

California Code of Regulations
Title 10: Investment
Chapter 5: Insurance Commissioner
Sub-Chapter 9: Insurance Fraud

Article 4

Program for Investigation and Prosecution of Automobile Insurance Fraud

§ 2698.60. Authority and Purpose

These regulations are promulgated pursuant to authority granted to the Insurance Commissioner under the provisions of Section 1872.8 of the California Insurance Code. The purpose of these regulations is to establish the level of annual assessment per insured vehicle in the state and to set forth the intended and allowable use of funds to be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud, including an application process and subsequent reporting requirements.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.61. Definitions

For the purposes of these regulations:

- (a) "Application" means the written document submitted to the Commissioner by which a local district attorney requests program funding, including a plan setting forth the district attorney's intended use of funds to enhance the investigation and prosecution of automobile insurance fraud.
- (b) "Assessment" means the annual fee paid by insurers for each vehicle insured under an insurance policy in the state to support enhanced investigation and prosecution of automobile insurance fraud.
- (c) "Case" means the file set up by the Division or district attorney(s) of the suspected fraudulent claims for the purpose of investigation, development of evidence and prosecution.
- (d) "Claim" means the request for payment of automobile insurance benefits which has been submitted to an insurer.
- (e) "Commissioner" means the Insurance Commissioner of the state of California.
- (f) "County Plan" means the plan submitted to the Commissioner as part of the application process by the local district attorney which details the projected use of the funds sought pursuant to these regulations.
- (g) "Department" means the California Department of Insurance.

- (h) "District Attorney" means the prosecuting officer of a California county jurisdictional district as provided in Government Code section 26500.
- (i) "Fraud Division" or "Division" means the California Department of Insurance Fraud Division, formerly known as the Bureau of Fraudulent Claims. The Bureau was designated the Fraud Division subsequent to the enactment of CIC Section 1872.8.
- (j) "Grantee" means a grant-funded applicant.
- (k) "In force" means an insurance policy, covering note or binder that has been issued and put into effect on a vehicle in this state.
- (l) "Incidental Expenses" means those costs incurred by the California Department of Insurance to administer the program and may include reasonable costs for collection of assessments, administrative support of the Fraud Division program component, management of the distribution and oversight of monies allocated to the district attorneys.
- (m) "Program" means those activities conducted by the Department, or any other agency, which are directed toward the enhanced investigation and prosecution of automobile insurance fraud and which require funding or administration through assessments and the distribution of funds to the Fraud Division, Department of California Highway Patrol and to district attorneys.
- (n) "Insurer" shall have the same meaning as used in California Insurance Code section 23.
- (o) "Regulations" means these regulations, California Code of Regulations Title 10, Chapter 5, Subchapter 9, Article 4.
- (p) "Suspected Fraudulent Claim" means a claim which has been referred to the Division because the insurer reasonably believes that the claim involves a person who has committed a fraudulent act related to automobile insurance.
- (q) "Transaction Date" means the date, by month, day and year, on which a vehicle is added to the Automobile Assessment File.
- (r) "Vehicle" shall have the same meaning as defined in Section 670 of the Vehicle Code and shall include commercial and non-commercial vehicles.
- (s) "Vehicle identification number (VIN)" means a series of Arabic number and Roman letter that is assigned to a motor vehicle by its manufacturer for identification purposes.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.62. Setting of the Annual Fee

- (a) Each insurer will be assessed and will pay a fee of twenty-five (\$.25) cents per vehicle for each quarter of a calendar year or any part thereof that it insures under a policy of insurance issued in this state. The assessment shall be made as provided in paragraph (b) of this section.

