

**State of California
Office of Administrative Law**

In re:
Department of Insurance

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections:

Amend sections: 2695.8(e)

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3


OAL Matter Number: 2016-1110-01

OAL Matter Type: Regular (S)

In this rulemaking action and in response to consumer complaints, the Department of Insurance amends subdivision (e) of section 2695.8 of Title 10 of the California Code of Regulations to further implement and interpret, among other statutes, section 758.5 of the Insurance Code concerning anti-steering provisions applicable to automobile insurance. More specifically, the action further specifies prohibitions on insurers making untruthful or deceptive statements that unreasonably influence policy holders and third parties (claimants) in selecting automobile repair facilities and further defines terms and concepts, such as when a claimant has chosen an automotive repair shop and what are unreasonable times or distances for the inspection of damaged automobiles, among other provisions.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2017.

Date: December 12, 2016



Dale P. Mentink
Senior Attorney

For: Debra M. Cornez
Director

Original: Dave Jones
Copy: George Teekell

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0223-04	REGULATORY ACTION NUMBER 2016-1110-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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ENDORSED - FILED
In the office of the Secretary of State
of the State of California

DEC 12 2016

1:24 p.m.

AGENCY WITH RULEMAKING AUTHORITY Department of Insurance	AGENCY FILE NUMBER (If any) REG-2015-00015
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2016, 10-2	PUBLICATION DATE 3/4/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Anti-Steering in Auto Body Repairs	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)		<i>om</i>
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2695.8(e)	per agency request
	AMEND 2695.8(e)	12/12/16
TITLE(S) 10	REPEAL	

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) 9/26/16 - 10/11/16; 10/24/16 - 11/8/16

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>1/1/2017</u>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	<i>om</i> per agency request 12/12/16
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON George Teekell	TELEPHONE NUMBER 415-538-4390	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) teekellg@insurance.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 11/9/16
TYPED NAME AND TITLE OF SIGNATORY Geoff Margolis, Deputy Commissioner & Special Counsel	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
DEC 12 2016
Office of Administrative Law

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

FINAL TEXT OF REGULATION

Anti-Steering in Auto Body Repairs

Date: November 9, 2016

CDI Regulation File: REG-2015-00015

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

Amend Subdivision (e) of Section 2695.8. Additional Standards Applicable to Automobile Insurance.

(e) No insurer shall:

- (1) require that an automobile be repaired at a specific repair shop; or,
- (2) after a claimant has chosen an automotive repair shop, suggest or recommend that an automobile be repaired at a the claimant select a different specific repair shop, except as permitted by unless all of the requirements set forth in California Insurance Code section 758.5 have been met. For purposes of California Insurance Code section 758.5 and this section, 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. For purposes of this section, "automotive 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 as an auto body and/or paint shop.
- (3) communicate false, deceptive, or misleading information to the claimant, including, but not limited to:
 - (A) Advising the claimant that an inspection of the vehicle will occur at a date that is later than required by subdivision (e)(4) of this Section 2695.8.
 - (B) Making a statement to the claimant to the effect that the automotive repair shop chosen by the claimant has a record of poor service or poor repair quality, or making any other statement to the claimant with respect to the chosen repair shop, if the statement is known to be, or should by the exercise of reasonable care be known to be, untrue, deceptive or misleading.
 - (C) Advising the claimant that the automotive repair shop chosen by the claimant has a record of poor service or poor repair quality, or of other

similar allegations against the repair shop, solely on the basis of the shop's participation or nonparticipation in a labor rate survey.

(3) (4) require a claimant to travel an unreasonable distance or wait an unreasonable period of time either to inspect a replacement automobile, to conduct an inspection of the claimant's vehicle, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop.

(A) In the case of both first-party and third-party claims: For purposes of this section, an unreasonable distance shall be, for cities or urban areas with a population of 100,000 or higher, more than fifteen (15) miles, and for all other areas of the state, more than twenty-five (25) miles, from the location where the vehicle is located and made available for inspection by the claimant.

