



**DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 117
PRODUCERS AND ADJUSTERS BULLETIN NO. 33**

**TO: ALL INSURANCE COMPANIES AUTHORIZED TO TRANSACT
BUSINESS IN DELAWARE and ALL LICENSED INSURANCE
PRODUCERS**

**RE: COMPLIANCE WITH REGULATORY REQUIREMENTS DURING
THE COVID-19 (CORONAVIRUS) CRISIS**

DATED: April 3, 2020

Beginning on Friday, March 13, 2020 at 8 a.m., Delaware has been under a State of Emergency to prevent the spread of coronavirus (COVID-19) in Delaware. The Delaware Department of Insurance (the Department) issued guidance to carriers in the form of Domestic and Foreign Insurers Bulletin No. 115 and Domestic and Foreign Insurers Bulletin No. 116/Producers and Adjusters Bulletin No. 32, which may be downloaded from the Bulletins link of the Legal dropdown menu on the Department's website, insurance.delaware.gov.

The purpose of this Bulletin is to provide additional guidance to insurers, other regulated entities and consumers regarding compliance with regulatory requirements during the COVID-19 public health emergency. This Bulletin is being provided in addition to, but not in place of, any prior guidance previously issued by Bulletin.

I. Cancellation and Nonrenewal of Insurance Policies and Policyholder Flexibility

Domestic and Foreign Insurers Bulletin No.116/Producers and Adjusters Bulletin No. 32, issued on March 20, 2020 and updated on March 26, 2020, reminds insurers that the Sixth Modification of the Declaration of a State of Emergency prohibits, without a court order, the suspension, cancellations and nonrenewals of certain defined insurance policies due to nonpayment of premium during the pendency of the Governor's declared State of Emergency.

Thereafter, on March 30, 2020, the Governor issued the Eighth Modification of the Declaration of the State of Emergency (Eighth Modification), which added at paragraph 4.d the following:

No provision contained in this Order shall be construed as relieving any policyholder of the obligation to pay premium payments due an insured or to comply with other

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.

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obligations that a policyholder may have pursuant to a covered insurance policy.

On April 1, 2020, Governor Carney issued the Ninth Modification of the Declaration of a State of Emergency, in which Paragraph 4.d. of the Eighth Modification was stricken and replaced with the following:

d. The Sixth Modification of the Declaration of the State of Emergency, dated March 24, 2020, is modified by adding the following sentences to the end of paragraph E. as follows: “The provisions in this Order are intended to grant covered policyholders an extension of time for the payment of premium due under covered insurance policies during the pendency of the declared state of emergency without penalty or interest. The provisions in this Order are not intended to vary the terms and conditions of any covered insurance policy. No provision contained in this Order is intended to be considered a forgiveness of premium due by a covered policyholder under a covered insurance policy prior to-, post-, or during the pendency of the declared state of emergency. Upon the termination of the COVID19 State of Emergency, any premium due by a covered policyholder will remain due under a covered insurance policy. Covered policyholders should contact their insurer regarding repayment of premium. Pursuant to 20 *Del. C.* § 3116(a)(1), I delegate to the Insurance Commissioner of the State of Delaware the authority to issue guidance to insurers and policyholders regarding the content of this Order.”

Accordingly, the Department encourages insurers to reach out to their insureds and work with them to modify payment schedules or otherwise make premium payment modifications during the duration of the Governor’s State of Emergency.

Insurers can, and should, obtain validation that the hardship of the insured or policyholder are directly related to the COVID-19 pandemic and the State of Emergency, or any subsequent Executive Orders issued by the Governor which closed businesses or ordered residents to remain at home unless performing an essential activity, by obtaining evidence in writing, or otherwise, from an employer, policyholder, insured or other appropriate source before foregoing a cancellation or nonrenewal.

