

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 192

By: Shurden

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 1219, as last amended by Section 50, Chapter 418, O.S.L. 1997 and 4008 (36 O.S. Supp. 2000, Section 1219), which relate to unfair claim settlement practices and policy loans; deleting requirement for payment of insurance claims within specified period; stating time period for payment of clean claims by certain health maintenance entities; deleting language requiring interest payments on certain claims; deleting definition; adding definitions; requiring notice of claim defects within a stated time period; specifying contents of notice; stating requirements for prima facie evidence; requiring payment or denial of claim within stated time period after receipt of information curing defects; stating when payment is considered made; requiring interest on overdue payments; prohibiting lapse in certain policies without specified notice; amending Section 1, Chapter 236, O.S.L. 1998 (63 O.S. Supp. 2000, Section 2514), which relates to reimbursement of claims; modifying language; decreasing time period for payment of clean claims; decreasing time period for notice of defective claims; stating requirements for prima facie evidence; decreasing time period for payment of accurate portion of claim; decreasing time period for payment or denial of cured claim; providing for attorney fees; requiring State and Education Employees Group Insurance Plan to maintain clean claims in same manner as certain health maintenance entities; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1219, as last amended by Section 50, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 2000, Section 1219), is amended to read as follows:

Section 1219. A. In the administration, servicing, or processing of any accident and health insurance policy, ~~it shall be an unfair claim settlement practice for any insurer to fail to notify a policyholder or assignee of record in writing of the cause~~

~~for delay in payment of any claim where the claim is not paid within thirty (30) days after receipt of proof of loss. Failure of an insurer to provide a policyholder or assignee of record with such notification shall constitute prima facie evidence that the claim will be paid in accordance with the terms of the policy every insurer shall reimburse all clean claims of an insured, an assignee of the insured, or a health care provider within forty-five (45) calendar days after receipt of the claim by the insurer.~~

~~B. If a claim is not paid within sixty (60) days after receipt of proof of loss, the insurer shall pay interest which shall be the same rate of interest as the average United States Treasury Bill rate of the preceding calendar year as certified to the Insurance Commissioner by the State Treasurer on the first regular business day in January of each year, plus two (2) percentage points, which shall accrue from the sixty-first day after receipt of proof of loss until the claim is paid.~~

~~C. As used in this section:~~

~~1. "Accident and health insurance policy" or "policy" means any policy, certificate, contract, agreement or other instrument that provides accident and health insurance, as defined in Section 703 of this title, to any person in this state; and~~

~~2. "Proof of loss" means written documents such as claim forms, medical bills, or other reasonable evidence of a claim, but shall not include information not necessary for determination of proof of loss and not pertinent to filed claims, such as any medical reports that the insurer wants to secure merely for completion of business records or files. "Clean claim" means a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment that impedes prompt payment; and~~

~~3. "Insurer" means any entity that provides an accident and health insurance policy in this state, including but not limited to,~~

a licensed insurance company, a not-for-profit hospital service and medical indemnity corporation, a fraternal benefit society, a multiple employer welfare arrangement, or any other entity subject to regulation by the Insurance Commissioner.

C. If a claim or any portion of a claim is determined to have defects or improprieties, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment, the insured, assignee of the insured, or health care provider shall be notified in writing within thirty (30) calendar days after receipt of the claim by the insurer. The written notice shall specify the portion of the claim that is causing a delay in processing and explain any additional information or corrections needed. Failure of an insurer to provide the insured, assignee of the insured, or health care provider with the notice shall constitute prima facie evidence that the claim will be paid in accordance with the terms of the policy.

D. Upon receipt of the additional information or corrections which led to the claim's being delayed and a determination that the information is accurate, an insurer shall either pay or deny the claim or a portion of the claim within forty-five (45) calendar days.

E. Payment shall be considered made on:

1. The date a draft or other valid instrument which is equivalent to the amount of the payment is placed in the United States mail in a properly addressed, postpaid envelope; or

2. If not so posted, the date of delivery.

F. An overdue payment shall bear simple interest at the rate of ten percent (10%) per year.

~~D.~~ G. In the event litigation should ensue based upon such a claim, the prevailing party shall be entitled to recover a reasonable attorney's fee to be set by the court and taxed as costs against the party or parties who do not prevail.

