

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814**

INITIAL STATEMENT OF REASONS

Anti-Steering in Auto Body Repairs

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CDI Regulation File: REG-2015-00015

INTRODUCTION

The California Department of Insurance (“the Department”) proposes to adopt amendments of Title 10, California Code of Regulations (“CCR”), Chapter 5, Subchapter 7.5, Article 1, section 2695.8(e), hereinafter referred to as “Anti-Steering” Regulations. (All references to the CCR in this Initial Statement of Reasons are references to sections in CCR Title 10.) The Department proposes to amend this section under the authority granted by California Insurance Code (“Ins. Code”) sections 790.10, 12921 and 12926; Civil Code section 3333, and Government Code sections 11152 and 11342.2.

Ins. Code section 758.5 prohibits insurers from requiring claimants from using a specific automotive repair dealer, and suggesting or recommending an automobile be repaired at a specified automotive dealer, unless the claimant requests the referral, and the claimant is informed in writing of his or her rights. In 2009, AB 1200 amended section 758.5, permitting insurers to provide claimants with specific truthful and non-deceptive information regarding the services and benefits available to the claimant during the claims process.

Current section 2695.8 (e), which clarifies Ins. Code section 758.5, prohibits insurers from requiring automobiles to be repaired at a specific repair shop and from suggesting or recommending a repair shop under certain conditions. The understanding and application of Ins. Code section 758.5 and CCR section 2695.8(e) by insurers is not consistent, resulting in some claimants becoming confused about, uncertain of, and deprived of their right to select a repair facility. Additionally, the Department received complaints that insurers are making statements that are in direct violation of Ins. Code section 758.5 by making statements that are deceptive and untruthful during the claims process.

The purpose of the proposed amendments to Ins. Code section 2695.8(e) is necessary to interpret, clarify, and make specific Ins. Code section 758.5, and prohibit insurers from making untruthful and deceptive statements that unreasonably influence claimants’ rights to select their repair facilities.

GENERAL DESCRIPTION OF THE PUBLIC PROBLEM

In 2009, Ins. Code section 758.5 (AB 1200) was amended to address the problem of misleading information that insurers disseminated to consumers during the claims process. Insurance companies and automotive repair dealers clashed over what information insurers can tell claimants, and when the information can be told. Based on information received by the Department, some insurers communicated deceptive and untruthful information to claimants which had the effect of steering them to specific automobile repair shops, in direct violation of the Insurance Code.

After the passage of the current regulations, the Department continued to receive complaints that insurers engaged in steering consumers to specific automotive repair shops. From 2009 through present day, there have been over 160 complaints related to Ins. Code section 758.5. Based upon the Department's investigation of these complaints, the Department concludes that in many cases, consumers' rights to select a repair shop have been violated under the Ins. Code. When untruthful and deceptive information is conveyed by insurers, consumers are unknowingly forced to take their automobiles to shops they may not have wanted to go to in the first place, and other competitive automotive repair shops may lose potential business, stifling the free market and consumers' rights to select a repair shop.

The Department tracked dozens of class-action lawsuits in other jurisdictions related to steering claims, filed by auto body repair shop plaintiffs against defendant insurers. The Department is aware and concerned about the potential litigation costs to California arising out of steering claims.

Consumers have a daunting task when settling insurance claims and repairing their automobiles after an auto accident. It is the Commissioner's obligation to ensure that consumers are afforded the freedom to choose the auto body repair shop where their automobiles are repaired and receive a fair amount for those repairs, without undue influence or deceptive practices from insurers. However, some insurers have stifled consumers in their ability to freely choose an auto body repair facility. For example, some insurers have steered consumers to specific auto body repair shops by advising them that their claim payment will be reduced by a lower labor rate if they do not take their vehicles to a specific shop.

While the legislature has enacted statutes expressly providing claimants with the right to freely choose a repair shop, these statutes do not contain enough specificity to provide the public, repair shops, and insurers with guidance on what constitutes non-deceptive and truthful information regarding a claim.

The proposed amendments are necessary to address various problems, including:

- 1) Address the problem of inconsistent interpretation and application of Ins. Code section 758.5, and inconsistent interpretation of when a claimant has "chosen" their automotive repair shop.

