

**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 520, 2304(16), and 2312 (18 **Del.C.** §§311, 520, 2304(16) & 2312)  
18 **DE Admin. Code** 903

**FINAL**

**REGULATORY IMPLEMENTING ORDER**

**903 Prompt Payment of Settled Claims [Formerly Regulation 81]**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

**A. The First Proposal**

In the March 1, 2020 edition of the *Register of Regulations* at 23 **DE Reg.** 730 and again in the April 1, 2020 edition of the *Register of Regulations* at 23 **DE Reg.** 831 (collectively, the First Proposal), the Commissioner of the Delaware Department of Insurance (Commissioner) published a notice of intent to amend Regulation 903 Prompt Payment of Settled Claims to:

- Allow insurance carriers to pay settled insurance claims other than claims that are subject to the Workers Compensation Statute at 19 **Del.C.** §2344 by electronic means; and
- Make grammatical and formatting edits throughout the regulation.

The authority for the proposed amendments is 18 **Del.C.** §§311, 520, 2304(16), and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a) and for an additional 30 days at the discretion of the Department. The Department did not hold a public hearing on the proposal. The Department received comments from nine commenters, which are on file with the Department. Two commenters endorsed the Department's proposed amendments wholesale. The other seven commenters offered comments that suggested substantive changes that required further public comment.

**B. The Second Proposal**

In response to the comments received on the First proposal, the Department published the Second Proposal to affect the same purposes as the First Proposal, taking into consideration comments received on the First Proposal. The Department provided a summary of the comments received in connection with the First Proposal in a separate section of the introduction to the Second Proposal (see at 24 **DE Reg.** 32 (07/01/20)).

As with the First Proposal, the Department solicited written comments on the Second Proposal from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a). The Department did not hold a public hearing on the Second Proposal. The Department received comments on the Second Proposal from one commenter, which are on file with the Department. This commenter requested that the Department include payment cards in the list of allowable forms of electronic payment at subsection 5.2.

**II. FINDINGS OF FACTS**

1. The amendments to Regulation 903 Prompt Payment of Settled Claims modernize acceptable claims payment methodologies to recognize that electronic payment of claims is an acceptable form of claims payment.
2. The Department declines to make the edits to subsection 5.2 suggested by the commenter, which would allow electronic payment to be made by payment card. A claim should be paid in full without the payee risking leaving residual cents and even dollars unused on a payment card.
3. The Department met the public notice requirements of the Administrative Procedures Act.

**III. DECISION TO ADOPT PROPOSED AMENDMENTS TO REGULATION 903**

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 903 regarding electronic payment of claims.

**IV. EFFECTIVE DATE OF ORDER**

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 520, 2304(16), and 2312 on the date indicated below. The effective date of this Order and of the amendments to this regulation shall be September 11, 2020.

**IT IS SO ORDERED.**

The 17<sup>th</sup> day of August, 2020.

Trinidad Navarro  
Commissioner, Delaware Department of Insurance

### 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 ~~will apply~~ applies to all ~~insurers~~ persons that settle claims either pursuant to a legal action or otherwise.

#### 3.0 Purpose

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

#### 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.

#### 4.05.0 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 the purpose purposes of this regulation 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 The date of agreement, memorialized in writing 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 unappealed 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;

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.

## 5.0 Settlement of Claims

5.1 ~~The language in 18 Del.C. §2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability has been resolved and an amount agreed upon, or ordered by the court, or awarded by an arbitration panel, the carrier is required to make prompt payment.~~

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

6.1 ~~In the event that an insurance carrier does not remit prompt payment pursuant to this regulation and If the Department has determined determines that said carrier a person has done so 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 shall may file an administrative action against the carrier pursuant to person in accordance with 18 Del.C. §323 and the Administrative Procedures Act. The commissioner If the Commissioner finds after a hearing that the person has violated 18 Del.C. §2304(16)(f) and this regulation, the Commissioner may take all of the following actions:~~

- 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 the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3% listed in subsection 5.1 of this regulation;~~
- 6.1.2 ~~Fine the insurer person according to the provisions outlined in 18 Del.C. §329, §329 and impose other such penalties as provided in 18 Del.C. §520.~~
- 6.1.3 ~~Fine any person(s) person involved with the claim and/or settlement according to the provisions outlined in 18 Del.C. §2308(a)(1).~~

## 7.0 General Business Practice

- 7.1 ~~Within a 36-month 36-month period, three instances of a carrier's person's failure to make prompt payment, as defined in section 4.0 above Section 5.0 of this regulation, shall give rise to a rebuttable presumption that the insurer person is in violation of 18 Del.C. §2304 (16)(f).~~
- 7.2 ~~The 36-month 36-month period established in section 7.1 above subsection 7.1 of this regulation shall be measured from the applicable date the amount was agreed upon, ordered by the court, or awarded by arbitration as set forth in subsection 5.1 of this regulation.~~

## 8.0 Separability

8.1 ~~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.~~

## 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 an insurer a person or its 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).~~

## 10.0 Effective Date

~~This regulation [shall become became] effective [30 days after publication in the Delaware Register of Regulations on October 1, 2001]. The amendments to this regulation shall become effective on [the eleventh day after publication of a final order signed by the Commissioner adopting the amendments into this regulation September 11, 2020].~~

