



# Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

## **SUPPLEMENTAL STATEMENT OF THE MASSACHUSETTS INSURANCE FEDERATION TO THE AUTO DAMAGE APPRAISER LICENSING BOARD IN CONNECTION WITH THE REVIEW OF REGULATIONS 212 CMR 2.00**

May 18, 2016

On May 4, 2016, the Massachusetts Insurance Federation (the “Federation”) submitted a statement to the Auto Damage Appraiser Licensing Board (the “ADALB” or the “Board”) at its meeting that day in connection with the comprehensive review of the ADALB regulations, 212 CMR 2.00 being undertaken by the Board. At the same time, the Federation also submitted proposed amendments to 212 CMR 2.00. The Federation is submitting this statement to the Board to supplement the materials and information in its original submission and to address certain issues that arose at or in connection with the May 4<sup>th</sup> meeting.

### **Additional Information About the Federation**

In its May 4<sup>th</sup> statement, the Federation provided information about the organization, including the fact that its members write more than 80% of the auto insurance business written in the state. To supplement that information, we are submitting herewith in Appendix A a list of all the Federation’s current members.

### **Use of Video and/or Digital Images**

In its May 4th submission, the Federation advocated for a restoration of the formal recognition of the permissibility of the use of video and digital images as part of the appraisal process. The Board had recognized the appropriateness of the use of video and/or digital images with documentation in Advisory Ruling 2014-01. That ruling was unfortunately and imprudently rescinded in 2015. As we noted in our May 4th statement, the Board's rescission of Advisory Ruling 2014-01 will not affect the continued use of video and/or digital images by insurers that have received approval of amended Direct Payment Plans that incorporate that technology.

Subsequent to the May 4th meeting, the Federation learned that several states have recently taken actions to eliminate the restrictions on the use of this technology. Specifically, Delaware, Pennsylvania and Virginia have all enacted changes in their statutes or regulations within the past year to eliminate such restrictions and to specifically allow the use of video/digital imaging. A copy of each state's revised statute or regulation is enclosed in Appendix B. These actions leave only three states with



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restrictions on the use of this technology – Connecticut, Massachusetts and Rhode Island. It is time for the ADALB to return to the 21st century (where it had been with the adoption of Advisory Ruling 2014-01). With respect to our proposed change to specifically allow the use of video or digital images in 212 CMR 2.04(1)(d), the Federation would not be opposed to qualifying provisions similar to those that appear in the Delaware regulation and in the Pennsylvania and Virginia statutes, to wit: an insurer may not require a motor vehicle owner to submit photographs, videos, or electronically transmitted digital imagery as a condition of an appraisal; and, when supplemental repair estimates become necessary after the repair work has been initiated due to the discovery of additional damage, they may be made by personal inspection or by photographs, videos or telephonic means, provided that in the case of disputed repairs a personal inspection is required.

## **Changes Proposed by the Alliance of Automotive Service Providers**

At the May 4th meeting, the Alliance of Automotive Service Providers (“AASP”) proposed a number of changes in 212 CMR 2.00. Our responses to those proposed changes are as follows:

- AASP proposes to amend 212 CMR 2.02(7) (Conflict of Interest) to require that drive-in appraisal services specifically inform consumers of their right to have their vehicles repaired at any licensed repair shop. This proposal is superfluous and not necessary because, as AASP notes, the ADALB statute, G.L. c. 26, § 8G specifically provides that “[n]o appraiser shall request or suggest that repairs be made in a specified repair shop.” Furthermore, 212 CMR 2.04(c) already specifically provides that “[n]o staff or independent appraiser, insurer, representative of insurer or employer of an independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual.” There is no need to require a separate and specific disclosure for one element of the appraisal process; it will only lead to potential confusion among the parties, especially since there is no indication, nor has the AASP submitted any factual basis suggesting, that consumers are not currently being adequately and fully informed of their right to have repairs performed at the repair shop of their choice. We also note that AASP’s drafting is confusing in itself because the proposed additional phrase “or on behalf of at a repair shop” is grammatically incorrect, and it is not clear where it is intended to be inserted in this provision.