~~E.~~ H. The provisions of this section shall not apply to the Oklahoma Life and Health Insurance Guaranty Association or to the Oklahoma Property and Casualty Insurance Guaranty Association.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 4008, is amended to read as follows:

Section 4008. A. There shall be a provision that after three (3) full years' premiums have been paid, the insurer, at any time while the policy is in force, will loan on the execution of a proper note or loan agreement by the owner of the policy, and on proper assignment of the policy and on the sole security thereof, at a specified rate of interest, not in excess of six percent (6%) per annum, on policies issued prior to January 1, 1976, a sum equal to or, at the option of the owner of the policy, less than the cash value of the policy at the end of the current policy year and of any dividend additions thereto. A policy issued on or after such date and prior to July 1, 1982, shall contain either, but not both, of the following policy loan interest rate provisions:

1. A provision that a policy loan shall bear interest at a specified rate, not in excess of eight percent (8%) per annum; or

2. A provision that all loans under the policy shall bear interest at a variable rate, not in excess of eight percent (8%) per annum, specified from time to time by the insurer. The effective date of any increase in such variable rate shall not be less than one (1) year after the effective date of the previous rate.

B. With respect to policies providing for a variable rate, the insurer shall:

1. When a loan is made and when notification of interest due is furnished, give notice of the variable rate currently effective;

2. As to any loans outstanding forty (40) days before the effective date of any increase in the variable rate, give notice of any such increase at least thirty (30) days before such effective date; and

3. As to any loans made during the forty (40) days before the effective date of this increase, give notice of such increase when the loan is made.

Every such notice shall be given as directed by the policy owner and any assignee as shown on the records of the insurer at its home office.

C. With respect to policies issued on or after July 1, 1982, the following provisions shall apply:

1. For purposes of this subsection, the "Published Monthly Average" means:

- a. Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, or
- b. in the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the Commissioner;

2. Policies issued on or after July 1, 1982, shall provide for policy loan interest rates as follows:

- a. a provision permitting a maximum interest rate of not more than eight percent (8%) per annum, or
- b. a provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law;

3. The rate of interest charged on a policy loan made under subparagraph b of paragraph 2 of this subsection shall not exceed the higher of the following:

- a. the Published Monthly Average for the calendar month ending two (2) months before the date on which the rate is determined, or

- b. the rate used to compute the cash surrender values under the policy during the applicable period plus one percent (1%) per annum;

4. If the maximum rate of interest is determined pursuant to subparagraph b of paragraph 2 of this subsection, the policy shall contain a provision setting forth the frequency at which time the rate is to be determined for that policy;

5. The maximum rate for each policy must be determined at regular intervals at least once every twelve (12) months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

- a. the rate being charged may be increased whenever such increase as determined under paragraph 3 of this subsection would increase that rate by one-half of one percent ($1/2$ of 1%) or more per annum, or
- b. the rate being charged must be reduced whenever such reduction as determined under paragraph 3 of this subsection would decrease that rate by one-half of one percent ($1/2$ of 1%) or more per annum;

6. The life insurer shall:

- a. notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan,
- b. notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in subparagraph c below,
- c. send to policyholders with loans reasonable advance notice of any increase in the rate, and

- d. include in the notices required above, the substance of the pertinent provisions of paragraphs 2 and 4 of this subsection;

7. The loan value of the policy shall be determined in accordance with Section 4029 of this title, but no policy shall terminate in a policy year as the sole result of a change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which the policy would otherwise have terminated if there had been no change during that policy year;

8. The substance of the pertinent provisions of paragraphs 2 and 4 of this subsection shall be set forth in the policies to which they apply;

9. For purposes of this subsection:

- a. the rate of interest on policy loans permitted under this subsection includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy,
- b. the term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due,
- c. the term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer, and
- d. the term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans;

10. No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates; and

11. The provisions of this act shall not apply to any insurance contract issued before ~~the effective date of this act~~ July 1, 1982,

unless the policyholder agrees in writing to the applicability of such provisions.

D. The company may deduct from such loan value any existing indebtedness on or secured by the policy not already deducted in determining such cash value including interest due or accrued, and any unpaid balance of the premium for the current policy year, and any interest which may be allowable on the loan to the end of the current policy year; provided, that the policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six (6) months after the application ~~therefor~~ therefore is made. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void, but not until at least thirty (30) days' notice shall have been mailed by the insurer to the last-known address of the insured or policy owner and of any assignee of record at the home office of the insurer.

A policy subject to the terms and conditions of this section which has been in force for more than three (3) years and has cash value sufficient to pay one full annual premium shall not be permitted to lapse until thirty (30) days' notice has been sent by first class mail, postage prepaid, or registered or certified mail, by the insurer to the last-known address of the policy owner, the person designated to pay premiums on the policy, the beneficiary of the policy and any assignee of record as shown on the records of the life insurer.

The policy, at the insurer's option, may provide for an automatic premium loan, subject to an election of the party entitled to elect. No condition other than as herein provided shall be

exacted as a prerequisite to any such loan. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies.

