



# COMMISSIONER OF SECURITIES AND INSURANCE

Troy Downing  
Commissioner

Office of the  
Montana State Auditor

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## ADVISORY MEMORANDUM

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To: ALL INTERESTED PERSONS

From: TROY DOWNING  
Commissioner of Securities and Insurance (CSI), Montana State Auditor

Date: August 21, 2024

### PURPOSE

The purpose of this bulletin is two-fold:

- To remind consumers of their right to take their collision-damaged vehicles to an automobile body repair business (“auto repair shop”) or location of their choice.
- To advise insurers, including their producers and adjusters, that they may not engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular auto repair shop or location.

### ILLEGAL PRACTICES

Recently, after reviewing automobile repair complaints filed with the CSI, we have found the following:

I. Pre/Post Sublet Scans. Some insurance companies are paying:

- For pre/post sublet scans if the scans are completed at or for auto repair shops participating in the insurer’s Direct Repair Program (DRP) but are not paying for pre/post sublet scans under the same or similar coverage circumstances if the scans are performed at or for non-DRP auto repair shops.

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- A higher dollar amount for pre/post sublet scans if the scans are completed at or for auto repair shops participating in the insurer's DRP, but are paying a lower dollar amount for pre/post sublet scans under the same or similar coverage circumstances if the scans are performed at or for non-DRP auto repair shops.

In both instances above, these practices constitute illegal incentives or inducements to use DRP-auto repair shops (also known as steering) and violate §33-18-224(1)(a)(ii). It would also be illegal if an insurer used similar tactics regarding other services, such as calibration. An insurer may not require a customer to use a specific auto repair shop, directly or indirectly, to receive coverage for a repair (a scan in this case) or a higher reimbursement rate.

II. Insurer Representations. CSI learned recently that at least one insurer (with an established DRP) may have discouraged a claimant from using a non-DRP auto repair shop by misrepresenting information about the shop, claiming that the shop was difficult to work with and made the claims process difficult. These types of statements are intimidating and can easily discourage a consumer from selecting an auto repair shop of the consumer's choosing, violating §33-18-224(1)(a)(ii). An insurer may not make false claims or provide misleading information about body repair shops to steer consumers, directly or indirectly, toward the insurer's preferred auto repair shops.

#### APPLICABLE LAW

In Montana, a consumer has the sole discretion to choose where the consumer's vehicle will be repaired. §33-18-224(4). This means an insurance company may not require that a claimant use a particular auto repair shop or location for an estimate or repair.

Per the requirements in §33-18-224(2), an insurance company may establish direct repair programs with auto repair shops. Upon request, the insurance company must provide, without prejudice or bias, the claimant with a list that includes all auto repair shops or locations that are reasonably close or convenient to the claimant and willing to provide services and that meet the insurance company's criteria identified in §33-18-224(2)(c)(i) through (vi). If a claimant requests such a list, the insurance company must inform the claimant that the claimant may use an auto repair shop or location at the sole discretion of the claimant. §33-18-224(2)(d).

An insurer, including its producers and adjusters, may not engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular auto repair shop or location. §33-18-224(1)(a)(ii). An incentive or inducement does not include providing a claimant with a list as provided §33-18-224(2)(c) or referring to a warranty issued by the auto repair shop or location. §33-18-224(3).

An insurance company must pay the "reasonable and necessary cost" of the auto repair shop services for covered damages, less any deductible under the terms of the policy. §33-18-224(4). An insurance company is not required to pay more for the auto repair shop services than the

Market Price. *Id.* Market Price means the price agreed upon between the insurer and the business or the prevailing competitive rate that is reasonable and necessary in the local area where the repairs are to be performed. §33-18-222(1).

### GUIDANCE

The CSI takes its obligations to consumers very seriously. All insurers, including their producers and adjusters, should review their notices, practices, policies, and procedures to ensure their conduct complies with the guidance in this advisory memorandum and §33-18-224, MCA, generally.

Section 33-18-201(6) requires that insurers attempt in good faith to effectuate “prompt, fair, and equitable” settlement of claims in which liability has become reasonably clear. The CSI will enforce the rights of claimants to receive the benefits to which they are contractually entitled and the protections they are afforded under the law.

The CSI will investigate allegations of unfair trade practices, both in the context of individual cases and general business practices, and will take appropriate enforcement action where evidence of unfair trade practices is demonstrated.

CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.