

# Nevada

By Michael C. Mills

## **What insurer practices are addressed by statute, regulation and/or insurance department advisory?**

*Misrepresentation of facts or policy provisions.*

NRS 686A.310(1)(a).

*Refusal to pay claims without conducting a reasonable investigation.*

NRS 686A.310(1)(c) (failure to adopt and implement reasonable standards for the prompt investigation and processing of claims).

*Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered.*

NRS 686A.310(1)(f). The insured cannot recover under this section unless there has been an ultimate recovery. *Mueller v. Prop. and Cas. Ins. Co. of Hartford*, Case No.: 2:12-cv-01589-GMN-VCF (D. Nev. July 6, 2013).

*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.*

NRS 686A.310(1)(g).

*Attempting to settle claims on the basis of an application altered without notice to, or knowledge or consent of, the applicant.*

NRS 686A.310(1)(h).

*Failure, after paying claim, to inform insureds or beneficiaries of the coverage under which payment was made.*

NRS 686A.310(1)(i).

*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.*

NRS 686A.310(1)(j).

*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.*

NRS 686A.310(1)(k).

*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.*

NRS 686A.310(1)(l).

*Failure to promptly provide a reasonable and proper explanation of the basis for a denial of claim.*

NRS 686A.310(1)(n).

*Concealment of benefits, coverages or other provisions that are pertinent to the claim.*

NAC 686A.660(b) creates an affirmative duty on the part of the insurance company to disclose all pertinent benefits coverages or other provisions of an insurance contract or policy to all first-party claimants.

*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 comparable provision.

*Failure to maintain complete claims files, in sufficient detail that pertinent events and dates may be reconstructed.*

No comparable provision.

*Does this state have any other pertinent law regarding insurer practices?*

No.

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

*Failure to acknowledge and act promptly on claims communications.*

NRS 686A.310(1)(b).

*Failure to adopt and implement reasonable standards for prompt investigation of claims.*

NRS 686A.310(1)(b).

*Failure to affirm or deny coverage within a reasonable time after proof of loss.*

NRS 686A.310(1)(d).

*Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear.*

NRS 686A.310(1)(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?*

NAC 686A.675(5). Notice must be given 60 days before the date on which a time limit may expire. This provision applies to all persons and to all insurance contracts or policies except policies of surety insurance. NAC 686A.600 (2). However, to prove a violation, there must be evidence of a general business practice. NAC 686A.600(1).

*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?*

NAC 686A.675(6). This provision applies to all persons and to all insurance contracts or policies except policies of surety insurance. NAC 686A.600 (2). However, to prove a violation, there must be evidence of a general business practice. NAC 686A.600(1).

*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.*

NAC 686A.660(4).

*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.*

- NAC 686A.690. Replies to inquiries to the Division of Insurance must be made within 20 days.
- NAC 686A.665(3). Replies to the insured must be made within 20 days after receipt of the communication that anticipates a response.

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

NRS 686A.675.

- (1) Must accept or deny claim or explain what further investigation is required 30 days from receipt of the proof of loss.
- (2) Reasons for denial of a claim must be annotated in the claims file.
- (3) Notices to the insured that the investigation is incomplete must be made within 30 days of receipt of claim and every 30 days thereafter.

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

*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?*

NAC 686A.675(4). This provision is specifically limited to first-party claims.

*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?*

NAC 686A.660(1). This provision is specifically limited to first-party claims.

*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 comparable provision.

*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?*

NAC 686A.660(5). This provision is limited to first-party claims.

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

NAC 686A.680. Standards for handling claim applicable to insurers under auto policies.

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

NRS 684A.030 defines independent insurance adjusters as “insurers” under Nevada’s UCPA. Thus, independent insurance adjusters are obliged to comply with the UCPA just as if they were an insurance company.

### **Practice tips for this state**

Nevada’s UCPA creates a private right of action in favor of the first-party insured and against the insur-

ance company for any act that amounts to a violation of the law. NRS 686A.310(2). There is no third-party private right of action. *Gunny v. Allstate Ins. Co.*, 108 Nev. 344, 346 830 P.2d 1335 (1992).

A claimant need not prove bad faith in order to prove a violation of the UCPA. As the court explained in *Hart v. Prudential Prop & Cas. Ins. Co.*, 848 F. Supp. 990 (D. Nev. 1994), “While the statute and the common law [tort of bad faith] may overlap to a limited extent, the statute reaches different conduct than that which is contemplated by the common law tort.” The court explained that Nevada’s UCPA was not a codification of common law “bad faith.” The court specifically said that not every violation of the provisions of NRS 686A.310 is a per se act of bad faith. *Id.* at 904. The court suggested that it would be unfair to subject an insurance company to an inconsequential violation of the statute where the carrier had appropriately paid the claim.

An insurance company can breach Nevada UCP Act even if there is no coverage for the loss. *Turk v. TIG Ins. Co.*, 616 F. Supp. 2d 1044 (D. Nev. 2009)

In order to prove that a regulatory violation amounts to a violation of the Nevada’s Unfair Claims Settlement Practice Act, the claimant has to prove that the violations occurred with “a frequency which indicates a general business practice.” NAC 686A.600(1)

Insurance Regulatory Agency: Division of Insurance, a part of Nevada’s Department of Business and Industry, <http://doi.nv.gov/Licensing/>

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