NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
SEVENTEENTH AMENDMENT TO 11 NYCRR 216
(INSURANCE REGULATION 64)

UNFAIR CLAIMS SETTLEMENT PRACTICES AND CLAIM COST CONTROL MEASURES

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2601, 3404(e), and 3420 of the Insurance Law, do hereby promulgate the following Seventeenth Amendment to Part 216 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon filing of the Notice of Emergency Adoption with the Secretary of State, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Section 216.5(a) is amended as follows:

(a)(1) Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within 15 business days of receiving notice of the claim. An insurer shall furnish to every claimant, or claimant's authorized representative, a notification of all items, statements and forms, if any, [which] that the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(2)(i) Notwithstanding paragraph one of this subdivision and subdivision (d) of section 216.2 of this Part, the provisions of this paragraph shall apply to any claim filed on or after May 30, 2020 for loss of or damage to real property, loss of or damage to personal property, or other liabilities for loss of, damage to, or injury to persons or property resulting from a riot or civil commotion in this State, where the superintendent has determined that it is in the best interests of the people of this State for such provisions to apply.

(ii) Every insurer shall commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within six business days of receiving notice of the claim or June 5, 2020, whichever is later.

(iii) An insurer shall furnish to every claimant, or claimant's authorized representative, a written notification detailing all items, statements and forms, if any, that the insurer reasonably believes will be required of the claimant, within six business days of receiving notice of the claim or June 5, 2020, whichever is later.

(iv) A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, the agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(v) Where necessary to protect health or safety, a claimant may commence immediate repairs to the exterior windows, exterior doors, and, for minor permanent repairs, exterior walls of real property. Any policy requirement that the claimant exhibit the remains of the real or personal property may be satisfied by the claimant

submitting reasonable proof of loss documentation of the damaged or destroyed property (without the need for a physical inspection), including photographs or video recordings; material samples, if applicable; and inventories, as well as receipts for any repairs to or replacement of property.

Section 216.6(c) is amended as follows:

(c)(1) Within 15 business days after receipt by the insurer of a properly executed proof of loss and receipt of all items, statements and forms [which] that the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer. When the insurer suspects that the claim involves arson, the foregoing 15 business days shall be read as 30 business days pursuant to section 2601 of the Insurance Law.

(2) If the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, within 15 business days after receipt of such proof of loss, or requested information. Such notification shall include the reasons additional time is needed for investigation. If the claim remains unsettled, unless the matter is in litigation or arbitration, the insurer shall, 90 days from the date of the initial letter setting forth the need for further time to investigate, and every 90 days thereafter, send to the claimant, or the claimant's authorized representative, a letter setting forth the reasons additional time is needed for investigation. If the claim is accepted, in whole or in part, the claimant, or the claimant's authorized representative, shall be advised in writing of the amount offered. In any case where the claim is rejected, the insurer shall notify the claimant, or the claimant's authorized representative, in writing, of any applicable policy provision limiting the claimant's right to sue the insurer.

(3)(i) Notwithstanding paragraph two of this subdivision, the provisions of this paragraph shall apply to any claim filed on or after May 30, 2020 for loss of or damage to real property, loss of or damage to personal property, or other liabilities for loss of, damage to, or injury to persons or property resulting from a riot or civil commotion in this State, where the superintendent has determined that it is in the best interests of the people of this State for such provisions to apply.

(ii) If the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, in writing, within 15 business days after receipt of such proof of loss or requested information or June 5, 2020, whichever is later. Such notification shall include the reasons additional time is needed for investigation and the anticipated date a determination on the claim will be provided, including, where the insurer requires a physical inspection, the reason for that inspection. If the claim remains unsettled, unless the matter is in litigation or arbitration, the insurer shall, 30 days from the date of the initial letter setting forth the need for further time to investigate, and every 30 days thereafter, send to the claimant, or the claimant's authorized representative, a letter setting forth the reasons additional time is needed for investigation and the anticipated date a determination on the claim will be provided. If the claim is accepted, in whole or in part, the claimant, or the claimant's authorized representative, shall be advised in writing of the amount offered. If the insurer rejects a claim, the insurer shall notify promptly the claimant, or the claimant's authorized representative, in writing, of any applicable policy provision limiting the claimant's right to sue the insurer.