- AASP proposes to amend 212 CMR 2.04(1)(c) (Conduct of Appraisals) by striking out the following sentence: “The provisions of 212 CMR 204(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.” The avowed purpose of this proposed change is to make sure consumers are aware of their right to use



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the repair shop of their choice. As indicated above, the ADALB statute is clear about consumers right to select the shop of their choice to make repairs. In addition, the Direct Payment Plan regulation is also very clear on this point. 211 CMR 123.06(1) provides as follows: “Consumer's Choice of Shop: No direct payment plan approved under 211 CMR 123.000, and no insurer in implementing such plan, shall require a claimant to have repairs made at any specific repair shop.” Consumers are clearly required to be informed of these rights and there is no indication that they are not being so informed. The proposed elimination of the reference to Direct Payment Plans in this regulation will do nothing to further enhance disclosure to consumers and claimants. Instead, it is likely to lead to conflict with the Division of Insurance regarding its regulation of Direct Payment Plans, which have separate statutory and regulatory authorization.

- AASP proposes to amend 212 CMR 2.04(1)(e) (Determination of Damage and Cost of Repairs) in the second to last sentence of the first paragraph to mandate the application of manufacturers’ recommended repair procedures and paint manufacturers’ procedures. Currently, this provision provides that a manufacturer’s warranty repair procedures and a paint manufacturer’s procedure may apply. Making such procedures mandatory as proposed by AASP rather than permissive as they are under the current regulation is unwarranted. AASP seeks to justify the change by asserting that “[b]y striking the word ‘may’ protects consumers by eliminating countervailing interpretations by appraisers for both insurers and repair shops that often leaves consumers without an ability to know what is appropriate and what is not.” This change does not protect consumers, but rather advances the interests of repair shops. AASP is correct that there may be “countervailing interpretations” in the negotiation process. The negotiation of the repair process of a vehicle after a covered loss is often filled with countervailing interpretations, and that is why it is necessary for a negotiation to take place. Furthermore, mandating the use of manufacturers’ recommended procedures is inappropriate and could lead to higher overall repair costs. Vehicle manufacturers are well known to recommend only the use of their own parts and are opposed to using aftermarket or like, kind and quality parts. To the extent manufacturers’ recommended procedures regarding parts were mandated, such a requirement would conflict with Division of Insurance regulation 211 CMR 133.04(1) regarding the requirement that appraisers specify the use of rebuilt, aftermarket or used parts in many instances.

- AASP proposes to amend 212 CMR 2.04(1)(e) (Determination of Damage and Cost of Repairs) in the fourth paragraph by adding at the beginning of the first sentence the following new sentence: “The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle.” AASP offers no explanation or justification for this proposed change. The Federation opposes the addition of this sentence because 211 CMR 133.04(1) already addresses the issue of operational safety in connection with the replacement of any part with a rebuilt,



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aftermarket, or used part. There is no need to have a separate statement about potential operational safety issue with respect to specific parts (in this instance suspension and steering parts). This change will only lead to confusion and potential conflict with Division of Insurance regulation 211 CMR 133.04(1).

- AASP proposes to amend 212 CMR 2.04(1)(e) (Determination of Damage and Cost of Repairs) in the fourth paragraph by inserting after the third sentence the following new sentence: “Costs associated with the shipping and handling of parts including cores shall not be considered overhead costs of the repair shop either and shall be listed on the appraisal.” AASP seeks to justify this proposed change by asserting that often aftermarket parts do not fit and the onus for returning the non-fitting part is on the shop owner. AASP argues that the insurer should pick up the cost “since the requirement of the part was suggested by the insurer.” First, we note that the AASP-proposed change is not limited to non-fitting aftermarket parts; rather, it would apply to any and all parts. Shops receive parts of all types – not just aftermarket parts – on a regular basis; it is a fundamental part of the auto repair process and business. Insurance carriers cannot be expected to bear the cost of what, in any other repair industry, would be considered part of the repairer’s operational overhead. Furthermore, Division of Insurance regulation 211 CMR 133.04(2) addresses the issue of responsibility for costs of returning parts purchased in the secondary market which are determined to be unfit, as follows: “If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree.” Because the Division’s regulation already specifically addresses the issue with respect to aftermarket parts, the AASP-proposed change will only lead to confusion and potential conflict between the regulatory regimes.

