

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

TEXT OF REGULATION

Auto Body Repair Labor Rate Surveys

Date: March 04, 2016

CDI Regulation File: REG-2012-00002

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

Title 10, Chapter 5, Subchapter 7.5, Article 1
Fair Claims Settlement Practices Regulations

Adopt Section 2695.81. The Standardized Auto Body Repair Labor Rate Survey.

The Insurance Commissioner has promulgated Section 2695.81 of these regulations in order to (1) establish a standardized labor rate survey that the Commissioner recommends insurers use as a basis to settle or pay automobile repair insurance claims in a fair and equitable manner, if the insurer elects to use a survey; and (2) ensure and enforce the good faith, prompt, fair and equitable settlement of automobile insurance claims pursuant to Insurance Code section 790.03.

(a) Nothing in this section shall be construed to require the insurer to pay for repair costs associated with prior or unrelated damages to the claimant's vehicle, to the degree an insurer is not required to pay for these costs under the insurance policy or any applicable law.

(b) Nothing in this section shall be construed to prohibit an insurer from paying a labor rate lower than the prevailing auto body rate, if the auto body repair shop, chosen by the claimant to perform repairs, charges a labor rate lower than the prevailing auto body rate.

(c) A survey that complies with the standards and requirements set forth in subdivision (d) of this Section 2695.81 (hereinafter, a "Standardized Labor Rate Survey"), that complies with Section 2698.91, and that is used pursuant to subdivision (e) of this section, shall result in a rebuttable presumption by the Commissioner that the insurer has attempted in good faith to effectuate a fair and equitable:

(1) labor rate component of a claim settlement, or

(2) adjustment of the labor rate component of a written estimate provided by a claimant pursuant to subdivision (f)(3) of Section 2695.8.

(d) The Standardized Labor Rate Survey.

(1) Currentness.

(A) Time since submittal of survey to the Department.

1. No survey that has been filed with the Department for over one calendar year shall qualify as a Standardized Labor Rate Survey.

2. No survey that has previously qualified as a Standardized Labor Rate Survey shall continue to qualify as a Standardized Labor Rate Survey for more than one calendar year after the date it was submitted to the Department.

(B) Time since collection of data.

1. Only a survey that uses no labor rate information older than sixteen (16) months shall qualify as a Standardized Labor Rate Survey.

2. No survey that has previously qualified as a Standardized Labor Rate Survey shall continue to qualify as a Standardized Labor Rate Survey after the day the oldest labor rate information used in the survey becomes sixteen months old.

3. For purposes of this subdivision (d)(1)(B), labor rate information becomes sixteen months old on the four-hundred-eighty-seventh (487th) day after it was collected.

(C) Extending the useful life of the survey.

Provided the survey satisfies the standards and requirements set forth in subdivisions (d)(2) through (d)(9) of this section, a survey that fails to meet the currentness standards set forth in subdivisions (d)(1)(A) and (d)(1)(B) of this section shall, notwithstanding those subdivisions (d)(1)(A) and (d)(1)(B), qualify as a Standardized Labor Rate Survey as long as all three of the following conditions are satisfied and, with respect to the conditions set forth in subdivisions (d)(1)(C)1. and (d)(1)(C)2. below, continue to be satisfied:

1. No longer a period than two (2) calendar years has elapsed since the date the survey was submitted to the Department. For purposes of this subdivision (d)(1)(C)1., two years has elapsed on the two-year anniversary date of the date the survey was submitted to the Department;

2. No labor rate information older than twenty-eight (28) months is used in the survey. For purposes of this subdivision (d)(1)(C)2., labor rate information becomes twenty-eight (28) months old on the eight-hundred-fifty-second (852nd) day after it was collected; and

3. The effects of inflation are taken into account, as follows:

a. The insurer adjusts each labor rate collected in the survey, and the prevailing rate for each geographic area surveyed, by an inflation factor that is derived by comparing the most recently stated annualized index value of the Monthly (All Items) Consumer Price Index for All Urban Consumers for California (hereinafter, the “most recent California CPI-U”) at the time the oldest labor rate survey data used in the survey was collected, on the one hand, to the most recent California CPI-U at the time the labor rate is adjusted pursuant to this subdivision (d)(1)(C)3, on the other. The Monthly (All Items) Consumer Price Index for All Urban Consumers for California is available on the California Department of Finance website.

