
TITLE 18 INSURANCE
DELAWARE ADMINISTRATIVE CODE

DEPARTMENT OF INSURANCE
900 Consumer Rights

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 applies to all persons that settle claims either pursuant to a legal action or otherwise.

24 DE Reg. 283 (09/01/20)

3.0 Purpose

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

24 DE Reg. 283 (09/01/20)

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 designated by such person and who is entitled to make claims on that person’s behalf including that person’s legal representative, but does not include any provider or other third party who has provided services to a claimant.

“**Commissioner**” means the Commissioner of the Delaware Department of Insurance.

“**Person**” shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society and other legal entity engaged in the business of insurance, including agents, brokers and adjusters. Person shall also mean medical service plans and hospital service plans as defined in 18 **Del.C.** §6302. For purposes of this regulation, medical hospital service plans shall be deemed to be engaged in the business of insurance.

24 DE Reg. 283 (09/01/20)

5.0 Prompt Payment

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

5.1.1 The date on which a settlement agreement is fully executed, 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;

5.1.3 The date that all of claimant’s documentation has been received and investigation of the claim is complete; or

5.1.4 The last day by which an arbitration award may be appealed as provided in applicable appellate court rules, when neither party to the arbitration has elected to file an appeal.

5.2 Payment shall be made in accordance with the following:

5.2.1 The person may allow a claimant to choose to receive the payment by check or by electronic payment;

5.2.2 If the claimant chooses to receive an electronic payment, the person shall not:

5.2.2.1 Use an institution or issuer to pay claims that imposes charges or fees upon the claimant that reduce the claim payment amount in any way; or

5.2.2.2 Impose any charges or fees upon the claimant in connection with the electronic payment;

TITLE 18 INSURANCE

DELAWARE ADMINISTRATIVE CODE

5.2.3 For purposes of subsection 5.2 of this regulation, a fee that may be incurred by the claimant due to the claimant's election of certain means to access the funds, including but not limited to the following, shall not be considered a prohibited fee that reduces the claim payment amount:

- Fees charged by the claimant's bank to accept a wire transfer;
- Fees for multiple ATM withdrawals charged by the claimant's bank under the terms of the claimant's account; or
- Fees charged by the financial institution used by the claimant to access monies (such as ATM fees charged by banks other than the bank in which the claimant has an account); and

5.2.4 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.

24 DE Reg. 283 (09/01/20)

6.0 Penalties for Failure to Remit Prompt Payment of a Settled Claim

6.1 If the Department determines that a person has 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 may file an administrative action against the person in accordance with 18 **Del.C.** §323 and the Administrative Procedures Act. If the Commissioner finds after a hearing that the person has violated 18 **Del.C.** §2304(16)(f) and this regulation, the Commissioner may:

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 listed in subsection 5.1 of this regulation;

6.1.2 Fine the person according to the provisions outlined in 18 **Del.C.** §329 and impose other such penalties as provided in 18 **Del.C.** §520.

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

24 DE Reg. 283 (09/01/20)

7.0 General Business Practice

7.1 Within a 36-month period, three instances of a person's failure to make prompt payment, as defined in Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the person is in violation of 18 **Del.C.** §2304 (16)(f).

7.2 The 36-month period established in subsection 7.1 of this regulation shall be measured from the applicable date as set forth in subsection 5.1 of this regulation.

24 DE Reg. 283 (09/01/20)

8.0 Separability

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.

24 DE Reg. 283 (09/01/20)

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 a person or the person's 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).

24 DE Reg. 283 (09/01/20)

10.0 Effective Date

This regulation became effective on October 1, 2001. The amendments to this regulation shall become effective on September 11, 2020.

24 DE Reg. 283 (09/01/20)