Cal. Admin. Code tit. 10, § 2591.3

Barclays Official California Code of Regulations Currentness
Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 3. Insurers
Article 19. Regulations for Enforcement Actions and Penalties (Refs & Annos)
§ 2591.3.

In determining that an enforcement action should be pursued and in selecting the appropriate amount of the penalty from the applicable range of penalty amounts that could be assessed, the Department shall consider:

(a) The nature of the violation, including but not limited to adverse actions such as overcharge of premium, unlawful denials or terminations of coverage, placement in a program or tier with a higher rate level or less coverage than the most favorable for which the insured would qualify, misrepresentations of terms, unlawful denial or delay of claims, unreasonably low claims offers or settlements, improper sharing of personal information, acts of unfair competition and acts of unfair discrimination.

(b) The severity of the violation.

(1) Severity of the violation includes but is not limited to:

(A) the extent of harm revealed through a consumer complaint or otherwise brought to the attention of the Department;

(B) the amount of premium overcharge or undercharge;

(C) the amount of underpayment of a claim;

(D) a comparison of the length of the delay to the time reasonably necessary or legally required to conduct the process or transaction;

(E) the significance of the amount of premium involved in relation to the total premium for the coverage; and

(F) the significance of the amount of underpayment of the loss settlement offer or final

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settlement involved in relation to the total loss settlement determined to be reasonable.

(2) Consideration may also be given to the necessary complexity of the transaction.

(c) The frequency of the occurrence of the violation. In determining the frequency, consideration may be given to the number of violations specifically identified and the number of persons reasonably determined to have been impacted over a given period of time by such violations within the insurer's population of applicants, insureds, claimants, potential applicants or among its competitors and to the number of files in which the violation takes place compared to the number of files with a similar transaction but no violation.

(d) The knowledge or willfulness of the non-compliant act.

(1) Violations that may be considered willful or knowingly committed include but are not limited to the following:

(A) When the insurer is aware at the time of the act that it is violating the law;

(B) When the insurer reasonably should have known of the act's unlawfulness when the non-compliant act occurred;

(C) When the insurer has promulgated express policies or procedures that are in noncompliance with the law;

(D) When the insurer has failed to adopt, communicate and implement reasonable standards for consistent, compliant activity; or

(E) When the insurer has failed to take effective remedial measures when a violation was identified or discovered.

(2) In the case of an employee, agent or contract entity conducting business on the insurer's behalf, knowledge or willfulness shall be attributed to the insurer unless the employee, agent or contract entity has acted outside the scope of the employment, agency or contract.

(e) The monetary effect of the violation on the insurer. For purposes of this criterion, consideration will be given to the amount of monetary gain or loss experienced by the insurer as a result of the violation.

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(f) The compliance record of the insurer. The compliance record includes but is not limited to the following:

(1) The number and type of violations identified in the investigation of consumer complaints generated by the insurer over a given period of time or the number and type of violations reported in a previous examination or investigatory report;

(2) The insurer's cooperation and prompt, good-faith actions taken to provide restitution and correct any non-compliant activity including where the noncompliance is discovered and resolved prior to the Department's involvement;

(3) The insurer's failure to take action in response to previous notifications identifying the non-compliant activity;

(4) The insurer's failure to implement its express commitments to take corrective action; and

(5) Any previous action taken against the insurer.

(g) The duration of the non-compliant activity. For purposes of this criterion, consideration will be given as to whether the violation was a single event or violations continued repeatedly over a given period of time.

(h) The existence of extraordinary circumstances. Extraordinary circumstances are circumstances outside of the control of the insurer that severely and materially affect the insurer's ability to comply with the law. Extraordinary circumstances do not include circumstances which the insurer could reasonably anticipate and prepare for or prevent.

(i) Previous actions taken by the Department against other insurers for similar noncompliance. For purposes of this criterion, consideration shall be given to previous actions for similar violations by insurers of similar size and circumstance. However, such consideration shall not preclude the Department from taking an enforcement action where no previous action had been taken or from seeking an increased or decreased penalty amount relative to a previous penalty amount.

Note: Authority cited: Sections 790.10 and 12921.1, Insurance Code;CalFarm Insurance Company v. Deukmejian, 48 Cal.3d 805 (1989); and20th Century Insurance Company v. Garamendi, 8 Cal. 4th 216 (1994). Reference: Sections 704.7, 769.86, 789.3, 790.035, 790.036, 790.07, 790.10, 1858.07, 1858.1, 1858.3, 1859.1, 1861.14, 10140.1, 10140.5, 10149.1, 10199.7, 10234.3, 10509.9, 11756, 12414.25 and 12921.1, Insurance Code.

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HISTORY

1. New section filed 12-15-2003; operative 1-14-2004 (Register 2003, No. 51).

10 CCR § 2591.3, 10 CA ADC § 2591.3

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