b. Labor rates and prevailing rates shall be increased commensurately with any increase in the California CPI-U greater than zero, but if at the time the labor rate is to be adjusted the Monthly (All Items) Consumer Price Index for All Urban Consumers for California is lower than it was at the time the oldest labor rate survey data used in the survey was collected, no adjustment shall be made, in which case the resulting determination not to change the rates shall for purposes of the immediately following sentence be deemed to be the adjustment described in this subdivision (d)(1)(C)3.

c. The adjustment described in this subdivision (d)(1)(C)3. may be made only once per survey, and may be made no earlier than the day after an eleven-month period has elapsed since the time the date the survey was submitted to the Department. For purposes of the immediately preceding sentence, eleven months elapses on the 335th day after the day the survey was submitted.

d. If an insurer exercises the option described in this subdivision (d)(1)(C), the insurer shall submit to the Department the adjusted survey results and the adjusted prevailing rate for each geographic area surveyed. In the event of a determination not to change rates pursuant to subdivision (d)(1)(C)3.b. of this section, the insurer shall submit to the Department a notice of the deemed adjustment pursuant to that subdivision stating the date of such deemed adjustment. In any event, the adjusted survey results and the adjusted prevailing rate for each geographic area surveyed, or the notice specified in the immediately preceding sentence, shall be submitted to the Department no later than the eighth calendar day after the date of the adjustment.

(2) Sample size. In order to produce a Standardized Labor Rate Survey, an insurer must send a survey questionnaire to all auto body repair shops registered with, or licensed by, the

Bureau of Automotive Repair to perform collision repairs. All shops that respond to the survey, that do not indicate on the survey that they decline to participate in it, and that meet the standards set forth in subdivision (d)(4) of this Section 2695.81, shall be used to determine prevailing auto body rates. If the insurer obtains information to the effect that a shop does not meet the standards set forth in subdivision (d)(3) or (d)(4) of this Section 2695.81, the insurer shall exclude the shop from the survey results. In this instance, the information indicating that the shop does not meet these standards must be submitted as part of the information submitted pursuant to subdivision (g) of Section 2698.91.

(3) A Standardized Labor Rate Survey shall use only labor rates of auto body repair shops registered with, or licensed by, the Bureau of Automotive Repair to perform auto body collision repairs. However, in cases where the survey questionnaire asks the repair shop to respond as to whether it is duly registered or licensed to perform auto body collision repairs and, if so, to provide its license number, this subdivision (d) shall not be construed to require an insurer to verify the registration or license status of surveyed shops with the Bureau of Automotive Repair.

(4) Only labor rates reported by auto body repair shops that meet each of the specific standards set forth in subdivision (d)(4)(A) below may be used in a Standardized Labor Rate Survey.

(A) Specific Standards. Each body shop whose labor rates are used 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, and any amendments thereto;
2. Have proof of garage keeper's liability and workers' compensation insurance or equivalent;
3. Have electrical or hydraulic equipment capable of making simultaneous multiple body or structural pulls;
4. Have a spray booth that meets current federal, state and local requirements;
5. 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;
6. Have the ability to remove and reinstall frame, suspension, engine and drive train components or use a qualified sublet provider;
7. Have the ability to evacuate, reclaim and recharge vehicles' air conditioning systems using EPA compliant in-house equipment and certified technicians or use a qualified sublet provider; and

8. 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.

(B) This subdivision (d)(4) shall not be construed to require the insurer to inspect surveyed shops in order to confirm that the specific standards are being met.

(5) For purposes of a Standardized Labor Rate Survey, “prevailing auto body rate” or prevailing rate shall be calculated as the greater of: (1) the arithmetic mean or average of labor rates charged by the surveyed auto body repair shops in the geographic area, or (2) the labor rate, at or below which, a simple majority of surveyed shops charge in a specific geographic area.

