
GOVERNMENT

Departmental Notice

CODE OF PRACTICE ADMINISTRATIVE FINES FOR HEALTH INSURANCE OFFENCES

PURPOSE

The purpose of this document is to illustrate how the Department of Health Regulatory Services - Health Insurance Commission will apply the Administrative Fines. It will also serve to instruct the Superintendent of Health Insurance (SHI) on how to dispense administrative fines in a fair, consistent and efficient manner for the purpose of reducing the length of time it takes to dispose of health insurance offences in the court system.

BASIS/LAW

Section 24 of the Health Insurance Law (2013 Revision) “Administrative Fines”:-*The Superintendent may –*
(a) subject to such conditions as he thinks fit, stay or compound any proceeding for an offence under section 5, 11, 14, 15 or 15A (irrespective of when the offence was committed); and

(b) subject to a right of appeal to a court of summary jurisdiction, impose a fine of one thousand dollars, and in the case of a continuing offence to a fine of one hundred dollars for each day or part of a day during which the offence continues; and the fines collected by the Superintendent under this section shall be paid into the revenue of the Islands.”

POLICY

The administrative procedure should be used sparingly and should not be used in cases where the accused is a serial offender or in cases in which the Public Interest in the prosecution of serious crimes requires that the matter be dealt with by the Court. Each case must be assessed on its own particular circumstances. Administrative Penalties should only be imposed in cases where the accused have admitted to the offence (the admission recorded in writing in the presence of an accompanying Health Insurance Inspector) and where the accused has indicated in writing that he wishes to utilize this procedure, and the SHI considers that the particular case would be an appropriate use of this procedure.

Under the Health Insurance Law (2013 Revision), offences relating to the following sections of the Law may attract an administrative penalty and fine:-

- Section 5- Compulsory health insurance
- Section 11- Duty of employer to provide information to employee
- Section 14 – Reporting to the Commission
- Section 15 – Termination of contract
- Section 15A - Prohibition against reduction of level of benefits.

SPECIFIED STEPS

For the purposes of this Code of Practice, when operating the Administrative Fines system, the specified steps to be taken by the Superintendent of Health Insurance and Health Insurance Inspectors are as follows:-

Health Insurance Inspector (HII)/Investigating Officer

- a. The HII will notify the accused in writing, stating the nature of the alleged contravention of the Health Insurance Law. The accused shall be given a maximum of 21 calendar days to reply to the notice.
- b. If there is no reply, the HII will notify the accused by way of a second letter, with delivery by way of registered mail or by hand. This notice shall state the nature of the alleged contravention; remind the accused of his failure to respond to the first notification and the need to provide an immediate response.
- c. The accused, notified by the HII of the alleged contravention may, within 10 calendar days of the date of the 2nd notice, provide to the Commission a written response in respect of any such contravention, and shall also provide any other documentation which the person wishes the Commission to consider in making any determination in relation to any alleged contravention.
- d. Where a person makes no submission in respect of the alleged contravention, within the time permitted, then the person shall be considered by the Commission to have admitted his guilt in relation to the alleged contravention and the matter will proceed to Court.
- e. The HII will conduct investigation(s) by gathering any additional evidence, collecting witness statements from all civilian witnesses, and statements from other officers which are essential in proof of the case. At any stage during the investigation, the accused may in writing request that the matter be dealt with administratively. The Commission may then consider the accused's request.
- f. Where the Commission intends to proceed administratively, the accused must be informed of the Commission's intention, and must be provided with documents, if any, in support of the alleged contravention.
- g. On the instructions of the SHI, the HII will thereafter complete the Administrative Fine(s) Agreement (**Form 1**). The accused must be given a copy of Form 1, and must evidence his agreement to the terms thereof by signing the relevant section. Having done so, the accused will be afforded an opportunity to make any written representation(s). The written representation(s) must be received within three working days of the signing of the said form.
- h. The SHI will return to the HII, the case file together with the Administrative Fine(s) Decision (**Form 2**) containing the amount of Administrative Fine to be charged.
- i. The HII prepares the Administrative Fine Ticket (**Form 3**) and arranges for the accused to be served with the said ticket. If the accused is a company, the ticket shall be served on the manager, owner or a director of the company.
- j. If the accused indicates disagreement with the facts of the case, or if he does not sign off on the relevant section of the Administrative Fine(s) agreement (**Form 1**), or if he refuses to pay the Administrative Fine, the HII will upon the expiration of the permitted period, forward the case file together with **Form 1** and any written representation to the SHI. The case will then proceed to Court.

