

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)  
18 **DE Admin. Code** 901

### PROPOSED

#### 901 Arbitration of Automobile and Homeowners' Insurance Claims

**INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML** hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 901 relating to Arbitration. The docket number for this proposed amendment is 1278.

The purpose of the proposed amendment to regulation 901 is to update the existing regulation to conform to statutory changes relative to health insurance arbitration and to provide for the payment of legal services to prevailing consumers in arbitration cases. The text of the proposed amendment is reproduced in the November 2009 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 December 7, 2009, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

#### 901 Arbitration of Automobile and Homeowners' Insurance Claims

##### 1.0 Purpose and Statutory Authority

- 1.1 The purpose of this Regulation is to implement 18 **Del.C.** §331, ~~Ch. 23~~, and 21 **Del.C.** §§2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile or homeowners' policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 2312, and 29 **Del.C.**, Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

**5 DE Reg. 1746 (3/1/02)**

##### 2.0 Insurer's Duty to Arbitrate

- 2.1 Every insurer providing coverage or benefits in this State for automobile or homeowners' insurance policies shall submit to arbitration of covered claims (as defined by 18 **Del.C.** §331 and 21 **Del.C.** §§2118 and 2118B) by their insureds unless it is exempt from arbitration by the Insurance Commissioner.

**5 DE Reg. 1746 (3/1/02)**

##### 3.0 Exemption from Arbitration

- 3.1 Insurers requesting exemption from the duty to arbitrate under a homeowners' insurance policy shall submit to the Insurance Commissioner the following:
  - 3.1.1 A request for exemption from arbitration;
  - 3.1.2 Copies or description of policies or plans for which exemption is requested;
  - 3.1.3 A detailed description of its internal review or appraisal procedures;
  - 3.1.4 Copies of documents to be provided to the insured describing its internal procedures including a statement that the insurer will be bound by a decision favorable to the insured;

- 3.1.5 A certification by an officer of the insurer with binding authority that the procedures described will be followed in all cases, that the insurer will be bound by a decision favorable to the insured and that all documents submitted are true and accurate; and
- 3.1.6 Payment of a non-refundable fee of \$75.00.
- 3.2 The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under section 3.1 contain the following minimum requirements:
  - 3.2.1 The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor may participate on the panel nor anyone under that supervisor's control;
  - 3.2.2 The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;
  - 3.2.3 The insured is permitted to be represented by counsel;
  - 3.2.4 The insured is informed as to the right to appeal, if any, an adverse decision;
  - 3.2.5 The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and
  - 3.2.6 The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.
- 3.3 The Commissioner may suspend, revoke or refuse to continue any exemption after notice and a hearing establishing violation of the above. The exemption provided above is not effective until the application has been filed, reviewed and approved by the Commissioner. The Commissioner may request reports from insurers from time to time on the above reviews.

**5 DE Reg. 1746 (3/1/02)**

**4.0 Exclusion from Arbitration**

- 4.1 The following claims shall not be subject to arbitration under this Regulation:
  - 4.1.1 Claims for which there is no jurisdiction under 18 **Del.C.** §§331 and 21 **Del.C.** §§2118 and 2118B;
  - 4.1.2 Claims for which there is no policy coverage in force;
  - 4.1.3 Claims that are already pending before any court;
  - 4.1.4 Claims that arise under an insurance policy from a jurisdiction other than Delaware; or
  - 4.1.5 Claims which arise under a homeowners' policy or plan which has been exempted by the Commissioner under section 3.0.
- 4.2 The Arbitration Secretary or Panel is authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under section 4.1.1 and after notice and an opportunity to respond is provided the petitioner.

**5 DE Reg. 1746 (3/1/02)**

**5.0 General**

- 5.1 These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.
- 5.2 In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration of a controverted claim or issue with the Insurance Commissioner shall be known as the "claimant," and the company or companies against which claim or claims is asserted shall be known as "respondent(s)."

- 5.3 Requests for arbitration with respect to homeowners' insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.

**5 DE Reg. 1746 (3/1/02)**

**6.0 Notice and Manner of Service**

- 6.1 Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.
- 6.2 Service of an original Petition shall be by Certified U.S. Postage and return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.
- 6.3 The parties must provide a brief statement verifying the service of all filed papers with the manner, date and address of service.

**5 DE Reg. 1746 (3/1/02)**

**7.0 When Arbitration May Be Commenced**

- 7.1 Arbitration may be commenced after the parties have attempted to resolve the matter informally and the Petitioner has provided the opposing party with all reasonably requested information in Petitioner's possession or provided the opposing party with an opportunity to obtain such information.
- 7.2 The Panel may dismiss without prejudice the matter if it finds that the Petitioner has not attempted to resolve the matter informally or has failed to provide the opposing party with reasonably requested information.

