

**State of Rhode Island and Providence Plantations  
DEPARTMENT OF BUSINESS REGULATION**

*Division of Insurance*

**1511 Pontiac Avenue, Bldg. 69-2  
Cranston, Rhode Island 02920**

**CONCISE EXPLANATORY STATEMENT**

**Insurance Regulation 73 – Unfair Claims Settlement Practices**

The Department of Business Regulation (“Department”) hereby adopts amendments to Insurance Regulation 73 effective February 18, 2014 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The Department makes these amendments in order to address the recent enactment of R.I. Gen. Laws 27-9.1-4 (25) regarding total loss vehicles; to bring the remaining portions of the regulation into conformance with the NAIC model other than those areas for which there is specific Rhode Island language, to address issues that have arisen since the last amendment of this regulation and to incorporate the substance of bulletins previously issued by the Department into the regulation. There are 22 differences between the text of the proposed rule as published in accordance with R.I. Gen. Laws § 42-35-3 and the rule as adopted. Those differences are:

1. A portion of the proposed amendment to section 3(D) was eliminated.
2. Two typographical errors in section 3(N) were corrected.
3. A phrase proposed to be included in section 3(L) was eliminated and the words “his, her or its” were added to clarify the meaning of the definition.
4. The phrase “by a claimant” contained in the definition was moved to the first line from the third line in section 3(N).
5. The phrase “holding insured status” was added to section 3(Q).
6. The phrase “first party” was added to section 5(C) to clarify the applicability of the section.
7. In section 7(A) the Department declined to change the phrase “properly executed proofs of loss” to “notification of claim” as it had proposed and the word “Department” was substituted for “insurance regulatory authority.”
8. Section 7(F) was amended to clarify that it did not apply to claims in which damages are in dispute.
9. Section 7(G) was amended to substitute “first party claimant” for “insured.”

10. Section 8(A)(1) was amended to fix a grammatical error and to clarify that section 8(A)(3) provided an exception to the general rule.

11. Section 8(A)(2)(a) and (d) were amended to clarify that a filing to qualify an entity under R.I. Gen Laws § 27-9.1-4(25) can be made by any interested person not just the entity itself.

12. Section 8(A)(2)(b) was amended to clarify that filings under this section can be approved or rejected or the Department can hold a hearing on the filings.

13. Section 8(A)(2)(c) was amended to clarify that a bulletin would be issued identifying qualifying entities and that the bulletin may be amended from time to time.

14. Section 8(A)(3) was amended to provide for those situations in which a title does not exist.

15. Section 8(A)(4) was added to address questions as to whether various portions of Section 8 apply to first party claims, third party claims or both. This section contains the substantive provisions of 8(B)(2) but its repeat here clarifies that fair market value, as defined in the statute, must be paid on all vehicles regardless of whether the claim is a first or third party claim.

16. Section 8(B)(1) and (2) were amended to substitute “first party claimant” for “insured” for clarity; change the phrase “taxes, license fees and registration fees” contained in the NAIC model act to “taxes, title, registration and other fees” to properly represent the fees charged in Rhode Island and to eliminate the proposed phrase “to purchase a comparable automobile” to clarify that the minimum that must be used is the statutory “fair market value.”

17. Section 8(B)(3) was amended to clarify that it applies to first party claims and the final paragraph was moved to 8(E)(3) as it is applicable to both first and third party claims.

18. Section 8(C)(1) was amended to change the word “estimate” used in the NAIC model to “appraisal” used in Rhode Island statute and to add a phrase contained in the NAIC model but inadvertently omitted from the proposal. In section 8(C)(1)(i) The Department rewrote the second sentence to clarify its applicability to all repairs in accordance with the Rhode Island statute.

19. Section 8(C)(5) was amended to change the word “replacement” used in the NAIC model to the word “aftermarket” used in Rhode Island statute.

20. Section 8(D)(7) was amended to change the word “customers” to “consumers.”

21. Sections 8(E) and 9 were amended to substitute “first part claimant” for “insured”

22. Section 10 was amended to clarify that an insurance producer may file a complaint on behalf of his or her customer and to add back the last line of the section which had been proposed to be deleted.