Procedure for Administrative Fines Hearing

- a. Where the Commission has decided to hold a hearing it shall hold such hearing at a time mutually agreed by the accused, in accordance with such procedure as it may determine.
- b. Where the person or his representative is present, the person or his representative shall be given an opportunity to address the Commission.
- c. Representatives appearing on behalf of a person are not required to be persons having legal qualifications.
- d. After any hearing, the Commission shall set out its findings in writing and shall make a determination (Administrative Penalty) in regard to any suspected failure to comply or contravention, and where the Commission determines that a person has failed to comply with or contravened a prescribed requirement, the Commission may consider the nature, circumstances and any actual or potential consequences of each and any such failure to comply or contravention by the person as well as any prior determinations in respect of that person by the Commission, and may issue a warning or impose a fine of one thousand dollars, and in the case of a continuing offence to a fine of one hundred dollars for each day or part of a day during which the offence continues, in respect of each such failure to comply or contravention.
- e. The Commission shall, in writing, notify any such person of its findings and determinations and any fine or warning, within a reasonable time not exceeding ninety days after its determination.
- f. An appeal against a determination of the Commission made under item (d) shall be made to a court of summary jurisdiction.
- g. Where no appeal against a determination of the Commission has been made under item (d) or where such an appeal has been unsuccessful, the fine imposed by the Commission shall be paid in full by the person fined.

Action by the Superintendent of Health Insurance (SHI)

- a. Review the case file together with **Form 1** and other supporting documents.
- b. Determine that (i) a substantially complete investigation has been conducted, (ii) that the accused has requested that the matter be dealt with administratively, (iii) the offence falls within section 24 of the Health Insurance Law (2013 Revision), and (iv) that the conditions of payment of an Administrative Penalty have been accepted.
- c. Refer to **Appendix 1** to determine the amount of the Administrative Fine. Complete **Form 2**. Sign and return the file together with **Form 2** to the HII.
- d. The HII will thereafter fill out an Administrative Fine(s) Ticket (in triplicate). The accused party will sign his/her name; signifying agreement with the levy assessed, and is given a copy. The original will be retained along with the other copy inside the issuing book, which will be kept by the Financial Accountant (FA).
- e. The offender will thereafter be required to pay the assessed fine immediately, except in extenuating circumstances and upon the discretion of the SHI, the fine can be paid within 14 calendar days,

inclusive of the date when the Administrative Fine(s) Ticket was issued at the time and place specified (i.e. Treasury Counter at the Government Administration Building, 10.00 am to 2.00 pm Monday to Friday).

- f. The HII and the FA will monitor the process to determine and ensure compliance with the payment of the assessed fine by the due date.
- g. In the event of a failure by the offending party, to pay the assessed sum, within the time specified, the FA will remove the original copy from the booklet, and pass it to the HII, who will prepare a case file in the usual manner for the prosecution of the offending party in the Summary Court. The Summary of Facts must include the accused's failure/refusal to pay the assessed administrative fine.

How/Where Should The Administrative Fine Be Paid

- a. The levy assessed should be paid at the Cayman Islands Government Treasury Department, First Floor, Government Administration Building, 10.00am – 2.00 pm, Monday to Friday. The sum to be paid to the Cayman Islands Government must be paid in cash or cheque, for which a receipt will be issued. A copy of the receipt must be provided to the investigating HII, for inclusion in the relevant file.
- b. The FA will create a system for recording the particulars of the administrative fines, including the date of the assessment, the sum assessed, the date of payment and the number of the government receipt. He/She will also produce reports on a quarterly basis, including the offences, and the total sum paid into government's revenues by the offenders.

Right of Accused to Appeal

Upon being informed of the decision by the SHI to require payment of an assessed sum, and if the accused remains dissatisfied with the decision taken by the Commission, the accused should then be informed of his right to have the offence adjudicated in Summary Court. No further negotiation or discussion shall be held with him with regard to the matter.

Action after an Administrative Fine has been paid

A case file will be prepared and maintained by the HII who will ensure that the following actions are taken:

- a. A file note containing details of the offence(s) and the payment of the Administrative Fine(s) will be added to the file.
- b. A report containing details of the offence and the payment of the Administrative Fine(s) is sent to the SHI for the attention of the Health Insurance Commission Board.
- c. Serial offenders will be identified and reported to the SHI.

Form 1

ADMINISTRATIVE FINE(S) AGREEMENT

Health Insurance Law (2013 Revision) Section 24 entitled *Administrative fines*:

“The Superintendent may –

- (a) subject to conditions as he thinks fit, stay or compound any proceeding for an offence under section 5, 11, 14, 15 or 15A (irrespective of when the offence was committed); and*
- (b) subject to a right of appeal to a court of summary jurisdiction, impose a fine of one thousand dollars, and in the case of a continuing offence to a fine of one hundred dollars for each day or part of a day during which the offence continues; and the fines collected by the Superintendent under this section shall be paid into the revenue of the Islands”*

Note: Notwithstanding that an administrative penalty has been paid, the Department of Health Regulatory Services, Health Insurance Commission reserves the right to exercise any other provision of the Health Insurance Law (2013 Revision) in respect of the accused.

