

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 14, 2016

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00265

Ex Parte: In the matter of
Amending the Rules Governing
Unfair Claim Settlement Practices

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 400 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Unfair Claim Settlement Practices" ("Rules"), which amend the Rules at 14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110.

The amendments to Chapter 400 are necessary to conform the Rules to the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act (MDL-900), Unfair Property/Casualty Claims Settlement Practices Model Regulation (MDL-902), and Unfair

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Life, Accident and Health Claims Settlement Practices Model Regulation (MDL-903). These amendments clarify that Chapter 400 applies to all insurance policies issued in the Commonwealth of Virginia – except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance – including those policies that are issued by health maintenance organizations, dental maintenance organizations, dental provider organizations, health service plans, accident and sickness insurers, and dental and optometric service plans. In addition, the amendments set forth claims settlement standards that are specific to automobile insurance, property policies, and accident and sickness insurance, life insurance and annuities.

NOW THE COMMISSION is of the opinion that the Bureau's proposal to amend the Rules at 14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Unfair Claims Settlement Practices," which amend the Rules at 14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments, shall file such comments or hearing request on or before January 31, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2016-00265.

(3) The Bureau shall hold two meetings during the comment period in order for insurers and interested persons to address questions about the proposed Rules to the Bureau. The meeting for property and casualty insurers and interested persons will be held on Tuesday, January 10, 2017, and the meeting for life and health insurers and interested persons will be held on Thursday, January 12, 2017. Each meeting shall be held from 9 a.m. to 12 p.m. in the Commission's second floor courtroom, located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

(4) If no written request for a hearing on the proposal to amend the Rules as outlined in this Order is received on or before January 31, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(5) The Bureau forthwith shall provide notice of the proposal to amend the Rules by sending, by e-mail or U.S. mail, a copy of this Order, together with the proposal, to all insurers licensed by the Commission to operate in the Commonwealth of Virginia, except for insurers licensed exclusively to write workers' compensation insurance, title insurance or fidelity and surety insurance, as well as all interested persons.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed amended Rules on the Commission's website:

<http://www.scc.virginia.gov/case>.

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(8) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

(9) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle and Deputy Commissioner Rebecca Nichols.

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Ch. 400 Rules Governing Unfair Claim Settlement Practices

CHAPTER 400

RULES GOVERNING UNFAIR CLAIM SETTLEMENT PRACTICES

14VAC5-400-10. Scope Purpose and scope.

~~This~~ The purpose of this chapter defines certain is to set forth minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claim settlement practices for the acknowledgement, investigation and disposition of claims arising under insurance policies issued pursuant to the laws of the Commonwealth of Virginia. This chapter applies to all persons as hereinafter defined herein and to all insurance policies and insurance contracts except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance and contracts or plans for future hospitalization, medical, surgical, dental, optometric or legal services. This chapter is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of the Unfair Trade Practices Act (§ 38.2-500 et seq. of the Code of Virginia).

14VAC5-400-20. Definitions.

The definition of "person" contained in § 38.2-501 of the Code of Virginia shall apply to this chapter and, in addition, where used in this chapter following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agent" means any individual, corporation, association, partnership or other legal entity person authorized to represent an insurer with respect to a claim;_

"Claim" means a demand for payment by a claimant and does not mean an inquiry concerning coverage;_

"Claimant" means either a first party claimant, a third party claimant, ~~or both, and includes such claimant's a~~ designated legal representative ~~and includes a member of the claimant's immediate family~~ or any other representative designated by the claimant;.

"Commission" means the State Corporation Commission ~~of the Commonwealth of Virginia;~~.

"Documentation" includes, but is not limited to, all pertinent communications, including electronic communications and transactions, data, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

"Estimate" means a written statement of the cost of repairs to an automobile or to property, including any supplements.

"Explanation of benefits" means any form provided by any insurer that explains the amounts covered under a policy or plan and shows the amounts payable by a covered person to a health care provider.

"First party claimant" means an individual, ~~corporation, association, partnership or other legal entity asserting~~ insured, a beneficiary, a policy owner, or an annuitant who asserts a right to payment under an insurance policy ~~or insurance contract issued to such individual, corporation, association, partnership or other legal entity~~ arising out of the occurrence of the contingency or loss covered by such policy ~~or contract;~~.

"Insured" means a person covered by an insurance policy.

"Insurer" means a person licensed to issue or who issues any insurance policy ~~or insurance contract~~ in this Commonwealth ~~and~~ , or any third party acting on its behalf. Insurer shall also include surplus lines brokers;.