- AASP proposes to amend 212 CMR 2.04(1)(e) (Determination of Damage and Cost of Repairs) in the fourth paragraph by rewriting the fourth sentence to strike out the phrase “unless otherwise negotiated between the parties.” The AASP asserts that the elimination of this phrase will “further create a simpler, more transparent transaction for consumers and licensed appraisers.” The AASP also proposes to eliminate the reference to using “published manuals or other documentation” if a repair shop or appraiser does not accept the formula dollars times hours” and to substitute for that reference the phrase “published database”. The AASP asserts that this change reflects the technological evolution from the use of paper manuals when the regulation was first written to “an electronic manual which is incorporated into the various appraisal software.” According to the AASP, this amendment “further protects consumers by creating an easily understood and simple process for computing costs.” The Federation opposes this proposed change. There are a myriad of databases provided by a variety of sources, including those in the manufacturing of paint and others whose databases are unvetted,



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unsubstantiated, unproved and susceptible to manipulation. For example, databases offered by a particular paint manufacturer are set up with a pricing base which specifies a dollar amount that has been negotiated between that manufacturer and that one shop; that dollar amount can include a number of variables, including the length of the purchase contract to use the manufacturer's product, the volume expected to be purchased during the contract period and other factors. Under this kind of database and arrangement, the true cost of the actual products being used to refinish a specific vehicle cannot be determined and can be grossly inflated. What the AASP is seeking with these changes is endorsement through the regulation of databases whose accuracy has not been independently established. Moreover, the result is likely to be higher overall repair costs.

- AASP proposes to amend 212 CMR 2.04(1)(e) (Determination of Damage and Cost of Repairs) in the sixth paragraph by revising the first sentence to reduce the time period within which a completed appraisal must be transmitted to the repair shop from five business days to three business days from the date of assignment. The AASP-proposed revision would also eliminate the option of the completed appraisal being sent by mail and would substitute for that option electronic submission, as well as preserving the option of transmittal by fax. The reduction in time from five business days to three business days from the date of an assignment for an estimate to be completed in all cases is simply not realistic. There are too many variables that can occur and prevent this from happening. This change would require that every single assignment, regardless of dollar amount or complexity, occur without problem.

- AASP proposes to amend 212 CMR 2.04(1)(h) (Supplemental Appraisals) by rewriting the third and fourth sentences to require that in connection with supplementals the time within which an insurer's appraiser must inspect the damaged vehicle be reduced from the current three business days to one business day. More significantly, the AASP-proposed revision would also add a sentence giving the repair shop the right to use the supplement if the inspection does not occur within the prescribed one business day, "unless otherwise agreed upon." The proposed reduction in the time frame from three days to one day is wholly unrealistic. An appraiser's schedule is often set up days in advance, and it is simply untenable for a shop to call requesting a supplement and to expect an appraiser to be available within 24 hours. What is of even more concern is the punitive result the AASP proposes if the supplemental inspection does not occur within the 24-hour period, *i.e.*, allowing the shop to use its own supplement. These changes would give repair shops virtually unfettered freedom to use their own supplements, regardless of whether insurers agree to them or not. The changes also would undermine the detailed precautions built into the Expedited Supplemental Appraisal process in 212 CMR 204(1)(i). Finally, these proposed changes will most certainly lead to higher overall repair costs.



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In conclusion, the Federation wants to remind the Board of a several important requirements of Governor Baker's Executive Order No. 562, specifically that (i) the costs of a regulation not exceed its benefits and (ii) the regulation "does not unduly and adversely affect Massachusetts citizens . . . or the competitive environment in Massachusetts." Several of AASP's recommended changes will violate those precepts because they will lead to higher overall repair costs. Those changes will mean that the costs of the new regulations will exceed their putative benefits, and they will unduly and adversely affect Massachusetts citizens because the higher overall repair costs will almost certainly lead to higher auto insurance costs. The AASP-proposed changes would also be harmful to the Massachusetts competitive environment because the regulations governing the appraisal and repair of damaged vehicles would be even more out of step with such regulations in most other states than they are now.

