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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 1. FIRE AND MARINE INSURANCE [1880 - 10108.1] (*Part 1 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 8.9. Insurance Mediation [10089.70 - 10089.83] (*Heading of Chapter 8.9 amended by Stats. 2004, Ch. 357, Sec. 1.*)

10089.70. (a) The department shall establish a program for the mediation of the disputes between insured complainants and insurers arising pursuant to any of the following:

(1) A claim that arises under a homeowners' insurance policy and that involves loss due to a fire for which the Governor has declared a state of emergency pursuant to Section 8558 of the Government Code. The department may refer to mediation any dispute covered by this paragraph in which the parties to the contract wish to discuss possible payments beyond policy limits.

(2) A claim that arises under a policy covering earthquake damage and that involves loss due to an earthquake for which the Governor has declared a state of emergency pursuant to Section 8558 of the Government Code. With respect to disputes arising under this paragraph, the program shall apply only to personal lines of insurance related to residential coverage.

(3) A claim that arises under automobile collision coverage or automobile physical damage coverage, in a policy as defined in Section 660.

(b) The goal of the program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This section shall not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or any dispute involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

(Amended by Stats. 2005, Ch. 447, Sec. 5. Effective January 1, 2006.)

10089.71. Any insured having a dispute with an insurer under a policy that qualifies for this program may file a written complaint with the department. The complaint shall indicate that the complainant has not been able to reach a satisfactory settlement of a claim with the insurer. The department shall, if deemed appropriate, notify the insurer against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the insurer in order to attempt resolution of the dispute.

(Amended by Stats. 2004, Ch. 357, Sec. 3. Effective August 30, 2004.)

10089.72. (a) If, after the department's intervention, the insurer and the insured do not reach agreement, the department may notify the insurer that in order to avoid referral to mediation, the insurer shall have 28 calendar days to resolve the dispute, unless the department, for good cause, extends the period by an additional 7 calendar days.

(b) The department may not refer a claim or dispute to mediation unless the amount claimed by the insured exceeds seven thousand five hundred dollars (\$7,500) and the amount in dispute exceeds two thousand dollars (\$2,000).

(Amended by Stats. 2004, Ch. 357, Sec. 4. Effective August 30, 2004.)

10089.73. If the dispute is not resolved within the time period prescribed by Section 10089.72, the insurer shall notify the department of the failure, and may include the reason for the failure. The insurer shall, within the time period prescribed by Section 10089.72, notify the department of its position if it believes that the dispute is not eligible for the mediation program.

(Amended by Stats. 2001, Ch. 727, Sec. 5. Effective January 1, 2002.)

10089.74. (a) If the insurer notifies the department of the failure to resolve the dispute, the department shall notify the insured of the insured's ability to request mediation and ask the insured whether the insured requests mediation. If the insured responds affirmatively, the department shall refer the dispute to mediation.

(b) If the insurer fails to give the required notice to the department prior to the expiration of the time limits set forth in Section 10089.72, the department shall notify the insured of the insured's ability to request mediation and ask the insured whether the insured requests mediation. If the insured responds affirmatively, the department shall refer the dispute to mediation. The department may not refer a dispute to mediation if the matter turns upon any of the reasons or conditions set forth in Section 10089.70, relative to applicability, or if for other good cause the commissioner determines that mediation of the dispute is inappropriate.

(c) If the insured has filed a civil complaint, the insurer is excused from mediating under this chapter any claims or disputes involved in the civil action.

(Amended by Stats. 2001, Ch. 727, Sec. 6. Effective January 1, 2002.)

10089.75. (a) Any insurer may inform an insured who has filed a complaint with the department concerning a dispute that qualifies for this program of the existence of the mediation program and may ask the insured to seek mediation under this chapter jointly with the insurer. Any insurer may notify the department of any dispute arising out of a qualifying event that it believes may be appropriately resolved through the mediation program. The department, with respect to that notification, shall proceed as provided in subdivision (a) of Section 10089.74.

(b) Notwithstanding Section 10089.82, if the commissioner makes a finding that an individual insurer has engaged in unreasonable or arbitrary refusals to mediate, the commissioner shall have the authority to require that insurer to participate in mediation in all cases deemed by the commissioner appropriate for mediation under this chapter.

(c) Any insurer who has been ordered to participate in mediation on a mandatory basis may seek a review of the order by filing in a court of competent jurisdiction within 30 calendar days of the order. The commissioner's order to participate in mediation, however, may not be stayed during the pendency of any judicial proceeding for any period beyond 60 calendar days after the initial date of the order to participate. The basis for the commissioner's decision to require an insurer to participate in the mediation program shall not be made public unless review is sought. The commissioner's decision not to require an insurer to participate, including the basis for the decision, shall be made public.

(d) Any insured whose request to mediate his or her claim under this chapter was declined by an insurer may request the commissioner to require the insurer to participate in the mediation program and may seek review in a court of competent jurisdiction of the commissioner's decision not to require the insurer to participate in the mediation program. The review shall be required to be sought within 30 calendar days after the commissioner's decision.

(Amended by Stats. 2001, Ch. 727, Sec. 7. Effective January 1, 2002.)

10089.76. Upon referral of a complaint to mediation, the department shall immediately transfer all necessary information concerning the claim, including the name and address of the insured and the insurer, to a mediator.

(Added by Stats. 1995, Ch. 848, Sec. 1. Effective October 13, 1995.)

10089.77. The department shall contract with a diverse pool of mediators for the provision of mediation services. The contractors shall be qualified mediators who meet standards established by the commissioner. The commissioner shall establish standards in consultation with consumer groups, policyholder groups, mediators, alternative dispute resolution groups, insurers, and the State Bar. These standards shall include:

(a) Mandatory training that may be provided by the department, which shall include, at a minimum, the legal rules for insurance policy interpretation and the rights of insureds under California law, and methods of determining costs of construction and reconstruction and costs of automobile repair in given geographical areas.

