

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 2304(16), (17), and (18) (18 **Del.C.** §§311, 2304(16), (17), & (18))
18 **DE Admin. Code** 902

PROPOSED

PUBLIC NOTICE

902 Prohibited Unfair Claim Settlement Practices

A. Type of Regulatory Action Required

Proposal of amendments to Regulation 902 – Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26].

B. Synopsis of Subject Matter of the Regulation

Pursuant to the authority conferred by 18 **Delaware Code**, Sections 311 and 2304(16), (17), and (18), the Delaware Department of Insurance (the Department), is proposing to amend Regulation 902 to update and clarify requirements concerning prohibited unfair claim settlement practices. Specifically, the Department is proposing to add new subsection 3.1.14, which includes a failure to promptly settle a claim as required under Regulation 903 as an unfair claim settlement practice. Please see the Department's proposal of amendments to Regulation 903, published in the March 1, 2020 and April 1, 2020 editions of the *Register of Regulations*, that among other things, clarifies what constitutes "prompt payment."

The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

C. Notice and Public Comment

The Department does not plan to hold a public hearing on the proposed amendments to Regulation 902. 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 of June, 2020. Any such requests should be directed to:

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Delaware Department of Insurance
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902 Prohibited Unfair Claim Settlement Practices

~~Claim Settlement Practices Which, When Committed Or Performed with Such Frequency as to Indicate a General Business Practice, Are Prohibited~~

1.0 Purpose

The purpose of this regulation is to set forth claim settlement practices which, when committed or performed with such frequency as to indicate a general business practice, are prohibited.

2.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 2304(16), (17), and (18), and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

4.03.0 Authority for Regulation; Basis for Regulation Prohibited Claims Settlement Practices

- 1.1 ~~18 Del.C. §314 authorizes the Insurance Commissioner to "...make reasonable rules and regulations necessary for or as an aid to the administration or effectuation of any provision of this title."~~
- 1.2 ~~18 Del.C. Ch. 23 entitled "Unfair Business Practices in the Insurance Business," 18 Del.C. §2304(16) Unfair Claim Settlement Practices; 18 Del.C. §2304(17) Failure to Maintain Complaint Handling Procedures; and 18 Del.C. §2304(18) Misrepresentation in Insurance Applications, provide the basis for this regulation.~~
- 1.2.13.1 ~~The Following Claim Settlement Practices When Committed~~ following claim settlement practices when committed or Performed performed with such Frequency frequency as to Indicate indicate a General Practice general practice are Prohibited prohibited:
- 1.2.1.43.1.1 Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue.
- 1.2.1.23.1.2 Failing to acknowledge and respond within 15 working days, upon receipt by the insurer, to communications with respect to claims by insureds arising under insurance policies.
- 1.2.1.33.1.3 Failing to implement prompt investigation of claims arising under insurance policies within 10 working days upon receipt of the notice of loss by the insurer.
- 1.2.1.43.1.4 Refusing to pay claims without conducting an investigation based upon all available information when the notice of loss received by the insurer indicates that such an investigation is necessary to properly determine such a denial of payment.
- 1.2.1.53.1.5 Failing to affirm or deny coverage or a claim or advise the person presenting the claim, in writing, or other proper legal manner, of the reason for the inability to do so, within 30 days after proof of loss statements have been received by the insurer.
- 1.2.1.63.1.6 Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become clear.
- 1.2.1.73.1.7 Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts which they might be entitled to under normal fair claims evaluations.
- 1.2.1.83.1.8 Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.
- 1.2.1.93.1.9 Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge of the insured.
- 1.2.1.103.1.10 Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which the payment has been made.
- 1.2.1.113.1.11 Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of a formal proof of loss form, both of which submissions contain substantially the same information, unless the formal proof of loss is required by law, prevailing rules, or the policy.
- 1.2.1.123.1.12 Failing to promptly settle claims, where liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.
- 1.2.1.133.1.13 Failing when requested to promptly provide an explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement. Such explanation may be made verbally but when given, must be documented in the claims file.
- 3.1.14 Within a thirty-six (36) month period, three instances of a carrier's failing to make prompt payment of a claim as required under 18 DE Admin. Code 903.

2.04.0 Violations; Penalties

- 2.1 Failure to comply will subject the violators to the provisions of ~~18 Del.C. §1732 (c)(2)~~ 18 Del.C. §1712 and 18 Del.C. §§2307(a) and 2308, which ~~deals~~ deal with hearings, license revocation, suspension or fine for non-compliance of any regulation.

3.05.0 Severability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

4.06.0 Effective Date

This Regulation ~~shall become~~ became effective August 1, 1977. The amendments to this Regulation shall become effective ten (10) days after publication of the final order adopting the amendments.

23 DE Reg. 920 (05/01/20) (Prop.)