

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

RELATES TO: KRS 304.12-230, 342.267, 342.610(7)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims and administrative law judges. KRS 342.267 requires the Commissioner to fine carriers for engaging in unfair claims settlement practices under KRS Chapter 342 or 304.12-230. This administrative regulation establishes standards for the Commissioner and carriers with regard to unfair claims settlement practices.

Section 1. Definitions.

- (1) "Agent" means a person or entity performing claims adjusting, case management, utilization review, or other service on behalf of a carrier.
- (2) "Carrier" is defined by KRS 342.0011(6).

Section 2. File and Record Documentation.

- (1) Each carrier's claim files and files held by an agent of the carrier shall be subject to examination by the commissioner or the commissioner's designee.
- (2) Each carrier or agent of the carrier shall maintain claim data that is readily accessible and retrievable for examination.
- (3) Documentation shall be contained in each claim file:
 - (a) Detailing the activities of each carrier and any agent of the carrier; and
 - (b) Detailing the basis for the decision of the carrier or agent of the carrier upon material matters of the claim.
- (4) Each document within a claim file shall be noted as to date received, date processed, or date mailed.
- (5) For a carrier that does not maintain hard copy files, claim files shall be capable of duplication to legible hard copy.
- (6) A claim file shall be maintained for a period not less than five (5) years following the creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

Section 3. Notice of Policy Provisions and Information.

- (1) A carrier shall provide the notice required by KRS 342.610(7) with regard to policy provisions, coverage, and benefits.
- (2) Failure to provide the notice in the form prescribed by 803 KAR 25:200 shall constitute an unfair claims settlement practice.

Section 4. Duty to Investigate. Upon notice of a work-related injury, a carrier shall diligently investigate a claim for facts warranting the extension or denial of benefits.

Section 5. Standards for Prompt and Timely Actions.

- (1) After receipt of notice of a work-related injury necessitating medical care or causing lost work days, a carrier shall as soon as practicable advise an injured employee of acceptance or denial of the claim.
- (2) A carrier shall provide to the employee in writing the specific reasons for denial of a claim.
- (3) A carrier shall inform an employee of additional information needed for the claim to be accepted.
- (4) A carrier shall meet the time constraints for accepting and paying workers' compensation claims established in KRS Chapter 342 and 803 KAR Chapter 25.

Section 6. Standards for Fair and Equitable Settlement.

- (1) A carrier shall attempt in good faith to promptly pay a claim in which liability is clear;
- (2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;
- (3) A carrier shall not compel an employee to institute formal proceedings with the Department of Workers' Claims to recover benefits where liability is clear;
- (4) A carrier shall not offer a settlement which is substantially less than the reasonable value of a claim;
- (5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose of compelling a settlement for less than a workers' compensation award; and
- (6) A carrier shall not require an employee to obtain information which is accessible to the carrier.

Section 7. Acknowledgment of Communications.

- (1) Upon receipt of an inquiry from the Department of Workers' Claims, each carrier shall furnish the Department of Workers' Claims a full response within fifteen (15) days.
 - (2) Upon receipt of a communication from an injured employee that reasonably suggests a response is expected, a carrier shall make a prompt and appropriate reply to the employee.
- (25 Ky.R. 1285; 1671; 1884; eff. 2-18-1999; TAm eff. 8-9-2007; 47 Ky.R. 574, 1218; eff. 3-2-2021.)

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.