

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 545

By: Senator J. Bryant
By: Representative G. Hodges

For An Act To Be Entitled

AN ACT TO CREATE STANDARDS FOR THE EVALUATION OF CLAIMS; TO ENSURE GOOD FAITH AND FAIR DEALING IN THE BUSINESS OF INSURANCE; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE STANDARDS FOR THE EVALUATION OF CLAIMS; AND TO ENSURE GOOD FAITH AND FAIR DEALING IN THE BUSINESS OF INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 66, Subchapter 2, is amended to add additional sections to read as follows:

23-66-216. Standards for the documentation, investigation, evaluation, communication, and payment of claims.

(a)(1) The claim files of an insurer, including a health carrier, are subject to examination by the Insurance Commissioner or his or her designee.

(2) Claim files shall be documented so that pertinent events and the dates of such events can be reconstructed at a later date, including without limitation all evidence supporting any decision made on a claim.

(3) All evidence supporting a claim decision shall be documented in an insurer's claim file in the event of a future examination by the commissioner.

(4) An insurer shall not:

(A) Misrepresent evidence when documenting a claim;

(B) Substitute values unsupported by competent evidence



when documenting a claim; or

(C) Alter evidence in a claim file.

(5) An insurer shall document:

(A) All potential elements of damages a claimant is legally entitled to recover; and

(B) An amount to pay for all elements of damages a claimant is legally entitled to recover.

(b)(1) The commissioner shall establish standards for the prompt investigation of a claim under Rule 43 promulgated by the State Insurance Department.

(2)(A) Every insurer shall complete investigation of a claim within forty-five (45) calendar days after notification of claim, unless the investigation cannot reasonably be completed within that time.

(B)(i) If an investigation cannot be completed within the forty-five (45) days under subdivision (b)(2)(A) of this section, an insurer shall notify claimants that additional time is required.

(ii) An insurer shall include with the notification under subdivision (b)(2)(B)(i) of this section the reason additional time is required.

(iii) However, an extension after the initial forty-five (45) days under subdivision (b)(2)(A) of this section shall not exceed thirty (30) days.

(C) If a claim investigation exceeds seventy-five (75) total days, the claim shall be admitted unless delayed by action of the insured.

(D)(i) If a delay is caused by the insured, the insurer shall notify the insured and state specifically what the insurer needs to complete the claim investigation.

(ii) A claim shall be admitted if the claim investigation extends beyond thirty (30) days following the insurer's receiving all specific information requested from the insured.

(iii) An insurer shall not deny a claim solely because it cannot complete its claim investigation within the time periods under this subdivision (b)(2).

(3) A claim investigation undertaken by an insurer shall be thorough, fair, prompt, unbiased, and conducted at the insurer's expense

before making any payment decisions.

(4) An insurer shall:

(A) Promptly complete any necessary follow-up investigation of a claim and give due consideration to any additional findings; and

(B) Investigate all potential elements of damages a claimant is legally entitled to recover.

(5)(A) If an insured asserts a contractual right to appraisal, the insurer shall complete the appraisal process within sixty (60) days unless the insured gives written consent to an extension.

(B) An insurer shall not refuse to participate in the appraisal process on the basis of disputing coverage.

(6) An insurer shall have no more than seventy-five (75) days total to complete an appraisal.

(c)(1) The commissioner shall establish standards for the prompt, fair, and equitable settlements applicable to an insurer under Rule 43 promulgated by the department.

(2) An insurer shall:

(A) Pay all amounts not in dispute within thirty (30) days following the evaluation of a claim or a reevaluation of a claim; and

(B) Pay all elements of damages an insured is legally entitled to recover under an insurance policy.

(3) An insurer shall not:

(A) Refuse to pay a claim based on information that is biased, speculative, invalid, or unreliable; or

(B) Provide incentives, financial or otherwise, for the insurer's claims employees to reduce the cost of investigating claims, denying claims, or underpaying claims.

(d)(1) The commissioner shall establish standards for the evaluation of a claim under Rule 43 promulgated by the department.

(2) An insurer shall:

(A) Treat its policyholder's interest with equal regard as it does the insurer's own interest;

(B) Make an objective evaluation of the facts and circumstances surrounding a claim;

(C) Evaluate all potential elements of damages a claimant

is legally entitled to recover under an insurance policy;

(D) Reevaluate a claim as new material information becomes available;

(E) Only consider the opinions of unbiased and qualified consultants when evaluating a claim;

(F) Acknowledge evidence supporting a claim during a claim evaluation;

(G) Evaluate a claim based on the uniqueness of each individual claim; and

(H) Fully, fairly, and promptly evaluate a claim.

(3) An insurer shall not:

(A) Treat a claim evaluation as an adversarial or competitive process;

(B) Consider factors in a claim evaluation for which there is no evidence;

(C) Alter evidence in a claim file in the evaluation of a claim;

(D) Substitute values in the evaluation of a claim that are unsupported by competent evidence; or

(E) Misrepresent facts or policy provisions in the evaluation of a claim.

