



September 2009

WEST VIRGINIA INFORMATIONAL LETTER

NO. 172

TO: All Insurance Companies Licensed to do Business in the State of West Virginia

RE: Record Retention Requirement

This Informational Letter is intended to remind insurers of their obligation to properly document claim files to ensure that the Offices of the Insurance Commissioner (“OIC”) can conduct a complete and thorough review of the subject claim by permitting the OIC to fully assess the subject insurer’s claim adjusting or processing methods. 114 CSR 15 provides, in relevant part:

4.2. For the purpose of examination, analysis and review activities conducted pursuant to W. Va. Code § 33-2-9 or this rule, an insurer or related entity licensed to do business in this state shall maintain its books, records and documents in a manner so that the commissioner can readily ascertain during an examination the insurer’s compliance with the insurance laws and rules of this state, the standards outlined in the NAIC Financial Conditions Examiner Handbook, and with the standards outlined in the NAIC Market Regulation Handbook, including, but not limited to, company operations and management, policyholder service, marketing, producer licensing, underwriting, rating, complaint/grievance handling, and claims practices.

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b. All insurer records within the scope of this rule must be retained for the lesser of:

1. The current calendar year plus five (5) calendar years;
2. From the closing date of the period of review for the most recent examination by the commissioner; or
3. A period otherwise specified by statute as the examination cycle for the insurer.

c. The producer of record shall maintain a file for each policy sold, and the file shall contain all work papers and written communications in his or her possession pertaining to the policy documented therein. These records shall be retained for the current calendar year plus additional years as set forth in subdivision b of this subsection.

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Page 1 of 3

WVIL 171



4.4. Claim files shall be maintained as follows:

a. A claim file and accompanying records shall be maintained for the calendar year in which the claim is closed plus additional years as set forth in subdivision b, subsection 4.2 of this section. The claim file shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim files shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed. A claim file shall, at a minimum, include the following items:

1. For property and casualty: the file or files containing the notice of claim, claim forms, proof of loss or other form of claim submission, settlement demands, accident reports, police reports, adjustors' logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, medical records, correspondence to and from insureds and claimants or their representatives, notes, contracts, declaration pages, certificates evidencing coverage under a group contract, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, copies of claim checks or drafts, or check numbers and amounts, releases, all applicable notices, correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, any other documentation created and maintained in a paper or electronic format, necessary to support claim handling activity, and any claim manuals or other information necessary for reviewing the claim;

2. For life and annuity: the file or files containing the notice of claim, claim forms, proofs of loss, medical records, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, claim handling logs, copies of checks or drafts, check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity; and

3. For health: the file or files containing the notice of claim, claim forms, medical records, bills, electronically submitted bills, proofs of loss, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, health facility pre-admission certification or utilization review documentation, claim handling logs, copies of explanation of benefit statements, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, copies of checks or drafts, or check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

It is further noted that 114 CSR § 14-3 requires the retention of all notes and work

papers concerning a claim in such detail that pertinent events and the dates of such events can be reconstructed. A violation of this provision can result in a finding by the OIC that the insurer transacted insurance in an illegal, improper or unjust manner and, accordingly, the OIC may refuse to renew, or may revoke or suspend the license of the insurer or, in lieu thereof, the OIC may order the insurer to pay a penalty set by statute. *See* 114 CSR § 14-10.

Moreover, insurers are required to provide the OIC with a complete copy of the claim file as part of an administrative proceeding involving the claim. If a violation is found, the OIC may request complete copies of other claim files from the insurer to determine whether the violation is occurring with such frequency as to constitute a general business practice, thus potentially triggering a violation of W. Va. Code § 33-11-4(9). Accordingly, the claim files must contain all of the insurer's documentation and records in order for the OIC to make an accurate assessment of whether a violation occurred with the initial claim at issue and, if so, whether a general business practice is prevalent.

Record retention is also an important tool in detecting fraudulent insurance claims. Insurance fraud is a serious and growing problem, which has been conservatively estimated as accounting for ten percent (10%) of the cost of insurance premiums. Consistent maintenance of essential claim records by insurers is crucial to a comprehensive investigation of potentially fraudulent claims. Additionally, use of such claim information is necessary to protect the citizens of West Virginia from insurance fraud.

The OIC has recently become aware that certain first and third party claimants involved in litigation concerning their respective claims have requested that the court order pertinent medical documentation to be destroyed or returned by the insurer at the conclusion of the litigation. The OIC is charged with ensuring the orderly, fair and consistent application of laws enacted by the Legislature to protect the state's consumers of insurance products and services. To that end, the Legislature has given the OIC broad authority to conduct market conduct reviews of insurer claim files on a targeted or periodic basis. Such reviews include, as set forth above, a detailed assessment of all relevant claim records maintained by insurers. The applicable insurance laws and rules demand consistent and comprehensive maintenance of all essential claim records by insurers to ensure that the laws protecting consumers of this state are being followed and that claims are being properly resolved. If records necessary for an adequate market conduct review are missing, the OIC will be substantially hindered in carrying out its legislative mandate and thus may subject insurers to penalties.

If you have a question concerning this Informational Letter, please e-mail your question to Informational.Letters@wvinsurance.gov or call (304) 558-0401.

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Insurance Commissioner