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BULLETIN NUMBER 12-14

Date: August 3, 2012

To: All P&C Insurance Companies

Re: Claims Handling Practices

The Maryland Insurance Administration has determined through complaint investigations and recent administrative hearings that the handling of some personal automobile and homeowners insurance claims by insurers have violated Sections 27-303 and 4-113(b) of the Insurance Article and the Code of Maryland Regulations ("COMAR"). Examples include, but are not limited to:

- 1) Failing to inform an insured who has reported damage to a parked, unoccupied vehicle that the claim could be paid under the policy's uninsured motorists property damage ("UMPD") coverage and the requirements for making a UMPD claim;
- 2) Failing to investigate a single car accident or an accident involving allegations of a phantom vehicle and then settling the claim under the policy's collision coverage resulting in a surcharge for an "at-fault loss" when no investigation of the claim to determine fault was undertaken;
- 3) Refusing to pay a claim under the insurance policy, while also refusing to provide a denial letter stating the basis for the refusal to pay;
- 4) Refusing to consider all available information prior to denying a claim or accepting liability on behalf of an insured, especially when the discounted information is favorable to the insured;
- 5) Delaying a claim unreasonably when an adjuster is not dispatched promptly to inspect reported property damage or when estimates of property damage obtained by the claimant are not considered and delaying a claim unreasonably based on the insurer's failure to promptly prepare or obtain its own estimate for the covered damages;



- 6) Assuming that the insured's account of the loss is untrue when there is no evidence to the contrary; and
- 7) Failing to promptly issue payment on a first-party claim for damages known by the insurer to be covered under the policy's terms.

In addition, the lack of investigation into certain automobile claims has resulted in the inability of insurers to non-renew or increase the premiums for private passenger automobile insurance policies in accordance with the provisions of Sections 27-613 and 27-614 of the Insurance Article and COMAR 31.08.03 and COMAR 31.15.10. The purpose of this Bulletin is to remind all Property & Casualty insurers of various laws and regulations applicable to claims investigations and required notices and to advise companies that the failure to comply with these statutes and regulations could result in administrative action including orders to pay claims, restitution, interest, administrative penalties and reversals of non-renewals and premium increases.

Section 27-303 of the Insurance Article states in pertinent part:

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:

- (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
- (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;
- (3) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;
- (4) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;
- (5) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;
- (6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;...
- (9) fail to act in good faith, as defined under § 27-1001 of this title, in settling a first-party claim under a policy of property and casualty insurance.

Section 4-113(b)(1), (2), and (5) of the Insurance Article state in pertinent part:

(b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:

- (1) violates any provision of this article other than one that provides for mandatory denial, refusal to renew, suspension, or revocation for its violation;

(2) knowingly fails to comply with a regulation or order of the Commissioner;...

(5) refuses or delays payment of amounts due claimants without just cause;...

COMAR 31.15.07.03 provides in pertinent part:

A. A prohibited unfair claim settlement practice occurs if an insurer commits one or more of the following acts:

(1) Misrepresents pertinent facts or policy provisions relating to the claim at issue. For the purposes of this regulation, misrepresentation includes, but is not limited to, the following acts:

(a) Providing incomplete or misleading disclosure of pertinent facts or policy provisions relating to the claim at issue;

(b) Concealing from a first-party claimant benefits, coverages, or other provisions of a policy when these benefits, coverages, or other provisions are pertinent to the claim at issue;

(c) Failing, upon written request, to disclose to a first-party claimant all benefits, coverages, or other provisions of an insurance policy under which a claim is presented;

(d) Except when there is a time limit specified in the policy or provided by law, making oral or written statements to any claimant that:

(i) There is a requirement that the claimant give written notice of loss or proof of loss within a specified time, and

(ii) The company is relieved of its obligations under the policy if the time limit is not complied with;

(e) Making oral or written statements to any claimant that there is a requirement that the claimant sign a release that extends beyond the subject matter that gave rise to the claim payment; or

(f) Issuing a check or draft in partial settlement of a loss or claim under a specific coverage or coverages, which check or draft contains language releasing the insurer or its insured from their total liability.

