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Bulletin 387
Motor Vehicle Glass and Collision Damage Repair
(Replaces Bulletin 336)

The Superintendent of Insurance issues this Bulletin to remind motor vehicle insurers of Maine's laws requiring claimants to be offered the opportunity to choose their motor vehicle glass and collision appraisal and repair providers, and to explain how those requirements apply to the practice of having appraisals done at preferred repair facilities.

The Maine Insurance Code prohibits insurers, and their agents or employees, from requiring, directly or indirectly, that glass or collision damage appraisals or repairs be made or not made in a specified place of business.[1] The statute also prohibits any insurer from entering into an agreement to manage, handle, or arrange for appraisals or repairs if the compensation is based on the difference between the list price of the repair services and the amount paid to the repair shop. Section 2164-C also prohibits any insurer from recommending that a claimant use a particular motor vehicle repair service or network of repair services without informing the claimant that there is no obligation to use the recommended facility.

The Bureau has received complaints of insurers referring claimants to specific repair shops or networks of repair shops without clearly disclosing that the claimants may use any facility for their repairs. Section 2164-C prohibits this practice. It applies to both glass repairs and collision repairs, and to both insureds and third-party claimants.

The Bureau remains concerned about the practice of basing claims payments, regardless of where repairs are made, on amounts which have been agreed to between an insurer and one or more repair shops, if those agreed charges are less than the reasonable cost of the repair absent the agreement. Section 2164-C does allow insurers to:

- contract with repair shops for repairs to claimants' motor vehicles on a discounted basis, if the interests of those claimants who elect to have repairs made elsewhere are not adversely affected and if such agreements do not violate other applicable laws, such as antitrust, laws; and
- limit the allowable charge for motor vehicle repairs to the amount for which the claimant can reasonably cause the repair to be performed absent a special arrangement between the insurer and repair shop or network of repair shops.

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[1] 24-A M.R.S. § 2164-C.

The Bureau has concerns about two issues related to the practice of insurers that retain third parties to administer or manage repair claims. Some of these firms have, or are affiliated with firms or networks of firms that have, vehicle repair or glass replacement services of their own. The Bureau has received complaints that:

- claimants, including those who have already selected repair facilities, are either encouraged or recommended to take their vehicles to the claims administrator's repair facilities without being clearly notified of the right to use a facility of the claimant's choice; and
- some claim administrators may be refusing to respond to communications from facilities that claimants have selected to do the repairs in accordance with their insurance policies.

These practices violate Section 2164-C. Insurers are ultimately responsible for the appropriate settlement and payment of claims arising under their policies, whether they process those claims directly or through contracts with third-party administrators.

The Bureau is also aware that some insurers have arrangements with networks in which the shops dedicate bays and other facilities for the insurer's use in appraising collision damage. Section 2164-C does not prohibit these arrangements. However, the statute does prohibit an insurer from requiring that a claimant go to a specified place of business for an appraisal. When the insurer makes the appraisal appointment, it must tell the claimant that he or she may take the vehicle elsewhere for an appraisal. If the insurer wants to have its own appraiser look at the vehicle, the claimant must be given the opportunity to have the appraisal done elsewhere than the location chosen by the insurer. Insurers may not limit the exercise of that right through policy language or policy interpretation. The Bureau understands that convenience is an important part of delivering services. However, insurers should be mindful of the appearance of coercion that attends these arrangements.

A claimant is vulnerable to this pressure at two important points in the claim. The first is when he or she reports the claim. This contact usually occurs by telephone, in circumstances that can be confusing and upsetting. The second is when the claimant is at the designated appraisal facility. Here, he or she might feel reluctant to take the motor vehicle elsewhere for another appraisal or the actual repair. The purpose of Section 2164-C is that, throughout the appraisal and repair process, the insurer should convey to the claimant his or her right to choose without penalty where to have the appraisal or repairs done. The claimant should also have meaningful opportunities to act on that right.

Insurers should closely monitor the vehicle repair settlement practices of their employees, agents, and administrators. Monitoring might include, for example, informing their employees, agents and administrators as to section 2164-C's requirements and requiring their employees, agents and administrators to use telephone scripts that contain language conforming to those requirements.

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NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.