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April 13, 2017

Rep. Travis Clardy
The Texas Capitol
Austin, Texas

Via email

RE: Concerns regarding CSHB 3804

Rep. Clardy:

Now that we have had an opportunity to review CSHB 3804, we wanted to take a moment to share our concerns with the current version prior to our meeting on Monday, April 17 at 2:30 PM at your office. It's our hope this will help provide you with the concerns our member insurance companies have raised with the bill.

Before we begin with the analysis of the committee substitute, we'd like to share our overall concerns with the legislation. We believe CSHB 3804 would significantly impact the direct repair programs (DRPs) maintained by insurance companies. These programs allow for faster repairs and streamlined processes, benefitting the consumer, the insurer and the participating repair facility.

In short, this bill would have the practical effect of:

- Prohibiting insurance companies from offering valuable warranties on repair work done by DRP repair facilities.

- Creating a presumption that the offering of DRP benefits is an act of intimidation, coercion or threat by the insurance company.

- Restricting the ability of insurers and repair facilities to work together in making repairs when the estimating systems do not provide the best guidance.

- Create the potential for Insurance Code violations based upon the subjective opinions rather than using a reasonableness standard.

Below, we outline our specific concerns with the bill.

We continue to have concerns regarding the definition of terms. We have specific concerns regarding the following defined terms:

"Estimating system" - We appreciate the change in the committee substitute which no longer requires the Texas Department of Insurance (TDI) to approve of the estimating system. We are not sure, however, that estimating system warrants a definition in statute now that the TDI approval requirement has been eliminated.

"Prevailing rate" – This definition raises a number of questions, such as:

1. Who will select the third party to do the rate survey?

2. What criteria will be used to select the third party?

3. How will the third party be compensated? Will the state pay for this? If so, what sort of fiscal note should we expect?

4. How often will the survey be conducted?

5. Why should direct repair program shop rates be excluded from a survey on prevailing rates?

6. What is the purpose of this definition?

We ask that last question in part because in our reading of the bill, Chapter 1952, Subchapter G or 28 TAC 5.501, the term "prevailing rate" does not appear anywhere. If we are incorrect in that assertion, please let me know.

We would add that the market, rather than a survey conducted at government's direction, should dictate any "prevailing rate" considered by the industry. Market forces tend to respond quicker to changing dynamics in the auto repair marketplace.

"Reasonable and necessary amount" – This definition is unclear to us. Our specific concerns include:

1. When referring to "amount," what specifically does the definition contemplate? Amount of time required? Amount of money? Of parts?

2. As technology and repair practices evolve, and as OEM parts manufacturers stop making certain parts, how would those changes be reflected in the "manufacturer and estimating systems?"

3. What is the purpose of this definition?

We would raise this last question for the same reasons we raised it regarding the definition of "prevailing rate." In our reading of the bill, Chapter 1952, Subchapter G or 28 TAC 5.501, the term "reasonable and necessary amount" does not appear anywhere. If we are incorrect in that assertion, please let me know.

The amended language found in 1952.301 (a-1) continues to provide significant challenges for those insurers who provide consumers with the benefits of direct repair programs. Based on the testimony from Tuesday's hearing, it is clear that some proponents of the bill believe that having a list of shops on a direct repair program is "a loophole in the law" and that the existence of the list is de facto "steerage."

The suggested addition to statute found in the proposed provisions of (a-1)(1) is worded in an awkward fashion. We do not see why this added provision is necessary, as current law already prohibits insurers from limiting the consumer to certain repair facilities.

As we have stated previously, there are provisions in the current Insurance Code and Texas Administrative Code that prohibit the conduct outlined in the proposed (a-1)(2). Given the fact that some supporters of this legislation equate offering a list of repair facilities on a direct repair program to "intimidating, coercing or threatening" of the vehicle owner, we have a fundamental difference of opinion as to the value such programs provide consumers.

Proposed (a-1)(3) is perhaps the most surprising feature in the bill. It would prohibit insurance companies from offering warranties on the repair work provided by repair facilities in its direct repair programs. This is a benefit insurance companies offer not because they are required to do so, but because the marketplace has evolved to make this a benefit consumers expect. We do not believe the Legislature should prohibit insurance companies from offering a valuable benefit to consumers.

Similarly, the amended language found in 1952.301 (b) continues to provide significant challenges for those insurers who provide consumers with the benefits of direct repair programs.

For the most part, it appears the changes found in the proposed (a-1) are mirrored by the proposed changes in subsection (b). We believe these changes are harmful to insurer's abilities to handle claims efficiently and quickly.

The proposed change to 1952.302(3) eliminates the reasonableness standard regarding distance to a repair facility. The Texas Legislature uses a reasonableness standard for countless things in various codes. Eliminating it here would mean a consumer's sole determination of what is an inconvenient distance would be grounds for the consumer to make a TDI complaint alleging a violation of the Insurance Code. The reasonableness standard provides a workable method for determining whether an insurance company has met its obligations.

Making a deviation from an estimating system's calculations an Insurance Code violation, as 1952.302(4) would do, would make repairs more expensive and less efficient. We believe that the repair process works best when repairs are made utilizing the tools available to us and making adjustments to processes when it makes sense to do so. We are mindful of the need to repair the vehicle in a way that restores the function and safety of the vehicle to its pre-loss condition.

There are times where deviations from an estimating system's calculations are warranted. If the estimating system were to inadequately address a particular repair, we would certainly want the repair facility and the insurance company to work together to resolve the problem. This provision would eliminate any flexibility the parties have when a deviation is warranted, even if the parties agree to do so.

We look forward to discussing this with you further at our meeting on Monday. In the meantime, please do not hesitate to contact us.

Sincerely,

Paul Martin
Director – State Affairs
Southwest Region

CC: House Insurance Committee members