Regarding health insurers, the Center for Consumer Information & Insurance Oversight (CCIIO) within the federal Centers for Medicare and Medicaid Services (CMS) issued guidance on March 24, 2020, in connection with the COVID-19 emergency. The guidance provided that if a Federally-Facilitated Exchange (FFE) or a State-Based Exchange Using the Federal Platform (SBE-FP) issuer extends premium payment deadlines and delays cancellations or terminations of coverage for non-payment of premiums with the permission of the applicable state regulatory authority, CMS will exercise enforcement discretion with regard to regulatory premium payment requirements pertaining to the deadline for payments to effectuate coverage under 45 CFR 155.400(e), as well as the deadline under 45 CFR 156.270(g) for termination of coverage after the exhaustion of grace periods, including for individuals receiving the benefit of advance payments of the premium tax credit (APTC). This enforcement policy allows issuers to extend payment deadlines in accordance with state regulatory guidance and delay the beginning of any applicable grace period.

The Department will not view any accommodations made to insureds incurring economic hardship during the COVID-19 pandemic and the State of Emergency, including any Executive Orders issued by the Governor which close businesses or order residents to stay at home unless performing an essential activity, as violating insurance laws such as unfair inducement prohibitions. However, accommodations to insureds or policyholders should not be made in an unfairly discriminatory manner.

The Commissioner will continue to review and assess circumstances as they arise or change with a regard to insurer solvency, and will amend, revise or rescind this guidance, in full or in part, as necessary or appropriate.

II. Beware of COVID-19 Related Fraud and Scams

According to the United States Department of Justice, the Federal Trade Commission, and the Federal Communications Commission, there are several ways scammers can use COVID-19 to target people, including vaccine and treatment scams, medical scams, charity scams, investment scams, and phishing and malware scams. For example, scammers may pose as national and global health authorities, medical providers or insurance companies. Beware of fake insurance agents selling low-priced insurance coverage to cover the costs of coronavirus treatment, or scammers selling vaccines, drugs, testing kits or other treatments for the virus. Also, beware of bogus calls warning that your health insurance was cancelled or offering to sell you travel insurance. Many of these scams are, unfortunately, directed to senior citizens.

The Delaware Insurance Fraud Prevention Act, 18 *Del. C.* Ch. 24, mandates the reporting of insurance fraud or criminal offenses otherwise related to the business of insurance. Specifically, 18 *Del. C.* § 2408 provides:

Any insurer which has a reasonable belief that an act of insurance fraud is being, or has been, committed shall send to the [Delaware Insurance Fraud Prevention] Bureau, on a form prescribed by the Bureau, any and all information and such additional information relating to such act as the Bureau may require.

There are no exceptions nor reasons for those engaged in the business of insurance to refrain from reporting if fraud or criminal activity is known or suspected. Consumers and others not engaged in the business of insurance are also strongly encouraged to report insurance fraud or suspected scams to the Department's Fraud hotline at 1-800-632-5154 or 302-674-7350 or email fraud@delaware.gov, and to other state or federal regulatory authorities as appropriate.

III. Electronic Filings, Electronic Signatures, and Notarization

Insurers are encouraged to file required forms electronically and utilize electronic signatures where permitted. The Department will accept electronic signatures that comply with the Uniform Electronic Transactions Act, Title 6 Ch. 12A. The Department also encourages insurers and other regulated entities to utilize electronic signatures in their business operations if appropriate.

Due to the COVID-19 national emergency and stay-at-home gubernatorial executive orders in various states, it has become difficult to obtain notarized “wet” signatures. To avoid the potential spread of COVID-19 and maintain compliance with the executive orders, the Department is temporarily suspending the notarization requirements for documents required to be filed under Title 18. This temporary suspension does not negate the necessity of obtaining notarized signatures. Rather, any person or entity submitting forms to the Department without notarization pursuant to this Bulletin shall file the properly notarized documents within 60 days of the end of the declared State of Emergency, unless further extended by the Commissioner. Alternatively, the Department will accept documents notarized in compliance with 6 *Del. C.* § 12A-111 or by remote notarization if authorized in the state in which the document is being notarized.