Forename(s) of Accused: _____ Surname(s): _____	Date _____ of _____ Birth: _____ HII/Investigating _____ Officer: _____
--	--

Do you require a lawyer at this time? ☐ Yes ☐ No

If yes, please provide the name of nominated lawyer: _____

“I, _____ wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything, but it may harm my defense if I do not mention something which I later rely on in Court. Anything I say or do may be given in evidence”

Signature of Accused: _____ Date: _____

Accused has been shown the relevant documents:

Signature of HII: _____ Date: _____

Accused has admitted to the offence(s) of:-

a. _____ pursuant to section _____ of the Health Insurance Law (2013 Revision)

b. _____ pursuant to section _____ of the Health Insurance Law (2013 Revision)

Accused has previously committed offences under the Health Insurance Law: ☐ Yes ☐ No. If yes, please provide details (including the date of the offence): 		
Forename(s) of Accused: _____ Surname(s): _____	Date _____ of _____ Birth: _____ HII/Investigating _____ Officer: _____	

“I, _____ admit to the offence(s) listed on Form 1, and agree to pay an administrative penalty of CI\$_____ as provided for under the Health Insurance Law (2013 Revision). I further understand that alternatively, I can elect for my case to be taken to Court”

Signature of Accused: _____	Date: _____
-----------------------------	-------------

“In my defense, please consider the following mitigating factors or those expressed in the letter attached when assessing the penalty to be levied.”

“I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it on my own free will and there is nothing I wish to alter, add or remove.”

Signature of Accused: _____	Date: _____
-----------------------------	-------------

Form 2

ADMINISTRATIVE FINE(S) DECISION

To be completed by the Superintendent of Health Insurance.

Name _____ of _____ Accused: _____	Date of Birth: _____
---------------------------------------	----------------------

Accused has admitted to the offence(s) of:-

- a. _____ pursuant to _____ of the Health Insurance Law (2013 Revision)
- b. _____ pursuant to _____ of the Health Insurance Law (2013 Revision)

The amount of Administrative Fine (in words): _____ _____ Amount: CI\$ _____

Before issuing the Administrative Fine, the following was taken into consideration:

_____ _____ _____ _____ _____ _____ _____

Superintendent of Health Insurance

Date: _____

Form 3

HEALTH INSURANCE LAW (2013 REVISION) SECTION 24

THE ADMINISTRATIVE FINE(S) TICKET

File # _____

Payment Instructions: Payment must be made in person or by representative in CI\$ Currency.

Tick ONE only

☐ Ticket served upon violator (PERSONALLY) ☐ Violator appeared in person before HII/SHI

Name: _____

DOB: _____ P.O. Box _____ Postal Code: _____

Phone: (w) _____ (h) _____ (c) _____

Brief Summary of Offence _____

As a result you are required to pay the assessed sum of CI\$ _____ on or before _____ or else you will be charged/summoned to appear in the Summary Court at George Town/Cayman Brac for the offence(s) listed below.

Please produce this ticket to the Treasury Counter at the Government Administration Building, between the hours of 10:00 a.m. to 2:00 p.m. Monday – Friday and pay the sum of: CI\$ _____ in respect of the following offence(s) committed by you.

Offence	Section of the Law	Fine
---------	--------------------	------

Date of Issue: _____ Time: _____ a.m. /p.m.

Place: Government Administration Building

Inspector's Name: _____ Signature: _____

Superintendent of Health Insurance

APPEAL PROCESS INSTRUCTIONS:

Upon being informed of the decision to require payment of an assessed sum, and you believe that the amount is too high, you can raise this as an objection immediately or within 14 calendar days in writing to the **Chairman of the Health Insurance Commission Board**. No request for review will be accepted if

submitted outside the permitted period. If you remain dissatisfied with the re-assessed sum, you will then be informed of your right to have the offence adjudicated in Summary Court and no further negotiation or discussion shall be held with you regarding this matter.

APPENDIX 1

ADMINISTRATIVE FINES

SECTION 24 OF THE HEALTH INSURANCE LAW (2013 REVISION)

OFFENCES AND ADMINISTRATIVE FINES

OFFENCE	FINE FOR VIOLATION
1.Compulsory Health Insurance (subsection 1) Section 5 (1) of the Health Insurance Law (2013 Revision)	\$1,000
2. Duty of employer to provide information to employees Section 11 of the Health Insurance Law (2013 Revision)	\$1,000
3.Reporting to the Commission Section 14 of the Health Insurance Law (2011 Revision)	
4. Termination of Contract Section 15 of the Health Insurance Law (2013 Revision)	\$1,000
5. Prohibition against the reduction of level of benefits. Section 15A of the Health Insurance Law (2013 Revision)	\$1,000
<i>The Superintendent may, in addition to the abovementioned fines, and subject to a right of appeal to a Court of Summary jurisdiction, impose a fine of one hundred dollars for each day or part of a day during which the offence continues.</i>	\$1,000