(B) In the case of first-party claims only:

1. Initial inspection. Except as provided in Subdivision (e)(4)(B)2. or (e)(4)(B)3. of this section, if an insurer chooses to exercise its right to inspect the damaged vehicle, the insurer shall within six (6) business days after receiving the notice of claim:

a. request of the claimant that he or she make the vehicle available for inspection by the insurer, and

b. provided the claimant makes the vehicle reasonably available for inspection, inspect the damaged vehicle.

2. Inspections and re-inspections in response to requests for supplemental estimates. Subdivision (e)(4)(B)1. of this section notwithstanding, and except as provided in Subdivision (e)(4)(B)3. of this section, if in response to a request for a supplemental estimate an insurer chooses to exercise its right to inspect or re-inspect the damaged vehicle, the insurer shall within six (6) business days after receiving the request for a supplemental estimate:

a. request of the claimant that he or she make the vehicle available for inspection or re-inspection by the insurer, and

b. provided the claimant makes the vehicle reasonably available for inspection or re-inspection, inspect or re-inspect the damaged vehicle.

3. Photographs or estimates in lieu of inspection or re-inspection; inspections and re-inspections upon receipt of photographs or

estimates. If the insurer requests from the claimant photographs of the damaged vehicle, or an estimate of repairs, in lieu of a physical inspection, such a request must be made within three (3) business days after the insurer's receipt of the notice of claim or request for a supplemental estimate and shall include notification to the claimant that, upon receipt of the photographs or estimate, the insurer may elect to inspect or re-inspect the vehicle. Subdivisions (e)(4)(B)1. and (e)(4)(B)2. of this section notwithstanding, if, after receiving the photographs or estimate of repairs from the claimant in response to a request pursuant to the immediately preceding sentence, the insurer subsequently elects to inspect or re-inspect the vehicle, the insurer shall within six (6) business days following its receipt of the photographs or estimate:

- a. request of the claimant that he or she make the vehicle available for inspection or re-inspection by the insurer, and
- b. provided the claimant makes the vehicle reasonably available for inspection or re-inspection, inspect or re-inspect the damaged vehicle.

(C) In the case of third-party claims only: The provisions of Subdivision (e)(4)(B) above notwithstanding, should an insurer exercise its right to inspect or re-inspect the damaged vehicle, the insurer shall within six (6) business days from the time the insurer decides to inspect or re-inspect the third-party claimant's vehicle:

1. request of the third-party claimant that he or she make the vehicle available for inspection or re-inspection by the insurer, and
2. provided the third-party claimant makes the vehicle reasonably available for inspection or re-inspection by the insurer, inspect or re-inspect the damaged vehicle.

(D) In the event that the first-party claimant or third-party claimant fails to make the damaged vehicle reasonably available for inspection or re-inspection during the six-day period specified in Subdivision (e)(4)(B)1., (e)(4)(B)2., (e)(4)(B)3. or (e)(4)(C) of this section, the insurer shall in each case inspect or re-inspect the damaged vehicle as soon after the end of that six-day period as is reasonable.

(E) For purposes of this Subdivision (e)(4):

1. Requests made of a claimant may be directed to the claimant or, where the claimant has chosen an automotive repair shop, to the automotive repair shop chosen by such claimant.

2. A claimant makes the damaged vehicle reasonably available for inspection or re-inspection by the insurer when either the claimant or the automotive repair shop chosen by the claimant makes the vehicle reasonably available for inspection or re-inspection by the insurer.

3. A claimant fails to make the vehicle reasonably available for inspection or re-inspection by the insurer when neither the claimant nor the automotive repair shop chosen by the claimant makes the vehicle reasonably available for inspection or re-inspection by the insurer.

(5) after the claimant has chosen an automotive repair shop, require that the claimant have the vehicle inspected at or by an automotive repair shop where the insurer has a Direct Repair Program, or at or by any other automotive repair shop identified by the insurer.

Note: Authority cited: 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, Insurance Code; and Section 9875.1, Business and Professions Code.