- (b) The Commissioner will invoice for the assessment specified in subsection (a) quarterly. The assessment shall be due on each vehicle, identified by its vehicle identification number for each quarter that a policy is in force on such vehicle and when a vehicle is added to or replaces one under an existing policy. Each quarterly assessment payment shall be submitted with a certification by an Officer of the insurer, under penalty of perjury under the laws of the State of California, that the number of vehicles reported therein is accurate and has been calculated in conformity with these regulations. The insurer shall, on request by the Commissioner, provide verification of the number of vehicles insured under a policy of insurance.
- (c) Subject to the prior written approval of the department, an insurer may use a method to identify the vehicles subject to this assessment other than provided in subsection (b) if, prior to using such methodology, the insurer:
- (1) demonstrates that it can not identify the vehicles it insures in this state by their individual vehicle identification number;
 - (2) submits a detailed description of proposed method,
 - (3) demonstrates the proposed alternative method is as accurate a method as that described in subsection (b) of this section, and
 - (4) agrees to use any method approved under this subsection until another method may otherwise be approved in writing by the department.
- (d) In order to verify of the number of vehicles for which an assessment is due and has been paid under this section, each insurer shall maintain a file known as the Automobile Assessment File. The Auto Assessment File shall contain the vehicle identification, policy number and transaction date for every vehicle for which a policy of insurance was in force for each quarter or any part thereof. For group insurers, the information shall be maintained on an individual company basis. The data shall be kept in a computer format that allows for the insurer to place each calendar year quarter data on a computer media format in a format specified by the Commissioner. The data in the file shall be kept for a minimum of five years after each calendar year quarter.
- (e) A separate assessment need not be paid on a vehicle insured on
- (1) A renewal policy issued within the same quarter of a calendar year, on the same vehicle by the same insurer or insurer with the same group.
 - (2) A multi-peril, umbrella or excess coverage policy where the vehicle is already covered under a primary policy.
 - (3) A road-side or mechanical breakdown policy that does not provide coverage for collision or other-than-collision (comprehensive) losses.
 - (4) A vehicle for which a policy has been written but was not put in force.
- (f) Payment of the assessment shall be considered delinquent if not paid by the insurer within forty-five (45) days of the invoice date. Any amount not paid within this period shall be charged a late fee in accordance with CIC section 12995.
- (g) Notwithstanding subdivision (a) of this section, if the Commissioner determines that the amount to be collected will exceed the amount to be expended from the annual Budget Act

appropriation to fund the program under this article, the Commissioner may discount the amount of the assessment to be collected to more closely meet the expenditures authorized by the annual Budget Act.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Sections 1872.8 and 12995, Insurance Code.

END OF SECTION

§ 2698.63. Application Procedure

- (a) A Request for Application (RFA) shall be distributed annually to each county district attorney in the state.
- (b) The RFA shall specify a deadline for submission which shall be 30 days after distribution.
- (c) Any district attorney who fails to submit an application, or whose application is not received by the Commissioner at the address specified in the RFA, by the close of business on the deadline date set forth in the RFA, may be subject to delay in receiving any funding award. Any district attorney from whom an application is not received within the ninety day period following the deadline set forth in the RFA shall not be considered for funding.
- (d) Applications for funding submitted by the district attorneys shall list the County Plan and budget elements as outlined in Section 2698.65 and shall include a Table of Contents to facilitate plan review.
- (e) Two or more counties may coordinate planning and submit plans addressing a multi-county area so long as each individual county plan identifies that county's proportion of the budget.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.64. Funding Procedure

- (a) Funding shall be in the form of a Grant Award Agreement and shall require an enabling resolution by the county Board of Supervisors approving and authorizing execution of the agreement.
- (b) Subsequent to the initial grant award, funding shall be distributed on a semi-annual basis, in July and January unless otherwise specified and justified in the Request for Application by the district attorney and contingent upon the adoption of each annual State Budget Act and the collection of assessments.
- (c) Any portion of distributed funds not used for local program purposes at the termination of each annual funding cycle shall be returned to the Insurance Fund to be reprogrammed for use in the subsequent program year for local program purposes. Counties shall provide the Department with an estimate of unused funds within sixty (60) days after the termination of the

program period and shall complete the transfer of funds back to the Insurance Fund within thirty (30) days after the completion of the final audit.

