



Unfair Claims Settlement Practices: Third-Party Claims (Part II)

Twenty-three states extend certain provisions of their versions of the NAIC model to include both first- and third-party claimants. These are:

Alaska	Nebraska	Pennsylvania
Arizona	Nevada	Rhode Island
Arkansas	New Hampshire	Utah
California	New Jersey	Vermont
Illinois	New York	Virginia
Kansas	Ohio	Washington
Kentucky	Oklahoma	West Virginia
Missouri	Oregon	

Not all of the listed states impose all of the same claims handling requirements nor do they do so in the same way. The requirements that are discussed in this article are:

1. Acknowledge receipt of the claim and provide contact information to the claimant;
2. Reply to communications;
3. Provide the necessary claim forms;
4. Advise as to the acceptance or denial of a claim;
5. Provide an explanation as to why the investigation and resolution of the claim are not completed and when such will occur;
6. Advise of the running of a statutory or contractual statute of limitations;
7. Pay that portion of a claim that is not in dispute.

Sixteen states require that the insurer send an acknowledgment of the receipt of the claim. The deadlines for compliance are 10 days in Alaska, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia; 15 days in California, Kentucky, Nebraska, New York, Ohio, Utah; 20 days in Nevada; and 30 days in Oregon. Oklahoma's deadline is 30 days by statute, but its administrative rules mandate 20 days. Research has not revealed a reason for this distinction.

Six states require that the insurer provide claims forms and instructions. Alaska requires that this must be done "promptly" with no specific time given. New York and Ohio specifically require that this be done within 15 days. Rhode Island and Virginia require that this be done "promptly" or at least 10 days after receipt

of the notice of claim. New Jersey also requires that it be done “promptly” but limits the third-party obligation to only those not represented by counsel.

Sixteen states set a time limit for responding to communications from the claimant or someone acting on their behalf. Generally, this requirement is limited to communications that indicate a response is expected or anticipated. The time limit for compliance is 10 days in New Hampshire, New Jersey, Rhode Island, Vermont, Virginia, Washington; 15 days in Alaska, Kentucky, Nebraska, New York, Ohio, Pennsylvania, Utah; 20 days in Nevada; and 30 days in Oregon. Oklahoma’s deadline is 30 days by statute, but its administrative rules mandate 20 days. Research has not revealed a reason for this distinction.

Twelve states require that the insurer provide an initial report as to the status of the investigation and, if necessary, follow-up reports as to when the claim may be resolved. The states are California, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia.

No two states that require status reports are similar. The compliance time frames range from 15 days (Nebraska) to 45 days (Oregon) after the receipt of the first notice of claim with follow-up reports every 15 days (Washington) to 45 days (Ohio) and thereafter. It is best in each of these states to review the specific statute or regulation.

The requirement of warning claimants of the running of a statute of limitations or contractual limitation exists in sixteen of the states. California, Nevada, New Jersey, Ohio and Utah require that this warning be given to first- and third-party claimants prior to 60 days before the deadline. Arizona, Arkansas, Kansas, Missouri, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and West Virginia require a 60 day warning for first-party and a 30 day warning for third-party claimants.

Seven of the states require that both first- and third-party claims be affirmed or denied within a specified time period. These are:

- Illinois – 30 days after investigation completed
- Kentucky – reasonable time after receipt of notice of claim
- Nebraska – 15 days after receipt of proof of loss
- New Hampshire – 30 days after receipt of notice of claim
- New Jersey – 45 days from notice of claim or 30 days from proof of loss
- New York – 15 days after receipt of proof of loss
- Rhode Island – 15 days after receipt of proof of loss

Finally, three of the states require that undisputed portions of both first- and third-party claims be paid within a specified time period. New Hampshire and Ohio gives the carrier 5 days while Nebraska provides 15 days.

These requirements directly affect the working relationship between the third-party claimant and the adjuster who is attempting to protect the insured's and his principal's interests while at the same time assist the principal in carrying out its legally mandated duties to all of those affected by the insurance contract.

An adjuster may be tempted to "help" the insured or his principal by a creative interpretation of his duties under these provisions. A good example would be providing a vague or incomplete notification as to the running of the statute of limitations. This is especially tempting when the claim has the potential to exceed the policy limits thereby exposing the insured's personal assets.

The solution for the claims professional is to comply with the regulations. The adjuster should not attempt to avoid the effect of the regulations by doing anything that can be later characterized as a subterfuge. To do so may expose the principal to direct action and the possibility of punitive damages.

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