The Department received other comments which it declined to address by changes in the regulation. Those comments were so numerous that it is impractical to address each individually. However, the following is the departments reasoning in the consideration of some of the more pervasive comments:

1. With regard to section 8, numerous comments were received advocating the position that the use of the words “for the purpose of this subdivision” evidence a legislative intent that R.I. Gen. Laws § 27-9.1-4(25) should only be applied to the determination of whether the vehicle was a total loss with the actual claim payment made to the claimant determined by another method. The basis for the analysis is an assumption that the undefined term “subdivision” means subsection (25) of section 4 of chapter 9.1 of title 27. However, when read in the context of the statute as a whole, a more reasonable interpretation of “subdivision” is that it refers to the chapter in which the section belongs – chapter 9.1 of title 27. To hold otherwise is to accept that the legislature included this section in the chapter entitled “Unfair Claim Settlement Practices” but did not intend it to apply to the actual claim only to the determination as to whether or not the vehicle would be repaired. The interpretation advocated would appear to violate the “purpose” section of the chapter at R.I. Gen. Laws § 27-9.1-1 which provides in relevant part “[t]he purpose of this chapter is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of Rhode Island.” In fact, such an interpretation could actually result in a violation of another “unfair claims practice.” R.I. Gen. Laws § 27-9.1-4(a)(3) requires an insurer to “...adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies.” If the insurer “totals” a vehicle using one method of valuation and then offers to pay the insured a lower amount than that valuation the use of these two separate standards for the same valuation could be considered to be “unreasonable.” The definition of “subdivision” adopted by the Department is consistent with the fact that the same phrase is used in R.I. Gen. Laws § 31-46-3 but has a different meaning than the use in Title 27, chapter 4. For these reasons the Department has declined to amend its proposal.

2. With regard to other comments made concerning “fair market value” the Department would like to clarify that this regulation applies to insurers and provides the minimum value of a vehicle. The inclusion of this definition does not prevent an insurer from paying a first or third party claimant more for a vehicle with special characteristics that increase its value. A number of insurers asked for a “safe harbor” provision for insurers that used an approved source. This is a misunderstanding of the regulation. The regulation does not alter any additional amounts that may be owed under the insurance contract to an insured (e.g. aftermarket enhancements that the insurer agreed to cover) nor does it alter the civil law on the amount of actual damages owed to a third party in a unique situation. Rather it provides a minimum in recognition of the fact that the insurer is in a superior bargaining position to the first or third party claimant. There were also a

number of comments contending that until vendors are approved insurers cannot settle claims. This is simply not true. Every insurer is more than aware of at least one entity that clearly qualifies as “nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles.” If there is any question that source should be used until the approval process is completed. Insurers that use a source which is not a “nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles” subsequent to the passage of the statute will be subject to administrative action.

3. The Department declined to make changes to the NAIC model language in sections 3(N) and 3(P) as the language proposed reflects the Departments intent.

4. The Department eliminated the definitions of “Person” and “Policy” in sections 3(R) and 3(S) because it did not feel that they were necessary to the regulation and are not included in the NAIC model.

5. The Department declined to include the NAIC model time limits in section 4(A) because that time limit conflicts with Rhode Island Insurance Regulation 67.

6. The Department declined to change section 6(A) to the NAIC language which allows an insurer to document a conversation in its claim notes rather than send notification in writing. The Department has encountered too many disputes between claimants and insurers regarding notification to accept claim notes as evidence of the conversation. Allowing the expanded definition of writing will simplify the procedure for insurers while providing appropriate evidence of the communication if a dispute arises.

7. The Department declined to substitute the word “detailed” for the word “adequate” in section 6(C) although an adequate response is required to be detailed.

8. The Department declined to limit section 7(D) to situations in which the claimant or insured is not represented by counsel.

9. The Department declined to amend section 7(E) to allow insurers to make time sensitive offers of settlement.

10. The Department rejected the suggestion that section 7(F) be limited to property damage.

11. The Department rejected the suggestion that sections 8(C) and (E)(5) (now (6)) be amended to eliminate the requirement that the insurer assure that the repair is done properly. This provision only applies where the insurer has designated the shop (in the very limited circumstances where that is permissible.) In that circumstance the insurer should be required to stand behind its selection of the shop.

12. The Department declined to amend the provisions of section 8(D). This provision comes from a bulletin which was subject to a federal lawsuit. The resulting language was carefully negotiated between the parties to that lawsuit. While many of the

suggestions are good, the Department does not feel comfortable making language changes to language negotiated in settlement of a lawsuit.

Dated – January 28, 2014