

Senate Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 5

SENATE BILL 1094

AN ACT

AMENDING SECTION 20-461, ARIZONA REVISED STATUTES; RELATING TO UNFAIR CLAIM SETTLEMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-461, Arizona Revised Statutes, is amended to
3 read:

4 20-461. Unfair claim settlement practices

5 A. A person shall not commit or perform with such a frequency to
6 indicate as a general business practice any of the following:

7 1. Misrepresenting pertinent facts or insurance policy provisions
8 relating to coverages at issue.

9 2. Failing to acknowledge and act reasonably and promptly upon
10 communications with respect to claims arising under an insurance policy.

11 3. Failing to adopt and implement reasonable standards for the prompt
12 investigation of claims arising under an insurance policy.

13 4. Refusing to pay claims without conducting a reasonable
14 investigation based upon all available information.

15 5. Failing to affirm or deny coverage of claims within a reasonable
16 time after proof of loss statements have been completed.

17 6. Not attempting in good faith to effectuate prompt, fair and
18 equitable settlements of claims in which liability has become reasonably
19 clear.

20 7. Compelling insureds to institute litigation to recover amounts due
21 under an insurance policy by offering substantially less than the amounts
22 ultimately recovered in actions brought by the insureds.

23 8. Attempting to settle a claim for less than the amount to which a
24 reasonable person would have believed he was entitled by reference to written
25 or printed advertising material accompanying or made part of an application.

26 9. Attempting to settle claims on the basis of an application which
27 was altered without notice to, or knowledge or consent of, the insured.

28 10. Making claims payments to insureds or beneficiaries not accompanied
29 by a statement setting forth the coverage under which the payments are being
30 made.

31 11. Making known to insureds or claimants a policy of appealing from
32 arbitration awards in favor of insureds or claimants for the purpose of
33 compelling them to accept settlements or compromises less than the amount
34 awarded in arbitration.

35 12. Delaying the investigation or payment of claims by requiring an
36 insured, a claimant or the physician of either to submit a preliminary claim
37 report and then requiring the subsequent submission of formal proof of loss
38 forms, both of which submissions contain substantially the same information.

39 13. Failing to promptly settle claims if liability has become
40 reasonably clear under one portion of the insurance policy coverage in order
41 to influence settlements under other portions of the insurance policy
42 coverage.

43 14. Failing to promptly provide a reasonable explanation of the basis
44 in the insurance policy relative to the facts or applicable law for denial
45 of a claim or for the offer of a compromise settlement.

1 15. Attempting to settle claims for the replacement of any
2 nonmechanical sheet metal or plastic part which generally constitutes the
3 exterior of a motor vehicle, including inner and outer panels, with an
4 aftermarket crash part which is not made by or for the manufacturer of an
5 insured's motor vehicle unless the part meets the specifications of section
6 44-1292 and unless the consumer is advised in a written notice attached to
7 or printed on a repair estimate which:

8 (a) Clearly identifies each part.

9 (b) Contains the following information in ten point or larger type:

10 —"This estimate has been prepared based on the use of
11 replacement parts supplied by a source other than the
12 manufacturer of your motor vehicle. Warranties applicable to
13 these replacement parts are provided by the manufacturer or
14 distributor of these parts rather than the manufacturer of your
15 vehicle."

16 16. As an insurer subject to section 20-826, 20-1342, 20-1402 or
17 20-1404, or as an insurer of the same type as those subject to section
18 20-826, 20-1342, 20-1402 or 20-1404 that issues policies, contracts, plans,
19 coverages or evidences of coverage for delivery in this state, failing to pay
20 charges for reasonable and necessary services provided by any physician
21 licensed pursuant to title 32, chapter 8, 13 or 17, if the services are
22 within the lawful scope of practice of the physician and the insurance
23 coverage includes diagnosis and treatment of the condition or complaint,
24 regardless of the nomenclature used to describe the condition, complaint or
25 service.

26 17. Failing to comply with chapter 15 of this title.