IV. Relaxation of requirements for in-person appraisals/inspections

Some commercial and personal property insurance contracts may require an appraiser to conduct an in-person inspection of property damage to verify the nature and extent of damage asserted by an insured in a claim. The Department encourages insurers to allow their appraisers to rely on photographic, video, or other evidence submitted by a claimant to support their claim, and to only require an in-person appraisal inspection when it would be difficult to determine the full extent of damage through pictures or where the claimant or his/her repair shop/vendor still does not agree with the appraiser’s assessment based on the photographic review.

Automobile insurers are reminded that 18 Del. Admin. Code § 602-4.0 allows an appraiser to “prepare an appraisal or a repair estimate on a motor vehicle that has been damaged as a result of a covered loss either from the appraiser’s personal inspection of the vehicle or from photographs, videos, or electronically transmitted digital imagery of the motor vehicle.” The Department encourages, to the extent possible, the discontinuation of in-person inspections for the duration of the COVID-19 emergency.

Relaxing in-person inspection requirements does not mean, however, that an insurer may disregard any provision of 18 *Del. C.* Ch. 23, Unfair Practices in the Insurance Business.

V. Communication with the Department

Insurers and other regulated entities are encouraged to communicate with the Department via email whenever possible. Most Department employees are currently working from home. Accordingly, correspondence received via the U.S. Postal Service or facsimile may be delayed for review.

However, all divisions of the Department are operational and will be checking emails, answering forwarded telephones and checking Department emails daily. The quickest way to ensure a response is to contact the Department via email or telephone. If you do not know the email address of the party you are trying to contact, please use one of the general email addresses below, as appropriate:

<u>OFFICE OF THE COMMISSIONER</u>	
Commissioner's general email	Insurance.Commissioner@delaware.gov
Office of Legal and Special Projects Arbitration Service of Process FOIA	DOI-Legal@delaware.gov DOI-Arbitration@delaware.gov DOI_SOP@delaware.gov https://alpha.delaware.gov/foia/?subj=INSCOM
Finance Invoices Premium Tax Surplus Lines Tax	DOI-invoices@delaware.gov DOI_Tax@delaware.gov DOI_SLTax@delaware.gov
<u>SIX MAIN DIVISIONS</u>	
Bureau of Captive & Financial Insurance Products	captive@delaware.gov
Bureau of Company Examination, Rehabilitation & Guaranty	berg@delaware.gov
Fraud Prevention Bureau	fraud@delaware.gov
Consumer Services & Investigations	consumers@delaware.gov MarketConduct@delaware.gov
Producer Licensing & Continuing Education Division	Licensing@delaware.gov
Rates & Forms Divisions	DOI_Rate@delaware.gov
<u>ADDITIONAL PROGRAMS</u>	
Bureau of Rehabilitation & Liquidation	DOI_Rehab@delaware.gov
DMAB: Medicare Counseling	DOI_DMABinfo@delaware.gov
Workplace Safety Program	DOI_WorkplaceSafety@delaware.gov

VI. On-Site Examinations

Insurers have inquired as to whether the Department will continue to conduct on-site examinations during pendency of the State of Emergency caused by the COVID-19 pandemic. The Department will fully comply with governmental directives regarding public gatherings, as well as the State of Emergency declared by the Governor on March 12, 2020 and subsequent Modifications issued by the Governor which closed businesses or ordered residents to stay at home unless performing an essential activity.

In that regard, the Department will not conduct any on-site examination work that is non-essential or is contrary to directives to limit gatherings or practice social distancing or isolation. To facilitate this, insurers should be aware that the Department may need to request more information in electronic form and may require more time to review submitted

information. Additionally, the Department acknowledges that insurer response times may be slower than usual as more insurance company employees are also working from home.

At this time, the Department will not delay on-site examinations that are set to begin on or after June 2020. However, should circumstances change and the current emergency continues after May 2020, the Department will revisit its plans for scheduled examinations and advise insurers accordingly.

VII. Administrative Hearings and Requests for Arbitration

Insurers, regulated persons and entities, and consumers have inquired as to whether the Department will continue to conduct administrative hearings and schedule requests for arbitration during the pendency of the State of Emergency caused by the COVID-19 pandemic. At this time, the Department will fully comply with governmental directives regarding public gatherings, as well as the State of Emergency issued by the Governor on March 12, 2020 and subsequent Executive Orders issued by the Governor which closed businesses or ordered residents to stay at home unless performing an essential activity. Accordingly, the Department will not hold any administrative hearings and will not schedule any arbitrations that are non-essential or contrary to directives to limit gatherings or practice social distancing or isolation.

