

UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

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Prefatory Note: By adopting this model act in June 1990, the NAIC separated issues regarding unfair claims settlement practices into a free-standing act apart from the NAIC Model Unfair Trade Practices Act. This change focuses more attention on unfair claims as a function of market conduct surveillance separate and apart from general unfair trade practices. By doing so, the NAIC is not recommending that states repeal their existing acts, but states may modify them for the purpose of capturing the substantive changes. However, for those states wishing to completely rewrite their comprehensive approach to unfair claims practices, this separation of unfair claims from unfair trade practices is recommended.

Section 1. Purpose

The purpose of this Act is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [insert state]. It is not intended to cover claims involving workers' compensation, fidelity, suretyship or boiler and machinery insurance. Nothing herein shall be construed to create or imply a private cause of action for violation of this Act.

Drafting Note: A jurisdiction choosing to provide for a private cause of action should consider a different statutory scheme. This Act is inherently inconsistent with a private cause of action. This is merely a clarification of original intent and not indicative of any change of position. The NAIC has promulgated the Unfair Property/Casualty Claims Settlement Practices and the Unfair Life, Accident and Health Claims Settlement Practices Model Regulations pursuant to this Act.

Section 2. Definitions

When used in this Act:

- A. "Commissioner" means the Commissioner of Insurance of this state;

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- B. "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by the policy;
- C. "Insurer" means a person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and third party administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans as defined in Section [insert applicable section]. For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance;

- D. "Person" means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations;
- E. "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, or annuity issued. "Policy" or "certificate" for purposes of this Act, shall not mean contracts of workers' compensation, fidelity, suretyship or boiler and machinery insurance.

Drafting Note: The term "policy" is intended to cover the product issued by medical, health or hospital service plans and should be changed to conform to the laws of each state.

The Federal Employee Retirement Income Security Act (ERISA) preempts certain entities and some activities of those entities from the application of state laws. The purpose of these definitions is to include within this Act and regulations issued pursuant to it, all entities and activities to the extent not preempted by ERISA.

Section 3. Unfair Claims Settlement Practices Prohibited

It is an improper claims practice for a domestic, foreign or alien insurer transacting business in this state to commit an act defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

Section 4. Unfair Claims Practices Defined

Any of the following acts by an insurer, if committed in violation of Section 3, constitutes an unfair claims practice:

- A. Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;
- B. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
- C. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;
- D. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- E. Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- F. Refusing to pay claims without conducting a reasonable investigation;
- G. Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;

- H. Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
- I. Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- J. Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;
- K. Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- L. Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;
- M. Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use;
- N. Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or required to be used by the insurer are performed in a workmanlike manner.

Section 5. Statement of Charges

Whenever the commissioner has reasonable cause to believe that an insurer doing business in this state is engaging in any unfair claims practice and that a proceeding in respect thereto would be in the public interest, the commissioner shall issue and serve upon the insurer a statement of the charges in that respect and a notice of hearing, which shall set a hearing date not less than thirty (30) days from the date of the notice.

Drafting Note: If a formal hearing procedure exists, states may wish to incorporate the timeframes from that existing procedure.

Section 6. Cease and Desist and Penalty Orders

If, after hearing, the commissioner finds an insurer has engaged in an unfair claims practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer charged with the violation a copy of the findings and an order requiring the insurer to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion, order:

- A. Payment of a monetary penalty of not more than \$1,000 for each violation but not to exceed an aggregate penalty of \$100,000, unless the violation was committed flagrantly and in conscious disregard of this Act, in which case the penalty shall not be more than \$25,000 for each violation, but not to exceed an aggregate penalty of \$250,000 pursuant to hearing; and/or
- B. Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known it was in violation of this Act.

Section 7. Penalty for Violation of Cease and Desist Orders

An insurer that violates a cease and desist order of the commissioner and, while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject, at the discretion of the commissioner, to:

- A. A monetary penalty of not more than \$25,000 for each and every act or violation not to exceed an aggregate of \$250,000 pursuant to hearing; and/or
- B. Suspension or revocation of the insurer's license.

Section 8. Regulations

The commissioner may, after notice and hearing, promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this Act. The regulations shall be subject to review in accordance with Section [insert applicable section].

Drafting Note: Insert section number providing for review of administrative orders.

Section 9. Severability

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

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1972 Proc. I 15, 16, 443-444, 491, 495-496 (claims settlement practices made part of Unfair Trade Practices Act).

1990 Proc. II 7, 13-14, 160, 177-179 (adopted free-standing claims settlement practices act).

1991 Proc. I 9, 16, 192-193, 203-206 (amended and reprinted).