



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Admitted and Non-Admitted Insurance Companies, All Licensed Insurance Adjusters and Producers, and Other Licensees and Interested Parties

FROM: Insurance Commissioner Ricardo Lara

DATE: April 14, 2020

RE: Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic

To help combat the spread of the COVID-19 virus, various federal, state, and local government officials have issued emergency public health orders and “shelter-in-place” directives. The COVID-19 pandemic has severely curtailed activities of policyholders in both personal and commercial lines, causing significant and widespread economic loss in California.

Business Interruption insurance is an optional coverage that may be purchased as part of a comprehensive multi-peril commercial policy, business owners’ policy, or on a stand-alone basis. Many small and large California businesses purchase Business Interruption insurance to protect against the loss of income and other losses caused by an interruption to the normal operations of the business.

The California Department of Insurance (Department) continues to encourage businesses to review their policies, including policy exclusions, coverage limits, and applicable deductibles, and contact their insurance companies to determine what their policies cover as each insurance policy is different and the coverage varies. However, despite the Department’s on-going guidance to businesses statewide during the COVID-19 pandemic, it has received numerous complaints from businesses, public officials, and other stakeholders asserting that certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refusing to open and investigate these claims upon receipt of a notice of claim.

Therefore, Insurance Commissioner Ricardo Lara finds it necessary to issue this Notice to ensure that all agents, brokers, insurance companies, and other licensees accept,

forward, acknowledge, and fairly investigate all business interruption insurance claims submitted by businesses.

Commissioner Lara hereby notifies all agents, brokers, insurance companies, and other Department licensees that they are required to comply with their contractual, statutory, regulatory, and other legal obligations, including but not limited to, the obligations set forth in the California Fair Claims Settlement Practices Regulations (Cal. Code Regs. tit. 10; sections 2695.1 et seq.) (the "Regulations") in connection with all California insurance claims including, but not limited to, Business Interruption insurance claims, event cancellation claims, and other related claims filed by California businesses.

The Regulations require, among other things, that all insurers, insurance agents, brokers, insurance company representatives, and other Department licensees accept any communication from the policyholder or its representative indicating that the policyholder desires to make a claim against a policy that reasonably suggests that a response is expected as a notice of claim. (Regulations, section 2695.5(b).) Upon receipt of a notice of claim, every Department licensee is required to transmit such notice of claim to the insurer immediately. (Regulations, section 2695.5(d).)

Upon receipt of a notice of claim, subject to certain exceptions, every insurer is required to acknowledge the notice of claim immediately, but in no event more than 15 calendar days after receipt of the notice of claim. (Regulations, section 2695.5(e).) If the acknowledgment of a claim is not in writing, a written acknowledgment of the receipt and date of the notice of claim must be made in the claim file of the insurer. (Regulations, section 2695.5(e)(1).) Failure of an insurance agent or claims agent to transmit a notice of claim to the insurer promptly will be imputed to the insurer, except where the subject policy was issued pursuant to the California Automobile Assigned Risk Program. (Regulations, section 2695.5(e)(1).)

Upon receipt of a notice of claim, the insurer is required to provide the policyholder with the necessary forms, instructions, and reasonable assistance, including but not limited to, specifying the information the policyholder must provide in connection with the proof of claim and begin any necessary investigation of the claim. (Regulations, section 2695.5(e)(2).) Thereafter, every insurer is required to conduct and diligently pursue a thorough, fair, and objective investigation of the reported claim, and is prohibited from seeking information not reasonably required for or material to the resolution of a claim dispute before determining whether the claim will be accepted or denied, in whole or in part. (Regulations, section 2695.7(d).)

After conducting a thorough, fair, and objective investigation of the claim, the insurer must accept or deny the claim, in whole or in part, immediately, but in no event more than 40 days after receipt of the proof of claim. The amount of the claim accepted or denied by the insurer must be clearly documented in the claim file unless the claim has been denied in its entirety. (Regulations, section 2695.7(b).)

If the claim is denied in whole or in part, the insurer is required to communicate the denial in writing to the policyholder listing all the legal and factual bases for such denial. (Regulations, section 2695.7(b)(1).) Where the denial of a first party claim is based on a specific statute, applicable law or policy provision, condition, or exclusion, the written denial must include reference to and provide an explanation of the application of the statute, applicable law, or policy provision, condition, or exclusion to the claim. Lastly, every insurer that denies or rejects a third party claim, in whole or in part, or disputes liability or damages must do so in writing. (Regulations, section 2695.7(b)(1).)

Based on the foregoing, every insurer, insurance agent, broker, insurance company representative, and other Department licensees is required to comply with their contractual, statutory, regulatory, and other legal obligations in connection with all California insurance claims, including but not limited to, Business Interruption insurance claims, event cancellation claims, and other related claims filed by California businesses. Additionally, no insurer, insurance agent, broker, insurance company representative, or other Department licensee shall dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refuse to open and investigate such claims upon receipt of a notice of claim.