



DOMESTIC/FOREIGN INSURERS BULLETIN NO. 100

TO: ALL DOMESTIC AND FOREIGN INSURANCE COMPANIES
RE: ENACTMENT OF HOUSE BILL 172 CONCERNING COLLECTION OF OVERPAYMENTS BY HEALTH INSURERS AND HEALTH PLANS
DATE: April 2, 2018
REVISED: April 23, 2018

The purpose of the original version of this bulletin was to notify domestic and foreign insurance companies of the enactment of House Bill 172 (HB 172) with House Amendment 2 (HA 2) of the 149th General Assembly. This bill amends Chapter 27, Title 18 of the Delaware Code to include a new section 2730, Collection of Overpayments by Health Insurers and Health Plans.

The purpose of this revised Bulletin is to clarify the description of the Bill as published in the original Bulletin. The original Bulletin described HB 172, but did not describe the effect of HA 2 on the original text of the bill. HA 2 revised subsection (a) to delete the 30 day notification requirement that a health insurer or a health plan must provide in connection with overpayment recovery efforts contained in the original bill, and added "abuse" to subsection (c).

Together, HB 172/HA 2 limits a health insurer's right to overpayment recovery to two years from the date of the original payment. The time limit does not apply where there is fraud or other intentional misconduct, when overpayment recovery is initiated by a self-insured plan, or where required by a federal or state plan. The bill also requires insurers to have policies and procedures allowing challenge to the alleged overpayment. The bill affects all lines of health insurance including both individual and group policies.

A copy of the engrossed bill may be downloaded from <http://www.legis.delaware.gov>, and is also attached to this Bulletin.

The bill becomes effective on **June 14, 2018**, 90 days from the March 16, 2018 date on which the Governor signed it. The Department does not plan to propose implementing regulations at this time.

Any questions or comments regarding this bulletin should be directed to Consumer Services at consumer@state.de.us. This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.

Trinidad Navarro
Delaware Insurance Commissioner

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Delaware Department of Insurance if additional information is needed.



SPONSOR: Rep. B. Short & Rep. Paradee & Sen. Bushweller
Reps. Carson, Kowalko, D. Short; Sens. Ennis, Lopez,
Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 172
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTH INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 27, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2730. Collection of overpayments by health insurers and health plans.

(a) Other than recovery for duplicate payments, a health insurer or health plan, whenever it engages in overpayment recovery efforts, shall provide written notice to the healthcare provider that identifies the error made in the processing or payment of the claim and justifies the overpayment recovery.

(b) A health insurer or health plan shall provide a healthcare provider with the opportunity to challenge an overpayment recovery, including the sharing of claims information, and shall establish written policies and procedures for healthcare providers to follow to challenge an overpayment recovery.

(c) A health insurer or health plan shall not initiate overpayment recovery efforts more than twenty-four months after the original payment for the claim was made. No such time limit shall apply to overpayment recovery efforts which are:

- (1) Based on a reasonable belief of fraud, abuse, or other intentional misconduct;
- (2) Required by, or initiated at the request of, a self-insured plan; or
- (3) Required by a state or federal government plan.

(d) Nothing in this section shall be deemed to limit a health insurer's or health plan's right to pursue recovery of overpayments that occurred prior to the effective date of this section where the health insurer or health plan has provided the healthcare provider with notice of such recovery efforts prior to the effective date of this section.

(e) For purposes of this section "health insurer" shall mean any entity or plan that provides health insurance in this State. Such terms shall include an insurance company, health service corporation, managed care organization, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state

insurance regulation. "Health insurer" shall also include any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

(f) For purposes of this section, "health plan" shall mean any hospital or medical policy or certificate, major medical expense insurance, health service corporation subscriber contract, health maintenance organization subscriber contract, managed care organization subscriber contract, dental or vision plan. Health plan does not include accident-only, credit, Medicaid plans, long-term care or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance or automobile medical payment insurance.

(g) Waiver Prohibited. The provisions of this section cannot be waived by contract. Any contractual arrangement in conflict with the provisions of this section or that purports to waive any requirements of this section is null and void.

Section 2. This Act shall take effect 90 days after its enactment.