- 2) Address the problem of insurance companies who communicate deceptive and untruthful information in order to improperly “steer” the claimant to an insurer-chosen repair shop.
- 3) Address the problem of clear guidelines for compliance with the Insurance Code on what types of statements are considered untruthful or deceptive statements.
- 4) Address the clarity issue where insurers require claimants to travel an unreasonable distance or wait an unreasonable amount of time to inspect a vehicle.
- 5) Address potential enforcement actions as the result of any alleged “steering” by insurers, or the communication of false or deceptive information.
- 6) Prevent potential class-action lawsuits that may be filed as the result of “steering” during the claims settlement process.

The Department’s proposed amendments to the regulations are described in more detail below.

SPECIFIC PURPOSE AND REASONABLE NECESSITY FOR THE PROPOSED AMENDMENTS TO THE REGULATIONS (Government Code § 11346.2(b)(1))

Section 2695.8(e).

Subdivision (e)(2)

The proposed subdivision clarifies and defines what “chosen” means in the context of the regulations and Ins. Code section 758.5. A claimant has “chosen” an automotive repair shop when the claimant has specified to the insurer a specific automotive repair shop where he or she wishes to repair the vehicle. The proposed subdivision also defines “automotive repair shop” or “repair shop” to mean an automotive repair dealer, as defined in section 9880.1 of the Business and Professions Code registered with, or licensed by, the Bureau of Automotive Repair to perform automotive repairs. This provision is necessary so that insurers are clear as to what is meant by “chosen” in Ins. Code section 758.5. Additionally, the provision provides clarity as to what type of entity falls under this regulation. Also, the definition of “automotive repair shop” or “repair shop” aligns with the reference in Ins. Code section 758.5(a) to section 9880.1 of the Business and Professions Code, which provides consistency.

Subdivision (e)(3)

The proposed subdivision is reasonably necessary to further clarify examples of what types of statements would communicate false, deceptive, or misleading information.

Additionally, the proposed subdivision is reasonably necessary to clarify Ins. Code section 758.5(b)(1)(B)(2) and Ins. Code section 790.03 (b) and (h), addressing complaints of insurers communicating deceptive and untruthful information to claimants.

Subdivision (e)(3)(A)

The Department has received complaints from consumers that some insurers have advised them that it will take several extra days or even weeks for the insurer to inspect the damaged vehicle, unless the claimant goes to the insurer's chosen Direct Repair Program ("DRP") shop. Insurers must have processes in place to inspect damaged vehicles in a timely and reasonable manner, no matter whether the claimant chooses his or her own repair shop or whether a DRP shop is chosen by the claimant. It is inherently unreasonable and unfair to delay inspection (and thus delay the repair) of vehicles because the claimant chooses a repair shop other than one suggested by the insurer. The proposed subdivision makes clear that false, deceptive, or misleading information includes advising claimants of the amount of time and distance beyond that referenced in subdivision (4) of this same section 2695.8(e). The proposed subdivision is reasonably necessary to address these consumer complaints, and for consistency purposes within the regulation, as well as making clear that this type of communication is considered false, deceptive, or misleading.

Subdivision (e)(3)(B)

The proposed subdivision clarifies that statements by an insurer used to disparage or discredit a customer's selected repair shop cannot be conveyed to a claimant without specific documentation supporting this allegation. The proposed regulation is reasonably necessary to clarify to insurers that this type of communication is allowed, but, if the insurer makes such statements, it must have sufficient support and documentation that the statements it is making are truthful and non-deceptive. Furthermore, this support must be referenced in the claim file, which is required to contain all information concerning the claim. Finally, the proposed regulation clarifies that this type of communication is considered false, deceptive, or misleading without proper documentation. The proposed language is reasonably necessary to clarify to insurers that disparaging statements regarding a shop is allowed only with documentation.

Subdivision (e)(3)(C)

The proposed subdivision clarifies that advising the claimant that the auto body repair shop chosen by a claimant is of poor quality solely based on the fact that the shop did or did not participate in a labor rate survey, is false, deceptive, or misleading. The fact that a shop chosen by a claimant did or did not participate in a survey does not necessarily mean that the shop is of poor quality and should not preclude that claimant from having the vehicle repaired in that shop. Such a statement is misleading, unless there is some documentation in the claim file

supporting it. Therefore, the proposed subdivision is reasonably necessary to address this type of communication.

