

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

DRAFT TEXT

REGULATION FILE: REG-2011-00024

Direct Repair Programs and Labor Rate Surveys

Note: Proposed additions to the current text of regulations are in underlined text and proposed deletions to the current text of regulations are reflected in ~~strikeout text~~.

Title 10, Chapter 5, Subchapter 9, Article 7

Amend section 2698.91 as follows:

Section 2698.91 Auto Body Repair Labor Rate Surveys

(a) Section 758(c) of the Insurance Code provides that any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing auto body rate in a specific geographic area shall report the results of that survey to the department, which shall make the information available upon request. The survey information shall include the names and addresses of the auto body repair shops and the total number of shops surveyed. Section 790.03(h) of the California Insurance Code enumerates sixteen claims settlement practices that, when either knowingly committed on a single occasion, or performed with such frequency as to indicate a general business practice, are considered to be unfair claims settlement practices and are, thus, prohibited. The practices prohibited include failing to the attempt in good faith to effectuate prompt, fair, and equitable settlements of claims. Section 790.10 of the California Insurance Code provides that the commissioner shall, from time to time as conditions warrant, after notice and public hearing, promulgate reasonable rules and regulations, and amendments and additions thereto, as are necessary to administer this article 6.5 (Unfair Practices) . The Insurance Commissioner has promulgated these regulations in order to accomplish the following objectives:

(1) To define certain terms in Section 758(c) of the Insurance Code and to delineate the limited purpose, limited use and minimum standards of a survey conducted pursuant to this Insurance code section;

(2) To delineate the purpose, use and minimum standards of a survey, which the commissioner may consider to be reliable evidence that an insurer has settled or paid automobile repair insurance claims in a fair and equitable manner; and

(3) To promote the good faith, prompt, efficient and equitable settlement of claims.

~~(a)~~ (b) 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/or set a specified prevailing auto body repair rate in a specific geographic area.

~~(b)(c)~~ For purposes of a survey conducted pursuant to California Insurance Code Section 758(c), “prevailing auto body rate” means the rate determined and/or set by an insurer as a result of conducting an auto body labor rate survey of 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)(d)~~ Any labor rate survey results reported to the Department of Insurance pursuant to Insurance Code section 758 shall include the following information that will be made available to the public upon its request:

- (1) The name and address of each auto body repair shop surveyed ~~in responding to the labor rate survey~~;
- (2) ~~The address of each auto body repair shop surveyed in the labor rate survey~~ Date the survey was completed;
- (3) The total number of shops surveyed in the labor rate survey and the total number of shops that responded to the survey, reported for each geographic area surveyed;
- (4) The prevailing rate ~~established~~ determined and/or set by the insurer for each geographic area surveyed;
- (5) A description of the specific geographic area covered by the prevailing labor rate reported.
- (6) A description of the formula or method the insurer used to ~~calculate or determine~~ and/or set the specific prevailing auto body rate reported for each specific geographic area.

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) Insurers shall either conduct the survey in writing or maintain written records of the information gathered by any method other than writing. 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 geographic area labor rate information. This information will be held confidential pursuant to the provisions of subsection 2698.91(g).

(f) Insurers shall send the results of their labor rate survey to the Department of Insurance within 30 calendar days of completing the labor rate survey. The Department shall designate the unit within the Department that will receive labor rate surveys. 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. 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.

~~(e)~~ (g) The Department of Insurance will make the public portions of the survey reports available upon written request to the Custodian of Records 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 the subject of a Public Records Act request, pursuant to the California Public Records Act, Government Code section 6250 et seq nor subject to other disclosure by the Department except where required to do so by a valid subpoena or court order.

(h) The primary purpose of a survey submitted pursuant to Insurance Code section 758 and compliant with this section is to inform the public about the prevailing labor rates charged in a specific geographic area and to provide insurers with a starting point in negotiating labor rates with auto body repair shops for a direct repair program . A survey, conducted pursuant to Insurance Code section 758, shall 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 presumption of 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.

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

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

(k) Nothing in these regulations shall require the insurer to use the posted labor rate of a shop surveyed, unless that shop responds to the survey that it 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 or other wholesale accounts.

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.

Adopt section 2698.92 as follows:

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 consider this survey in determining whether an insurer has offered a fair and reasonable claims settlement and/or whether the

insurer has supported the reasonableness of 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. In instances where the standards in this section and Section 2698.91 conflict, the provisions of this section shall supersede the provisions of Section 2698.91.

(b) Unless otherwise authorized by the Department, in determining whether an insurer has offered a fair and reasonable claims settlement and/or whether the insurer has supported the reasonableness of 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, the Department will not consider any survey submitted to the Department more than one calendar year prior to the date of the written estimate provided by the claimant.

