

UNFAIR CLAIMS SETTLEMENT PRACTICES

New Hampshire Law

1. **What insurer practices are addressed by statute, regulation and/or insurance department advisory?**
 - a. **Misrepresentation of facts or policy provisions.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(1)
 - b. **Refusal to pay claims without conducting a reasonable investigation.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(12) (prohibiting refusal to make payment of a claim solely on the basis of an insured's request to do so without making an independent evaluation of the insured's liability based upon all available information)
 - c. **Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(5)
 - d. **Attempting to settle claims for less than an amount to which a reasonable person would believe he or she was entitled after referring to written or printed advertising material or literature made part of an application.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(8)
 - e. **Attempting to settle claims on the basis of an application altered without notice to, or knowledge or consent of, the applicant.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(7)
 - f. **Failure, after paying claim, to inform insureds or beneficiaries of the coverage under which payment was made.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(10)(claim payments must be accompanied by statement setting forth the benefits included with the claim payment). N.H. Code Admin. R. Ann. Ins. 1001.03(b) (statements setting forth benefits included with payments must be in writing and in sufficient detail that the benefits can be reasonably understood)
 - g. **Asserting to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(6)

- h. Delaying investigation or payment of claims by requiring a claimant or his or her physician to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(9). N.H. Code Admin. R. Ann. Ins. 1001.07 (when a disability benefits claim has been accepted by an insurer, the insurer shall not require additional reports from the insured's or beneficiary's physician to substantiate disability which has already been established by a prior report)
- i. Failure to promptly settle claims under one coverage of a policy where liability is reasonably clear in order to influence settlements under other coverages of the policy.**
N.H. Code Admin. R. Ann. Ins. 1001.04 (when there is no dispute as to one or more elements of the claim, an offer of settlement for such undisputed elements shall be made notwithstanding the existence of disputes as to other elements of the claim). N.H. Code Admin. R. Ann. Ins. 1002.07 [applicable to property and casualty insurers] (when there is no dispute as to one or more elements of the claim, an offer of settlement for such undisputed elements shall be made notwithstanding the existence of disputes as to other elements of the claim)
- j. Failure to promptly provide a reasonable and proper explanation of the basis for a denial of claim.**
N.H. Code Admin. R. Ann. Ins. 1001.03 (when claim is denied in whole or in part, insurer must give reason for the denial; when coverage is denied, insurer must provide the applicable policy provision). N.H. Code Admin. R. Ann. Ins. 1002.05(b) [applicable to property and casualty insurers] (when claim is denied in whole or in part, insurer must give written notice of reason for the denial and any applicable policy provision);
- k. Concealment of benefits, coverages or other provisions that are pertinent to the claim.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(1). N.H. Code Admin. R. Ann. Ins. 1001.02(b) (insurer must mail to every insured or claimant a notification of all items, statements or forms that it reasonably believes will be required in the settlement of the claim)
- l. Issuance of checks or drafts in partial settlement of a loss or claim under a specific policy coverage that contains language releasing the insurer or its insured from its total liability.**
No such provision
- m. Failure to maintain complete claims files, in sufficient detail that pertinent events and dates may be reconstructed.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(13) (insurer must maintain complete record of all complaints received, whether they were deemed valid, the time it took to process, and the disposition)

- n. **Does this state have any other pertinent law regarding insurer practices?**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(14) (knowingly underestimating the value of any claim by an insurer or by an adjuster representing the insurer). N.H. Rev. Stat. Ann. § 417:12, I (if the commissioner of the insurance department has reason to believe that insurer is engaging in any unfair or deceptive method of competition, act, or practice that is not defined in RSA 417:4, the commissioner shall issue a statement of the charges and a notice of hearing)

2. **What timing issues are addressed by statute, regulation and/or insurance department advisory?**