(A) Examples of how prevailing rate is to be calculated are as follows:

1. Assuming there are six (6) repair shops in a specific geographic area, with surveyed labor rates of \$64, \$65, \$66, \$66, \$71, and \$73. The arithmetic mean or average labor rate of the six repair shops is \$67.50 ($\$64 + \$65 + \$66 + \$66 + \$71 + \$73 / 6$). The rate at or below which a simple majority of surveyed shops charge is \$66, since four of the six shops (the simple majority) charge a rate of \$66 or less. Since \$67.50 is greater than \$66, the prevailing rate would be the arithmetic mean or average, which is \$67.50; or
2. Assuming there are six (6) repair shops in a specific geographic area, with surveyed labor rates of \$62, \$64, \$64, \$67, \$68, and \$70. The arithmetic mean or average labor rate of the six repair shops is \$65.83 ($\$62 + \$64 + \$64 + \$67 + \$68 + \$70 / 6$). The rate at or below which a simple majority of surveyed shops charge is \$67, since four of the six shops (the simple majority) charge a rate of \$67 or less. Since \$67 is greater than \$65.83, the prevailing rate would be \$67.

(B) If the insurer exercises the option specified in subdivision (d)(1)(C) of this section, the prevailing rate shall be the prevailing rate as determined pursuant to subdivision (d)(1)(C) of this section.

(6) No Standardized Labor Rate Survey shall use any discounted rate negotiated or contracted for with members of its Direct Repair Program, or any other Direct Repair Program, as defined in Section 2698.90. However, nothing in this subdivision (d)(6) shall be construed to prohibit the use of the non-discounted posted labor rate of a Direct Repair Program shop in a Standardized Labor Rate Survey. If the Standardized Labor Rate Survey uses a surveyed rate from one of the insurer’s Direct Repair Program shops, the insurer shall state that fact in its submittal to the Department pursuant to Subdivision (d)(8) of Section 2698.91.

(7) Only direct responses provided by an auto repair shop on a survey questionnaire that complies with subdivision (d)(9) of this section shall be used in a Standardized Labor Rate Survey. Labor rates obtained from the following sources shall not be used in a Standardized Labor Rate Survey:

(A) Estimates written by the insurer to estimate repair claims,

(B) Third-party automobile collision repair estimating software used by the insurer to prepare estimates,

(C) Subrogation reimbursement, or

(D) Any source other than direct responses provided by an auto repair shop on a survey questionnaire.

(8) Any geographic area used in a Standardized Labor Rate Survey must enable the survey to consistently yield prevailing labor rates that, when used in paying or adjusting an automobile insurance claim, ensure that the labor rate component of the claim settlement is fair and equitable. Geographic areas shall be deemed to satisfy the requirement stated in the immediately preceding sentence if they meet the following standards set forth in subdivisions (d)(8)(A) through (d)(8)(D), below.

(A) Definitions. For purposes of this subdivision (d)(8):

1. Street Address means the “physical address of record” of an auto body repair shop as recorded with the Bureau of Automotive Repair at the time the survey is conducted;

2. Qualified Auto Body Repair Shop means an auto body repair shop that is licensed by the Bureau of Automotive Repair to perform auto body collision repairs and that meets the standards set forth in subdivision (d)(4)(A) of this Section 2695.81; and

3. Responding Qualified Auto Body Repair Shop means a Qualified Auto Body Repair Shop that responds to, and does not decline to participate in, the survey. For purposes of the immediately preceding sentence, a shop “responds to” the survey if on the survey questionnaire it specifies a rate for one or more of the types of labor listed below, in which case the shop is a Responding Qualified Auto Body Repair Shop for purposes of determining the prevailing rate for that particular type of labor:

a. Auto body/sheet metal labor,

b. Structural labor,

c. Frame labor,

d. Mechanical labor,

e. Refinish labor, and

f. Aluminum repair labor.

(B) Geographic area. The geographic area for an auto body repair shop shall comprise six (6) Responding Qualified Auto Body Repair shops. For each Responding Qualified Auto Body Repair Shop, the geographic area shall be the shop in question plus the five Responding Qualified Auto Body Repair Shops closest in straight-line distance to that shop. If the shop in question is not a Responding

Qualified Auto Body Repair Shop, then the geographic area shall be the closest six Responding Qualified Auto Body Repair Shops in straight-line distance to the shop in question.

(C) Geocoding. Distances among shops shall be based upon the latitude and longitude coordinates of the Street Address of each shop.

