

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

TO: All Property and Casualty Insurance Carriers

FROM: MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

DATE: August 20, 2014

A handwritten signature in cursive script, reading "Monica J. Lindeen".

DIRECT REPAIR PROGRAMS AND LOCAL PART PURCHASING

Direct repair programs benefit consumers by encouraging quick, convenient repair service for covered automobile damage. If abused, however, direct repair programs can steer claimants to specific automobile repair businesses, undermining competition, and curtailing claimants' freedom of choice. To promote competition and preserve the freedom of choice, the Montana Legislature enacted Montana Code Annotated § 33-18-224, which regulates direct repair programs.

If an insurer maintains a direct repair program, § 33-18-224(2)(a) prohibits the insurer from limiting the number of repair businesses that can participate. Upon a claimant's request, § 33-18-224(2)(c) requires insurers to provide "without prejudice or bias" a list of all repair businesses that are reasonably close or convenient to the claimant.

It has come to the attention of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), that some insurers have made a repair business's participation in direct repair programs contingent on the business's

agreement to order all parts from a given source. Please be advised that, in the opinion of the CSI, such a requirement is prohibited by Montana law.

All automobile repair businesses are free to deal directly with any parts supplier regardless of location. Repair businesses must be compensated for those parts and the services reasonable and necessary to repair the covered damages. Further, insurers cannot bar an automobile repair business from participating in a direct repair program simply because the business chooses to buy parts directly from local suppliers.

In limited circumstances, an insurer may exclude repair businesses that do not meet criteria established in § 33-18-224(2)(c)(i)–(vi). Specifically, § 33-18-224(2)(c)(iii) allows an insurer to exclude repair businesses that do not agree “to perform quality repairs at the market price.” Market price is defined in § 33-18-222 as the:

- (a) Price agreed upon between the insurer and the business, or
- (b) Prevailing competitive rate that is reasonable and necessary in the local area where the repairs are to be performed.

Absent a specific price agreement between the insurer and the repair business, market price is measured by the cost of parts and labor in the local area. So long as a repair business’s decision to purchase parts directly from local vendors does not result in repair services that exceed local market prices, the repair business’s decision cannot be a basis for exclusion from a direct repair program. If a claimant chooses a repair business that charges more than the local market price, § 33-18-224(4) limits the insurer’s obligation to the local market price.

For any questions regarding this advisory memorandum, call the CSI Legal Bureau at (406) 444-2040.