1 – The Claim Function and Professional Ethics

# 1- Goals of the Claims Function

**Objective**: Illustrate how an insurer’s claims function supports the primary goals; Keeping the insurer’s promise; Supporting the insurer’s profit goal

Claims representatives become more valuable and can provide better service to both the insurer and its customers when they understand the two primary goals of the Claims Department and know how to support those goals.

People purchase property-casualty insurance policies to protect against financial losses. When policyholders make claims under their insurance policies, the insurer is called on to honor the promise made in the policy – namely, to indemnify the policyholder for financial losses. This does not imply that the insurer should or will pay every claim that is presented; rather, it implies that the insurer’s Claims Department will conduct a good faith investigation of a claim and pay only legitimate claims that are covered by the policy.

An insurer’s senior management establishes the goals for the claims function. In doing so, mangers must equally consider the needs of the insurance customer (the policyholder) and the needs of the insurer**. The claims function helps an insurer meet these two primary goals:**

* **Keeping the insurer’s promise**
* **Supporting the insurers profit goal**

## Keeping the Insurer’s Promise

The first goal of the claims function is to satisfy the insurer’s obligations to the policyholder as set forth in the insurance contract. **In a property insurance policy (1st party), the insurer’s promise to pay for direct physical loss to covered property by a covered cause of loss**. **In a liability insurance policy, the insurer’s promise is to pay on behalf of the insured (3rd party) any damages for which the insured is legally liable because of bodily injury, property damage**, or other specified types of injury caused by an accident, up to the applicable limit of insurance. **The insurer also agrees to defend the insured against any claims or suits seeking damages** covered by the policy.

**The insurer fulfills its promise by providing fair, prompt, and equitable service to the policyholder either directly, when the loss involves a first-party claim made by the policyholder against the insurer, or indirectly, when the loss involves a third-party claim made against the policyholder by someone to whom the policyholder may be liable**.

**The contractual promise that the insurer fulfills, as set out in the insuring agreement, is to pay, defend, or indemnify the insured in the event of a covered loss. The insurer fulfills this promise by providing fair, prompt and equitable service to the policyholder either directly for first-party claims or indirectly for third-party claims**.

**The insurance contract is marketed not only as a financial mechanism to restore policyholders and other claimants to a pre-loss state, but also as a way for policyholders to achieve peace of mind. For a claimant, a loss occurrence and the consequences are not routine and can be overwhelming. A claims representative should handle claims in a way that promotes peace of mind for the policyholder who has suffered a loss and that quickly restores a claimant to his or her pre-loss condition**.

## Supporting the Insurer’s Profit Goal

The second goal of the claims function is to support the insurer’s profit goal. Achieving this goal is generally the responsibility of the marketing and underwriting departments; however, the claims function serves a role in generating underwriting profit by controlling expenses and paying only legitimate claims.

**These are the ways in which the following claim function personnel help the insurer generate an underwriting profit:**

* **By managing all claim function expenses, setting appropriate spending policies, and using appropriately priced providers and services, claims managers can help maintain an insurer’s underwriting profit.**
* **Claims staff can avoid overspending on costs of handling claims, claim operations, or other expenses**
* **Ensuring fair claim settlement, thus avoiding costly litigation and regulatory oversight or penalties, claims representatives prevent any unnecessary increase I the cost of insurance and subsequent reduction in the insurer’s underwriting profit**

An insurer’s success in achieving its profit goal is reflected in is reputation for providing the service promised. A reputation for resisting legitimate claims can undermine the effectiveness of an insurer’s advertising. Consequently, the two goals of the claims function work together in support of a profitable insurance operation.

# 2 – Claims Department Structure, Personnel, and Performance

**Objective**: Examine how the claims department results can be optimized by Department structure; the types of functions of claims personnel; Claims performance measurements

Information generated by a Claims Department, including about loss payments and expenses, is essential to marketing, underwriting, and pricing insurance products. In this way the claims function is crucial to fulfilling an insurer’s promise to pay covered losses, creating an accompanying need for an insurer’s Claims Department to operate efficiently.

