

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-148—sHB 6549

Insurance and Real Estate Committee

**AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN
INSURANCE POLICY CLAIMS AND CONCERNING REQUIREMENTS
FOR PERSONS PERFORMING REPAIRS, REMEDIATION OR
MITIGATION PURSUANT TO A LOSS**

SUMMARY: This act allows the Insurance Department to establish a program to mediate disputes between insureds and insurance companies to settle certain claims that involve losses from catastrophic events for which the governor has declared a state of emergency. The program must address disputes where the difference between the parties' positions on the actual cash value or amount of the loss is \$5,000 or more, notwithstanding any applicable deductible. The parties may agree to mediate a dispute involving a smaller amount.

The act requires the commissioner to designate an entity to implement the program and specifies the conditions an entity must meet to be designated. The mediation must be conducted in accordance with procedures the entity establishes and the insurance commissioner approves.

Insurers licensed to provide insurance for the affected lines must participate in the program. The insurer must pay a mediation fee to the designated entity within ten business days after it receives an invoice for the mediation from the entity. The insurer is not responsible for any cost incurred by an insured, including costs for advisors, representatives, attorneys, or public adjusters.

The act allows the commissioner to adopt implementing regulations and specifies what they must contain.

An insured's right to request mediation does not affect any other right he or she may have to redress the dispute after completing the mediation, including any remedies specified in the insurance policy or any right provided by law. However, if the insured and the insurer settle the case and the insured does not rescind his or her agreement, this provision does not apply.

The act expands the scope of the law that requires that a person who performs repair, remediation, or mitigation services under certain insurance policies provide notice to the insured on the scope of the work and its estimated price.

The act also makes technical changes.

EFFECTIVE DATE: October 1, 2013

MEDIATION PROGRAM

Affected Policies

The mediation program applies to claims under a:

1. personal risk insurance policy, other than private passenger nonfleet automobile insurance;

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2. condominium association master policy; or
3. condominium unit owners' association property insurance policy.

The program does not apply to claims:

1. for which coverage is in dispute or when coverage has been exhausted or
2. made under a flood policy issued by the National Flood Insurance Program.

Administrative Entity

Under the act, the commissioner must not designate an entity to administer the program unless it agrees to:

1. let the commissioner oversee its operational procedures regarding the administration of the program;
2. give the commissioner access to all of the systems, databases, and records related to the program; and
3. report to the commissioner in a form and manner he prescribes.

In order to be designated, the entity's procedures must require that:

1. the parties agree before mediation, in writing, that statements made in the mediation are confidential and will not be admitted into evidence in any civil action on the claim, except with respect to proceedings or investigations of insurance fraud;
2. a settlement reached in a mediation must be transcribed into a written agreement, on a form approved by the commissioner, that is signed by the insured and an authorized representative of the insurer;
3. a settlement prepared during a mediation must allow the insured to rescind it within five business days after it is reached, so long as he or she has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the settlement;
4. the mediator may terminate a mediation session upon determining that the insured or the insurer's representative is not participating in good faith or if, even after good faith efforts, a settlement cannot be reached; and
5. the designated entity may (a) schedule additional sessions if it believes they will result in a settlement; (b) require the insurer to send a different representative to a rescheduled mediation session if the first one did not participate in good faith, and pay any fee for the other representative; and (c) reschedule a mediation session if the mediator determines that the insured is not participating in good faith, but only if the insured pays the entity's fee for the mediation.

Regulations

The implementing regulations must at least include:

1. the form and manner of notification by the insurer to an insured of the right to mediation,
2. the forms and procedures for an insured or insurer to request mediation, and
3. the requirements for an insurer's participation at the mediation hearing.

NOTICES BY SERVICE PROVIDERS

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By law, people who provide repair, remediation, or mitigation services for losses that are covered by a personal risk insurance or commercial risk policy must give the insured, before any work begins, written notice of the work to be completed and its estimated total price. The requirement does not apply to repairs (1) to an automobile covered by insurance or (2) covered by the laws governing home improvement contractors.

The act additionally requires that any contract or document in connection with these services authorizing an insurer to directly pay the service provider include a disclosure provision. The provision must (1) disclose to the signatory that the insured has the right to be named as a joint payee on the payment instrument and (2) be in at least 12-point type and immediately above the signature line.

The act prohibits the contract or document from including any provision that creates a power of attorney or waives the signatory's or insured's legal rights against the person performing the work.

By law, if the person performing the mitigation does not comply with the notice requirement, any contract for the service between that person and the insured is void. The act extends this provision to its disclosure requirements.

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