(2) Attempts to settle a claim on the basis of an application which has been altered without notice to, or the knowledge or consent of, the insured. An insurer may not be found to have violated this regulation unless the:

(a) Insurer knew or had reason to know of the alteration; and

(b) Alteration is material to settlement of the claim at issue.

(3) Refuses to pay a claim for an arbitrary or capricious reason based on all available information.

(4) Fails to include, in any claim paid to an insured or beneficiary, a statement or other identification setting forth the specific policy coverage under which the payment is made.

(5) Fails to make a good faith attempt to settle a claim promptly under one portion of a policy, whenever liability is reasonably clear, in order to influence settlements under other portions of the policy.

(6) Fails to promptly provide a reasonable explanation of the basis for denial of a claim when requested to do so.

(7) Fails to act in good faith in settling a first party claim under a policy of property and casualty insurance.

COMAR 31.08.03.09 provides:

.09 Statement of Actual Reason.

A. Applicability to Binders. This regulation applies to a binder only if the binder has been in effect for at least 45 days.

B. Contents of Statement. If an insurer cancels, refuses to renew, increases a premium for, or reduces coverage under a policy or binder of private passenger motor vehicle liability insurance, the statement of actual reason required by Insurance Article, §§27-613 or 27-614, Annotated Code of Maryland, shall include at a minimum:

(1) If the action of the insurer is due wholly or partly to an accident:

(a) The name of the driver;

(b) The date of the accident; and

(c) If fault is a material factor for the insurer's action, a statement that the driver was at fault.

(2) If the action of the insurer is due wholly or partly to a violation of Maryland vehicle law or the vehicle laws of another state:

(a) The name of the driver;

(b) The date of the violation; and

(c) A description of the violation.

(3) If the action of the insurer is due wholly or partly to the claims history of an insured:

(a) The date that the claim that is the basis of the insurer's action occurred; and

(b) A description of each claim, such as:

(i) "Theft of vehicle on [date]";

(ii) "Vandalism of vehicle on [date]"; or

(iii) "Towing claim on [date]"; or

(4) If the action of the insurer is due wholly or partly to a reason other than those described in §B(1)—(3) of this regulation or to a violation of the terms and conditions of the policy or the underwriting standards of the insurer, a description of the action of the insured that is the basis of the insurer's action, such as:

(a) "Insured loans the insured vehicle to an excluded driver"; or

(b) "Insured loans the insured vehicle to a non-listed driver".

C. In addition to the information required by §B of this regulation, with respect to a cancellation or nonrenewal, the statement of actual reason required by Insurance Article, §27-613, Annotated Code of Maryland, shall include a statement that the action by the insured that is the basis of the cancellation or nonrenewal violates the insurer's rating criteria or underwriting standards.

COMAR 31.15.10.03 provides in pertinent part:

.03 Private Passenger Motor Vehicle Insurance.

A. Scope. This regulation applies to private passenger motor vehicle insurance.

B. Determining Number of Claims.

(1) For the purpose of determining the number of not-at-fault claims under Insurance Article, §27-501(k), Annotated Code of Maryland, claims under the following types of coverage shall be presumed to be not-at-fault:

(a) Uninsured motorist coverage; and

(b) Comprehensive coverage.

(2) The presumption in §B(1) of this regulation may be overcome if the carrier demonstrates that the claim was an at-fault claim.

C. Complaint Proceeding Based on Accident—Determination of Fault.

(1) In a consumer complaint proceeding for cancellation or refusal to renew coverage under Insurance Article, §27-501(k) or (l)(iv), Annotated Code of Maryland, based wholly or partly on an accident, the Insurance Administration may:

(a) Review the insurer's determination of fault for the accident; and

(b) Decide whether the insurer's determination of fault was arbitrary or capricious.

(2) Payment of a settlement by an insurer for an accident is evidence of the insured's fault for the accident, but is not conclusive proof of fault.

If you have any questions regarding this Bulletin, please contact Sandra Castagna, Associate Commissioner, Property and Casualty at scastagna@mdinsurance.state.md.us or 410-468-2341.

**Therese M. Goldsmith
Insurance Commissioner**

By: ***Signature on original***

**Sandra Castagna
Associate Commissioner
Property and Casualty**