The results of a Claims department can be optimized by its structure, personnel, and performance measures.

## Claims Department Structure

An insurer’s Claims Department can be organized in several ways. Usually, a senior claims officer heads the Claims Department and reports to the Chief Executive Officer (CEO), the Chief Financial Officer (CFO), or the Chief Underwriting Officer. The senior claims officer may have staff located in the same office. This staff often makes up the home office Claims Department. Within this area, any number of technical and management specialists can provide advice and assistance to remote claims offices and claim representatives.

The senior claims officer may have several claims offices or branches countrywide or even worldwide. Staff from remote claims offices can all report directly to the home office Claims Department, or regional/divisional claims offices may oversee the territory.

Regional claims officers may have one or more branch offices reporting to the – for example, in both Boston and New York City. And a branch office in New York City may have smaller offices in Albany, New York, and Erie New York, reporting to it. Each branch office could have a claims manager, one or more claims supervisors, and a staff of claims representatives. Similar department structures are adopted by third-party administrators (TPAs).

### Claims Personnel

Claims personnel are among the most visible employees of an insurer and must therefore be able to interact well with a variety of people.

A claim representative fulfills the promise to either pay the insured or on behalf of the insured by handling claims when losses occur. People who handle claims may be staff claim representatives, independent adjusters, employees of TPAs, or producers who sell policies to insureds. Public adjusters also handle claims by representing the interests of insureds to the insurer.

**Staff Claims Representatives** – **Staff claims representatives are employees of an insurer and handle most claims**, usually while working from branch or regional offices rather than at the insurer’s home office. **They may include inside claim representatives who handle claims exclusively from the insurer’s office, and field claim representatives (also called outside claim reps), who handle claims both inside and outside the office.** Field claim reps handle claims that requires such tasks as investigating the scene of the loss; meeting with insureds, claimants, lawyers, and others involved in the loss; and inspecting damage. If the branch or region covers a large territory, the insurer may set up claims offices in areas away from the branch office to enable the claim reps to serve insureds more efficiently.

**Independent Adjusters** – **Some insurers may find it economically impractical to establish claims offices in every state in which insureds reside. In such instances, insurers may contract with independent adjusters to handle claims in strategic locations, meet increased service demand, or when specialized skills are needed (such as investigate aircraft accidents).**

Some insurers employ claims personnel in their home or branch offices to monitor claims progress and settle claims but use independent adjuster to handle all field work. Other insurers hire independent adjusters when their staff claims representatives are too busy to handle all claims themselves.

Some independent adjusters are self-employed, but many works for adjusting firms that range in size from one small office with a few adjusters to national firms with many offices employing hundreds of adjusters.

**Third-Party Administrators (TPAs)** – Businesses that choose to self-insure do not use agents, underwriters, or other typical insurer personnel. However, they do need personnel to handle losses that arise. Self-insured business can employ their own claims representatives or contract with **TPAs, which handle claims, keep claims records, and perform statistical analyses. TPAs are often associated with large independent adjusting firms or with subsidiaries of insurers. Many property-casualty insurers have established subsidiary companies that serve as TPAs**.

**Producers -** Producers can also function as claims representatives for certain claims. **The term “producer” includes agents, brokers, sales representatives, and intermediaries who place insurance with insurers**. **Insurers may allow producer to pay claims up to a certain amount**, such as $2,500. **Those producers can issue claim payments, called drafts, directly to insureds for covered claims, thus reducing the insured’s wait time.** In this capacity, producers function like inside claim representatives.

**Public Adjusters** – If a claim is complex, or if settlement negotiations are not progressing satisfactorily with the insurer, the insured may hire a public adjuster to protect his or her interests. Some states have statutes that govern the services public adjusters can provide. But **in general, the public adjuster prepares an insured’s claim and negotiates the settlement with the staff claims representative or independent adjuster for a fee. The insured, in turn, pays the public adjuster’s fee, which is usually a percentage of the settlement**.

## Claims Performance Measures

Because Claims Department members have diverse roles and are spread over a wide geographic area, insurers face special issues when it comes to evaluating and measuring the performance of their Claims Department Staff.