We appreciate the Board's consideration of these comments, along with our May 4<sup>th</sup> submission. We look forward to working with the Board and the Division of Insurance to make changes in the regulations that benefit all parties.

Respectfully submitted,

John P. Murphy  
Executive Director



MAY 18, 2016 SUPPLEMENTAL STATEMENT TO THE ADALB  
APPENDIX A



## Mass Insurance Federation

### Member Companies

Acadia Insurance Group	AIM Mutual Insurance Cos.
Allstate Insurance	Amica Mutual Insurance Co.
Atlantic Charter Insurance Co.	Chubb Group
CNA Insurance Co.	The Concord Group
Coverys	CUNA Mutual Group
Encompass Insurance Co.	Farmers
GEICO	Hanover Insurance Group
Liberty Mutual Group	MAPFRE
MetLife Auto & Home	National General
Nationwide	Norfolk & Dedham Group
Preferred Mutual Insurance Co.	Progressive
Quincy Mutual Group	Safety Insurance Group
Selective Insurance Group	Travelers Insurance Group
USAA	Zurich North America

### Associate Members

The American Insurance Association (AIA)

National Association of Mutual Insurance Companies (NAMIC)

Property Casualty Insurers Association of America (PCI)

Reinsurance Association of America (RAA)

**SUPPLEMENTAL STATEMENT OF  
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**APPENDIX B**

**DELAWARE**

**DEPARTMENT OF INSURANCE  
OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 17 (18 Del.C. §311 &  
Ch. 17)  
18 DE Admin. Code 602

602 Motor Vehicle Physical Damage Appraisers

**Statement of Purpose**

18 Del.C., Ch. 17 has been amended to include motor vehicle physical damage appraisers under the license requirements therein. The following regulation is required to set standards of conduct for appraisers and to implement the provisions of Chapter 17 and establish through regulations guideline procedures for the manner in which motor vehicle physical damage appraisers conduct their business. It is not contemplated that this regulation shall apply where no appraisal has been assigned. Recognition is given to the fact that many minor damage claims do not require a formal appraisal and to require such would be an undue burden upon the parties involved.

**1.0 Definitions.**

~~1.1~~ As used in 18 Del.C., Ch. 17:

“**Appraisal**” is not considered to include an estimate of repair to be performed by the individual or entity making such estimate;

“**Appraiser**” means a motor vehicle physical damage appraiser licensed under the provisions of 18 Del.C. Ch.17. This shall include all persons who in this State practice the appraisal of motor vehicle physical damage.

~~“**Appraiser**” is not considered to include an estimate of repair to be performed by the individual or entity making such estimate;~~

“**Motor vehicle**” means any "motor vehicle" as defined in 21 Del.C. §101.

**2.0 Display of Appraiser License.**

~~2.1~~ Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Insurance Department and shall display it, upon request, to an owner whose vehicle is being inspected, to the repair shop representative involved or to any authorized representative of the Insurance Department

**3.0 Copies of Appraisal—Specification of New Parts.**

~~3.1~~ The appraiser shall exchange a legible copy of his appraisal with that of the repair shop selected to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly



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**DELAWARE (CONT.)**

indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replaced or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

**4.0 ~~Personal Inspection Required.~~ Manner of Inspection.**

~~4.1~~ No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than a personal inspection. Notwithstanding the requirement that an appraisal be based upon a personal inspection, the appraiser making the appraisal may prepare an initial repair estimate on an automobile that has been damaged as a result of a covered loss either from the appraiser's personal inspection of the vehicle or from photographs, videos or electronically transmitted digital imagery of the automobile; provided, however, that no insurer may require an owner of an automobile to submit photographs, videos, or electronically transmitted digital imagery as a condition of an appraisal.

**5.0 Specified Repair Shop Requirement.**

~~5.1~~ No appraiser shall require that repairs be made in a specified repair shop.