- a. **Failure to acknowledge and act promptly on claims communications.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(2). N.H. Code Admin. R. Ann. Ins. 1001.01(a) (insurers must acknowledge receipt of notice of claim within 10 working days; some circumstances might warrant a speedier method of acknowledgment). N.H. Code Admin. R. Ann. Ins. 1002.05(b) [applicable to property and casualty insurers] (insurers must acknowledge receipt of notice of claim within 10 working days in writing or by telephone or face-to-face if claimant is provided with toll free telephone number of the claims office; if claimant requests written acknowledgement after, the insurer must so provide within 5 working days of the request). N.H. Code Admin. R. Ann. Ins. 1001.01(b) (insurers must reply to all claims communications within 10 working days). N.H. Code Admin. R. Ann. Ins. 1002.04(b) [applicable to property and casualty insurers] (insurers must reply to all claims communications within 10 working days)
- b. **Failure to adopt and implement reasonable standards for prompt investigation of claims.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(3). N.H. Code Admin. R. Ann. Ins. 1001.02(b) (insurers must establish procedures to commence investigation of any claim within 5 working days upon receipt of notice of loss). N.H. Code Admin. R. Ann. Ins. 1002.05(a)(1) [applicable to property and casualty insurers] (insurers must establish procedures to commence investigation of any claim not later than 5 working days from receipt of notice of claim)
- c. **Failure to affirm or deny coverage within a reasonable time after proof of loss.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(11). N.H. Code Admin. R. Ann. Ins. 1001.02(c) (insurer must advise insured or claimant, in writing, of the acceptance or rejection of a claim within 10 working days after acknowledgment of receipt of notice of claim; if the insurer needs more time, the insurer must notify the insured or claimant within 10 working days after acknowledgment of the loss and provide reason for the delay). N.H. Code Admin. R. Ann. Ins. 1001.02(d) (if additional time is needed, the insurer must send notification within 30 days from the date of the letter stating more time is needed, and every 30 days thereafter). N.H. Code Admin. R. Ann. Ins. 1001.02(g) (letter setting forth need for more time after the

first 30-day period must contain statement that claimant can take the matter up with the New Hampshire insurance department, and provide its address and telephone number). N.H. Code Admin. R. Ann. Ins. 1001.02(a) (insurer must make complete decision regarding payment, coverage, or denial within 30 days of the receipt of any health insurance claim; if a decision is not made within that time, the insurer shall provide a written explanation for the delay). N.H. Code Admin. R. Ann. Ins. 1002.05(c) [applicable to property and casualty insurers] (insurer must make complete decision regarding coverage, acceptance, denial, or payment of claim within 30 days of the receipt of notice of claim; if more time is needed, insurer must provide a delay letter setting forth the reasons, and if needed, send another delay letter within 30 days and every 30 days thereafter)

- d. Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear.**
N.H. Rev. Stat. Ann. § 417:4, XV(a)(4)
- e. Continuing negotiations with a claimant who is not an attorney, nor represented by an attorney, up to the time the claimant's right may be affected by a statute of limitations, insurance policy or contract time limit, without giving the claimant written notice that the time limit may expire and affect his or her rights. How much prior notice, before the time limit expires, must be given to claimants? Is the notice requirement limited to first-party claimants?**
No such provision
- f. Making statements indicating that the rights of a claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the claimant of a relevant statute of limitations. Is this provision limited to third-party claimants?**
No such provision
- g. Requiring a claimant to give written notice of loss or proof of loss within a specified time unless the time limit is specified in the policy.**
No such provision
- h. Failure to provide an adequate response, e.g., within 15 working days of the receipt of an inquiry from the insurance commissioner or an appropriate reply to all other pertinent communications about a claim from a claimant that reasonably indicate a response is expected.**
N.H. Code Admin. R. Ann. Ins. 1001.01(c) (upon receipt of an inquiry from the insurance department, insurer must provide the department with a complete and accurate written response within 10 working days). N.H. Code Admin. R. Ann. Ins. 1002.05(c) [applicable to property and casualty insurers] (upon receipt of an inquiry from the insurance department, insurer must provide the department with a complete and accurate written response within 10 working days). N.H. Code Admin. R. Ann. Ins. 1001.01(b) (insurer must reply to all claims communications

from insureds, claimants, or authorized representatives within 10 working days); N.H. Code Admin. R. Ann. Ins. 1001.01(a) (insurer must acknowledge receipt of notice of claim within 10 working days)

i. Does this state have any other pertinent law regarding timing issues?

N.H. Code Admin. R. Ann. Ins. 1001.02(e) (insurer cannot justify a delay in processing or paying a claim on the grounds of suspected fraud unless the insurer has notified the insurance department and provided specific reasons for the suspicions). N.H. Code Admin. R. Ann. Ins. 1001.02(h) (insurer must pay any amount finally agreed upon in settlement of all or part of a claim not later than 5 working days from the date of such agreement or from the date of the performance by the insured, claimant, or authorized representative of either of all conditions set forth by such agreement). N.H. Code Admin. R. Ann. Ins. 1002.05(d) [applicable to property and casualty insurers] (insurer must pay claim within 5 working days from date of agreement or within 5 working days after receipt of documentation needed to process the claim)

3. Are there other statutes, regulations and/or insurance department advisories that address specific types of claims?

a. Failure to settle claims on the grounds that responsibility for payment should be assumed by others, except as otherwise provided by the policy. Is this provision limited to first-party claims?