Subdivision (e)(4)

The current subdivision prohibits an insurer from requiring a claimant to travel an unreasonable distance either to inspect a replacement automobile to conduct an inspection of the vehicle and obtain a repair estimate, or to have the automobile repaired at a specific repair shop. The proposed subdivision will add the prohibition that insurers cannot require claimants to wait an unreasonable period of time to either have their vehicles inspected, obtain a repair estimate, or to have the vehicle repaired. The proposed subdivision is reasonably necessary to clarify the deceptive practice and to also clarify what is considered unreasonable. The reasonableness standards as defined in subdivisions (e)(4)(A) – (e)(4)(C) are modeled after New York’s Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades. The proposed regulation is reasonably necessary to address the problem of inconsistent communication of when automobiles must be inspected, and what is a reasonable distance for a claimant to travel to have their vehicles inspected. The proposed regulation specifically addresses the inconsistent application of what is meant by “unreasonable” in the current regulation and makes clear what the standard entails. This standard will ensure consistent application and communication by insurers.

Subdivision (e)(4)(A)

The proposed regulation sets a standard for a reasonable time for insurers to inspect damaged vehicles, which is six (6) business days, given that the claimant has made the vehicle available. The reasonableness standards for inspections as defined in this proposed subdivision are modeled after New York’s Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades. The language is reasonably necessary to clarify to insurers and the public what is considered an unreasonable amount of time to wait to have a claimant’s car inspected.

Subdivision (e)(4)(B)

When insurers request an estimate of repairs in lieu of a physical inspection, the proposed subdivision defines that the request must be made within three (3) days. Additionally, the proposed subdivision sets the standard for a reasonable amount of time for insurers to inspect the vehicles after a request for an estimate is made, which is six (6) business days. The proposed subdivision is reasonably necessary to address the situation where claimants prefer to have an estimate in lieu of physical inspection. The reasonableness standards for inspections as defined in this proposed subdivision are modeled after New York’s Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades. The proposed subdivision is also reasonably necessary to clarify the timeframe when a claimant must request an estimate, and when insurers must inspect the vehicle. The

language provides clarity, consistency, and guidance to both insurers and the public.

Subdivision (e)(4)(C)

The proposed subdivision defines what is considered an unreasonable distance, in larger and smaller populations. The Department acknowledges that, in some outlying and rural areas of this state, ten miles may seem too short a distance, and therefore in rural areas the Department considers more than twenty-five (25) miles as unreasonable. The reasonableness standards for distance as defined in this proposed subdivision are modeled after New York's Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades. The ten-mile or twenty-five-mile distance is only triggered when and if the insurer requires the claimant to travel to a location chosen by the insurer. In cases where the insurer sends out an appraiser to assess the damage at the claimant's home, place of business, or chosen auto body repair shop, the insurer would not be "requiring" the claimant to travel an unreasonable distance either to inspect a replacement automobile or to conduct an inspection of the vehicle. Also, in cases where the insurer requests, but does not require, the claimant to travel beyond the stated distances, the insurer would not be "requiring" the claimant to travel an unreasonable distance. In those instances, no violation of this regulation would occur. The proposed subdivision is reasonably necessary to address the clarity issue of what is considered an unreasonable distance to travel, and to provide specific guidelines to insurers.

Subdivision (e)(5)

The proposed subdivision addresses circumstances where claimants have previously chosen a specific automobile repair dealer, and the insurer subsequently requires that a claimant go to a different repair shop to have the vehicle inspected. This practice creates the potential for improper steering to that insurer-directed shop, even after the claimant has exercised his or her right to choose a different repair shop. The proposed regulation is reasonably necessary to identify this type of unfair practice and to prevent insurers from engaging in it.

ECONOMIC IMPACT ASSESSMENT (Government Code § 11346.3(b)(2))

Costs Anticipated From the Proposed Amendments

The proposed regulations impose a 6-business-day limit for inspecting the vehicle, a mileage limitation, and a restriction on sending a claimant to a Direct Repair Program ("DRP") shop (or any shop identified by the claimant's insurer) for inspection if the claimant has already chosen a repair shop.

The proposed 6-day limit is a new maximum. Currently, there is no timeframe for vehicle inspections specified. However, the Department estimates that the average time

insurers take to currently inspect a vehicle is less than six days. Therefore, the new limit is projected to have a negligible economic impact. The State of New York has a similar requirement which is the same as the proposed California limit, so this is not unprecedented for most of the insurers. The reasonableness standards for time to inspect as defined in this proposed subdivision are modeled after New York's Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades.