**6.0 Supplementary Allowances.**

~~6.1~~ Every appraiser shall promptly reinspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and the amount or extent of damages is in dispute

**7.0 Conduct of Appraisers.**

7.1 Every appraiser shall:

- 7.1.1 Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings;
- 7.1.2 approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals;
- 7.1.3 disregard any efforts on the part of others to influence his judgment in the interest of the parties involved;
- 7.1.4 prepare an independent appraisal of damage;
- 7.1.5 inspect a vehicle within six working days of assignment to the appraiser unless intervening circumstances (i.e., catastrophe, death, failure of the parties to cooperate) render such inspection impossible.

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**DELAWARE (CONT.)**

**8.0     Gratuities or Other Consideration.**

8.1 No appraiser shall:

- 8.1.1 Receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer or, if self-employed, his customer;
- 8.1.2 Traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal services rendered by him for his own benefit.

**9.0     Effective Date.**

This proposed amended regulation shall become effective 10 days after being published as a final regulation.

[Effective May 11, 2016]

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**PENNSYLVANIA**

**MOTOR VEHICLE PHYSICAL DAMAGE APPRAISER ACT –  
COMPLIANCE WITH ACT**

**Act of Apr. 14, 2016, P.L. 79, No. 13**

**Cl. 63**

Session of 2016

No. 2016-13

HB 1638

**AN ACT**

Amending the act of December 29, 1972 (P.L.1713, No.367), entitled "An act concerning motor vehicle physical damage appraisers; providing for the licensing of persons engaged in appraising physical damages to motor vehicles; fixing fees and prescribing unlawful acts and penalties," further providing for compliance with act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 11(b), (c) and (e) of the act of December 29, 1972 (P.L.1713, No.367), known as the Motor Vehicle Physical Damage Appraiser Act, are amended to read:

Section 11. Compliance with Act.--\* \* \*

(b) The appraiser shall ~~[leave]~~ **furnish** a legible copy of his appraisal ~~[with that of]~~ **to** the repair shop selected by the consumer to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replaced or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

(c) ~~[No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than a personal inspection.]~~ **An appraiser may prepare a repair estimate obtained by personal inspection or by photographs, videos or telephonic means. An appraiser may not require the submission of photographs or videos in order to obtain an appraisal. An appraiser, or an insurer as part of the appraisal process, shall disclose to the owner of the vehicle that there is no requirement to submit photographs or videos in order to obtain an appraisal.**

\* \* \*

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**PENNSYLVANIA (CONT.)**

(e) [~~Every appraiser shall promptly reinspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and the amount or extent of damages is in dispute.~~] **Supplemental repair estimates that become necessary after the repair work has been initiated due to discovery of additional damage to the motor vehicle may be made by personal inspection or by photographs, videos or telephonic means, provided that in the case of disputed repairs a personal inspection shall be required.**

\* \* \*

Section 2. This act shall take effect in 60 days.

APPROVED--The 14th day of April, A.D. 2016.

[Effective Date: June 13, 2016]

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**VIRGINIA**

CODE OF VIRGINIA § 38.2-510 as amended by Chapter 286 of 2016, effective July 1, 2016

§ **38.2-510**. Unfair claim settlement practices.

A. No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

17. Making appraisals of the cost of repairing ~~an automobile~~ *a motor vehicle* that has been damaged as a result of a ~~collision~~ *covered loss* unless such appraisal is based upon a personal inspection by a representative of the repair facility or *a representative of the insurer who is making the appraisal. Notwithstanding the requirement that an appraisal be based upon a personal inspection, the repair facility or the insurer making the appraisal may prepare an initial, which may be the final, repair appraisal on a motor vehicle that has been damaged as a result of a covered loss either from the representative's personal inspection of the motor vehicle or from photographs, videos, or electronically transmitted digital imagery of the motor vehicle; however, no insurer may require an owner of a motor vehicle to submit photographs, videos, or electronically transmitted digital imagery as a condition of an appraisal. Supplemental repair estimates that become necessary after the repair work has been initiated due to discovery of additional damage to the motor vehicle may also be made from photographs, videos, or electronically transmitted digital imagery of the motor vehicle, provided that in the case of disputed repairs a personal inspection is required.*

[Effective Date: July 1, 2016]