

Ins 6.11 Insurance claim settlement practices

- (1) **PURPOSE.** This rule is to promote the fair and equitable treatment of policyholders, claimants and insurers by defining certain claim adjustment practices which are considered to be unfair methods and practices in the business of insurance. The rule implements and interprets applicable statutes including but not limited to ss. [601.04 \(3\)](#), [601.01 \(2\)](#), and [645.41 \(3\)](#), Stats.
- (2) **SCOPE.** This rule applies to the kinds of insurance identified in s. [Ins 6.75](#), transacted by insurers as defined in s. [600.03 \(27\)](#), Stats., and nonprofit service plans subject to ch. [613](#), Stats.
- (3) **UNFAIR CLAIM SETTLEMENT PRACTICES.**
- (a) Any of the following acts, if committed by any person without just cause and performed with such frequency as to indicate general business practice, shall constitute unfair methods and practices in the business of insurance:
1. Failure to promptly acknowledge pertinent communications with respect to claims arising under insurance policies.
 2. Failure to initiate and conclude a claims investigation with all reasonable dispatch.
 3. Failure to promptly provide necessary claims forms, instructions and reasonable assistance to insureds and claimants under its insurance policies.
 4. Failure to attempt in good faith to effectuate fair and equitable settlement of claims submitted in which liability has become reasonably clear.
 5. Failure upon request of a claimant, to promptly provide a reasonable explanation of the basis in the policy contract or applicable law for denial of a claim or for the offer of a compromise settlement.
 6. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages involved.
 7. Failure to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.
 8. Failure to settle a claim under one portion of the policy coverage in order to influence a settlement under another portion of the policy coverage.
 9. Except as may be otherwise provided in the policy contract, the failure to offer settlement under applicable first party coverage on the basis that responsibility for payment should be assumed by other persons or insurers.
 10. Compelling insureds and claimants to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.
 11. Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.
 12. Failure, where appropriate, to make use of arbitration procedures authorized or permitted under any insurance policy.

13. Adopting or making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(b) Any of the following acts committed by any person shall constitute unfair methods and practices in the business of insurance:

1. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages involved.

2. Failure to make provision for adequate claims handling personnel, systems and procedures to effectively service claims in this state incurred under insurance coverage issued or delivered in this state.

3. Failure to adopt reasonable standards for investigation of claims arising under its insurance policies.

4. Violating the requirements established in s. [632.85](#), Stats.

(4) PROMPT DEFINED. Except where a different period is specified by statute or rule and except for good cause shown, the terms "prompt" and "promptly" as used in this rule shall mean responsive action within 10 consecutive days from receipt of a communication concerning a claim.

(5) PENALTY. The commission of any of the acts listed in sub. [\(3\) \(a\)](#) or [\(b\) 2.](#) or [3.](#) shall subject the person to revocation of license to transact insurance in this state. Violations of this rule or any order issued thereunder shall subject the person violating the same to s. [601.64](#), Stats.

History: Cr. [Register, October, 1971, No. 190](#), eff. 11-1-71; am. (1), [Register, September, 1973, No. 213](#), eff. 10-1-73; am. (2), [Register, February, 1974, No. 218](#), eff. 3-1-74; emerg. am. (2), eff. 6-22-76; am. (2), [Register, September, 1976, No. 249](#), eff. 10-1-76; am. (1) and (2), [Register, March, 1979, No. 279](#), eff. 4-1-79; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., [Register, April, 1992, No. 436](#), eff. 5-1-92; cr. (3) (b) 4., [Register, February, 2000, No. 530](#), eff. 3-1-00.

628.34 **Unfair marketing practices**

(1) MISREPRESENTATION.

(a) *Conduct forbidden.* No person who is or should be licensed under chs. [600](#) to [646](#), no employee or agent of any such person, no person whose primary interest is as a competitor of a person licensed under chs. [600](#) to [646](#), and no person on behalf of any of the foregoing persons may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer, or any intermediary that contains false or misleading information, including information that is misleading because of incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or willfully refraining from making a proper entry, are "communications" within the meaning of this paragraph. No intermediary or insurer may use any business name, slogan, emblem, or related device that is misleading or likely to cause the intermediary or insurer to be mistaken for another insurer or intermediary already in business. No intermediary may provide a misleading certificate of insurance.

(b) *Presumption of insurer's violation.* If an insurance agent distributes cards or documents, exhibits a sign or publishes an advertisement which violates par. [\(a\)](#), having reference to a particular insurer that the agent represents, the agent's violation creates a rebuttable presumption that the violation was also committed by the insurer.

