

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)
18 DE Admin. Code 1408

PROPOSED

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 1408 relating to payment of long-term care services. The docket number for this proposed regulation is 1337.

The purpose of the proposed regulation 1408 is to require timely payment of claims involving Long Term Care insurance. The text of the proposed amendment is reproduced in the March 2010 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday April 5, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

1408 Standards for Prompt, Fair and Equitable Settlement of Claims for Long-Term Care Insurance

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311, 2304(16), and 2312 and 7107. It is promulgated in accordance with 29 Del.C. Ch. 101.

2.0 Scope

This regulation shall apply to all carriers as defined herein.

3.0 Definitions

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

“Carrier” means any entity that provides long-term care insurance in this State. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with long-term care plans.

“Days” means calendar days.

“Institutional Provider” means a hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care or other coverage which may be provided in a long-term care policy. An entity must be a Provider under this Regulation in order to be an Institutional Provider.

“Policyholder,” “Insured,” or “Subscriber” means a person covered under a long-term care insurance policy or a representative (other than a provider) designated by such person and entitled to make claims on his behalf.

“Provider” means any entity or individual licensed, certified, or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide long-term care services, irrespective of whether the entity or the individual is a participating provider pursuant to a written agreement with the carrier. When used alone, the term “provider” shall include individual providers and institutional providers.

4.0 Prompt Payment of Clean Claims

- 4.1 "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.
- 4.2 "Clean Claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstances requiring special treatment that prevents timely payment from being made on the claim.
- 4.3 Within thirty (30) days after receipt of a claim for benefits under a long-term care insurance policy or certificate, an insurer shall pay such claim if it is a clean claim, or send written notice acknowledging the date of receipt of the claim and one of the following:
 - 4.3.1 The insurer is declining to pay all or part of the claim and the specific reason(s) for denial; or
 - 4.3.2 That additional information is necessary to determine if all or any part of the claim is payable and the specific additional information that is necessary.
- 4.4 Within thirty (30) days after the receipt of all the requested additional information, an insurer shall pay a claim for benefits under a long-term care insurance policy or certificate if it is a clean claim, or send a written notice that the insurer is declining to pay all or part of the claim, and the specific reason or reasons for denial.
- 4.5 If an insurer fails to comply with 4.3 or 4.4, such an insurer shall pay interest at the rate of 1% per month on the amount of the claim that should have been paid but that remains unpaid after forty-five (45) days after the receipt of the claim with respect to 4.3 or all requested additional information under 4.4. The interest payable pursuant to this sub-section shall be included in an late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.
- 4.6 These provisions shall not apply where the insurer has a reasonable basis supported by specific information that such claim was fraudulently submitted.
- 4.7 Any violation of this regulation by an insurer if committed flagrantly and in conscious disregard of the provisions of this regulation or with such frequency as to constitute a general business practice shall be considered a violation of 18 Del.C. §2304.

5.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

6.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a carrier or its representative based upon a violation of 18 Del.C. §2304.

7.0 Separability

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

8.0 Effective Date

This regulation become effective for all claims submitted for payment on or after July 1, 2010.