(d) The Commissioner reserves the right to perform such audits as he or she may deem necessary to determine that appropriate insurance claims information is deposited within the time frames specified in these regulations.

NOTE: Authority cited: Sections 1875.18 (d) (2), Insurance Code Reference: Sections 1875.15 and 1875.18, Insurance Code.

§2698.83 Law Enforcement Access to Claims Analysis Bureau Insurance Claims Information.

(a) Access to insurance claims information shall be made available to law enforcement solely for the purpose of detection and investigation of insurance fraud.

(b) No claims analysis bureau shall charge any fee to any law enforcement agency for access to any insurance claims information as defined in these regulations.

(c) A claims analysis bureau shall provide insurance claims information in the form match report to law enforcement entities within 10 calendar days of receipt of a complete and properly executed written request for information.

(d) A written request by law enforcement entities for insurance claims information shall contain the following information:

- (1) the specific insurance claims information requested; and
- (2) the identity of the requesting party including contact information.

(e) If a claims analysis bureau receives a written request for information from a law enforcement agency that does not comply with the provisions of 2698.83 (d) (1)-(2) the Claims Analysis Bureau shall specify the manner or non-compliance and return the request to the law enforcement agency for correction amendment and re-submittal.

NOTE: Authority cited: Section 1875.18 (d) (2), Insurance Code

Reference: Section. 1875.18, Insurance Code

§2698.84. Procedure for Correction of Incorrect Information Deposited In a Claims Analysis Bureau

(a) Any person who believes that any insurance claims information maintained by a Claims Analysis Bureau is incorrect may request in writing that the CAB investigate whether or not the information is correct.

(b) Within 30 days from the date of receipt of a written request pursuant to subsection 2698.84(a), a CAB shall either:

(1) Correct, amend or delete the portion of the insurance claims information in dispute; or

(2) Notify the individual of:

(A) The CAB's refusal to make such correction, amendment or deletion.

(B) The reasons for the refusal.

(C) The individual's right to file a statement as provided in subdivision (d).

(c) If the CAB corrects, amends or deletes recorded insurance claims information in accordance with this subsection, the CAB shall notify the individual in writing and furnish the correction, amendment or fact of deletion to any person specifically designated by the individual who may have, within the preceding two years, received the incorrect information.

(d) Whenever an individual disagrees with a CAB's refusal to correct, amend or delete insurance claims information, the individual shall be permitted to file with the CAB:

(1) A concise statement setting forth what the individual asserts is the correct, insurance claims information; and

(2) A concise statement of the reasons why the individual disagrees with the insurance claims information maintained by the CAB.

(e) In the event an individual files either statement as described in subdivision (d), the CAB shall file the statement with the disputed insurance claims information and provide a means by which anyone reviewing the disputed insurance claims information will be made aware of the individual's statement and have access to it.

NOTE: Authority cited: Sections 1875.18(d) (2) Insurance Code.

Reference: Section 1875.18(d) (2), Insurance Code

§2698.85 Examination by the Insurance Commissioner of Insurance Claims Information Transmitted to Claims Analysis Bureau

(a) The Commissioner may perform an examination of any insurance claims information transmitted to any CAB he or she may deem necessary and shall have access to all non-privileged reports, working

papers, correspondence, or other documents, including audit reports and audit working papers relating to the insurer's receipt, compilation and transmission of insurance claims information.

(b) The expenses of any examination of insurance claims information conducted pursuant to subsection 2698.85 (a) shall be borne by the organization that is the subject of the examination.

NOTE Authority cited, 1875.18(d) (2) Insurance Code

Reference: Sections : 736, 1875.18, Insurance Code.

§2698.86 Public Records Act Requests and Subpoenas Seeking Insurance Claims Information from Claims Analysis Bureaus

(a) A Claims Analysis Bureau shall not release any insurance claims information in response to a Public Records Act Request.

(b) A Claims Analysis Bureau shall not release any insurance claims information received pursuant to the provisions of California Insurance Code 1875.18 to public inspection until such time as the release of the information is required in connection with a criminal or civil proceeding.

NOTE: Authority cited: Section 1875.18 (d) (2), Insurance Code

Reference : Section 1875.16, Insurance Code; Section. 1875.18, Insurance Code

§2698.87 Security Procedures Applicable To Information Deposited To A Claims Analysis Bureau

(a) Every CAB shall establish and adopt administrative policies and procedures and physical controls to: prevent the unauthorized access to its system of records; to prevent unauthorized disclosure of records; and to prevent physical damage to or destruction of records. At a minimum the administrative policies and procedures and physical controls shall require that:

(1) records are protected from public view;

(2) the area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) records are inaccessible to unauthorized persons outside of business hours;

(4) records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form; and,

(5) direct access to records is restricted to only those individuals who must have direct access to records in order to perform their duties.

(b) Every Claims Analysis Bureau shall provide annual training regarding its administrative policies and procedures and physical controls to all employees to prevent: unauthorized access to its system of records; unauthorized disclosure of records; and physical damage to or destruction of records.

(c) A CAB may delegate any functions described in CIC 1875.11 (b) to another entity providing:

(1) the CAB provides annual training and instruction required by subsection 2698.87 (b) to all individuals performing any aspect of the function delegated by the CAB; and,

(2) the CAB annually provides to the Insurance Commissioner a list of the names, addresses and the Taxpayer Identification Number (TIN) of the individuals that perform any aspect of the function delegated by the CAB to the entity.

(d) Every Claims Analysis Bureau shall maintain records establishing full compliance with the applicable provisions of Section 2698.87 and shall immediately provide any requested information regarding information deposited with the CAB to the Insurance Commissioner upon request.

NOTE: Authority: Section 1875.18(d)(2), Insurance Code

Reference: Sections 1875.15 and 1875.18, Insurance Code

§2698.88 Immunity From Defamation, Invasion of Privacy Or Negligence

(a) A Claims Analysis Bureau or any person employed therein that provides insurance claims information to any other person or entity pursuant to California Insurance Code Section 1875.18 shall have the same immunity provided under California Insurance Code Section 791.21 to any person that discloses personal or privileged information; however, this subsection does not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

NOTE: Authority cited: Sections 1875.18 (d) (2), Insurance Code

Reference: Section. 1875.18 (c) (2) and (d) (2) , Insurance Code

§2698.89 Penalties

a) The Commissioner may suspend or revoke the license of any CAB if the CAB fails to comply with any provisions of this subchapter.

(b) The Commissioner shall conduct any proceeding to suspend or revoke any license granted to a CAB in accordance with the Administrative Procedures Act, Chapter 5(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Penalties for noncompliance are cumulative and shall be in addition to any other penalties or remedies provided by the Insurance Code.

NOTE: Authority cited: Sections 1875.18, Insurance Code

Reference: Section. 1875.18, 12921 and 12926 Insurance Code

§2698.89.1 Effective Date

(a) The regulations set forth in this subchapter shall become effective upon filing with the Secretary of State.

b) All persons or entities subject to the regulations set forth in this subchapter shall have until July 1, 2007 to fully comply with the provisions of this subchapter.

NOTE: Authority: Sections 1875. 18, Insurance Code

Reference: Sections 1875.15 and 1875.18, Insurance Code

(Repealed text is stricken out and adopted text is underlined).

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