
TITLE 18 INSURANCE
DELAWARE ADMINISTRATIVE CODE

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
900 Consumer Rights

902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]

1.0 Purpose

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

26 DE Reg. 112 (08/01/22)

2.0 Authority

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

26 DE Reg. 112 (08/01/22)

3.0 Prohibited Unfair Claims Settlement Practices

3.1 The following unfair claim settlement practices when committed or performed with such frequency as to indicate a general business practice are prohibited:

- 3.1.1 Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue.
- 3.1.2 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.
- 3.1.3 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.
- 3.1.4 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.
- 3.1.5 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.
- 3.1.6 Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become clear.
- 3.1.7 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.
- 3.1.8 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.
- 3.1.9 Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge of the insured.
- 3.1.10 Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which the payment has been made.
- 3.1.11 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.
- 3.1.12 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.
- 3.1.13 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.

3.2 It shall be considered prima facie evidence of a general business practice of committing an unfair claim settlement practice if the Department finds that, within a given sample of claims sampled by the Department

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during an investigation or examination of the insurer, the total number of unfair claims settlement practices exceeds four percent or more of claims, and the general business practice violation occurred within:

3.2.1 A single category of practices prohibited under subsection 3.1 of this regulation; and

3.2.2 A single 12-month period.

3.3 The presumption that a general business practice violation occurred pursuant to subsection 3.2 of this regulation is not, in and of itself, an additional general business practice violation.

3.4 An insurer may overcome the presumption that a general business practice violation has occurred by presenting any relevant evidence to the Commissioner, including evidence relating to the harm to claimants caused by the violation, the nature of the violation, and the insurer's intent.

3.5 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).

3.6 Section 3.0 of this regulation does not apply to general business practice violations if the general business practice is otherwise regulated under 18 **DE Admin. Code** 1310.

26 DE Reg. 112 (08/01/22)

4.0 Violations; Penalties

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

26 DE Reg. 112 (08/01/22)

5.0 Severability

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

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6.0 Effective Date

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

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