(iii) If an insurer has any claim subject to this paragraph under which the claimant, or the claimant's authorized representative, has not been advised in writing of the insurer's acceptance or rejection of the claim within the time frames specified in paragraph (1) of this subdivision, the insurer shall submit a report to the

superintendent in a form acceptable to the superintendent. The insurer shall submit the report each week that the insurer has any such claims. The insurer shall submit the report on the Tuesday of the week, except if that day is a holiday, then the report shall be submitted on the next business day. For each such claim, the report shall specify:

(*a*) the alleged date the loss occurred;

(*b*) the date the claim was filed with the insurer;

(*c*) the date a properly executed proof of loss and receipt of all items, statements and forms required by the insurer were received by the insurer;

(*d*) the alleged estimated amount of the loss;

(*e*) the reason given for the extension;

(*f*) the anticipated date a determination will be made on the claim provided to the claimant;

(*g*) how many extensions have been requested on that claim; and

(*h*) the zip code where the loss occurred.

A new section 216.13 is added as follows:

216.13 Mediation.

(a) This section shall apply to any claim filed by an individual or small business claimant on or after May 30, 2020 for loss of or damage to real property, loss of or damage to personal property, or other liabilities for loss of, damage to, or injury to persons or property resulting from a riot or civil commotion in this State, where the superintendent has determined that it is in the best interests of the people of this State for such provision to apply. For the purpose of this subdivision, "small business" means any business that is resident in this State, is independently owned and operated, and employs 100 or fewer individuals.

(b)(1) Except as provided in paragraph (2) of this subdivision, an insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:

(i) at the time the insurer denies a claim in whole or in part;

(ii) within ten business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is $1,000 or more; or

(iii) within two business days after the date that is 45 days after the insurer has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, provided that the insurer has not offered to settle the claim prior to such date.

(2) If, prior to June 5, 2020 the insurer denied a claim in whole or in part, or a claimant disputed a settlement offer, and the claim still remains unresolved as of June 5, 2020, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from June 5, 2020.

(3) The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.

(c) If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.

(d) The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.

(e)(1) The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.

(2) A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.

(3) A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address, and the insurer shall not be required to attend a mediation for:

(i) a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the claimant against the insurer, unless the insurer and the claimant agree otherwise;

(ii) any claim that the insurer has reason to believe is a fraudulent insurance act, as defined in Insurance Law § 403(a), or for which the insurer has knowledge that a fraudulent insurance act has taken place; or

(iii) any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.

(f)(1) The insurer shall participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim, and who has authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative shall bring to the mediation a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) The insurer's representative shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) A claimant's right to request mediation pursuant to this section shall not affect any other right the claimant may have to redress the dispute, including remedies specified in the insurance policy, such as a claimant's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the claimant has not cashed or deposited any check or draft disbursed to the claimant for the disputed matter as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement cannot be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid for by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

Statement of Reasons for Emergency Measure
Seventeenth Amendment to 11 NYCRR 216 (Insurance Regulation 64)

Insurance Law Section 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims promptly and fairly.

Properties in New York State have recently been looted and vandalized by individuals that have infiltrated and used the peaceful protests against police brutality and racial discrimination to commit these destructive and damaging acts across New York State. In order to help consumers and businesses thus affected, this emergency rulemaking requires insurers to promptly process and investigate insurance claims made by claimants; allows claimants to make immediate repairs to certain parts of damaged real property, if necessary, to protect health and safety; and to submit proof of loss by photographs or video recordings. This emergency regulation also offers individual and small business claimants the option to resolve disputes through an impartial mediation process, paid for by the applicable insurer.

Many of the businesses in the areas affected by the looting and vandalism have been closed for several weeks in compliance with the Governor's Executive Orders to help contain the spread of COVID-19. They have been looking forward to re-opening their businesses to sustain their operability, provide employment, and resuscitate the local economy. It is therefore of the utmost importance that these insureds be able to start rebuilding their businesses right away.

Given the nature and extent of the damage caused by the looters and vandals, and the need for businesses to be able to reopen as soon as possible upon their region meeting the COVID-19-related reopening requirements, the existing regulation's time frames are inadequate to protect affected consumers and businesses and to ensure the public's safety and welfare.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

Linda A. Lacewell
Superintendent of Financial Services

Date: June 4, 2020

NEW YORK STATE OF OPPORTUNITY. Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the Seventeenth Amendment to Part 216 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 64), entitled "Unfair Claims Settlement Practices And Claim Cost Control Measures," signed by me on June 4, 2020, pursuant to the authority granted by Financial Services Law Sections 202 and Insurance Law Sections 301, 2601, 3404(e), and 3420, to take effect upon the filing of the Notice of Emergency Adoption with the Secretary of State.

Pursuant to Section 202(6) of the State Administrative Procedure Act, the Seventeenth Amendment to Part 216 of 11 NYCRR (Insurance Regulation 64) is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

Linda A. Lacewell
Superintendent of Financial Services

Date: June 4, 2020