No such provision

b. Failure to disclose to a claimant all relevant benefits, coverages and other provisions under which the claim is asserted. Is this provision limited to first-party claims?

N.H. Code Admin. R. Ann. Ins. 1001.02(b) (insurer must mail to every insured or claimant a notification of all items, statements or forms that it reasonably believes will be required in the settlement of the claim) (not limited to first-party claims)

c. Denial of a claim on the grounds of the claimant's failure to exhibit the relevant property without proof of the insurer's demand and the claimant's unfounded refusal.

No such provision

d. Requiring a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment. Is this provision limited to first-party claims?

No such provision

e. Does this state have any other pertinent law regarding specific types of claims?

N.H. Code Admin. R. Ann. Ins. 1001.06 (insurer may not refuse advance payments on a claim because the claimant or insured retained an attorney to

facilitate recovery). N.H. Code Admin. R. Ann. Ins. 1001.02(f) (when insurer denies a claim on basis of no coverage or the amount of loss is below the deductible, the insurer must inform the insured in writing of the reason of the denial and include the insurance department's toll free telephone number). N.H. Code Admin. R. Ann. Ins. 1002.05(h) [applicable to property and casualty insurers] (when insurer denies a claim on basis of no coverage or the amount of loss is below the deductible, the insurer must provide its toll free telephone number and the address and telephone number of the New Hampshire insurance department)

4. Are there other statutes, regulations and/or insurance department advisories pertinent to unfair claims settlement practices?

N.H. Code Admin. R. Ann. Ins. 1001.02(i) (insurer cannot request that a claimant or insured waive insurer obligations under these rules, except for a waiver of the 30-day delay letter rule). N.H. Code Admin. R. Ann. Ins. 1002.05(h) [applicable to property and casualty insurers] (insurer cannot request that a claimant or insured waive insurer obligations under these rules, except for a waiver of the 30-day delay letter rule). N.H. Code Admin. R. Ann. Ins. 1001.08 (insurers cannot employ or use the services of an unlicensed adjuster). N.H. Code Admin. R. Ann. Ins. 1002.10 [applicable to property and casualty insurers] (insurers cannot employ or use the services of an unlicensed adjuster). N.H. Code Admin. R. Ann. Ins. 1001.09 (insurer must provide telephone facilities such that an insured or claimant can contact the company claims office without expense). N.H. Code Admin. R. Ann. Ins. 1002.11 [applicable to property and casualty insurers] (insurer must provide a toll-free telephone number on all forms and correspondence, and if desired a fax number or email address, for claimants to contact claims office). Additional provisions applicable to property and casualty insurers can be found at N.H. Code Admin. R. Ann. Ins. 1002.8, 9, 12-20

5. Practice tips for this state:

In order to “knowingly” violate the provisions of N.H. Rev. Stat. Ann. § 417, “[i]t is enough that the acts complained of are done voluntarily rather than through mistake or inadvertence.” *Appeal of Metropolitan Property & Liab. Ins. Co.*, 120 N.H. 733, 735-36 (1980).

The insurance commissioner need only suspect a violation of N.H. Rev. Stat. Ann. § 417:4 to issue a notice of hearing. *In re Bennett (N.H. Ins. Dep't)*, 151 N.H. 130, 133 (2004).

A private right of action exists only after the insurance commissioner finds a violation. *RSA 417:19; Hunt v. Golden Rule Ins. Co.*, 638 F.3d 83, 88 (1st Cir. 2011).

A plaintiff may bring an action against an insurer for negligent failure to settle a case within policy limits. *Dumas v. State Farm Mut. Auto. Ins. Co.*, 111 N.H. 43, 46 (1971).

An insured may have a contract action against an insurer who wrongfully fails to make payments, or delays, if the insured proves that the failure or delay was a breach of contract. If an insurer breaches an insurance contract in bad faith, damages are not limited to the policy limits. There is no tort action for an insurer's wrongful refusal or delay to settle a first-party claim. *Lawton v. Great Southwest Fire Ins. Co.*, 118 N.H. 607, 611-12, 614 (1978).

New Hampshire Insurance Department
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