For purposes of this subdivision (d)(8), the latitude and longitude coordinates used as the location of each shop shall be derived using a geocoding process that entails translating a table of Street Address entries, searching for the address in the reference data embedded in an address locator, and delivering the best location candidate. In order to comply with this requirement, the survey analysis must use TIGER (Topologically Integrated Geographic Encoding and Referencing) line files from the most recent U.S. Census, which contain street locations and points of intersections. To perform address matching, the survey analysis must use address GIS (Geographic Information System) software capable of reliably computing distances between shops with at least a degree of precision that will enable the reporting of distances among shops that are accurate to the one-thousandth of a mile (i.e., the software must report these distances in miles using at least three significant digits to the right of the decimal place), such as ArcGIS (developed by Environmental Systems Research Institute, Redlands).

(D) Tie breaker. Any contrary provision of subdivision (d)(8)(B) of this section notwithstanding, in the event that the Responding Qualified Auto Body Repair Shop furthest from the shop in question in the geographic area specified in said subdivision (d)(8)(B) is the same number of miles, rounded to the thousandth of a mile, from the shop in question as another Responding Qualified Auto Body Repair Shop that otherwise would not be in the geographic area, that other Responding Qualified Auto Body Repair Shop shall also be included within the geographic area.

(9) A Standardized Labor Rate Survey shall utilize the questionnaire set forth in Section 2695.82. The insurer may customize the format of the questionnaire; however, the substance of the insurer's questionnaire must be in accordance with the form set forth in Section 2695.82. The questionnaire shall not contain any disclosures, statements, or questions in addition to those contained in Section 2695.82. The questionnaire used in connection with a Standardized Labor Rate Survey shall also comply with all of the following:

(A) The survey questionnaire shall be mailed to the auto body repair shops in accordance with Insurance Code Section 38, or in the case of electronic transmission of the survey, in accordance with Insurance Code Section 38.5.

(B) Auto body repair shops may be allowed to respond electronically, e.g., by email, or by entering information into a secure web site; however, an auto body repair shop must be allowed to respond by hard copy via U.S. mail or courier if the auto body repair shop does not consent to electronic receipt or submission. If the auto body repair shop responds to the survey electronically, the insurer's electronic survey

system must allow the shop to print a copy of the completed survey which contains all the information it submitted.

(C) A date by which the questionnaire must be received that is at least thirty (30) calendar days after the date the survey questionnaire was mailed or electronically transmitted to the auto body repair shop must be specified on the questionnaire.

(e) Use of the Standardized Labor Rate Survey.

(1) An insurer may use a Standardized Labor Rate Survey as a basis to quantify the labor rate cost component of estimates of repair prepared by or for the insurer pursuant to subdivision (f) of Section 2695.8.

(2) An insurer may use a Standardized Labor Rate Survey as a basis to reasonably adjust the labor rate in a written estimate provided by a claimant's chosen repair shop pursuant to subdivision (f)(3) of Section 2695.8 only if the insurer can demonstrate at least one of the following:

(A) The labor rate charged or quoted by the repair shop on a particular claim is greater than the prevailing rate determined by the Standardized Labor Rate Survey. In this instance, the insurer may adjust the labor rate in the written estimate provided by the claimant's chosen repair shop to an amount equal to the prevailing rate as determined by the survey; or

(B) The labor rate charged or quoted by the repair shop on a particular claim is greater than the posted labor rate of that repair shop. In this instance, the insurer may adjust the labor rate in the estimate to the lesser of the repair shop's posted labor rate or the prevailing auto body rate as determined by the survey.

(3) When adjusting a labor rate in a written estimate provided by a claimant's chosen repair shop pursuant to subdivision (e)(2) above, if the insurer has exercised the option set forth in subdivision (d)(1)(C) of this section, the insurer shall adjust the prevailing rate pursuant to subdivision (d)(1)(C) of this section.

(4) This subdivision (e) shall not preclude an insurer from adjusting upward the prevailing rate determined by the Standardized Labor Rate Survey in cases where the labor rate charged or quoted by the repair shop on a particular claim is greater than the prevailing rate determined by the Standardized Labor Rate Survey and the insurer negotiates a higher labor rate with the repair shop that is reasonable for the particular repair, geographic area, or other factors.

(5) This subdivision (e) shall not be construed to imply that the repair shop must accept the amount offered for payment by the insurer or that the amount charged by the repair shop is excessive or unreasonable, but only that the insurer has taken reasonable steps to quantify its contractual or legal obligation for payment of the claim pursuant to the applicable insurance policy or other laws.