SECTION 3. AMENDATORY Section 1, Chapter 236, O.S.L. 1998 (63 O.S. Supp. 2000, Section 2514), is amended to read as follows:

Section 2514. A. ~~The State and Education Employees Group Insurance Plan,~~ Every health maintenance ~~organizations~~ organization, prepaid health plan, and ~~every~~ medical group which contracts with a health maintenance organization or prepaid health plan shall reimburse all clean claims of an enrollee, an assignee of the enrollee, or a health care provider within ~~sixty (60)~~ forty-five (45) calendar days after receipt of ~~such~~ the claim by such entity.

B. As used in this section, "clean claim" means a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment that impedes prompt payment.

~~B.~~ C. 1. If a claim or any portion of a claim is determined to have defects, or improprieties, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment, the enrollee, assignee of the enrollee, or health care provider shall be notified in writing within ~~forty-five (45)~~ thirty (30) calendar days after receipt of the claim by the ~~State and Education Employees Group Insurance Plan,~~ health maintenance organization, prepaid health plan, or contracting medical group. The written notice shall specify ~~what~~ the portion of the claim that is causing a delay in processing and explain ~~what~~ any additional information or corrections ~~are~~ needed. Failure of a health maintenance organization, prepaid health plan, or contracting medical group to provide the enrollee, assignee of the enrollee, or health care provider with such notice shall constitute prima facie

evidence that the claim will be paid in accordance with the terms of the health benefit contract.

2. The portion of the claim that is accurate shall be paid within ~~sixty (60)~~ forty-five (45) calendar days after receipt of the claim by the ~~State and Education Employees Group Insurance Plan,~~ health maintenance organization, prepaid health plan, or contracting medical group.

~~C.~~ D. Upon receipt of the additional information or corrections which led to the ~~claim~~ claim's being delayed and a determination that the information is accurate, ~~the State and Education Employees Group Insurance Plan,~~ a health maintenance organization, prepaid health plan, or medical group which contracts with a health maintenance organization or prepaid health plan shall either pay or deny the claim or a portion of the claim within ~~ninety (90)~~ forty-five (45) calendar days.

~~D.~~ E. Payment shall be considered made on:

1. The date a draft or other valid instrument which is equivalent to the amount of the payment is placed in the United States mail in a properly addressed, postpaid envelope; or

2. If not so posted, the date of delivery.

~~E.~~ F. An overdue payment shall bear simple interest at the rate of ten percent (10%) per year.

G. In the event litigation should ensue based upon such a claim, the prevailing party shall be entitled to recover a reasonable attorney's fee to be set by the court and taxed as costs against the party or parties who do not prevail.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1328 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The State and Education Employees Group Insurance Plan shall reimburse all clean claims of an enrollee, an assignee of the

enrollee, or a health care provider within forty-five (45) calendar days after receipt of the claim by the entity.

B. As used in this section, "clean claim" means a claim that has no defect or impropriety, including a lack of any required substantiating documentation, or particular circumstance requiring special treatment that impedes prompt payment.

C. 1. If a claim or any portion of a claim is determined to have defects or improprieties, including a lack of any required substantiating documentation, or a particular circumstance requiring special treatment, the enrollee, assignee of the enrollee, or health care provider shall be notified in writing within thirty (30) calendar days after receipt of the claim by the State and Education Employees Group Insurance Plan. The written notice shall specify the portion of the claim that is causing a delay in processing and explain any additional information or corrections needed. Failure of the Plan to provide the enrollee, assignee of the enrollee, or health care provider with such notice shall constitute prima facie evidence that the claim will be paid in accordance with the terms of the health benefit contract.

2. The portion of the claim that is accurate shall be paid within forty-five (45) calendar days after receipt of the claim by the State and Education Employees Group Insurance Plan.

D. Upon receipt of the additional information or corrections which led to the claim's being delayed and a determination that the information is accurate, the State and Education Employees Group Insurance Plan shall either pay or deny the claim or a portion of the claim within forty-five (45) calendar days.

E. Payment shall be considered made on:

1. The date a draft or other valid instrument which is equivalent to the amount of the payment is placed in the United States mail in a properly addressed, postpaid envelope; or

2. If not so posted, the date of delivery.

F. An overdue payment shall bear simple interest at the rate of ten percent (10%) per year.

G. In the event litigation should ensue based upon such a claim, the prevailing party shall be entitled to recover a reasonable attorney's fee to be set by the court and taxed as costs against the party or parties who do not prevail.

SECTION 5. This act shall become effective November 1, 2001.

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CJ

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