NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Where the future of insurance has its voice™

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

January 31, 2017

Commissioner Jacqueline Cunningham
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218-1157

Dear Commissioner Cunningham,

Thank you for the opportunity to lend feedback on the Bureau's proposed **Rules Governing Unfair Claims Settlement Practices.**

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers.

NAMIC member companies serve more than 170 million policyholders and write more than $230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets.

Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

We understand that the claims settlement practices regulations have not been updated in many years, and we appreciate the deliberative process that the Bureau is taking in the update. While in many areas the proposed rules track with the NAIC model regulations, there are several areas where they deviate. For consistency, we'd ask that changes be made to the proposed rules so that they follow the model as much as is practicable.

We have had ongoing dialogue with Bureau staff to suggest specific language adjustments that would make the proposed rules more consistent with the model and provide clarity to the insurance industry. For the purposes of this letter then, we offer the following areas that we draw your attention to as those areas which we have communicated to the staff about.

NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Where the future of insurance has its voice™

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

Definitions:

1) We have concerns that the current language defining third party claimant positions providers in an inappropriate place with P&C insurers. We would suggest the NAIC model definition of third party claimant:

   J. "Third party claimant" means any person asserting a claim against any person under a policy or certificate of an insurer

2) Please consider this additional language when defining provider: "Provider" means any person providing health care services pursuant to a health care policy.

Compliance Standards (25)

We had a discussion at the 1/10 hearing with BOI staff where we indicated some discomfort with the word willfully, and that it may need more specificity. The staff invited us to try to develop language that recognized that section of the Code but added sufficient detail to cover our concerns. Per our discussion with BOI staff about the definition of "willfully" please consider this language:

It shall be a violation of this chapter if any person:
1. ~~Willfully violates any provision of this chapter;~~ who with conscious disregard, violates § 32.218A of the Code of Virginia

File documentation (30)

Please consider utilizing the retention requirement of two preceding years as in the model language, as opposed to the proposed requirement of three preceding years. (Section E)

Misrepresentation of the policy (40)

We have concerns that the proposed regulation turns a prohibition in the code in to an affirmative duty via the regulation. While the Code states that you may not misrepresent pertinent facts, this draft regulation expands to an affirmative duty to fully disclose all pertinent issues. While certainly insurers agree with informing insureds and intend to do so, we feel the Code language is not as likely to be grounds for unwarranted litigation. We'd suggest the regulation match the code language by adjusting the language as follows:

14VAC5-400-40. Misrepresentation of policy provisions.

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

A. No ~~person shall knowingly obscure or conceal from first party claimants, either directly or by omission, benefits, coverages or other provisions of any insurance policy or insurance contract when such~~ insurer shall misrepresent pertinent facts or insurance policy provisions ~~fail to fully disclose to a first party claimant all pertinent~~ benefits, coverages~~,~~ ~~or other provisions are pertinent to a claim of an insurance policy~~ under which a claim is presented and document the claim file accordingly.

Also in Section 40, NAMIC voiced concerns about Section D regarding prejudice and the policy requirements reflected in the forms. We offer the following language to replace the proposed section D to satisfy that concern:

D. No Insurer shall deny a claim based on the failure of a claimant or insured to give written notice of a loss or of a claim within a specified time limit unless:

i. written notice within a specified time period is required by the policy's provision; or
ii. the claimant's or insured's failure to comply with the notice requirement of the policy prejudices the insurer's rights.
iii. the notices for the making of the claim and notice to the insured are required within the policy grant of coverage.

Section 50:

We understand the Bureau's viewpoint regarding speed of technology upgrades that have decreased the amount of time that passes in communications. In fact, it behooves insurers to continue to speed this timeframe and they do so within their power. To that point then, we believe there is no demonstrable value in deviating from the model language on time frames of communications. It causes increased programming and compliance costs where an insurer is already making efforts to be as efficient as possible. Many have expressed that the window of time is rarely as long as either of the requirements suggest, so we believe the best way to address it is to be uniform with other states in order to decrease internal compliance costs while continuing to encourage insurers to be innovative and speedy with technology regarding communications. To that end, please make the relevant adjustments to 15 days and 21 days respectively in section 50 in order to match up to Section 6 and 7 of the model.

Section 70:

NAMIC indicated discomfort with the concept of a "partial denial" and how that may be clarified to ensure that it is not meant to include settlement negotiations. To that end, we suggest the following additional language:

NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Where the future of insurance has its voice™

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

A. Any denial of a claim must, including a partial denial, shall be given to a claimant in writing and the claim file of the insurer shall contain a copy of the denial. A partial denial does not include settlement negotiations.

Section 80:
In Section D, please consider re-inserting the phrase "Reasonably expected." We feel the phrase is important for context.

Also in section 80, we feel there needs to be clarity added in section H regarding reasonable charges. I'd suggest the following:

[H. If towing is as a result of a covered loss, unless Unless] the insurer has provided a claimant with the [name names] of [a any] specific towing [company companies] prior to the claimant's use of another towing company, the insurer shall pay all reasonable towing charges *pursuant to the limits of the policy*, irrespective of the towing company used by the claimant

Lastly, in Section I, please consider this wording change to reflect how the financial transaction sometimes occurs:

[H. I.] Prior to termination of payment for transportation or rental reimbursement expenses, the insurer shall provide reasonable time for the claimant to ~~receive payment for automobile repairs or replacement~~ *repair the automobile*. In the event of a total loss, the insurer shall provide reasonable time for a claimant to acquire a replacement automobile.

Thank you again for the opportunity to engage on the proposed regulations. If I can be of any assistance, please don't hesitate to call on me.

Sincerely,

Erin Collins
Director - State Affairs – Mid-Atlantic
National Association of Mutual Insurance Companies
804.878.6473 Cell www.namic.org
Where the future of insurance has its voice™