With regard to the mileage restriction, California is the most urban state with 95% of the population living in just 5.28% of the geographic area. Given the urban nature of nearly the entire state and the flexibility for the insurer to waive the inspection in lieu of an estimate by the claimant, the economic impact of this provision should also be very small.

While the Department has received some complaints regarding steering, insurers contend this practice is not widespread. In addition, any cost to a DRP shop losing business would result in a benefit to another auto body shop that would gain the business. The economic costs and benefits would mostly occur in the same industry and would likely be negligible.

Summary of Economic Impact Assessment

Government Code sections 11346.3(b)(1)(A) through (C)

The proposed regulations are projected to have a negligible impact on employment within the State of California (Government Code section 11346.3(b)(1)(A)). The proposed regulation is not expected to impact the creation of new businesses or the elimination of existing businesses within California (Government Code section 11346.3(b)(1)(B)), and the Department has determined that the proposed regulations will not affect California businesses ability to expand (Government Code section 11346.3(b)(1)(C)).

The Economic Impact on Jobs, Businesses and the State Economy

The Creation or Elimination of Jobs

There is no estimated impact on jobs because there is no projected monetary cost or benefit, due to the proposed regulations as explained in the *Costs Anticipated From the Proposed Amendments* section above. Any impact that may occur would be minimal.

The Creation of New Businesses, Elimination of Existing Businesses, or the Expansion of Existing Businesses

There is no estimated impact on the creation of new businesses or the expansion of existing business because there is no projected monetary cost or benefit due to the proposed regulations, as explained in the *Costs Anticipated From the Proposed Amendments* section above. Any impact that may occur would be minimal.

Health and Welfare Effects, the Impact on Worker Safety and Environmental Effects

The Department has also assessed whether and to what extent the proposed regulations affect other criteria set forth in Government Code sections 11346.3(b)(1)(D).

The changes in the proposed regulations are not likely to have an impact on worker safety. Compliance with the proposed regulations doesn't change the nature of existing job responsibilities of employees in affected industries. Thus, the proposed regulations will probably neither increase nor reduce worker safety. The Department has also concluded that there would be no effect on the state's environment.

The Department anticipates numerous benefits from the proposed action, including:

1. The proposed regulations will benefit consumers who will have the right to evaluate options and to get the best repairs as quickly as possible, and allow body shops to compete freely in an open market, increasing openness and transparency in business and government, and promotes health and welfare to consumers and businesses.
2. Consumers will benefit by not having to drive an unreasonable distance or wait an unreasonable amount of time to have their vehicles inspected. Ins. Code section 758.5 intends for consumers to have the right to a timely vehicle inspection without having to travel an excessive distance. The proposed standards codify reasonable targets for good service to the insurance consumers, which promotes the welfare of consumers.
3. Auto body repair shops will benefit since the proposed regulations prohibit disparaging and discrediting statements of a customer's chosen specific shop without specific documentation. Additionally, the proposed regulations will prevent insurers from making untruthful and deceptive statements that unreasonably influence a claimant's right to select their auto body repair facility. These benefits increase openness and transparency in business and government.

TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORT OR SIMILAR DOCUMENT RELIED UPON (Government Code § 11346.2(b)(3))

The Department identifies the following technical, theoretical or empirical study, report, or similar document relied upon by the Department in the proposed regulation:

- 1) Isaac, R. & Lee, J. (2016). *Anti-Steering in Auto Body Repairs Economic Impact Analysis*.

ANTICIPATED BENEFITS FROM THE REGULATORY ACTION (Government Code § 11346.2(b)(1))

The Department anticipates numerous benefits from the proposed action, including:

1. The proposed regulations will benefit consumers who will have the right to evaluate options and to get the best repairs as quickly as possible, and allow body shops to compete freely in an open market, increasing openness and transparency

in business and government, and promotes health and welfare to consumers and businesses.

