



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: April 29, 2019

TO: Ms. Leslie Ledogar, Regulatory Specialist
Department of Insurance

FROM: J. Todd Webb – Chairperson *JTW*
State Council for Persons with Disabilities

RE: 22 DE Reg. 831 [DOI Proposed Regulation Regarding Prompt Payment of
Workers Compensation Claims (April 1, 2020)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Insurance's (DOIs) proposal to amend the existing regulation dealing with payment of settled claims other than those pertaining to Workers Compensation (an agreement on compensation or benefits is controlled by 19 *Del. C.* section 2344). The regulation is promulgated by the Department of Insurance and required by 18 *Del. C.* section 2304(16). The proposed regulation was published as 23 DE Reg. 831 in the April 1, 2020 issue of the Register of Regulations. SCPD has the following observations.

The new regulation contains most of the provisions as the current regulation. There is some change in the language used but the meaning remains the same. For example, both regulations provide that once a claim has settled, whether because of litigation or negotiation, the insurance carrier must make payment within thirty (30) days. The thirty (30) days run from the date the settlement agreement is signed by both parties; the date the final court order is issued; or the last day on which an arbitration can be appealed, when neither party appeals.

If an insurance carrier has failed to promptly pay a settled claim in bad faith, the insurance commissioner can, after a hearing take several steps: award interest equal to the prime rate plus three percent (3%) to the claimant; fine the insurance carrier; and fine any person(s) involved with the claim and settlement.

A rebuttable presumption that an insurance carrier violates section 2304(16)(f) arises if the carrier fails to make a payment three (3) times within a thirty-six (36) month period. This period is measured by the same standards in which the claim is to be paid (namely the date the settlement agreement is signed by both parties; the date the final court order is issued; or the last day on which an arbitration can be appealed, when neither party appeals).

Only the insurance commissioner can enforce this regulation against an insurance carrier or its employees; there is no private cause of action granted to the affected claimant.

This regulation continues to recognize that settled claims with an insurance carrier were not always being paid in a timely manner. This regulation continues to impose an obligation on the insurance carrier to pay settled claims within thirty (30) days with the threat of penalties if non-payment or delayed payment occurs more than three (3) times in a three (3) year period.

The most significant amendment in the proposed regulation is that the claimant is allowed to receive payment by check or electronic payment. If electronic payment is selected, the payment cannot be to a prepaid card or other method where any transaction fees are incurred. The electronic payment feature is new and keeps up with the technology that has evolved in the way payments can be made.

The effective date of the regulation is thirty (30) days after publication in the register of regulations. The amendments to the regulation become effective on the 11th day after publication of the final order signed by the Insurance Commissioner adopting the amendments.

This is a laudable attempt by the Department of Insurance to regulate the manner in which settled claims are paid and the timeliness of those payments. Therefore, SCPD endorses the proposed regulation.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed regulation.

cc: The Honorable Trinidad Navarro
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council