

Date: June 7, 2010

To: Candace Thorson – NCOIL

From: David McClune, Executive Director – California Autobody Association
555 University Ave., Ste. 236, Sacramento, CA 95825

Re: Request For Comments On New Substitute Amendment To Draft Auto Body Anti-Steering Model

**California Autobody Association (CAA) Proposed Markup to Substitute Amendment to Draft
Model Act Regarding Insurer Auto-Body Steering**

Key: Additions indicated by ***boldface italic blue text***
Deletions indicated by ~~strikethrough~~
Optional text indicated by *underlined italic blue text*

Section 3. Definitions

For the purposes of this Act,

- A. "Claimant" means an individual other than an insured who requests payment under terms of the insured's insurance policy.
- B. "Insured" means the party named on a policy as the individual with legal rights to the benefits provided by the policy.
- C. "Insurer" means an insurance company and/or any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.
- D. "Policy" means a contract issued for private motor-vehicle insurance that is individually underwritten for personal, family, or household use.
- E. "Preferred repair facility" means a repair facility that ~~meets an insurer's customer service and repair standards~~ ***has any written or verbal agreement with the insurer regarding financial concessions to the insurer in exchange for referral of work.***
- F. "Repair facility" means a motor vehicle dealer, garage, body shop, or other commercial entity that undertakes the repair ***of motor vehicles for compensation.*** ~~or replacement of those parts that generally constitute the exterior of a motor vehicle.~~

Section 4. Selection of Repair Facility, Insurer Prohibitions

An insurer authorized to do business in [insert state] shall not:

- A. require ***or suggest that*** an insured or claimant ~~to~~ ***must*** utilize preferred repair facilities ***for obtaining an estimate or performing repairs*** as a prerequisite to settling or paying any claim arising under a policy or policies of insurance. ~~An insurer may recommend a repair facility prior to an insured or claimant choosing one.~~

B. engage in any act of coercion or intimidation, *or make any false, misleading, or otherwise not wholly true statements*, causing or intended to cause an insured or claimant to *either* utilize a preferred repair facility, *or not utilize a non-preferred repair facility chosen by the insured or claimant. This includes, but is not limited to, repair turnaround time, claims processing time, repair warranties, repair cost, replacement car cost, and repair quality.*

C. recommend a repair facility once an insured or claimant has advised the insurer that one has been selected, or interfere with the insured or claimant's selection once it has been made *unless at the time of the recommendation,*
1). the insured or claimant has been advised that they are under no obligation to use the insurer's recommended facility, and
2). the insurer has determined the insured or claimant has not already chosen a repair shop.

D. recommend a different repair facility without express permission from the insured or claimant, or otherwise interfere with the insured or claimant's selection once it has been made.

~~D. pay a non-preferred repair facility selected by an insured or claimant less to complete a repair than the insurer would have paid a preferred repair facility for the same work~~

E. limit payment for repairs to a non-preferred repair facility selected by an insured or claimant based on the amount the insurer would have either paid, or not paid, a preferred repair facility.

Disclosure

An insurer authorized to do business in this state shall disclose to an insured or claimant, at *each and every* such time as the insurer or its third-party representative recommends use of a preferred repair facility, that:

A. the insured or claimant is under no obligation to use ~~the~~ *any* preferred repair facility

B. the insurer or its third-party representative has a financial interest in such facility, if such an interest exists

C. the insurer or its third-party representative receives discounts and other financial concessions from the preferred repair facility as a condition of being considered a preferred repair facility, unless no such agreement exist.

Such disclosures must be made in the same method as the recommendation (e.g. verbal or written).

Violations and Penalties

A. The [insert appropriate state agency] shall investigate, with the written authorization of the insured or claimant, any written complaints received pursuant to this Act, regardless of whether such written complaints are submitted by an individual or a repair facility. For the purpose of this section, any insurer utilizing a third-party representative shall be held accountable for any violation of this section by such third-party representative.

B. Violations of this Act shall constitute [insert state] unfair claims settlement practices and shall be subject to applicable state fines and penalties.

B. Violations of this Act shall constitute [insert state] unfair claims settlement practices *by the insurer* and *each occurrence of violation* shall be subject to applicable state fines and penalties.

Section 7. Effective Date

This Act shall take effect on [insert date], applying to personal lines motor-vehicle insurance policies either written to be effective or renewed on or after nine (9) months from the effective date of the bill.