

Insurers Are Regulated

Introduction

Both insurers and lawyers are regulated by law. Insurers are regulated through the Insurance Code, regulations, and case law. Lawyers are regulated by the State Bar Act, Rules of Professional Conduct, and case law.¹ The common purpose of these regulations is to protect the public from those who wield great power.

Insurer Regulation

“[A] contract entered into between two parties of unequal bargaining strength, expressed in the language of a standardized contract, written by the more powerful bargainer to meet its own needs, and offered to the weaker party on a ‘take it or leave it’ basis carries some consequences.”² These consequences include statutes, regulations, and case law that impose duties upon insurers for the protection of policyholders.³

The McCarran Ferguson Act 15 U.S. Code § 6701 delegates to the States the regulation of insurance. Each State has passed an Insurance Code and promulgated regulations. All States have adopted a Model Unfair Claims Settlement Practices Act developed by the National Association of Insurance Commissioners except Iowa, Mississippi, and Nevada.⁴ Not all States have adopted the NAIC Model Regulation, with seventeen States abstaining.⁵

1. Insurance Code

Defined unfair methods of competition and unfair and deceptive acts or practices in the business of insurance prohibits an insurer from misrepresenting pertinent facts or insurance policy provisions, failing to acknowledge and act reasonably promptly upon communications, failing to adopt and implement reasonable standards for the prompt investigation and processing of claims, failing to affirm or deny coverage of claims, not attempting in good faith to effectuate prompt, fair, and equitable settlements, compelling insureds to institute litigation to recover amounts due, failing to settle claims in order to influence paying other claims, failing to give a reasonable explanation for the denial of a claim, and more.⁶

2. Administrative Regulations

Regulations promulgated pursuant to statute require the following:⁷

A. Investigation

The insurer must immediately acknowledge receipt of a claim, provide reasonable assistance to the claimant, and begin an investigation of the claim. The insurer must conduct and diligently pursue a thorough, fair, and objective investigation and must not persist in seeking

¹ See, *Lawyers Are Regulated* at DutytoDefend.com.

² *Gray v. Zurich Insurance Co.* (1966) 65 Cal.2d 263, 269.

³ See, *Compendium of Insurer Duties*

⁴ See, <https://www.naic.org/store/free/MDL-900.pdf>

⁵ See, <https://www.naic.org/store/free/MDL-902.pdf>

⁶ Ins. Code § 790.03(h).

⁷ Cal. Code Regs. § 2695 et. seq.

information not reasonably required for or material to the resolution of a claim.

B. Disclosure and Assistance

The insurer must disclose to a policyholder all coverages that may apply to the claim. When additional benefits might reasonably be payable under an insured's policy, the insurer shall immediately communicate this fact to the insured and cooperate with and assist the insured in determining the extent of the insurer's additional liability.

C. Communication

Upon receiving any communication from a policyholder that reasonably suggests that a response is expected, the insurer must immediately, but in no event more than fifteen days, furnish the policyholder with a complete response based on then known facts.

D. Accept or Deny a Claim

Upon receiving a claim, the insurer must immediately, but in no event more than forty days, accept or deny the claim, in whole or in part. Where an insurer denies any part of a claim, it must do so in writing and must provide to the policyholder a statement listing all bases for such denial and the factual and legal bases for each reason which is then within the insurer's knowledge. If the denial is based on a specific policy provision, the insurer must identify and explain it. The insurer must advise the policyholder of a right to have Department of Insurance review the claim and must not condition settlement of any claim on withdrawing a complaint to the Department.

E. Payment

The insurer must not delay or deny settlement of a claim on the basis that responsibility for payment should be assumed by others. The insurer must not attempt to settle a claim by making a settlement offer that is unreasonably low. Upon acceptance of the claim the insurer must immediately tender payment.

F. Standards

The insurer must adopt written standards for the prompt investigation and processing of claims, and provide training to all claims agents who must certify in writing under penalty of perjury that they have read and understands the regulations. Required standards are not limited to procedures for processing claims, so presumably substantive standards are also required.

G. Documentation

The insurer must keep a claims adjusting manual with a copy of the regulations and a detailed claim file with all documents pertaining a claim. Information obtained by telephone or interview must be documented in the claim file. The claim file must specify the amounts of a claim that are accepted or denied.

H. No Discrimination

Insurers may not discriminate based upon the plaintiff's or the policyholder's age, race, gender, income, religion, language, sexual orientation, ancestry, national origin, or physical disability.