

Frequently Asked Questions¹

Statutes and Rules Regulating Insurance Coverage for Motor Vehicle Repairs

1. **Question: Do claimants have the right to require that motor vehicle repairs be done in accordance with vehicle manufacturer recommendations?**

Answer: Not always. The Department's jurisdiction to regulate insurance companies is grounded in the New Hampshire insurance laws, Title 37 of the Revised Statutes Annotated. The Department's jurisdiction over quality of workmanship issues with respect to motor vehicle repairs is specified in Ins 1002.17 (Willing and Able Repair Facilities; Motor Vehicle Insurance) (available at http://www.gencourt.state.nh.us/rules/state_agencies/ins1000.html), and RSA chapter 407-D (After Market Parts) (available at <http://www.gencourt.state.nh.us/rsa/html/XXXVII/407-D/407-D-mrg.htm>). These statutory and regulatory requirements do not state that in all instances a claimant has the right to have repairs done in accordance with vehicle manufacturer recommendations. Rather, Ins. 1002.17 and RSA 407-D provide their own standards that may or may not overlap with vehicle manufacturer recommendations. For example, vehicle manufacturers typically recommend that replacement parts be Original Equipment Manufacturer (OEM) parts. RSA 407-D does not require that motor vehicle repair facilities always use OEM parts. Rather, the statute permits the use of non-OEM parts when a vehicle is more than two years old or has more than 30,000 miles. The statute, as opposed to typical manufacturer recommendations, takes into account that a non-OEM replacement part should be permissible so long as the specific part at issue is at least equal in like kind and quality to the original part in terms of fit, quality and performance. RSA 407-D ensures quality for claimants and, at the same time, permits insurance companies to be cost effective.

¹ *Disclaimer: This document is intended only as a guide and may be subject to change without notification. Users should refer to NH statute RSA 400-A:16, RSA 407-D, and other applicable statutes and rules and the assistance of counsel for further explanation or confirmation of answers. Users may also contact the Insurance Department for assistance.*

2. Question: Do claimants have the right to a safe repair?

Answer: Yes, consistent with New Hampshire insurance laws. Those laws address motor vehicle repair safety in RSA 417:4, XX's (Coercion in Requiring Certain Automobile or Glass Repair) (available at <http://www.gencourt.state.nh.us/rsa/html/XXXVII/417/417-4.htm>) "usual and customary" rule and in RSA 407-D (After Market Parts) (available at, see answer to question 1). RSA 417:4, XX's phrase "usual and customary guarantees as to materials and workmanship" means that the work required to be performed by a motor vehicle repair facility due to an accident must be performed in the same manner as it would be performed by most motor vehicle repair facilities in the area during the ordinary course of repairing vehicles. A safety element with respect to repairs is implicit in the "ordinary course of repair" standard as set by motor vehicle repair facilities in the area at issue. In addition, RSA 407-D requires that certain parts be either OEM parts or non-OEM parts that are of "like kind and quality" to OEM parts. The "like kind and quality" standard includes a safety component in that non-OEM parts must be at least the same fit, quality and performance as the OEM part.

3. Question: Are insurance companies required to pay motor vehicle repair facilities a fair and reasonable price for services rendered?

Answer: Yes. New Hampshire's fair and reasonable price standards are set forth in Ins 1002.17 (Willing and Able Repair Facilities; Motor Vehicle Insurance) (available at, see answer to question 1) and RSA 417:4, XX (Coercion in Requiring Certain Automobile or Glass Repair) (available at, see answer to question 2). The way in which the statute accords an auto repair facility a right to be paid a fair and reasonable price is by giving the insurance company the right to limit payment for such work based on the fair and reasonable price in the area. The statute then explains that fair and reasonable means the price available from a recognized, competent and conveniently located, independent repair shop or facility which is willing and able to repair the damaged automobile within a reasonable time. Thus, what is "fair and reasonable" is determined through the competitive market among independent auto repair facilities.

4. **Question: What rights do claimants have in regard to receiving the usual and customary guarantees as to materials and workmanship?**

Answer: A claimant's rights to usual and customary guarantees with respect to motor vehicle repairs is set forth in Ins 1002.17 (Willing and Able Repair Facilities; Motor Vehicle Insurance) (available at, see answer to question 1). The rule provides that a claimant shall be entitled to the usual and customary guarantees as to materials and workmanship relative to the motor vehicle that is being repaired or replaced. This entitlement is also included in RSA 417:4 XX(c) (Coercion in Requiring Certain Automobile or Glass Repair) (available at, see answer to question 2). Although neither the rule nor the statute explains how the standard should be interpreted or applied in a given case, it is generally understood the usual and customary determination requires a fact intensive case-by-case inquiry.

5. **Question: What is the scope of insurers' right to use after market parts?**

Answer: An insurer's right to use after market (AM) parts is detailed in RSA chapter 407-D (After Market Parts)(available at, see answer to question 1). Pursuant to RSA 407-D:3-a, insurers must use original equipment manufacturer (OEM) parts for parts that fall within the parameters of the statute if a vehicle has been placed in service within the preceding 2 years and has 30,000 or fewer miles recorded on the odometer. RSA 407-D:3-a also requires OEM parts for leased vehicles if the lease provides that AM parts will cause a diminution of the residual value of the leased vehicle. If a vehicle does not fall within either of the above standards and the insurer does not want to authorize OEM parts, the insurer must then ensure that any AM parts used are, at a minimum, of like kind and quality to the OEM part in terms of fit, quality and performance. Insurers seeking to use after market parts must also meet the RSA 407-D disclosure standard.