

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 520, 2304(16), and 2312 (18 **Del.C.** §§311, 520, 2304(16) & 2312)

18 **DE Admin. Code** 903

PROPOSED

PUBLIC NOTICE

903 Prompt Payment of Settled Claims

A. Type of Regulatory Action Required

Proposal of amendments to Regulation 903 - Prompt Payment of Settled Claims.

B. Synopsis of Subject Matter of the Regulation

Regulation 903 contains the requirements for prompt payment of settled insurance claims as required by 18 **Del.C.** §2304(16).

The Delaware Department of Insurance (the Department) is proposing to amend Regulation 903 to allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 **Del.C.** §2344 by electronic means. The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 **Del.C.** §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

C. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 903. The proposed amendments appear below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1st day, May, 2020. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
ATTN: Docket 4233-2019
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@delaware.gov

903 Prompt Payment of Settled Claims [Formerly Regulation 81]

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 520, 2304(16), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Scope

This regulation ~~will apply~~ applies to all ~~insurers~~ insurance carriers that settle claims either pursuant to a legal action or otherwise.

3.0 Purpose

The purpose of this regulation is to ~~ensure prompt payment of claims pursuant to the settlement of claims set forth requirements for prompt payment of settled insurance claims~~ by insurance carriers as required by 18 **Del.C.** §2304(16)(f).

4.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Claimant" means a person covered under an insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on that person's behalf.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Insurance carrier" means any entity that provides insurance in this State and includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with insurance provided in this State.

4.0 5.0 Prompt Payment

5.1 Under 18 ~~Del.C.~~ §2304(16)(f), insurance carriers are required in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. An insurance carrier shall make prompt payment of a claim that has settled. ~~For the purpose purposes of this regulation regulation,~~ prompt payment ~~is defined as remittance of the check~~ requires payment within 30 days from any one of the following dates:

5.1.1 ~~the date of agreement, memorialized in writing~~ The date on which a settlement agreement is fully executed by both the claimant and the insurance carrier, including the settlement of a case prior to a hearing but pursuant to an action filed in court;

5.1.2 The date a final order is issued by the court; or

5.1.3 ~~unappealed~~ The last day by which an arbitration award may be appealed as provided in applicable appellate court rules, when neither a claimant nor an insurance carrier has elected to file an appeal.

5.2 Payment shall be made in accordance with the following:

5.2.1 The insurance carrier shall allow a claimant to choose to receive the payment by check or by electronic payment; and

5.2.2 If the payee chooses to receive an electronic payment, the payment may be by any means except for a prepaid card or other electronic transaction method for which the payee incurs or may incur any transaction fees.

5.2.3 Notwithstanding anything in this regulation to the contrary, payments for settled workers compensation claims shall be made in the form required by 19 ~~Del.C.~~ §2344.

5.0 Settlement of Claims

5.1 The language in 18 ~~Del.C.~~ §2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon, or ordered by the court, or awarded by an arbitration panel, the carrier is required to make prompt payment.

6.0 Procedure and Penalties for Failure to Remit Prompt Payment Of A Settled Claim

6.1 In the event that an insurance carrier does not remit prompt payment pursuant to this regulation and ~~If the Department has determined~~ determines that said an insurance carrier has ~~done so~~ failed to remit prompt payment of a settled claim as required by 18 ~~Del.C.~~ §2304(16)(f) and this regulation in bad faith and with such frequency as to indicate a general business practice, the Department ~~shall~~ may file an administrative action against the insurance carrier pursuant to in accordance with 18 ~~Del.C.~~ §323 and the Administrative Procedures Act. ~~The commissioner~~ If the Commissioner finds after a hearing that the insurance carrier has violated 18 ~~Del.C.~~ §2304(16)(f) and this regulation, the Commissioner may take all of the following actions:

6.1.1 Award interest to the claimant in an amount equal to the prime rate of interest plus 3% on the amount of the claim, which shall be calculated from the applicable date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3%, listed in subsection 5.1 of this regulation;

6.1.2 Fine the insurer insurance carrier according to the provisions outlined in 18 ~~Del.C.~~ §329, §329 and impose other such penalties as provided in 18 ~~Del.C.~~ §520.

6.1.3 Fine any person(s) person involved with the claim and/or or settlement according to the provisions outlined in 18 ~~Del.C.~~ §2308(a)(1).

7.0 General Business Practice

- 7.1 Within a ~~36-month~~ 36-month period, three instances of a ~~an insurance~~ carrier's failure to make prompt payment, as defined in ~~section 4.0 above~~ Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the ~~insurer~~ insurance carrier is in violation of 18 **Del.C.** §2304(16)(f).
- 7.2 The ~~36-month~~ 36-month period established in ~~section 7.1 above~~ subsection 7.1 of this regulation shall be measured from the applicable date ~~the amount was agreed upon, ordered by the court, or awarded by arbitration~~ as set forth in subsection 5.1 of this regulation.

8.0 Separability

- ~~8.1~~ If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected and shall remain valid.

9.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an ~~insurer~~ insurance carrier or its representative based upon a violation of 18 **Del.C.** §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 **Del.C.** §2304(16).

10.0 Effective Date

This regulation shall become effective 30 days after publication in the Delaware *Register of Regulations*. The amendments to this regulation shall become effective on the eleventh day after publication of a final order signed by the Commissioner adopting the amendments into this regulation.

23 DE Reg. 831 (04/01/20) (Prop.)