(c) To be a statistically valid survey, the insurer must survey all known auto body repair shops licensed to perform collision repairs by the Bureau of Automotive Repair in a specific geographic area. All shops that respond to the survey, and which meet the standards set forth in subsection 2698.92(e) of these regulations, shall be used to determine the prevailing auto body rate in that geographic area.

(d) The survey shall only use labor rates of auto body repair shops licensed by the Bureau of Automotive Repair to perform auto body collision repairs. This subsection shall not require an insurer to verify the licenses status of surveyed shops with the Bureau of Automotive Repair, in cases where the survey questionnaire asks the repair shop to respond as to whether it is duly licensed to perform auto body collision repairs and, if so, to provide its license number.

(e) An insurer may only use labor rates in a survey reported by shops that meet the following specific standards. This subsection shall not require the insurer to inspect surveyed shops, in cases where the insurer has asked the repair shop in the survey questionnaire whether it meets the specifically identified standards. Failure of a shop to meet the identified standards shall not void a claimant's right to select that auto body repair shop to effect repairs, as provided in Insurance Code Section 758.5. The fact that a shop does not meet these standards should not be construed as permission for an insurer to imply that the shop is inferior or should not be used by the claimant to perform repairs, but only that this shop's labor rate may not be used in a survey. In order for a shop labor rate to be used in a survey it must:

1. Meet all equipment requirements for auto body repair shops, as required by the Bureau of Automotive Repair and as described in California Code of Regulations, Title 16, Division 33, Chapter 1, Article 6, Section 3351.5, Equipment Requirements for Auto Body Repair Shops;

2. Have proof of garage keeper's liability and workers' compensation insurance or equivalent;

3. Have a gas metal arc (GMA/MIG) welder and technicians qualified or certified in proper welding techniques;

4. Have the ability to hoist a vehicle for inspection and repair;

5. Have a four-point anchoring system capable of holding a vehicle in a stationary position during frame and/or unibody pulls which is suitable for the specific type of vehicle being repaired;

6. Have electrical or hydraulic equipment capable of making simultaneous

multiple body or structural pulls;

7. Have a pressurized spray booth equipped with a fresh air-supplied respirator system that meets current federal, state and local requirements;

8. Have the ability to complete and verify four-wheel alignment through computer printout either from an in-house alignment system with at least one technician that is certified or qualified or utilize a qualified sublet provider;

9. Offer a written limited lifetime warranty against defects in workmanship;

10. Have the ability to remove and reinstall frame, suspension, engine and drive train components;

11. Have the ability to evacuate, reclaim and recharge vehicles air conditioning system using EPA compliant in-house equipment and certified technicians or use a qualified sublet provider; and

12. Subscribe to a provider of structural specifications with periodic updates covering the vehicle structure for the make, model, and year of the vehicle(s) being repaired and wheel alignment specifications for the make, model, and year of the vehicle(s) being repaired.

(f) In addition to the public information, as described in section 2698.91(d), the following non-public information shall be separately included in any submission to the Department:

(1) the labor rate reported by each shop that responded to the survey;

(2) the name and address of each shop sent a survey, but did not respond to the survey, reported for each geographic area surveyed;

(3) a copy of the survey questionnaire used to survey the auto body repair shops.

(g) For purposes of a survey compliant with this section, "prevailing auto body rate" means the greater of: (1) the mean average labor rate charged by auto body repair facilities in the specific geographic area or, (2) the rate, at or below which, the majority of surveyed shops charge in a specific geographic area. Other statistical methods may be used by an insurer if they are approved by the Department.

(h) 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 public information required in Section 2698.91 of these regulations and a version containing the non-public information.

(i) Insurers shall not use any discounted rate negotiated or contracted with members of its Direct Repair Program, or any other Direct Repair Program, as defined in section 2698.90, 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-discounted or non-contracted posted

rate of a Direct Repair Program shop in its survey.

(j) For purposes of this section, a geographic area used by an insurer in a survey shall be no smaller than a United States Postal Service Zip Code and shall not be larger than a thirty (30) mile radius from the center of the geographic area being surveyed. Other geographic areas may be used, if statistically valid and which represent a reasonable economic or market area, if approved by the Department.

Note: Authority cited: Sections 758, 758.5, 790.03, 790.10, 12921, and 12926, Insurance Code. Reference: Sections 758, 758.5 and 790.03 of the Insurance Code; Section 6250-6276.48, of the Government Code; and Section 2695.8(f)(3) of California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5.