Cal. Admin. Code tit. 10, § 2695.1

Barclays Official California Code of Regulations Currentness
Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 7.5. Unfair or Deceptive Acts or Practices in the Business of Insurance
Article 1. Fair Claims Settlement Practices Regulations (Refs & Annos)

§ 2695.1. Preamble.

(a) Section 790.03(h) of the California Insurance Code enumerates sixteen claims settlement practices that, when either knowingly committed on a single occasion, or performed with such frequency as to indicate a general business practice, are considered to be unfair claims settlement practices and are, thus, prohibited by this section of the California Insurance Code. The Insurance Commissioner has promulgated these regulations in order to accomplish the following objectives:

(1) To delineate certain minimum standards for the settlement of claims which, when violated knowingly on a single occasion or performed with such frequency as to indicate a general business practice shall constitute an unfair claims settlement practice within the meaning of Insurance Code Section 790.03(h);

(2) To promote the good faith, prompt, efficient and equitable settlement of claims on a cost effective basis;

(3) To discourage and monitor the presentation to insurers of false or fraudulent claims; and,

(4) To encourage the prompt and thorough investigation of suspected fraudulent claims and ensure the prompt and comprehensive reporting of suspected fraudulent claims as required by Insurance Code Section 1872.4.

(b) These regulations are not meant to provide the exclusive definition of all unfair claims settlement practices. Other methods, act(s), or practices not specifically delineated in this set of regulations may also be unfair claims settlement practices and subject to California Insurance Code Section 790.03(h) and/or California Insurance Code Section 790.06. These regulations are applicable to the handling or settlement of all claims subject to Article 6.5 of Division 1, Part 2, Chapter 1 of the California Insurance Code, commencing with Section 790, except as specifically provided below:

(1) Workers' compensation insurance;

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(2) Liability insurance for the professional malpractice of health care providers as defined in California Code of Civil Procedure Section 364(f)(1);

(3) Self insured or self funded plans which are bona fide Employee Retirement Income Security Act (“ERISA”) plans which are not also multiple employer welfare arrangements, to the extent that these ERISA plans are not covered by insurance;

(4) Any other self funded or self insured plan, to the extent it is not covered by insurance, which is lawfully conducting business in this state.

(c) In recognition of both the unique relationship which exists under a surety bond between the surety, the obligee or beneficiary, and the principal, and the fact that the processing of surety claims is subject to the Unfair Practices Act, beginning with California Insurance Code Section 790, only sections 2695.1 through 2695.6, inclusive, section 2695.10, and sections 2695.12, 2695.13 and 2695.14, inclusive, shall apply to the handling or settlement of claims brought under surety bonds.

(d) These regulations apply to home protection contracts and home protection companies defined in California Insurance Code Section 12740.

(e) All licensees, as defined in these regulations, shall have thorough knowledge of the regulations contained in this subchapter.

(f) Policy provisions relating to the investigation, processing and settlement of claims shall be consistent with or more favorable to the insured than the provisions of these regulations.

(g) The California Insurance Code provides the commissioner with access to all records of an insurer and the power to examine the affairs of every person engaged in the business of insurance to determine if such person is engaged in any unfair or deceptive act or practice.California Insurance Code Section 790.03(h) requires all persons engaged in the business of insurance to effectuate prompt, fair and equitable settlements of claims and to otherwise process claims in a fair and reasonable manner. The Department considers the use of reliable information to be an essential element of the fair and equitable settlement of claims. The fact that information, data or statistical methods used or relied upon by a licensee to process or establish the value of insurance claims is obtained through a third party source shall not absolve the licensee of its legal responsibility to comply with these regulations or to effectuate prompt, fair and equitable settlements of claims. Failure of a licensee to provide the commissioner with requested information sufficient to examine the licensee's claims handling practices may justify a finding that the licensee was in non-compliance with these regulations or other applicable insurance code provisions. Any and all information received pursuant to the Department's request shall be given confidential treatment, as provided in California Insur-

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ance Code section 735.5 and California Government Code Section 11180 et seq. When processing or establishing the value of a claim, a licensee shall not be responsible for the accuracy of information provided by a governmental entity, unless the licensee has discovered or been notified of the inaccuracy and has continued to use the information.

Note: Authority cited: Sections 790.034, 790.10, 1871.1, 12340-12417, inclusive, 12921 and 12926, Insurance Code; and Sections 11152 and 11342.2, Government Code. Reference: Sections 735.5, 790.03(h) and 12740, Insurance Code; and Section 11180, Government Code.

HISTORY

1. New subchapter 7.5 (sections 2695.1-2695.17) filed 12-15-92; operative 1-14-93 (Register 92, No. 52).

2. Editorial correction of printing error in History 1. (Register 93, No. 4).

3. Amendment of subchapter heading and subsection (b), new subsections (b)(1)-(b)(4), repealer and new subsection (c), amendment of subsection (d), repealer of subsection (e) and subsection relettering filed 1-10-97; operative 5-10-97 (Register 97, No. 2).

4. Amendment of subchapter heading and new article 1 heading filed 2-13-2001 as an emergency; operative 2-13-2001 (Register 2001, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2001 or emergency language will be repealed by operation of law on the following day.

5. Amendment of subchapter heading and new article 1 heading refiled 6-1-2001 as an emergency; operative 6-13-2001 (Register 2001, No. 22). A Certificate of Compliance must be transmitted to OAL by 10-11-2001 or emergency language will be repealed by operation of law on the following day.

6. Amendment of subchapter heading and new article 1 heading refiled 10-11-2001 as an emergency; operative 10-11-2001 (Register 2001, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-8-2002 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 10-11-2001 order transmitted to OAL 11-14-2001 and filed 12-31-2001 (Register 2002, No. 1).

8. Amendment of section and Note filed 4-24-2003; operative 7-23-2003 (Register 2003, No. 17).

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9. Inclusion of informational note following article heading filed 3-1-2004 (Register 2004, No. 10).

10. Change without regulatory effect filed 8-4-2004 repealing the informational note following article heading; depublishing the amendments to the insurance claims handling practices regulations that were approved by OAL 4-24-2003, but were enjoined in Personal Insurance Federation and The Surety Association of America v. John Garamendi; and reinstating replacement regulations that were either (1) in effect prior to OAL's 4-24-2003 approval of the amendments to the regulations or (2) were found by the court to be valid, as amended, all pursuant to a court-approved settlement agreement dated 6-7-2004 (Register 2004, No. 32).

11. Amendment of subsection (b), repealer and new subsection (c), new subsection (g) and amendment of Note filed 6-1-2006; operative 8-30-2006 (Register 2006, No. 22).

10 CCR § 2695.1, 10 CA ADC § 2695.1

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