Insurers are businesses, so they must make a profit to survive. Claims departments pay a crucial role in insurer profitability by paying fair amounts for legitimate claims and providing accurate, reliable, and consistent ratemaking data. Because paying claims fairly does not conflict with insurer profit goals, an insurer measures its claims and underwriting departments’ performance using a loss ratio, which is a profitability measure.

**Loss Ratio** – **measures losses and loss adjustment expenses against earned premium, that reflects the percentage of premiums being consumed by losses**.

In addition to reaching profit goals, an insurer strives to ensure that its Claims Department meets quality performance goals. Internally identified best practices, claims audits, and customer-satisfaction data are tools that provide measures of quality.

### Profitability Measures

A loss ratio is one of the most commonly used measures for evaluating and insurer’s financial well-being. It compares and insurer’s losses and loss adjustment expenses (LAE) with its collected premiums and reveals the percentage of premiums being consumed by losses. An increasing ratio could indicate that the insurer is improperly performing the claims function. Increasing losses could also mean that the Underwriting Department elected to cover loss exposures that were more costly or occurred more frequently than it estimated or that the Actuarial Department failed to price the insurer’s products correctly.

When an insurer’s loss ratio increases, the Claims Department, along with other insurer functions, is pressured to reduce expenses. Claim representatives could quickly reduce LAE in the short term by offering the settlement payments insureds and claimants demand rather than spending resources on investigating claims and calculating and negotiation fair payments.

However, **to reduce LAE in the long term, inflated settlement demands should be resisted; researched; negotiated; and if necessary, litigated. LAE can also be reduced by making sure that claims procedures are always properly performed by claim representatives**.

### Quality Measures

Three frequently used tools provide quality measures for evaluating a Claims Department’s performance: Best Practices, Claims Audits, and Customer Satisfaction data.

The term “best practices” generally refers to a system of identified internal practices that produce superior performance. Best practices are usually shared with every claims representative. An insurer can identify best practices by studying its own performance or the performance of similar successful insurers.

Claims Department best practices are often based on legal requirements specified by regulators, legislators, and courts. Example; a Claims Department may have a best practice stating that claims will be acknowledged within 24 hours of receipt. This time frame may have been selected because of regulation, law, or court decision.

Insurers use claims audits to ensure compliance with best practices and to gather statistical information on claims. A claims audit is performed by evaluating information in a number of open and closed claim files. Claim audits can be performed by the claims staff who work on the files (called a self-audit), or they can be performed by claims representatives from other offices or by a team from the home office.

The quality of a Claims Department’s performance is also measured by customer satisfaction. Claims supervisors and managers monitor correspondence they receive about the performance of individual claims representatives. While compliments are usually acknowledged, supervisors or managers must respond to complaints. Claims Departments have procedures for responding to complaints, which can come directly from insureds, claimants, or vendors or be submitted on their behalf by a state insurance department.

No matter the source, complaints must be investigated by management and responded to in a timely manner. Complaints, such as not receiving a return phone call, may indicate legitimate service issues. Other complaints may simply indicate dissatisfaction with an otherwise valid claim settlement. Review of complaints received in a claims office can show whether problems exist with a particular claim representative, supervisor, or manager.

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| **Quantitative and Qualitative Audit Factors** |  |
| **Quantitative (measurable)** | **Qualitative (analysis evaluation)** |
| Timeliness of reports | Realistic reserving |
| Timeliness of reserving | **Accurate evaluation of insured’s liability** |
| Timeliness of payments | Follow up on subro opportunity |
| Number of files opened each month | Litigation cost management |
| Number of files closed each month | Proper releases taken |
| Number of files reopened each month | Correct coverage evaluation |
| Percentage of recovery from subro | Good negotiation skills |
| Average claim settlement value by claim type | Thorough investigations |
| Percentage of claims entering litigation |  |
| Percentage of cases going to trial |  |
| Accuracy of data entry |  |

# 3 – Importance of Ethics ad Professionalism for Claims Representatives

**Objective**: Justify how ethical and professional behaviors are the backbone of good-faith claims handling

How does a claims representative balance the interests of the insurer, the insured, and the claimant? While giving equitable treatment to a variety of parties can be challenging, claims representatives can achieve this goal (and fulfill the insurer’s promise) through ethical and professional behavior.