"Investigation" means all activities of an insurer ~~directly or indirectly related to the determination of liability and extent of loss under coverages afforded by an insurance policy or~~

~~insurance contract; used to make a determination that the claim should be paid, denied, or closed.~~

~~"Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;~~

~~"Person" has the same meaning as defined in § 38.2-501 of the Code of Virginia.~~

~~"Policy" means insurance policy, contract, certificate of insurance, evidence of coverage, or annuity.~~

~~"Proof of loss" means all necessary documentation reasonably required by the insurer to make a determination of benefit or coverage.~~

~~"Provider" means any person providing health care services.~~

~~"Third party claimant" means any individual, corporation, association, partnership or other legal entity person asserting a claim against any individual, corporation, association, partnership or other legal entity an insured or a provider filing a claim on behalf of an insured under an insurance policy or insurance contract of an insurer;~~

~~"Workers' Compensation insurance" includes, but is not limited to, Longshoremens and Harbor Workers' Compensation.~~

14VAC5-400-25. Compliance standards.

It shall be a violation of this chapter if any person:

A. Willfully violates any provision of this chapter; or

B. Commits a violation of any provision of this chapter with such frequency as to indicate a general business practice.

14VAC5-400-30. File and record documentation.

~~The An insurer's claim files shall be subject to examination by the Commission or by its duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.~~

A. An insurer shall maintain all claim data so that it is accessible and retrievable for examination. Claim data includes but is not limited to the claim number, line of coverage, date of loss and date received, as well as date of payment of the claim, date of denial or date closed without payment.

B. Detailed documentation shall be maintained for each claim file in order to permit reconstruction of all transactions relating to each claim.

C. Each document within the claim file shall be noted as to date received, date processed or date mailed.

D. All data and documentation shall be maintained for all open and closed files for the current year and, at a minimum, the three preceding calendar years.

14VAC5-400-40. Misrepresentation of policy provisions.

~~A. No person shall knowingly obscure or conceal from first party claimants, either directly or by omission, benefits, coverages or other provisions of any insurance policy or insurance contract when such insurer shall fail to fully disclose to a first party claimant all pertinent benefits, coverages or other provisions are pertinent to a claim of an insurance policy under which a claim is presented and document the claim file accordingly.~~

B. No person shall misrepresent benefits, coverages or other provisions of any insurance policy when such benefits, coverages or other provisions are pertinent to a claim.

~~C.~~ No insurer shall deny a claim for failure of a first party claimant to submit to physical examination or for failure of a the first party claimant to exhibit the property which is the subject of the claim without proof of demand by such insurer and unfounded refusal by a claimant to do so unless there is documentation of breach of the policy provisions in the claim file.

~~C. D.~~ No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a deny a claim based on the failure of a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with required by the policy provisions unless the failure to comply with such time limit in fact the notice requirements prejudices the insurer's rights.

~~D. E.~~ No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment include with any payment or in any accompanying correspondence that payment is "final" or "a release" of any claim unless the policy limit has been paid or a compromise settlement has been agreed to by the claimant.

~~E. F.~~ No insurer shall issue checks or drafts a payment in partial settlement of a loss or claim under for a specific coverage which contain that contains language that purports purporting to release the insurer or its insured the first party claimant from its total liability.

14VAC5-400-50. ~~Failure to acknowledge~~ Acknowledgement of pertinent communications.

A. ~~Every~~ An insurer, upon receiving notification of a claim shall, within 10 ~~working~~ calendar days, acknowledge the receipt of such notice to the first party claimant unless payment is made within such period of time. Acknowledgement may be sent to a provider claimant. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated. Notification given by a claimant to an agent of an insurer shall be notification to the insurer.

B. ~~Every insurer, upon~~ Upon receipt of any inquiry from the Commission respecting a claim, ~~an insurer~~ shall, ~~within 15 working days of receipt of such inquiry,~~ furnish an adequate a complete response to the inquiry within 14 calendar days of receipt.

C. An appropriate reply shall be made within 10 ~~working~~ calendar days on all other pertinent communications from a claimant ~~which~~ that reasonably suggest that a response is expected.

D. ~~Every insurer, upon~~ Upon receiving notification of a ~~first-party~~ claim, ~~an insurer~~ shall promptly provide necessary claim forms, instructions, and reasonable assistance ~~so that first party claimants can~~, including language translations, in order for the claimant to comply with the policy conditions and the insurer's reasonable requirements; ~~provided, however, every insurer, upon receiving notification of a third party claim, shall promptly provide the third party claimant with all necessary claim forms.~~ Compliance with this subdivision subsection within 10 ~~working~~ calendar days of notification of a claim shall constitute compliance with subsection A of this section.

14VAC5-400-60. Standards for prompt investigation of claims.