(e)(1) The commissioner shall establish standards for the communication of the payment of a claim to an insured under Rule 43 promulgated by the department.

(2) Following the report of a loss, an insurer shall communicate:

(A) To an insured, or other person for whom coverage may apply, all potential coverages that may be applicable to the loss;

(B) The amount the insurer will pay for each element of damages a claimant is legally entitled to recover on a claim; and

(C)(i) The insurer's claim decisions in writing.

(ii) If the claim is not paid in full, the insurer shall:

(a) Communicate all the reasons the insurer believes full payment is not justified; and

(b) Direct the insured, or other person for

whom coverage may apply, to the evidence supporting the insured's justification for not making full payment on the claim.

(3) An insurer shall not:

(A) Conceal or fail to disclose how the insurer:

(i) Interprets the insurer's policy provisions; or

(ii) Handles similarly situated claims; or

(B) Misrepresent facts or policy provisions when communicating about claims.

23-66-217. Standards for appraisal arbitration – Legislative intent – Definition.

(a) It is the intent of the General Assembly that this section only applies to:

(1) First party property claims and no other lines of insurance;

(2) When the insured invokes a contractual right to appraisal arbitration in a first-party property insurance contract; and

(3) When the amount in dispute between the insurer and insured is greater than ten thousand dollars (\$10,000).

(b) As used in this section, "umpire" means a neutral and impartial party selected by the appraisers for the insurer or the insured.

(c)(1) An appraiser employed to arrive at a valuation of damages for insurance purposes, including the scope of damages and the pricing of each item within that scope, shall be fair, impartial, disinterested, and independent.

(2) An appraiser in the appraisal process shall not have a direct, material interest in the amounts determined by the appraisal process.

(3) The appraiser shall:

(A) Disclose any known fact to all parties that a reasonable person would consider likely to affect the appraiser's valuation of the insured property; and

(B) Continue to disclose to all parties to the appraisal of any facts, including any contingency arrangement for the payment of the appraiser, that the appraiser learns after accepting the appointment that a reasonable person would consider likely to affect the appraiser's valuation of the insured property.

(4) An insurer, insured, or a representative of an insurer or a

representative of an insured, may directly communicate with their own appraiser.

(5) An insurer, insured, or a representative of an insurer or a representative of an insured, including an adjuster or attorney, shall not directly communicate with the other party's appraiser without the written consent and participation of both parties or their representatives.

(6) The appraisers may directly communicate with each other as part of the appraisal process to reach an agreed-upon settlement amount.

(d)(1) An umpire employed to arrive at a valuation of damages for insurance purposes, including the scope of damages and the pricing of each item within that scope, shall be fair, impartial, neutral, and paid for equally by both the insurer and insured.

(2) An umpire is considered fair, impartial, and neutral if the umpire does not have:

(A) An existing direct or material relationship with a party to the appraisal; and

(B) A direct or material interest in the outcome of an appraisal proceeding.

(3) An umpire shall disclose to all parties to an appraisal process:

(A) Any known facts a reasonable person would consider likely to affect the impartiality of the umpire, including:

(i) A financial or personal interest in the outcome of the appraisal; and

(ii) A current or previous relationship with a party to the agreement to appraise or a party to the appraisal proceeding or with their counsel or representatives, including adjusters, witnesses, or either of the appraisers; and

(B) Any facts the umpire learns after accepting the appointment that a reasonable person would consider likely to affect the impartiality of the umpire.

(4) An insurer, insured, or a representative of the insurer or a representative of the insured, including adjusters, attorneys, and appraisers, shall not have ex parte communications with the umpire during the appraisal process.

(5) The umpire shall not have ex parte communications with the

insurer, including adjusters, the insured, the representative of the insurer, or the representative of the insured, including attorneys.

(6) If the appraisers cannot agree on an umpire, a person shall be designated as an umpire by a court.

(7) An umpire is charged with resolving issues the appraisers are unable to agree upon during the course of an appraisal.

(e) An insurer shall not:

(1) Offer or sell an insurance policy that makes the insurer's participation in the appraisal process optional if requested by the insured under the terms of the applicable insurance policy; or

(2) Deny participation in an appraisal by asserting there is a dispute as to coverage.

(f) If an insured asserts a contractual right to appraisal, the insurer shall complete the appraisal process within sixty (60) days.

(g) An award that is issued by an appraisal panel is binding on both insurer and insured unless it was:

(1) Made without authority;

(2) Made as the result of fraud; or

(3) Not issued in substantial compliance with the terms of the applicable insurance policy.

(h) The appraisal arbitration process shall be completed within sixty (60) days from the date the matter is presented to the umpire unless the insured consents in writing to a reasonable extension of time.