(f) The data and survey information not specified in subdivision (d) of Section 2698.91 that is submitted to the Department in connection with a Standardized Labor Rate Survey shall not be produced or otherwise be disclosed by the Department, except where the Department is required to produce the data or information by a valid subpoena, court order, or other applicable law.

Note: Authority cited: Sections 758, 790.10, 12921, and 12926, Insurance Code. Reference: Sections 758 and 790.03 of the Insurance Code.

Adopt Section 2695.82 QUESTIONNAIRE FOR THE STANDARDIZED LABOR RATE SURVEY.

To: (Auto Body Repair Facility) _____ From: (Insurance Company name, address, telephone number, email address) _____

Instructions: We are conducting a survey of auto body repair labor rates for all auto body repair shops in your area. This questionnaire should be completed by an authorized representative of the auto body repair facility to which it is addressed and returned to [Insurance Company] at [insert address] no later than [insert due date]. If the information is not complete, the survey may be rejected.

FAILURE TO COMPLETE THIS QUESTIONNAIRE IN FULL MAY RESULT IN ITS EXCLUSION FROM THE AUTO BODY LABOR RATE SURVEY FILED WITH THE CALIFORNIA DEPARTMENT OF INSURANCE. HOWEVER, YOU ARE NOT REQUIRED TO COMPLETE THIS SURVEY. IF YOU CHOOSE NOT TO COMPLETE THIS SURVEY, OR IF YOUR SHOP IS NOT ELIGIBLE TO PARTICIPATE IN THIS SURVEY, PLEASE RETURN IT TO US FOR OUR RECORDS. IF YOU CHOOSE TO NOT COMPLETE THIS SURVEY, PLEASE CHECK THE FOLLOWING DECLINATION:

I DECLINE TO PARTICIPATE IN THIS SURVEY: _____

Question 1: The survey may only use labor rates of auto body repair shops registered with, or licensed by, the California Bureau of Automotive Repair to perform auto body collision repairs. Is your shop duly registered or licensed to perform auto body collision repairs by the California Bureau of Automotive Repair?

YES _____ NO _____

If you answered Yes to question 1, please provide your license number with the California Bureau of Automotive Repair _____.

If you answered No to question 1, stop here, proceed to declaration to complete your survey and return the survey questionnaire to us.

Question 2: We may only use labor rates in a survey reported by auto body repair shops that meet certain specific standards. Please confirm below whether you meet all of the following specific standards:

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, and any amendments thereto;

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

3. Have electrical or hydraulic equipment capable of making simultaneous multiple body or structural pulls;

4. Have a spray booth that meets current federal, state and local requirements;

5. 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;

6. Have the ability to remove and reinstall frame, suspension, engine and drive train components or use a qualified sublet provider;

7. 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

8. 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.

I confirm that this auto body repair shop meets all of the above standards:

YES _____ NO _____

If you answered NO to question 2, stop here, proceed to declaration to complete your survey and return this survey questionnaire to us.

Question 3: Hourly Rate Charged – Please indicate the hourly rate charged by your facility for non-direct repair program or other non-discounted auto body repair work for each category of repair identified below.

(a) Auto Body/Sheet Metal Labor Rate: _____ per hour.

(b) Structural Labor Rate: _____ per hour.

(c) Frame Labor Rate: _____ per hour.

(d) Mechanical Labor Rate: _____ per hour.

(e) Refinish Labor Rate: _____ per hour.

(f) Aluminum Repair Labor Rate: _____ per hour.

Question 4: Does your repair shop have a contract or agreement with this insurer to perform repair work for a discounted rate or other considerations in exchange for referrals by the insurer?

YES _____ NO _____

If you answered YES to Question 4, you may not include discounted rates in your response to Question 3, above. Your response to Question 3 must only reflect the hourly rate charged by your facility for non-direct repair program or other non-discounted auto body repair work for each category of repair identified.

PLEASE MAKE A COPY OF THIS SIGNED AND COMPLETED QUESTIONNAIRE FOR YOUR RECORDS AND MAIL TO THE ADDRESS SHOWN ON THIS QUESTIONNAIRE

DECLARATION

By signing below, I declare that the information provided above is true and correct.

Signature: _____ **Date:** _____

Print Name: _____

Title: _____

Telephone: _____

Email Address (optional): _____

Physical Address of Repair Shop: _____

Note: Authority cited: Sections 758, 790.03, 790.10, 12921, and 12926, Insurance Code.
Reference: Sections 758, and 790.03 of the Insurance Code.

