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

FINAL TEXT OF PROPOSED AMENDMENT TO REGULATION STANDARDS FOR REPAIR AND USE OF AFTERMARKET PARTS

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 7.5. Unfair or Deceptive Acts or Practices in the Business of Insurance
Article 1. Fair Claims Settlement Practices Regulations

Amend Section 2695.8

[Subdivisions (a)-(e) unchanged]

(f) If a partial loss~~es are~~ is settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the claimant with a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be of an amount ~~which~~that will allow for repairs to be made in accordance with accepted trade standards for good and workmanlike automotive repairs by an "auto body repair shop" as defined in section 9889.51 of the Business and Professions Code, and in accordance with the standards of automotive repair required of auto body repair shops as described in the Business and Professions Code and associated regulations, including, but not limited to, Section 3365 of Title 16 of the California Code of Regulations. An insurer shall not prepare an estimate that deviates from the standards, costs, and/or guidelines provided by the third-party automobile collision repair estimating software used by the insurer to prepare the estimate, if such deviation would result in an estimate that would not allow for repairs to be made in accordance with accepted trade standards for good and workmanlike automotive repairs by an auto body repair shop, as described in this subdivision. ~~a workmanlike manner~~. If the claimant subsequently contends, based upon a written estimate ~~which~~that he or she obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall:

(1) pay the difference between the written estimate and a higher estimate obtained by the claimant; or,

(2) if requested by the claimant, promptly provide the claimant with the name of at least one repair shop that will make the repairs for the amount of the insurer's written estimate. The insurer shall cause the damaged vehicle to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy or as otherwise allowed by law. The insurer shall maintain documentation of all such communications; or,

(3) reasonably adjust any written estimates prepared by the repair shop of the claimant's choice and provide a copy of the adjusted estimate to the claimant and the claimant's repair shop. The adjusted estimate provided to the claimant and repair shop shall be either an edited copy of the claimant's repair shop estimate or a supplemental estimate based on the itemized copy of the claimant's repair shop estimate. The adjusted estimate shall identify the specific adjustment made to each item and the cost associated with each adjustment made to the claimant's shop's estimate.

(g) No insurer shall require the use of non-original equipment manufacturer replacement crash parts in the repair of an automobile unless all of the following conditions are met:

(1) the parts are at least equal to the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance;

(2) the insurers specifying the use of non-original equipment manufacturer replacement crash parts shall pay the cost of any modifications to the parts ~~which~~that may become necessary to effect the repair; ~~and,~~

(3) the insurers specifying the use of non-original equipment manufacturer replacement crash parts warrants that such parts are at least equal to the original equipment manufacturer parts in terms of ~~like~~ kind, quality, safety, fit, and performance. ~~as original equipment manufacturer replacement crash parts~~The insurer must disclose in writing, in any estimate prepared by or for the insurer, the fact that it warrants that such parts are at least equal to the original equipment manufacturer parts in terms of kind, quality, safety, fit, and performance; ~~and,~~

(4) all original and non-original manufacturer replacement crash parts, manufactured after the effective date of this ~~subchapter~~subdivision, when supplied by repair shops shall carry sufficient permanent, non-removable identification so as to identify the manufacturer. Such identification shall be accessible to the greatest extent possible after installation; and,

(5) the use of non-original equipment manufacturer replacement crash parts is disclosed in accordance with section 9875.1 of the California Business and Professions Code.

(6) If an insurer specifying the use of non-original equipment manufacturer replacement crash parts has knowledge that a part is not equal to the original equipment manufacturer part in terms of kind, quality, safety, fit, and performance, or does not otherwise comply with this section, it shall immediately cease requiring the use of the part and shall, within thirty (30) calendar days, notify the distributor of the non-compliant aspect of the part.

(7) In the repair of a particular vehicle, an insurer specifying the use of a non-original equipment manufacturer replacement crash part that is not equal to the original equipment manufacturer part in terms of kind, quality, safety, fit, and performance, or does not otherwise comply with this section, shall pay for the costs associated with returning the part and the cost to remove and replace the non-original equipment

manufacturer part with a compliant non-original equipment manufacturer part or an original equipment manufacturer part.

(8) Nothing in this subdivision prohibits an insurer from seeking reimbursement or indemnification from a third party for the costs associated with the insurer's compliance with this subdivision, including, but not limited to, costs associated with the insurer's obligation to warrant the part, modifications to the part, or returning, removing or replacing a non-compliant, non-original equipment manufacturer part. However, seeking reimbursement or indemnification from a third party shall not in any way modify the insurer's obligation to comply with this subdivision. An insurer shall retain primary responsibility to comply with this subdivision and shall not refuse or delay compliance with this subdivision on the basis that responsibility for payment or compliance should be assumed by a third party.

[Subdivisions (h)-(k) unchanged]

Note: Authority: Sections 790.10, 12921 and 12926, Insurance Code; Section 3333, Civil Code; and Sections 11152 and 11342.2, Government Code. Reference: Sections 758.5~~,~~ and 790.03~~(c) and 790.03(h)(3)~~, Insurance Code; and Section 9875.1, Business and Professions Code.