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AMENDED TEXT OF PROPOSED REGULATION

Note: Proposed additions to the original regulations submitted to the Office of Administrative Law (OAL) are reflected in double underlined text. Proposed deletions to the original regulations submitted to the OAL are reflected in ~~double~~ ~~strikeout~~.

Title 10

Chapter 5

Subchapter 9

Article 7 Direct Repair Programs and Labor Rate Surveys

Section 2698.91 Auto Body Repair Labor Rate Surveys

(a) An "auto body repair labor rate survey" or "survey" is any gathering of information, ~~from auto body repair shops~~ regarding what auto body repair labor rate the repair shops charge, used to determine and set a specified prevailing auto body repair rate in a specific geographic area and used by the insurer as a basis for determining the cost to settle automobile collision, physical damage, and liability claims for auto body repairs.

(1) Insurers shall either conduct the survey in writing or maintain written records of the information gathered by any method other than writing.

(2) Upon request, the department shall have access to all records, data, computer programs, or any other information used by the insurer or any other source to determine geographical area labor rate information.

(b) "Prevailing auto body rate" means the most commonly occurring rate ~~determined and set by an insurer as a result of conducting an auto body labor rate survey of charged by auto body repair shops in a particular specific geographic area. and used by the insurer as a basis for determining the cost to settle automobile collision, physical damage, and liability claims for auto body repairs.~~

(c) Any labor rate survey results reported to the Department of Insurance pursuant to Insurance Code section 758 shall include the following:

(1) The name of each auto body repair shop surveyed in the labor rate survey and the labor rate amount charged by that particular shop;

(2) The address of each auto body repair shop surveyed in the labor rate survey;

(3) The total number of shops surveyed in the labor rate survey and the total

number of shops that responded to the survey;

(4) The prevailing rate ~~established~~ determined and set by the insurer for each geographic area surveyed;

(5) A description of the specific geographic area covered by the prevailing labor rate reported and the number of shops surveyed within the specified geographical area.

(A) The description shall list the zip codes or groups of zip codes designated within the specific geographic area surveyed.

(B) No designated geographic area shall include less than 10 shops, unless there are not ten shops within that designated geographic area.

(C) A designated geographic area shall not be less than a zip code area.

(6) A description of the formula or method the insurer used to ~~calculate or determine~~ and set the specific prevailing auto body rate reported for each specific geographic area.

(7) Date the survey was completed.

~~Any confidential information not required by this section should be removed from the labor rate survey results prior to submitting the survey to the Department of Insurance.~~

(d) Insurers shall not use any rate negotiated or contracted with members of its Direct Repair Program, as defined in section 2698.90, or any other auto body repair shop, as part of a labor rate survey to determine and set the prevailing auto body rate in a specific geographic area. Nothing in these regulations shall be construed to preclude an insurer from including the non-contracted rate of members in its Direct Repair Program in its survey.

(e) Nothing in these regulations shall be construed to require an insurer to pay more than the amount necessary to perform workmanlike repairs.

(f) Nothing in these regulations shall preclude an insurer from voluntarily negotiating and/or contracting with an automobile repair facility for a specific labor rate.

(g) Nothing in these regulations shall require an insurer to conduct an auto body labor rate survey.

(h) Nothing in these regulations shall require the insurer to use the posted labor rate of a shop surveyed, unless that shop charges its posted labor rate in the majority of repairs that it effects, not including what that shop charges through its direct repair program with insurers.

(g) (i) The primary purpose of A a survey submitted pursuant to Insurance Code section 758 and compliant with these regulations this section is to inform the public about the prevailing labor rates charged in a geographic area and to provide insurers with a starting point in negotiating labor rates. The survey shall may not be used to cap or reduce the labor rate charged on an estimate or repair order prepared by the claimant's chosen auto body repair shop or to support the reasonableness of an insurers' adjustment of a written estimate provided by a claimant pursuant to section 2695.8(f)(3) of California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5., except as provided in Section 2698.92 of these regulations. An insurer shall not use a survey to support the reasonableness of an insurer's adjustment, as described in this subsection, if the survey was conducted and submitted to the Department more than eighteen (18) months prior to its use.

~~(d) (h) (j)~~ (j) Insurers shall send the results of their labor rate survey to the Market Conduct Division of the Department of Insurance within 30 days of completing the labor rate survey. In cases where the survey data used by an insurer is changing on a regular basis, the survey shall be submitted no less than annually. The Department shall designate the unit within the Department that will receive labor rate surveys. Any confidential information not required by this section should be removed from the labor rate survey results prior to submitting the survey to the Department of Insurance.

~~(e) (i) (k)~~ (k) The Department of Insurance will make the public portions of the survey reports available upon written request to the Custodian of Record pursuant to the California Public Records Act, Government Code section 6250 et seq. The additional non-public records and other information used by the insurer to conduct the survey shall not be subject to disclosure by the Department except where required to do so by a valid subpoena or court order.

(j) (l) In order for the Department to more effectively make survey information available to the public, the Department may require that a survey be submitted in a standard electronic or other format in order to publish survey data on the Department's public web site.

Note: Authority cited: Sections 758, 12921, and 12926, Insurance Code. Reference: Sections 758 and 790.03, Insurance Code; Section 6250-6276.48, Government Code; and Section 2695.8(f)(3) of California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5.

Section 2698.92 Additional Standards for Auto Body Repair Labor Rate Surveys

(a) If a survey complies with the standards set forth in Section 2698.91 and the additional standards set forth in this section, the Department may, at its discretion, consider this survey in determining whether an insurer has supported the reasonableness of an its adjustment of a written estimate provided by a claimant pursuant to section 2695.8(f)(3) of California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5.

(b) For purposes of a survey compliant with this section, the term "specific geographic area" shall mean a United States Postal Service Zip Code area, and each geographic area shall be no greater than and no less than a zip code area.

(c) Unless otherwise authorized by the Department, for purposes of a survey compliant

with this section, the survey must be based upon survey data obtained not less than one hundred eighty (180) calendar days from the insurer's use of this data.

(d) To be a statistically valid survey, the insurer must survey no less than fifty percent (50%) of the auto body repair shops in a specific geographic area.

(e) The survey shall only use labor rates of auto body repair shops licensed by the Bureau of Automotive Repair.

(f) If the insurer has a direct repair program with any auto body repair shop in this state, the insurer may only survey shops that meet or exceed the standards the insurer requires of its direct repair shops and may not use shops that do not meet these standards.

(g) The survey shall contain the labor rate amount charged by each particular shop that responded to the survey.

(h) For purposes of this section, the labor rate established for each geographic area shall be based upon the arithmetic mean of the surveyed rates, and not the most frequently occurring rate. Other statistical methods may be used by insurer if they are approved by the Department.

(i) Each survey submitted to the Department pursuant to this section shall include a copy of the survey questionnaire sent to auto body repair shops.

(j) Each survey submitted to the Department pursuant to this section shall include the number of shops sent a questionnaire and the number of shops that responded to the questionnaire.

(k) The additional data and survey information provided in accordance with this section shall not be the subject of a Public Records Act request, pursuant to the California Public Records Act, Government Code section 6250 et seq.

(1) If an insurer submits a survey pursuant to this section, the Department may require the insurer to submit a public version, containing the information required in Section 2698.91 of these regulations and a version containing the private information required pursuant to this section.

Note: Authority cited: Sections 758, 790.03, 12921, and 12926, Insurance Code. Reference: Sections 758 and 790.03, Insurance Code; Section 6250-6276.48, Government Code; and Section 2695.8(f)(3) of California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5.