

Definition of Payment Systems

Under the Direct Payment System, it is illegal for an insurance appraiser to subsequently adjust an appraisal downward just because repairs are not done or are not done as written.

The major difference between the Completed Work Claim Form and Direct Payment methods of insured auto damage claims settlement in Massachusetts must be recognized:

- Under the Completed Work Claim Form system, the insurer is not obligated to pay for repairs to a damaged vehicle unless and until the repairs are completed, and the insurer then only has to pay for those repairs that are actually done.
- Under the Direct Payment system, the insurer must always pay the FULL amount necessary to repair a damaged vehicle to its pre-accident condition. The claimant then may negotiate with a repair shop and authorize whatever repairs, if any, the claimant wants to have done. Under the governing statutes (M.G.L., Chapter 90, §34O, and Chapter 175, §113O), governing regulations (211 CMR 123.05(3)), and all insurers' Direct Payment Plans, if repairs are not done according to the insurer's appraisal, the insurer's only remedy is to then reduce the insured actual cash value of the vehicle by the amount of the insurer's payment.
- There is no hybrid settlement system. For any particular claim, it is either Completed Work Claim Form or Direct Payment, not both.

No matter what a body shop negotiates with an insurance appraiser, it is a violation of the Massachusetts Consumer Protection Act, M.G.L., Chapter 93A, for a body shop to charge for repairs unless the CUSTOMER has authorized those particular repairs:

- A body shop's relationship with its customer is contractual. A Body shop can only charge for those repairs for which it has contracted with its customer. A customer is only obligated to pay for repairs for which he or she has contracted. The Direct Payment regulations (211 CMR 123.05(4)(a)) allow a body shop to act on behalf of its customer in requesting an insurer to pay more for repairs than was written on an insurer's appraisal. But unless it is a referral shop, a body shop has no contract with the insurer to perform those repairs.
- Under regulations issued by the Massachusetts Attorney General, it is a *per se* violation of the Massachusetts Consumer Protection Act for a body shop to charge for repairs which its customer has not authorized. 940 CMR 5.05(3) says it is an unfair or deceptive act or practice for a repairer to charge for repairs, unless the repairer has received specific authorization for the repairs from its customer, and that authorization can only be in one of the four manners set out in the regulation. Neither these regulations, nor any other law, allow a body shop to charge for repairs based upon an insurer's authorization.

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When the Direct Payment claim settlement system is used, under no circumstances can an insurance appraiser subsequently adjust an appraisal downward just because repairs are not done or are not done as written.

- Whether written solely based upon their own observations or as the result of negotiation with a body shop appraiser, when an insurance appraiser prepares a signed and stamped appraisal, he or she is swearing under the penalties of perjury that the repairs written are those necessary to return a damaged vehicle to its pre-accident condition. The Auto Damage Appraiser Licensing Board's regulations require that an appraisal be sworn to under the penalties of perjury (212 CMR 2.02(5)(b)). The regulations also require an appraiser to "itemize the cost of all parts, labor, materials, and necessary procedures required to restore the vehicle to pre-accident condition," (212 CMR 2.04(1)(e)).
- When writing a supplemental appraisal, an insurance appraiser cannot adjust a prior appraisal for a vehicle downward as a result of seeing that written work was not done or was not done as written. When he or she wrote the prior appraisal, the insurance appraiser was swearing that the repairs written were necessary to put the damaged vehicle back into its pre-accident condition. Although those repairs were not done or not done in the manner written by the appraiser, it does not change the prior appraisal. After an appraisal is written, it is then the customer's choice of what repairs, if any, to have done, as well as the manner in which such repairs should be done. The body shop legally can do only those repairs that are authorized by its customer, in the manner authorized by the customer. Under Direct Payment, there is no legal authority for an insurer to take away payments that were already sworn to as proper. Under Direct Payment, the insurer's only remedy is to reduce the insured actual cash value of the vehicle.

There Is No Legal Basis For Any Position Other Than What Is Stated Here.