- (d) A district attorney who has undertaken investigations and prosecutions which will carryover into a subsequent program year may carryover into the subsequent year distributed but unused funds not exceeding twenty-five percent (25%) of the total annual funding, provided that the district attorney files a written plan which specifies and justifies to the Commissioner how those funds will be used at the end of the program period and at the time of the subsequent application. In the event that, due to extenuating circumstances, distributed funds exceeding twenty-five percent (25%) of the previous total annual funding are unused, the Commissioner shall consider and approve requests for carry-over of the unused funds to the extent that the district attorney provides justification.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.65. County Plan and Criteria for Distribution of Funds to the District Attorney Grantee

In order to be considered for funding, the local district attorney must submit a plan outlining the projected and prior use of funds for the purposes of the program. Funds assessed after January 1, 1993 shall be distributed among these district attorneys who have submitted a plan. Seventy percent (70%) of available funds will be distributed based on the applicant's proportionate share of the state's population, twenty percent (20%) will be distributed based on the applicant's proportionate share of the automobile insurance suspected fraudulent claims submitted to the Fraud Division during the prior three years and ten percent (10%) will be based on the Commissioner's analysis of the County Plan. The plan must be submitted within the statutory time-frame and must include the following elements:

- (a) Problem Statement. A description of the problem in the county, including how it arose, why it is important, its unique aspects, if any, and what is needed to resolve the problem, including supporting data, evidence, or indicators of fraudulent activity related to automobile insurance.
- (b) Qualifications. A description of the applicant's experience in operating the auto insurance fraud program using funds authorized under Section 1872.8 of the Insurance Code since 1989 including:
- (1) The total amount of funds received by the local district attorney since 1989.
 - (2) The total amount expended to support the district attorney's investigation and prosecution of auto insurance fraud, including details of the following items:
 - (A) Personnel costs including salaries and benefits.
 - (B) Operations expenses, including space, equipment, travel and other expenses in support of the program.
 - (3) The results obtained through implementation of the program, including:

- (A) The number of investigations initiated or coordinated with other law enforcement agencies.
- (B) The number of arrests and convictions.
- (C) The number of indictments or complaints.
- (D) A comparison of the amounts originally claimed in cases determined to be fraudulent compared to payments actually made.

(c) Program Strategy:

- (1) Outreach. A description of the manner in which the district attorney will develop his or her caseload, the source(s) for referrals for cases for investigation or prosecution, whether directly from the Fraud Division or from other law enforcement agencies and/or insurers.
- (2) Personnel. Justification for the number of personnel, position titles and position justification of personnel which will be funded fully or in part through grant funds, including descriptions of the qualifications of personnel to be assigned to the program and an organization chart identifying positions to be funded.
- (3) Program Coordination. A description of the manner in which the district attorney plans to coordinate involved sectors, including insurers, medical and legal provider communities, auto repair facility operators, the Division, the California Highway Patrol, local law enforcement and community safety agencies.
- (4) Management Plan. A detailed plan and schedule of the steps the district attorney will complete in achieving the objectives of the program and a discussion of how the program staff will be organized and what internal quality control and budget monitoring procedures will be employed. This part shall also include how this program will be integrated with any other anti-fraud program(s) maintained within the district attorney's office;
- (5) Staff development. The plan for ongoing training of personnel on the investigation and prosecution of automobile insurance fraud. Staff development may be addressed through coordination with the Division, insurers, or other entities.

(d) Objectives. This section shall outline the district attorney's anticipated achievements in the following areas:

- (1) Estimated number of investigations to be initiated during the grant period, including separate estimate of the number resulting from carryover investigations; and
- (2) Estimated number of prosecutions to be initiated during the grant period.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al . (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.66. Budget Proposal

The proposed budget forms the basis for program management and audit and must be presented in line-item detail and cover a one year program period from July through June. Annual budget levels shall be included in the RFA. The budget may include a line item for an independent audit to be completed at the end of each annual program period or as specified in the RFA. The district attorney's budget shall include the following:

- (a) Salaries and benefits computed at the county salary and benefit schedule.
- (b) Operation support costs.
 - (1) Estimated costs shall be listed by line item.
 - (2) Itemized costs shall conform to county policy regarding appropriateness of expenses.
 - (3) Allowable costs are those costs incurred in direct support of local program activities, including program related travel, equipment costs proportional to program-related use of the equipment, facilities cost, expert witness fees and audits.
- (c) Indirect costs: indirect costs are those not capable of being assigned to a particular project or program, but necessary to the operation of the organization and the performance of the program. The costs of operating and maintaining facilities, accounting services, and administrative salaries are examples of indirect costs. Indirect costs shall not exceed 10 percent of personnel salaries (excluding benefits and overtime) or 5 percent of total direct program costs (excluding equipment).
- (d) Non-allowable budget items include:
 - (1) Real property purchases and improvements.
 - (2) Aircraft or motor vehicles, except the purchase of motor vehicles which is specifically justified to the Commissioner.
 - (3) Interest payments.
 - (4) Food and beverages, except as purchased in connection with program-related travel. Food and beverages costs shall not exceed the applicant's per diem schedule.
 - (5) Weapons or ammunition unless included as part of a benefit package.
- (e) Program funds must be used to support enhanced investigation and prosecution of insurance fraud and shall not be used to supplant funds which in the absence of program funds would be made available for any portion of the local automobile insurance fraud program.
- (f) Budget modifications are allowable so long as they do not change the grant award amount.
- (g) The annual and proposed use of these funds are subject to full public disclosure.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.67. District Attorney Reporting and Commissioner's Audit

Each district attorney receiving funds pursuant to Section 1872.8 shall submit an annual report to the Commissioner regarding the local program and its accomplishments. Failure to submit the annual report shall affect subsequent funding decisions. The report shall include the following items:

- (a) An expenditure Report, which shall include information for the following:
 - (1) Personnel: salaries and benefits.
 - (2) Operations cost breakdown.
 - (3) Explanation of any significant variances from the county's plan as approved.
- (b) A financial audit report prepared by an independent, qualified state or local government auditor or independent public accountant licensed by the State of California or the county Auditor Controller. The audit report shall certify that local expenditures were made for the purposes of the program as specified in Section 1872.8 of the Insurance Code, these Regulations, the guidelines in the Request for Application and the County Plan.
 - (1) The auditor shall use county policies and procedures as the standard for verifying appropriateness of personnel and support costs.
 - (2) In the event that the program audit is included as part of an organization-wide audit, revenues and expenditures for the local program must be shown separately.
- (c) Except as provided in this section, financial audits under this program shall be performed in accordance with the standards set forth in Government Accounting Standards Revised (August 1999) published by the Controller General of the United States, General Accounting Office. The above General Accounting Standards Revised (1999) are incorporated herein by this reference.
- (d) A Program Report which shall include the following:
 - (1) The number of investigations initiated related to automobile insurance fraud.
 - (2) The number of arrests related to automobile insurance fraud.
 - (3) The number of prosecutions related to automobile insurance fraud.
 - (4) The number of convictions related to automobile insurance fraud.
 - (5) The dollar savings realized as a result of automobile insurance fraud case prosecutions.
 - (6) A summary of the activity directed toward the reduction of automobile insurance fraud with the following:
 - (A) Fraud Division.
 - (B) Insurance companies.

- (e) The deadlines for submission are as follows:
 - (1) Expenditure Reports and Audit reports must be submitted to the Commissioner no later than four (4) months after the close of the program period as specified in the Request for Application. A county may request an extension in the event an organization-wide audit will delay submission of the audit.
 - (2) Program Reports must be submitted to the Commissioner no later than two (2) months after the close of the program period as specified in the Request for Application.
- (f) There shall be a grant liquidation period of ninety (90) days following the termination of the program period during which costs incurred but not paid may be paid and deducted from the program budget.
- (g) The Commissioner may perform such additional audits or reviews of any local program as he or she may deem necessary and shall have access to all working papers, correspondence, or other documents, including audit reports and audit working papers related to the audit report or local program.
- (h) Notwithstanding any other provision of the law, the Commissioner shall perform a fiscal audit of the program administered under this section once every three years. The cost of a fiscal audit shall be shared equally between the department and the grantee.

Note: Authority cited: Section 1872.8, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.3d 805, 824.

Reference: Section 1872.8, Insurance Code.

END OF SECTION

§ 2698.68. Assessment of Annual Fee

The fee imposed pursuant to California Insurance Code Section 1872.81 shall be calculated and assessed in the same manner as set forth in Section 2698.62 of this Title and will be paid in annualized increments of seven and one half cents (\$.075) for each calendar year quarter or any part thereof.

Note: Authority cited: Section 1872.81, Insurance Code; Authority cited: Section 1872.81, Insurance Code; CalFarm Insurance Company et al. v. Deukmejian, et al. (1989) 48 Cal.2d 805, 824.

Reference: Section 1872.81, Insurance Code.

END OF SECTION