



**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

REVISED & June 25, 2020
REISSUED: July 2, 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.

Purpose of Original Bulletin and Subsequent Revisions

Original Bulletin: 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.

June 25th Revision: The purpose of updating and reissuing this Bulletin on June 25, 2020 was to:

- Update Section VII, Administrative Hearings and Requests for Arbitration to inform that arbitrations are being conducted electronically;
- Update Section IX concerning the suspension of the temporary licensing program;

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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- Update Section VI concerning On-Site Examinations; and
- Add a new paragraph at Section X concerning on-site audits of third-party administrators.

July 2nd Revision: The purpose of updating and reissuing this Bulletin on July 2, 2020 is to update Section I concerning cancellation and nonrenewal of insurance policies and policyholder flexibility by informing insurers, producers and adjusters that under the Twenty-Third Modification to the Governor’s Declaration of a State of Emergency:

- The moratorium on the cancellation or nonrenewal of policies that had been in effect under the Sixth and Ninth Modifications to the Governor’s Declaration of a State of Emergency has been lifted; and
- Insurers must grant policyholders suffering a COVID-19-related hardship an extension of time for the repayment of premium which was past due between March 25, 2020 through July 1, 2020 without penalty or interest.

I. Cancellation and Nonrenewal of Insurance Policies and Policyholder Flexibility – Moratorium lifted as of July 1, 2020 and repayment plan instated

A. Prior Actions

Domestic and Foreign Insurers Bulletin No.116/Producers and Adjusters Bulletin No. 32, issued on March 20, 2020 and updated on March 26, 2020, reminded 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 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 COVID-19 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.”

B. Twenty-Third Modification – Cancellation/Non-Renewal Moratorium Lifted and Payment Plan Instated

On June 30, 2020, the Governor issued the Twenty-Third Modification of the Declaration of a State of Emergency, which provides at paragraph B:

Effective July 1, 2020 at 8:00 a.m. E.D.T., paragraph E. of the Sixth Modification of the Declaration of the State of Emergency, dated March 24, 2020, relating to the payment of insurance premiums, and paragraph 5. of the Ninth Modification, dated March 30, 2020, which modified paragraph E. of the Sixth Modification, are hereby stricken and replaced with the following:

1. Beginning July 1, 2020, every insurer shall provide a 90-day payment plan for past due premiums to individual policyholders who demonstrate a loss of job/termination of employment due to the COVID-19 State of Emergency, or, if the policyholder is a business, the business demonstrates it was required to close or significantly reduce its business operations due to the COVID-19 State of Emergency. Repayment of the unpaid premium shall, at a minimum, be amortized over said 90-day period in up to 3 equal installments, except that an insurer may permit a longer repayment period to assist policyholders.
2. This Order is intended to grant policyholders an extension of time for the payment of premium which was past due between March 25, 2020 through July 1, 2020 without penalty or interest. Except as required herein, the provisions in this Order are not intended to vary the terms and conditions of an insurance policy. No provision contained in this Order is intended to be considered a forgiveness of premium due by policyholder under an insurance policy prior to-, post-, or during the pendency of this State of Emergency. Failure to make payment under the payment plan may be the basis for cancellation or nonrenewal of a policy. Policyholders are encouraged to contact their insurer regarding payment of past-due 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.

C. Implementation of the lifting of the cancellation/non-renewal moratorium and instatement of premium repayment plan

With this order, insurers are no longer required to suspend policy cancellations and non-renewals due to a policyholder's financial hardship caused by the COVID-19 pandemic. The cancellation/non-renewal moratorium is lifted as of July 1, 2020.

Insurers shall provide policyholders who were excused from paying premiums during the period between March 25, 2020 through July 1, 2020 due to COVID-19 related hardship a repayment period, under the following conditions:

- The policyholder must be provided at least 90 days to repay premiums in 3 equal installments and without penalty or interest;
- An insurer may permit a repayment period that is longer than 90 days to assist policyholders, also without penalty or interest;
- Insurers must provide adequate notice to its policyholders that contains information about the availability of 90-day (or longer), interest and penalty-free payment plans;
- All repayment plans must be documented in writing and must include the amount of delinquency, when payment is due, and the amount of each payment, as they pertain to the individual policyholder; and
- An insurer may not cancel or decline to renew a policy due to previous nonpayment while a policyholder is actively repaying past due premiums in accordance with the terms of the repayment plan. However, if a repayment or currently-due premium payment is not paid by the policyholder in a timely fashion according to the terms of the insurance policy and this Bulletin, the insurer may consider cancellation or non-renewal, but only according to the Department's existing policy cancellation regulations, including notice requirements. With the striking of the Sixth Modification, which had required a court order to suspend, cancel or non-renew a policy, a court order is no longer necessary.