A. ~~Unless otherwise specified in the policy, within 15 working~~ Within 10 calendar days after receipt by the insurer of ~~properly executed proofs~~ proof of loss, a first party claimant shall be advised of the acceptance or denial of the claim by the insurer. If the insurer needs more time to determine whether a ~~first-party~~ claim should be accepted or denied, it shall notify the first party claimant within ~~45 working~~ 10 calendar days after receipt of the ~~proofs~~ proof of loss giving the reasons more time is needed.

B. ~~Unless otherwise specified in the policy, if~~ If an investigation of a first party claim has not been completed, ~~every~~ an insurer shall, within 45 calendar days from the date of the notification of a first party claim and every 45 calendar days thereafter, send to the first party claimant a ~~letter~~ written notice setting forth the reasons additional time is needed for investigation.

14VAC5-400-70. ~~Standards for prompt, fair and equitable settlement of claims~~ Claims settlement standards applicable to all insurers.

A. Any denial of a claim ~~must~~ , including a partial denial, shall be given to a claimant in writing and the claim file of the insurer shall contain a copy of the denial.

B. ~~No~~ An insurer shall ~~deny a claim unless~~ provide a reasonable written explanation of the basis for such any claim denial ~~is included in the written denial. Specific~~ The written explanation shall provide a specific reference to a policy provision, condition or exclusion ~~shall be made when a denial is based on such provision, condition or exclusion.~~

C. ~~Insurers~~ An insurer shall not ~~fail to settle first party claims~~ deny a claim on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

D. In any case where there is no dispute as to coverage or liability, ~~every~~ an insurer ~~must~~ shall offer to a first party claimant, ~~or to a first party claimant's authorized representative,~~ an amount ~~which~~ that is fair and reasonable as shown by the investigation of the claim, provided the amount so offered is within policy limits and in accordance with policy provisions.

E. An insurer shall not unreasonably refuse to pay any claim in accordance with the provisions of the policy.

F. An insurer shall not compel a first party claimant to institute a suit to recover amounts due under the policy by offering substantially less than the amounts ultimately recovered in a suit brought by the first party claimant.

14VAC5-400-80. ~~Standards for prompt, fair and equitable settlements~~ Claims settlement standards applicable to automobile insurance.

A. Where liability is reasonably clear, ~~insurers~~ an insurer shall not recommend that a third party claimants claimant make ~~claims~~ a claim under their its own ~~policies~~ policy solely to avoid paying ~~claims~~ a claim under ~~such insurer's insurance~~ the insured's policy or ~~insurance contract~~.

B. ~~Insurers~~ An insurer shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

C. ~~Insurers~~ An insurer shall, ~~upon the claimant's request,~~ include the first-party claimant's insured's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the ~~first-party claimant~~ insured, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

D. If When an insurer prepares an estimate of the cost of automobile repairs, ~~such~~ the estimate shall be in an amount for which ~~it may be reasonably expected~~ the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located qualified repair shops.

E. When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

F. When an insurer elects to repair and the automobile is ~~in fact~~ repaired in a repair shop ~~selected by the insurer~~ or designated by the insurer as a repair shop that will repair the

automobile for the amount offered by the insurer, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

G. An insurer shall provide reasonable notice to a claimant prior to termination of payment for automobile storage charges. The insurer shall provide reasonable time for the claimant to remove the automobile from storage prior to the termination of payment. Unless the insurer has provided a claimant with the name of a specific towing company prior to the claimant's use of another towing company, the insurer shall pay all reasonable towing charges irrespective of the towing company used by the claimant.

H. Prior to termination of payment for transportation or rental reimbursement expenses, the insurer shall provide reasonable time for the claimant to receive payment for automobile repairs or replacement. In the event of a total loss, the insurer shall provide reasonable time for a claimant to acquire a replacement automobile.

14VAC5-400-90. Claim settlement standards applicable to property policies.

When an insurer prepares an estimate of the cost of repairs to property, the estimate shall be an amount for which the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant.

14VAC5-400-100. Claims settlement standards applicable to accident and sickness insurance, life insurance and annuities.

A. An insurer shall review any notice of claim or proof of loss submitted against one policy to determine if such notice of claim or proof of loss may fulfill the insured's obligation under any other policy issued by that insurer.

B. For accident and sickness claims, an insurer shall provide to a first party claimant an explanation of benefits describing the coverage for which the claim is paid or denied within 10

calendar days of receipt of proof of loss, unless otherwise specified in the policy. An insurer shall provide an explanation of benefits for prescription drug claims that may be provided in the aggregate no less frequently than quarterly.

C. An insurer shall not arbitrarily or unreasonably deny or delay payment of a claim in which liability has become reasonably clear.

14VAC5-400-110. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.