**5 DE Reg. 1746 (3/1/02)**

**8.0 Commencement of Arbitration**

- 8.1 An arbitration will commence upon the filing of a Petition and three copies, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the proper fee. The petitioner shall at the same time send a copy of the same Petition and supporting documents to the insurer or insurer's representative and a statement verifying service under section 5.0. The Arbitration Secretary may return any non-conforming Petition.
- 8.2 Within 20 business days of receipt of the Petition, the responding insurer ("Respondent") shall file a Response with three copies, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached and payment of the proper fee. The Respondent shall at the same time send a copy of the same Response and supporting documents to the Petitioner or Petitioner's representative and a statement verifying service under section 5.0. The Arbitration Secretary may return any non-conforming Response.
- 8.3 If the Respondent fails to file a Response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitration Panel for summary disposition. The Panel may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on Respondent. The Arbitration Secretary or Panel may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.
- 8.4 Upon the filing of a proper Response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitration Panel.
- 8.5 The Insurance Department will provide the approved form of Petition or Response as they may be amended from time to time. The Parties are free to produce and use their own copies of those forms.

**5 DE Reg. 1746 (3/1/02)**

**9.0 Arbitration Panels**

- 9.1 The Commissioner shall establish ~~two~~ types of Arbitration Panels. There shall be Panels established for automobile insurance claims and homeowners' insurance claims.
- 9.2 Each Panel shall consist of three members of suitable backgrounds or experience or as may be specified by statute, to be selected by the Commissioner. No member may serve on a Panel in which his employer or client is a party. Each Panel shall have a presiding member who shall be appointed by the Commissioner.
- 9.2.1 In the case of automobile claims, each Panel shall consist of at least one Delaware licensed attorney as a member and the balance of the members shall be Delaware licensed insurance adjusters and/or appraiser as defined in 18 **Del.C.** §1702(c)
- 9.2.2 In the case of homeowners' claim, the Panel shall consist of individuals of suitable expertise in evaluating such claims and may include Delaware licensed property appraisers or adjusters. One member of the panel shall be a Delaware licensed attorney.
- 9.2.3 ~~In the case of health insurance claims involving the certification of treatment or procedure, one member of the panel must be a licensed health care professional in the relevant area of dispute.~~
- 9.2.43 A decision by ~~the~~ a Panel requires concurrence by at least two of the Panel members. The written decision shall be signed by the panel chair and shall reflect the votes of the members.

**5 DE Reg. 1746 (3/1/02)**

**10.0 Arbitration Hearings**

- 10.1 The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.
- 10.2 The purpose of Arbitration is an attempt to ~~effect~~ affect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter informally. Arbitration hearings shall be conducted in keeping with that goal. The arbitration hearing is not a substitute for a civil trial. In accord, the Delaware Rules of Evidence do not apply and hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Panel. If the Panel allows any brief testimony, the Panel shall allow brief cross examination or other response by the opposing party.
- 10.3 The Arbitration Panel may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside the parties' presence for information to resolve the matter.
- 10.4 The Panel is to consider the matter based on the submissions of the parties and information otherwise obtained by the Panel. The Panel shall not consider any matter not contained in the original or supplemental submissions of the parties which has not been provided the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.
- 10.5 Claims for reasonable attorney fees under ~~21 Del.C. §2118B~~, shall ~~only~~ be granted by the arbitrators upon the petitioner ~~proving that the insurer acted in "bad faith."~~ prevailing without an arbitrator's dissent in all cases. ~~Bad faith is an intentional, reckless or malicious indifference to the duties owed an insured, not negligence, carelessness or inadvertence of any degree.~~

**5 DE Reg. 1746 (3/1/02)**

**11.0 Subrogation Arbitration**

- 11.1 Subrogation arbitration between or among insurers pursuant to 21 **Del.C.** §2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

**5 DE Reg. 1746 (3/1/02)**

**12.0 Arbitration Fees**

- 12.1 Each party to an arbitration shall tender and pay the following filing fees for arbitration.
- 12.1.1 \$30.00 for Automobile Insurance Claims; and
- 12.1.2 \$30.00 for Homeowners' Insurance Claims.

12.2 The filing fees are non-refundable and shall only be returned when a claim is determined to be excluded from arbitration. The prevailing party at arbitration is normally entitled to recover shall recover their paid filing fees as costs. ~~However, the Panel may, for cause, award the filing fee as costs as may be equitable.~~

**5 DE Reg. 1746 (3/1/02)**

### **13.0 Appeals**

13.1 Appeals from an adverse decision of the Arbitration panel shall be taken to the Superior Court of the State of Delaware by filing a Notice of Appeal with the Arbitration Secretary.

13.2 The Notice of Appeal must be filed within 90 days in the case of claims for homeowners' insurance claims and within 30 days in the case of automobile insurance claims.

13.3 All further filings and proceedings shall be in accordance with the Superior Court Rules of Civil Procedure.

**5 DE Reg. 1746 (3/1/02)**

### **14.0 Effective Date**

14.1 ~~This regulation, as amended, shall replace existing Regulations 10 and 10A in their entirety. This regulation shall become on March 11, 2002. Any health claims commenced under this regulation prior to the effective date of Regulation 11 shall be resolved in accordance with the provisions of 73 Del. Laws Ch. 96. This amended regulation shall become effective on January 11, 2010.~~

**5 DE Reg. 1746 (3/1/02)**

**13 DE Reg. 583 (11/01/09) (Prop.)**