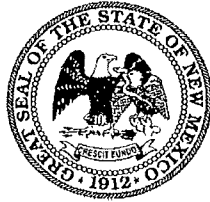


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**BULLETIN NO. 2016-017**

TO: EVERY INSURER, NONPROFIT HEALTH CARE PLAN, HEALTH  
MAINTENANCE ORGANIZATION, AND PREPAID DENTAL PLAN  
TRANSACTIONING BUSINESS IN NEW MEXICO

FROM: JOHN G. FRANCHINI, SUPERINTENDENT OF INSURANCE

DATE: JULY 08, 2016

RE: PAYMENT OF CLAIMS BY ELECTRONIC FUNDS TRANSFER

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This Bulletin is issued pursuant to Section 59A-2-8 NMSA 1978 of the New Mexico Insurance Code, 13.1.2 *et seq.* NMAC.

NMSA 1978 §59A-16-21A currently states as follows:

**59A-16-21. Payment of claim by check or draft; failure to pay; interest.**

A. An insurer shall pay claims arising under its policies with checks or drafts which are promptly paid. Without amending other statutes dealing with checks and drafts, a resident of New Mexico is granted a cause of action for ten percent of the amount of any check or draft that is not paid or lawfully rejected within ten days of forwarding by a New Mexico financial institution, but in no case to be less than five hundred dollars (\$500) plus costs of suit and attorneys' fees. The insurer shall not be required to pay such civil damages for delay if it proves that the delay in processing and payment was caused by a financial institution or postal or delivery service, and the check or draft was paid or lawfully rejected within forty-eight hours of actual receipt of the draft or check by the person on whom drawn. .... (emphasis added)

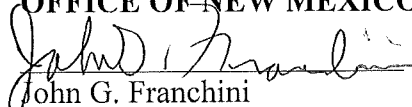
This statute is clearly intended by the New Mexico Legislature to protect insurance consumers from unreasonable delays in the payment of claims by insurers. This is a reasonable and legitimate concern on the part of the Legislature and the Office of the Superintendent of Insurance as the regulator responsible for the supervision of this industry. Prompt payment of claims is a crucial component of the insurance business.

It must be noted, however, that the statutory provision quoted above was passed in its present form more than thirty years ago, and business practices have changed significantly during that time. In particular, financial transactions may now occur through electronic payments, which occur almost instantaneously and securely and which were not available to either individual or business insurance consumers in 1984.

The Superintendent is aware that this provision of the Insurance Code should be updated to allow for electronic payments as an ordinary business practice, and that such an amendment would significantly benefit insurance claimants and beneficiaries since electronic payments are speedier and more secure than the mailing or ground delivery of checks and drafts. Electronic payments would also benefit the payor by protecting against loss of the payment and the attendant administrative inconvenience of verifying and replacing the payment.

Until the statute can be changed through the legislative process, however, it is the determination of the Superintendent that electronic payment of claims, properly processed with **voluntary participation and documented consent** of the payee as well as the payor shall be deemed compliant with the requirement of this Section 59A-16-21 to make payment by means of check or draft. All other terms of this Section remain in full force and effect.

**ISSUED** at Santa Fe, New Mexico on July 18<sup>th</sup>, 2016.

**OFFICE OF NEW MEXICO SUPERINTENDENT OF INSURANCE**  
  
John G. Franchini  
Superintendent of Insurance