27 18. Denying liability for a claim under a motor vehicle liability
28 policy in effect at the time of an accident without having substantial facts
29 based on reasonable investigation to justify the denial for damages or
30 injuries that are a result of the accident and that were caused by the
31 insured if the denial is based solely on a medical condition that could
32 affect the insured's driving ability.

33 B. Nothing in subsection A, paragraph 16 of this section shall be
34 construed to prohibit the application of deductibles, coinsurance, preferred
35 provider organization requirements, cost containment measures or quality
36 assurance measures if they are equally applied to all types of physicians
37 referred to in this section, and if any limitation or condition placed upon
38 payment to or upon services, diagnosis or treatment by any physician covered
39 by this section is equally applied to all physicians referred to in
40 subsection A, paragraph 16 of this section, without discrimination to the
41 usual and customary procedures of any type of physician. A DETERMINATION
42 UNDER THIS SECTION OF DISCRIMINATION TO THE USUAL AND CUSTOMARY PROCEDURES
43 OF ANY TYPE OF PHYSICIAN SHALL NOT BE BASED ON WHETHER AN INSURER APPLIES
44 MEDICAL NECESSITY REVIEW TO A PARTICULAR TYPE OF SERVICE OR TREATMENT.

1 C. In prescribing rules to implement this section, the director shall
2 follow, to the extent appropriate, the national association of insurance
3 commissioners unfair claims settlement practices model regulation.

4 D. Nothing contained in this section is intended to provide any
5 private right or cause of action to or on behalf of any insured or uninsured
6 resident or nonresident of this state. It is, however, the specific intent
7 of this section to provide solely an administrative remedy to the director
8 for any violation of this section or rule related thereto TO THIS SECTION.

9 E. The director shall deposit, pursuant to sections 35-146 and 35-147,
10 all civil penalties collected pursuant to this article in the state general
11 fund.

12 Sec. 2. Health plans; medical necessity review; report

13 Health plans that do not predominately engage in the process of medical
14 necessity review but apply medical necessity review to a particular type of
15 service or treatment pursuant to section 20-461, subsection B, Arizona
16 Revised Statutes, as amended by this act, shall submit a report annually on
17 or before December 15 to the director of the department of insurance. The
18 report shall include the particular type of service or treatment for which
19 medical necessity reviews were conducted and the number of claims denied by
20 the health plan that were overturned at the external independent review level
21 of an appeal. The information shall be reviewed by the department of
22 insurance to make sure that the health plan, as a general business practice,
23 does not use medical necessity review in a discriminatory fashion pursuant
24 to section 20-461, Arizona Revised Statutes, as amended by this act.

25 Sec. 3. Delayed repeal

26 Section 2 of this act, relating to medical necessity review reports of
27 health plans, is repealed from and after December 31, 2006.

28 Sec. 4. Effective date

29 Section 20-461, Arizona Revised Statutes, as amended by this act, and
30 section 2 of this act, relating to medical necessity review reports of health
31 plans, are effective from and after December 31, 2004.

APPROVED BY THE GOVERNOR MARCH 22, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 22, 2004.

ON RECONSIDERATION

Passed the House March 15, 2004,

Passed the Senate _____, 20____,

by the following vote: 43 Ayes,

by the following vote: _____ Ayes,

14 Nays, 3 Not Voting

_____ Nays, _____ Not Voting

Jake Flake
Speaker of the House

President of the Senate

Norman L. Moore
Chief Clerk of the House

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1094

FAILED
Passed the House

March 15, 20 04

Passed the Senate

March 2, 20 04

by the following vote: 28 Ayes,

by the following vote: 17 Ayes,

31 Nays, 1 Not Voting

10 Nays, 3 Not Voting

Speaker of the House

Forman L. Moore

Chief Clerk of the House

President of the Senate

Klu Blumett

Chamin Ballester

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17th day of March, 2004

at 12:10 o'clock P. M.

Jennifer Ubarra
Secretary to the Governor

Approved this 22 day of

March, 2004

at 9:05 o'clock A. M.

Jan Noyth
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of March, 2004

at 10:06 o'clock A. M.

Janice K. Brewer
Secretary of State

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