Insurers who have existing repayment plans that span periods longer than 90 days are permitted to use those plans, but only if interest is not accrued on policyholder debt during the repayment term. The Department requests that insurers who intend to utilize repayment plans that span periods longer than 90 days share the terms of those plans with the Department so that the Department may be responsive to constituent inquiries.

The notice to policyholders concerning the availability of the repayment plan should comply with the following minimum requirements:

Method of Contacting Policyholders: Insurers are encouraged to widely publicize the availability of repayment plans, including but not limited to posting notices on the insurer's website. However, website-only notice is insufficient. Insurers must contact policyholders directly in writing, either by mail or, for those policyholders who conduct

business with the insurer exclusively on-line or electronically in compliance with 18 *Del. C.* § 107, by electronic means.

If the insurer can effectively identify the subset of policyholders who are past due during the period between March 25, 2020 through July 1, 2020 due to COVID-19 hardship, then the notice may be sent only to those past-due policyholders, instead of to the insurer's entire book of Delaware policyholders.

Minimum Content of the Notice: The notice should advise the policyholder that if a policyholder has past due premiums from March 25, 2020 through July 1, 2020 because of a hardship due to COVID-19, the policyholder is entitled to a 90-day (or longer), interest and penalty-free repayment plan. The notice may be a generic notice that may be sent to all policyholders, as long as the repayment plan itself is customized to each policyholder's particular circumstances.

Further, the notice should advise the policyholder that the policyholder must affirmatively take the responsibility to request a repayment plan, and that the policyholder has two weeks from the date of the notice (whether received by mail or electronically) to contact the insurer.

Lastly, the notice may require the policyholder to provide, concurrent with the request for a repayment plan, some form of validation that the hardship suffered is 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. Proof may include but is not limited to evidence in writing, or otherwise, from an employer, policyholder, insured or other appropriate source, but such proof must be the least minimally necessary to demonstrate a COVID-19 hardship.

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 that 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	consumer@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
A. DMAB: Medicare Counseling	DOI_DMABinfo@delaware.gov
B. 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, 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.

In the original version of this Bulletin, the Department indicated that it will not delay on-site examinations that are set to begin on or after June 2020. However, the Department has not scheduled any on-site exams during June or July. To the extent that the Department schedules on-site examinations in the future, if circumstances change and the current emergency continues after July 2020, the Department will continue to revisit its plans for scheduled on-site 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 the time this bulletin was first issued, the Department stated that it 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.

It continues to not be 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.

That said, the Department has resumed its arbitration program and is scheduling arbitrations to be heard electronically.

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 web browser: 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

At the time of the issuance of the original version of this bulletin, the Department had received notice from its testing contractor, Pearson VUE, that Pearson VUE had temporarily closed its U.S. testing centers starting March 17, 2020 in order to limit the exposure to the COVID-19 virus, and that its centers would be closed for 30 days, so candidates will not be able to schedule an exam until after April 16th or until conditions allow.

Due to this change, the Department determined to offer temporary licenses under 18 *Del.C.* Ch. 17 for all license types issued pursuant to that chapter, and required applicants to sign a Consent Order stating that they have 90 days from the date that Pearson VUE is back in operation to complete their exam.

Pearson VUE has informed the Department that it has contracted with a third-party vendor to provide licensee examination services in settings that are large enough for applicants to take the examination in-person but in accordance with social distancing guidelines. As a result, temporary licensees should take note of the following:

- As of **June 30, 2020**, the Department will no longer issue temporary licenses.
- All temporary licenses shall lapse on **September 30, 2020**. As provided in the Consent Order, temporary licensees who wish to remain licensed must take the applicable examination **before September 30, 2020**.
- If a temporary licensee successfully passes the licensing exam, the temporary license shall be automatically converted into a permanent license. If the temporary licensee fails the licensing exam, the temporary licensee's license shall automatically lapse in accordance with the terms of paragraph 4.c. of the Consent Order.
- Applicants who have applied for a temporary license **before June 30, 2020** may either:
 - Proceed with their application, with the understanding that their license will lapse on September 30, 2020 unless they successfully pass the applicable examination; or
 - Withdraw their application and proceed directly to taking the applicable licensing examination.

Questions regarding this process should be directed to licensing@delaware.gov. For more information about scheduling exams, please visit Pearson VUE's website at <https://home.pearsonvue.com/>.

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 any filing or response deadline required by current law, regulation or Department Bulletin, your company should 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.

As an addition to the original Bulletin, the Department informs that, until further notice, the Department will not require insurers to conduct any on-site audits of third-party administrators that are contrary to directives to limit gatherings or practice social distancing or isolation. Regulation 1406-7.3 requires an insurer to, at least semiannually, conduct a review of the operations of its third-party administrator in cases where an administrator administers benefits for more than one hundred certificate holders on behalf of an insurer, and that at least one such review shall be conducted on-site. For now, insurers may utilize electronic information requests to satisfy their on-site audit obligations under Regulation 1406-7.3.

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
Delaware Insurance Commissioner