(b) A requirement that no mediator participating in this program may have business, familial, contractual, or other affiliation with, or financial interest in, the insured, or in any insurer, insurance agent, or agency. For purposes of this subdivision, an investment in a mutual fund that holds insurer stocks is not a financial interest. Financial interest does not include prior representation of, or an employment or contractual relationship with a law firm or lawyer who represents, one or more insurers or who represents insurance agents in connection with their business affairs, provided the law firm or lawyer has not previously represented any of the parties to the mediation.

However, any prior representation, employment, or contractual relationship shall be disclosed to the parties to the mediation. If any party objects to the mediator because of the prior representation, employment, or contractual relationship, the department shall dismiss that mediator and select a new mediator. An objection under this subdivision does not limit a party's right to object once under subdivision (d).

(c) A requirement that no mediator participating in this program may be either a lawyer or an employee of a lawyer or law firm that has represented any party to the mediation in the previous 36 months, or a person who has a business, familial, contractual, or other affiliation with a lawyer or law firm that has represented any party to the mediation in a lawsuit against the insurer in the last 36 months.

(d) Each party to the mediation may object once to the mediator assigned by the department. If a party objects to the mediator, the department shall dismiss the mediator and assign another mediator.

(Amended by Stats. 2001, Ch. 727, Sec. 8. Effective January 1, 2002.)

10089.78. Upon receipt of a complaint, the mediation service, to the extent possible, shall issue a notice to the insured and the insurer setting a date and time within 21 calendar days of the date of the notice for commencement of a mediation conference. The mediator shall make all reasonable efforts to schedule the mediation at a time agreeable to both parties. The notice shall inform the parties that the cost of mediation will be borne by the insurer, except to the extent provided in Section 10089.81. The notice shall also state that in the event of a proposed settlement the insured may have three business days in which to rescind the agreement, as specified in subdivision (c) of Section 10089.82.

(Amended by Stats. 2001, Ch. 727, Sec. 9. Effective January 1, 2002.)

10089.79. (a) The costs of mediation shall be reasonable, and shall be borne by the insurer, except as provided in Section 10089.81. The commissioner may set a fee not to exceed one thousand five hundred dollars (\$1,500) for each homeowners' or earthquake coverage dispute mediated pursuant to this chapter, and seven hundred dollars (\$700) for each automobile coverage dispute mediated pursuant to this chapter.

(b) The administrative expenses for the mediation program shall be paid from existing resources available to the department. If additional resources are required by the department, those resources shall be made available by an annual appropriation in the Budget Act.

(Amended by Stats. 2005, Ch. 447, Sec. 6. Effective January 1, 2006.)

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage. For disputes mediated pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the department shall refer to mediation issues related to the settlement of the claim. The insured and insurer shall produce, to the extent available, documents relevant to the successful mediation of the claim, including documents related to the degree of loss, the value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(b) The mediator shall determine prior to the mediation conference whether the insured will be represented by counsel at the mediation. The mediator shall inform the insurer whether the insured will be represented by counsel at the mediation conference. If the insured is represented by counsel at the mediation conference, the insurer's counsel may be present. If the insured is not represented by counsel at the mediation conference, then no counsel may be present.

(c) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted under this chapter.

(d) The statements made by the parties, negotiations between the parties, and documents produced at the mediation are confidential. However, this confidentiality shall not restrict the access of the department to documents or other information the department seeks in order to evaluate the mediation program or to comply with reporting requirements. This subdivision does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

(Amended by Stats. 2005, Ch. 447, Sec. 7. Effective January 1, 2006.)

10089.81. All parties to the mediation proceeding shall negotiate in good faith and shall have the authority to immediately settle claims. An insurer that fails to appear for a scheduled mediation conference or meeting for which the consumer appears shall pay the consumer for his or her actual expenses incurred in attending the conference plus the value of lost wages. An insured who has good cause for a failure to appear may reschedule one time, at a time set by the mediator. If an insured fails to demonstrate good cause for the first failure to appear or subsequent failures to appear, that insured loses his or her right to mediate the claim under this chapter and shall pay all costs charged by the mediator up to the time of the failure to appear that terminates the mediation.

(Added by Stats. 1995, Ch. 848, Sec. 1. Effective October 13, 1995.)

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations or limitation on the insured's right to sue as set forth in Section 2071 is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three-business-day cooling off period.

(Amended by Stats. 2005, Ch. 448, Sec. 3.5. Effective January 1, 2006.)

10089.83. (a) On or before August 1 of each year in which this program is in effect, the commissioner shall report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance on the status of the program in the prior year, including statistics about the number of cases suitable for mediation, the number sent to mediation, and the number accepted, as well as declined, by the insurers, and other similar information concerning the operation of the program in the annual report submitted pursuant to Section 12922.

(b) At six-month intervals, the department shall collect from the mediators with which it contracts for this service the following information: the number of persons to whom mediation was offered, the number of insurers that accepted and declined mediation, the number of settlements, and of those settlements, the number rejected within the three business day cooling off period. For each settlement, the mediation service shall also report the amount initially claimed by the consumer and the amount agreed to be paid, if any, by the insurer or other party.

(c) The department may adopt regulations, including reporting requirements, in the commissioner's discretion, to implement this chapter. The regulations shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the regulations is deemed necessary for the immediate preservation of the public peace, health or safety, or general welfare.

(Amended by Stats. 2006, Ch. 405, Sec. 8. Effective September 22, 2006. Operative January 1, 2007, by Sec. 14 of Ch. 405.)