

Kansas Administrative Regulations

Kansas Department of Insurance

Article 1.—General

40-1-34. Unfair claims settlement practices.

The national association of insurance commissioners' "unfair claims settlement practices model regulation," January 1981 edition, is hereby adopted by reference, subject to the following exceptions:

(a) Section 1 is not adopted.

(b) The first sentence of section 2 is not adopted.

(c) In section 2, the phrase "Section 4(9) of the Act" is replaced with the phrase "K.S.A. 40-2404, and amendments thereto."

(d) In section 3, the phrase "Section 2 of the Unfair Trade Practice Act" is replaced with the phrase "K.S.A. 40-2404, and amendments thereto."

(e) Section 8(d) is not adopted.

(f) Section 8 is amended by the addition of the following subsection: "(e) An insurer shall not attempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured."

(g) Section 8 is further amended by the addition of the following subsection: "(f) If a claim is denied for reasons other than those described in section 8(a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer."

(h) Section 8 is further amended by the addition of the following subsection: "(g) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions."

(i) Section 8 is further amended by the addition of the following subsection: "(h) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney when the claimant's rights

may be affected by a statute of limitations or a policy or a contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days and to third party claimants sixty days before the date on which such time limit may expire."

(j) Section 8 is further amended by the addition of the following subsection: "(i) No insurer shall make statements which indicate that the rights of a third party 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 third party claimant of the provision of a statute of limitations."

(k) Section 9(a) is amended by deleting the phrase "first party."

(l) In section 9(a), subsection (1) is amended by replacing the word "insured" with the word "claimant."

(m) In section 9(a), subsection (2) is not adopted by reference and is replaced with the following language: "The insurer may elect to pay a cash settlement, based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost shall be determined by any source or method for determining statistically valid fair market value that meets both of the following criteria:"

"(A) The source or method's database, including nationally recognized automobile evaluation publications, shall provide values for at least eighty-five percent (85%) of all makes and models of private passenger vehicles for the last fifteen (15) model years taking into account the values for all major options for such vehicles; and"

"(B) the source, method, or publication shall provide fair market values for a comparable automobile based on current data available for the local market area as defined in subsection (j)(2)."

(n) In section 9(a), subsection (3) is not adopted by reference and is replaced with the following language: "When an automobile total loss is settled on a basis which deviates from the methods and criteria described in subsections (a)(1) and (a)(2)(A) and (B) of this section, the deviation must be supported by documentation giving the particulars of the automobile condition and the basis for the deviation. Any deviations

from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the claimant."

(o) Section 9 is amended by the addition of the following subsection: "(h) Insurers shall include consideration of applicable taxes, license fees, and other fees incident to transfer of evidence of ownership in third party automobile total losses and shall have sufficient documentation relative to how the settlement was obtained in the claim file. A measure of damages shall be applied which will compensate third party claimants for the reasonable loss sustained as the proximate result of the insured's negligence."

(p) Section 9 is further amended by the addition of the following subsection: "(i) A claimant has the right of recourse if the claimant notifies the insurer, within thirty (30) days after the receipt of the claim draft, that claimant is unable to purchase a comparable automobile for the amount of the claim draft. Upon receipt of this notice, the insurer shall reopen its claim file within five (5) business days, and one of the following actions shall apply:"

"(1) the insurer shall either pay the claimant the difference between the market value as determined by the insurer and the cost of the comparable vehicle of like kind and quality which the claimant has located, or negotiate and effect the purchase of this vehicle for the claimant; or"

"(2) the insurer may elect to offer a replacement in accordance with provisions of subsection 9(a)(1)."

(q) Section 9 is further amended by the addition of the following subsection: "(j) As used in this regulation, the following terms shall have the following meanings:"

"(1) comparable automobile means a vehicle of the same make, model, year, style and condition, including all major options of the claimant vehicle;"

"(2) local market area means the fifty (50) mile area surrounding the place where the claimant vehicle was principally garaged."

(Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 2001 Supp. 40-2404; effective May 1, 1981; amended May 1, 1986; amended July 10, 1989; amended Jan. 10, 2003.)

***** Authenticated Kansas Administrative Regulation *****