Ethics (a set of principles and values) and professionalism (the behavior or qualities that characterize a profession) are the foundation of good-faith claims handling. Good-faith claims handling is evident when claims representatives make an honest effort to determine whether and to what extent a claim is covered.

## Ethics

**Ethics is particularly important in good-faith claims handling because claims representatives face numerous ethical dilemmas trying to balance the interest of insures and claimants, who are their customers, and the interests of insurers, who are their employers**.

Ethics – the study of what constitutes good and bad behavior, dealing with moral duty and obligation.

Ethics is a set of principles and values that determines the better course of action, given the choice of two or more legal courses of action. In today’s business environment, being ethical is often equated with merely obeying the law; however, ethical behavior goes beyond merely obeying the law. Legality involves making a choice between what is lawful and what is unlawful. Ethics involves making a choice between two or more acceptable courses of action. Example; it is not illegal for one person to remain silent when someone else – a competitor, for example – is falsely accused of improper behavior. However, not speaking up could be considered unethical, particularly if the accusation causes the competitor harm and the party who remains silent thereby benefits.

## Professionalism

**Professionalism involves the behavior and qualities necessary to properly implement an ethical decision**. In the example of the falsely accused competitor, professionalism requires the non-accused party to speak up in a timely, objective manner. **Professionals should also act knowledgeably, courteously, and empathetically.**

## Role of Ethics and Professionalism in Good Faith

Ethics and professionalism are of utmost importance to insurers and claims representatives when they are establishing good faith. **These are three ways good faith is established:**

* **Satisfying contractual duties and other promises**
* **Maintaining insurers’ credibility**
* **Complying with legal duty**

First, insurers and claims representatives are bound by the insurance contract to act in good faith, and to do so, they must act ethically and professionally. **They must keep the promises specified in insurance policies, as well as those created by law. In insurance transactions, the insured pays a premium for the insurer’s promise to handle claims in good faith. The insurance policy states the terms of that promise. In fulfilling the promises insurers make in their policies, claims representatives encounter and attempt to satisfy a variety of parties, including insureds, claimants, producers, service providers, regulators, and the general public. When the needs of these parties conflict, claims representatives may be faced with dilemmas that require their understanding of and ability to apply ethical and professional principles**.

**In addition to the promises made in the insurance policy, claims representatives make many other promises to insureds, claimants, vendors, and their employers. Claims representatives must keep these promises if they want to behave ethically and professionally and comply with good-faith claims handling practices**. Example; a claim rep may promise to contact an insured, a claimant, or a vendor within a specified time. Promises to employers may include a promise to follow n employers’ code of business conduct, complete a course of continuing education, maintain appropriate licensing, or confirm to dress codes.

**Another reason ethics and professionalism are important to complying with good-faith claims handling practices that claim representative’s behavior can affect public trust in the credibility of insurers. Unethical or unprofessional conduct can affect the insurer adversely. Although claim representatives handle thousands of claims ethically, professionally, and without complaint on a daily basis, one incident that violates the public’s expectations of ethical or professional conduct may receive wide publicity and can damage the insurer’s credibility and the public’s trust**. News about collusion between insurers and brokers to fix prices, inappropriate claim denials during catastrophes, and insurance executives’ mishandling of corporate funds contributes to a negative public image of the insurance business. Consequently, most insurers recognize that abiding by ethical and professional standards of conduct demonstrates good faith and is essential to improving their public image.

A third reason that ethics and professionalism are important to complying with good-faith claims handling practices is that consumer regulations create legal duties for insurers. Claims representatives have an ethical and professional responsibility to comply with these regulations to ensure that consumers are treated fairly through prompt, honest, and responsive claims handling. Some consumer regulations may also define the minimum expected ethical and professional standards for insurers and claims representative. In addition, many insurers have good-faith claims handling guidelines in place that exceed these minimum standards, and such guidelines may also describe the insurer’s philosophy regarding ethical and professional conduct. Both regulatory requirements and insurers’ guidelines can provide guidance to claims representatives regarding ethical and professional claims handling conduct.