At this time, it is not possible for the Department to conduct telephonic hearings due to the need to have a court reporter present to record the hearings. However, the Department will continue to review and explore options to determine if a feasible remote hearing solution is achievable. Also, insurers, regulated entities and consumers should be aware that the Department may need to request more information in electronic form and may require more time to review submitted information while employees are working from home.

VIII. Insurance Company Premium Tax Payment Deadlines Not Extended

The annual premium tax filing deadline for captive insurance companies and the quarterly filing deadline for insurance company premium tax payments is **April 15, 2020**. That deadline has not been extended by the Commissioner or by directive of the Governor's Office.

On March 23, 2020, the Delaware Division of Revenue issued Technical Information Memorandum 2020-1 (the Memorandum) concerning COVID-19 tax filing extensions. Pursuant to the Memorandum, filing deadlines for the types of taxes listed in the Memorandum were extended to July 15, 2020 to correspond with the federal government's tax filing extension to the same date. The Memorandum can be accessed by typing the following information into your webbrowser: https://revenuefiles.delaware.gov/2020/TIM2020-01_COVID-19_filing_extension.pdf.

However, captive and traditional insurance company premium taxes are not tied to federal tax filings and are not included in the Memorandum. Insurance company premium taxes are based upon the gross amount of direct premiums collected and received by an insurer during the previous calendar year. Accordingly, insurance premium taxes should already have been collected by an insurer and should be remitted to the Department pursuant to the gross amount

of direct premiums collected and received by the insurer during the previous calendar year's regular schedule for payments.

IX. Temporary Licenses

The Department received notice from its testing contractor, Pearson Vue, that Pearson Vue has temporarily closed its U.S. testing centers starting March 17, 2020 in order to limit the exposure to the COVID-19 virus. Its centers will be closed for 30 days, so candidates will not be able to schedule an exam until after April 16th or until conditions allow. For more information about scheduling exams please visit Pearson Vue's website at <https://home.pearsonvue.com/>.

Due to this change, the Department will offer temporary licenses for under 18 *Del. C. Ch. 17* for all license types issued pursuant to that chapter. Before issuance of a temporary license, the applicant must sign a Consent Order stating that they have 90 days from the date that Pearson Vue is back in operation to complete their exam. The applicant is also required to provide background checks and a Letter of Responsibility from an individual actively licensed in the state of Delaware. If there is a statewide shutdown that prevents applicants from obtaining background checks, the Producer Licensing section will no longer issue any temporary licenses. Questions regarding this process should be directed to licensing@delaware.gov.

X. Regulatory Filing Deadlines, Response Deadlines and Requests for Extension

Currently, the Department's Licensing and Examination Division is processing applications daily and does not believe that an extension will be necessary for producers, surplus lines licensees, adjusters or business entities.

Additionally, the Department reiterates that it is not granting a blanket extension for insurers or other regulated entities to respond to inquiries from the Commissioner or from the Department's Consumer Services Division. During the State of Emergency, it is critical that the Department be able to discuss matters of urgent importance with insurers and other regulated entities punctually and thoroughly, as well as to communicate with consumers effectively. Please communicate with the Department via email and/or telephone, when necessary, while Department staff are working from home.

If your company believes that it will not be able to meet a filing or response deadline required by current law, regulation or Department Bulletin, please contact the Department as soon as possible to discuss alternative arrangements. If the issue involves the Market Conduct Division, please contact Frank Pyle at Frank.Pyle@delaware.gov. If the issue involves any other Division in the Department, please contact that Division directly at the email address provided in Section V. of this Bulletin, above.

General questions concerning this Bulletin should be directed to the Office of Legal and Special Projects at DOI-Legal@delaware.gov.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.

Trinidad Navarro

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Delaware Insurance Commissioner