CARLTON FIELDS

NY DFS Issues Circular Letter Addressing Life Insurance Unfair Claims Settlement Practices During the Contestability Period

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On January 26 – in its first-issued circular letter of the year – the New York Department of Financial Services (DFS) reminded life insurers doing business in the state that they can only contest claims following the death of insureds during the two-year contestability period if there is "actual evidence of misrepresentation" and warned insurers against "improperly … shifting the burden of proof to beneficiaries." The DFS said such conduct is unlawful and has been revealed via its examinations and investigations of life insurers. The letter was accompanied by a press release in which Governor Andrew Cuomo stated that "[i]nsurers are on notice of their obligations and that this administration has zero tolerance for those who seek to sidestep their responsibilities." The circular letter reviewed New York law allowing insurers within the two-year contestability period to avoid paying a claim based on a material misrepresentation made by the insured prior to issuance of the policy. Further, a misrepresentation about a medical impairment is presumed material if the insured or someone else having a claim under the policy prevents full disclosure and proof of the nature of such a medical impairment. The letter asserts that some insurers have improperly used this presumption to impose an obligation on

beneficiaries to obtain medical records so that the insurers can look for such misrepresentations and have rescinded policies when beneficiaries have failed to do so. According to the DFS, this improperly shifts the burden to beneficiaries, who have no general obligation to provide insurers with medical records and who may not even have the right to such records themselves. The letter emphasizes that the presumption of materiality applies only after an insured proves that a misrepresentation has been made; therefore, an insurer cannot use this presumption to demand that beneficiaries provide medical records to allow the insurer to determine whether such a misrepresentation has been made. The circular letter advises insurers that if, absent "actual evidence" of material misrepresentations, they require beneficiaries to provide medical records, they are not fulfilling their obligation "to effectuate prompt, fair and equitable settlements of claims in good faith," and may also be guilty of an unfair or deceptive trade practice. Further, the letter states that any policy provision requiring beneficiaries claiming death benefits to waive the insured's physician-patient privilege or to provide the insured's medical records, other than proof of death, is unfair. The circular letter also calls out the practice of insurers unilaterally withholding payment or rescinding policies after the insured has died, emphasizing that an insurer must make prompt payment on a claim unless it has proof that the insured made a material misrepresentation. Further, even with such proof, an insurer may not rescind a policy after the death of the insured without either a judicial determination or the agreement of all beneficiaries; it may not do so unilaterally.

Authored By

Ann Young Black

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