(2) UNFAIR INDUCEMENTS.

(a) *General.* No insurer, no employee of an insurer, and no insurance intermediary may seek to induce any person to enter into an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy, nor may any insurer make any agreement of insurance that is not clearly expressed in the policy to be issued. This subsection does not preclude the reduction of premiums by reason of expense savings, including commission reductions, resulting from any form of mass marketing.

(b) *Absorption of tax.* No agent, broker or insurer may absorb the tax under s. [618.43 \(2\)](#).

(3) UNFAIR DISCRIMINATION.

(a) No insurer may unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved, subject to ss. [632.365](#), [632.746](#) and [632.748](#). Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket or franchise policy, and terms are not unfairly discriminatory merely because they are more favorable than in a similar individual policy.

(b) No insurer may refuse to insure or refuse to continue to insure, or limit the amount, extent or kind of coverage available to an individual, or charge an individual a different rate for the same coverage because of a mental or physical disability except when the refusal, limitation or rate differential is based on either sound actuarial principles supported by reliable data or actual or reasonably anticipated experience, subject to ss. [632.746](#) to [632.7495](#).

(4) RESTRAINT OF COMPETITION. No person who is or should be licensed under chs. [600](#) to [646](#), no employee or agent of any such person, no person whose primary interest is as a competitor of a person licensed under chs. [600](#) to [646](#), and no one acting on behalf of any of the foregoing persons, may commit or enter into any agreement to participate in any act of boycott, coercion or intimidation tending to unreasonable restraint of the business of insurance or to monopoly in that business.

(5) FREE CHOICE OF INSURER. No person may restrict in the choice of an insurer or insurance intermediary another person required to pay the cost of insurance coverage whenever the procurement of insurance coverage is required as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract. However, the person requiring the coverage may reserve the right to disapprove on reasonable grounds the insurer or the coverage selected. The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify that additional grounds are not reasonable.

(6) EXTRA CHARGES. No person may make any charge other than premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing or

continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

- (7) INFLUENCING EMPLOYERS.** No insurer or insurance intermediary or employee or agent of either may, in connection with an insurance transaction, encourage, persuade or attempt to influence any employer to refuse employment to or to discharge any person arbitrarily or unreasonably.
- (8) USE OF OFFICIAL POSITION.** No person holding an elective, appointive or civil service position in federal, state or local government may use decision-making power or influence in that position to coerce the placement of insurance for any prospective policyholder through any particular intermediary or with any particular insurer.
- (9) REFUSAL TO RETURN INDICIA OF AGENCY.** No agent may refuse or fail to return promptly all indicia of agency to the principal on demand.
- (10) INSURANCE SECURITY FUND.** No insurer or insurance intermediary may make use in any manner of the protection given policyholders by ch. [646](#) as a reason for buying insurance from the insurer or intermediary.
- (11) OTHER UNFAIR TRADE PRACTICES.** No person may engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined under sub. [\(12\)](#).
- (12) RULES DEFINING UNFAIR TRADE PRACTICES.** The commissioner may define specific unfair trade practices by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or restrain competition unreasonably.
- (13) MARKETING OF WELLNESS PROGRAMS.**
- (a)** In this subsection, "wellness program" means a program that is designed to promote health or prevent disease through a reward to insured individuals and that meets the qualifications of [45 CFR 146.121](#) (f) (1) or (2).
- (b)** Notwithstanding subs. [\(2\) \(a\)](#), [\(3\)](#), [\(7\)](#), and [\(11\)](#) and any rules promulgated under sub. [\(12\)](#), it is not a violation of this section for an insurer to advertise, market, offer, or operate a wellness program.

History: [1975 c. 371, 421](#); [1979 c. 89, 109, 313, 355](#); [1991 a. 279](#); [1995 a. 289](#); [1997 a. 27, 237](#); [2009 a. 275](#); [2011 a. 224](#).

Cross-reference: See also ss. [Ins 2.07](#), [3.27](#), [6.19](#) [6.67](#), [6.68](#), and [6.90](#), Wis. adm. code.

Any administrative rule requiring dissemination of cost disclosure information that is misleading due to incompleteness is beyond the scope of the insurance commissioner's authority in that it violates sub. (1) (a). *Aetna Life Insurance Co. v. Mitchell*, [101 Wis. 2d 90, 303 N.W.2d 639](#) (1981).

There is no private right of action to enforce sub. (3). *NAACP v. American Family Mutual Insurance Co.* [978 F.2d 287](#) (1992).