Title 10, Chapter 5, Subchapter 9, Article 7
Direct Repair Programs and Labor Rate Surveys

Amend Section 2698.91. Reporting Auto Body Repair Labor Rate Surveys.

(a) For purposes of this Article, an “auto body repair labor rate survey” or “survey” is any gathering of information by an insurer, or on an insurer’s behalf, 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.

(b) For purposes of a survey conducted pursuant to California Insurance Code section 758(c), “Prevailing auto body rate” means the rate determined and 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) For purposes of this Article, an “auto body repair shop” or “repair shop” means 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 body repairs.

(d) Any labor rate survey results reported to the Department of Insurance pursuant to Insurance Code section 758 shall include the following survey data, which will be made available to the public upon request:

- (1) The name and physical 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;
- (4) The prevailing auto body rate established determined and set by the insurer for each geographic area surveyed;
- (5) A description of the specific geographic area covered by each prevailing labor rate reported; or, in the case of a survey that is intended to comply with the standards and requirements set forth in subdivision (d) of Section 2695.81 (i.e., a “Standardized Labor Rate Survey”) and to be used pursuant to subdivision (e) of Section 2695.81, a statement to this effect, together with a description of any geographic areas where a survey will not be used to quantify the labor rate component of estimates of repair prepared pursuant to Section 2695.8;
- (6) A description of the formula or method the insurer used to calculate or determine the specific prevailing auto body rate reported for each specific geographic area;
- (7) The labor rate reported by each shop that responded to the survey; and
- (8) The name, and physical address of record, and license number as recorded with the Bureau of Automotive Repair, of each shop that responded to the survey and that is a member of the insurer’s Direct Repair Program, as defined in Section 2698.90.

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 send the results of their labor rate survey to the Market Conduct Division of the Department of Insurance.~~

(e) Insurers shall submit the results of their labor rate survey to the Custodian of Records of the Department of Insurance within thirty (30) calendar days of completing the survey. A survey is complete when the insurer has compiled all the results and completed a survey report. In cases where the survey data used by an insurer is changing on a regular basis, the survey shall be submitted no less frequently than annually.

The Department may require that the survey data specified in subdivision (d) of this Section 2698.91 be submitted in a standard electronic or other format usable by the Department in order to publish survey data on the Department's public website.

~~(e)~~ (f) The Department of Insurance will make the survey data specified in subdivision (d) of this section reports available to the public upon written request to the Custodian of Records pursuant to the California Public Records Act.

(g) The following non-public information shall be included separately from the public information in any survey submitted to the Department:

(1) the name and physical address of each shop sent a survey, but that did not respond to the survey;

(2) a copy of the survey questionnaire used to survey the auto body repair shops; and

(3) the definition and description of each geographic area surveyed.

(4) for any shop excluded from the survey pursuant to Subdivision (d) of Section 2695.81, the name of the shop and any information the insurer obtains indicating that the shop does not meet the standards set forth in subdivisions (d)(3) and/or (d)(4) of Section 2695.81.

(h) Upon request, the Department shall have access to all survey responses, other survey records, data, computer programs, or any other information used by the insurer or any other source to develop the survey and/or determine geographic area labor rate information. The fact that information, data or records used or relied upon by a licensee are obtained through a third party source shall not absolve the licensee of its responsibility to provide the Department with the requested information. The licensee shall ensure that any contracts it enters into with a third party to conduct these surveys does not conflict with this requirement. This information will be held confidential pursuant to the provisions of Subdivision (g) of Section 2695.81. All survey records, questionnaires and all other information regarding the survey shall be maintained by the insurer for a minimum of five years.

(i) Nothing in this section shall be construed to prohibit an insurer from negotiating and/or contracting with an auto body repair shop for a specific labor rate.

(j) Nothing in this section shall be construed to require an insurer to conduct an auto body repair labor rate survey.

(k) The fact that an insurer has submitted a labor rate survey pursuant to this section shall not be construed to indicate, and an insurer shall not represent, that the Department has approved the survey for use in settling and paying claims or that the Department has made a determination that the survey data is accurate and reliable.

Note: Authority cited: Sections 758, 12921 and 12926, Insurance Code. Reference: Section 758, Insurance Code; sections 6250-6276.48, Government Code.