2. Consumers will benefit by not having to drive an unreasonable distance or wait an unreasonable amount of time to have their vehicles inspected. Ins. Code section 758.5 intends for consumers to have the right to a timely vehicle inspection without having to travel an excessive distance. The proposed standards codify reasonable targets for good service to the insurance consumers, which promotes the welfare of consumers.
3. Auto body repair shops will benefit since the proposed regulations prohibit disparaging and discrediting statements of a customer's chosen specific shop without specific documentation. Additionally, the proposed regulations will prevent insurers from making untruthful and deceptive statements that unreasonably influence a claimant's right to select their auto body repair facility. These benefits increase openness and transparency in business and government.

The proposed amendments are not likely to have an impact on worker safety and will have no known effect on the state's environment.

REASONABLE ALTERNATIVES AND PERFORMANCE STANDARD (Government Code § 11346.2(b)(4)(A) and § 11346.2(b)(4)(B))

Adverse Impact on Small Business

The Department contemplated reasonable alternatives that would lessen any adverse impact on small businesses, however the Department does not anticipate an adverse impact on small business. The proposed regulations will have a minimal direct impact on insurers as discussed in the foregoing analysis, but by law, they are not considered small businesses (Government Code sections 11342.610(b)(2)). This regulation also affects automotive body shops which are predominately small businesses. However, as with insurers, there is no anticipated adverse impact on automotive body shops.

Analysis of Alternatives to the Proposed Regulation

The Department has contemplated alternatives that are less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. However, no such alternative has been proposed.

The Department does not anticipate the proposed regulations will mandate specific technology or specific actions or procedures. Furthermore, the proposed regulations are considered a performance standard. (See *Specific Technologies or Equipment /Prescribes Specific Actions or Procedures* below).

The following are alternatives that the Department considered:

Alternative 1: Maintain the Status Quo

CDI considered maintaining the status quo and keeping the current regulations that allow an insurer to attempt to steer business to shops that they have contracted under its DRP. Maintaining the status quo will not subject insurers to any additional costs, nor will it provide any benefit.

Reasons for rejecting Alternative #1

The Department considers some of the current practices potentially anti-consumer and anti-competitive. If insurers are able to funnel business to a contracted DRP, that may hurt other body shops in the marketplace and may reduce free-market competition. A consumer may want to evaluate options and to try and get the best quality repairs possible. If they are steered to a shop that will accept a limited amount of money from an insurer (or told that they will have to pay some of the higher costs out-of-pocket at other shops), the quality and safety of the repair could be compromised.

Alternative 2: Require a 10-day limit for conducting a vehicle inspection

The Department considered adopting a 10-day limit for conducting a vehicle inspection.

Reasons for rejecting Alternative #2

Since the Department estimates that the current average time for inspection is less than 6 days, this standard is likely already being met. However, this longer standard would be inadequate because waiting longer than a week for an inspection would be unreasonable for a consumer in most cases. Further, this reasonableness standard for time to inspect is modeled after New York's Regulations, section 216.7 - Standards for Prompt, Fair and Equitable Settlement of Motor Vehicle Physical Damage Claims, which have been in effect for decades. Therefore, since insurers are already conducting inspections in this time frame in New York State, there is no reason to have a longer timeframe when inspecting vehicles in this state.

SPECIFIC TECHNOLOGIES OR EQUIPMENT / PRESCRIBES SPECIFIC ACTIONS OR PROCEDURES (Government Code §§ 11346.2(b)(1), 11346.2(b)(4)(A))

Adoption of the proposed amendments to the regulations would not mandate the use of specific technologies or equipment.

Adoption of the proposed regulations does not prescribe specific actions or procedures. The proposed regulations prohibit insurers from requiring a claimant to travel an unreasonable distance or wait an unreasonable period of time to inspect an automobile. The limit on distance and wait time, however is only relevant when an insurer requires a claimant to travel for an inspection or requests an estimate of repair in lieu of a physical inspection. The distance and time limits are performance standards, and do not prescribe specifically how an inspection must be done, or how the travel requirements should be met. The insurer is free to do what they want in terms of meeting the distance and time requirements. Therefore, the proposed regulations are performance standards, and do not prescribe specific actions or procedures.

PRE-NOTICE DISCUSSIONS (Government Code § 11346.45(a))

The Commissioner conducted pre-notice public discussions pursuant to Government Code section 11346.45(a) on January 25, 2012, April 3, 2015, and April 16, 2015. Interested and affected parties were given an opportunity to present statements or comments with respect to the proposed amendments. The Commissioner considered these statements and comments in drafting the proposed amendments.