Ethical and professional conduct that exemplifies good faith benefits claims representatives, insurers, consumers, and the general public. For claims representatives, ethical and professional conduct can be the foundation of successful, satisfying careers. For insurers, ethical and professional conduct can help retain customers and attract investors. Consumers who believe they have been treated fairly and in good faith are more likely to renew their policies with the same insurer, thus reducing insurers’ acquisition costs and improving financial performance. When insurer’s financial performance improves, insurers can more easily attract investors.

**Ethical and professional conduct that exemplifies good faith can benefit consumers by encouraging fair treatment and prompt payment**. Insureds and, by extension, society can reap the benefits of insurance – peace of mind, support for credit, efficient use of resources, and reduction of social burdens – only if the business of insurance is conducted ethically, professionally, and in good faith.

# 4 – Ethical and Professional Concerns for Claims Representatives

Objective: Illustrate the ethical and professional concerns of claims representatives

Claims representatives may face multiple ethical and professional concerns, which often present various choices, sometimes with no clear distinction among possible correct courses of action. The concerns arise from aspects of a claim representative activities.

## Conflicts of Interests

Ethical concerns often arise from potential conflicts of interest – a situation that occurs when a decision maker’s personal interest interfere to the extent that he or she makes decisions that adversely affect customers or employers. **A conflict of interest can occur many ways during claims handling, such as when employees have the opportunity to purchase salvage, when vendors offer claim representatives incentives for referring business to them, when the insurer provides multiple coverages for one insured that are triggered by the same occurrence (overlapping coverages), or when the insurer provides coverage for multiple insured involved in the same claim (overlapping insureds)**.

## Salvage

A conflict of interest can occur when a stolen item is recovered and sold as salvage (by having inside knowledge of the value). Example; a one-carat diamond recovered from a theft claim that sells for $5K in a retail store might have a salvage value of $600. A claim representative may be tempted to purchase salvage for a slightly higher amount than the highest bid from an outside savage buyer. This presents a conflict of interest because the claim rep has the advantage over other potential buyers by virtue of knowing the salvage bids and being able to place a slightly higher bid to obtain the item. Because of this potential conflict of interest, claims reps should not bid on salvage, and most insurers have specific guidelines that prohibit claims representatives from purchasing salvage.

## Vendor Incentives

Claim reps often employ vendors or refer insureds to vendors that can help them replace or repair lost or damaged property. A conflict of interest can arise when vendors offer gifts (such as vacations or hard to get event tickets), favors, gratuities, or other incentives to claim reps in an effort to get more business. As a result, many insurers have guidelines that either prohibit the acceptance r incentives or set dollar limits on approved incentives.

## Overlapping Coverages or Insureds

Another conflict of interest can arise from overlapping coverages or overlapping insureds. This situation occurs when the insurer provides multiple coverages for one insured that are triggered by the same occurrence or when the insurer covers multiple insures involved in the same claim. A claims representative faced with decisions involving multiple coverages or insured may have conflicting responsibilities – example, deciding how to allocate liability among parties. The avoid this conflict of interest, some insurers have guidelines that require the claim to be bifurcated, with different claims representatives handling each part independently. However, some insurers have gone to a team environment for claims handling, the implementation of which should only be done with advice of legal counsel because of conflicts of interest issues that could arise.

*An insured individual is injured in an auto collision with an uninsured motorist who is responsible for the accident. The insured has PIP coverage and UIM coverage on his auto policy. The claims representatives responsibilities in handling the PIP claim can conflict with those in handling the UM claim because UM settlements are often based on the amount of medical expenses paid under PIP. As a result, the PIP and UM claims may need to be handled by different claim reps who can make coverage determinations independently of one another.*

*Two insureds, Lucas and Maria, have auto liability coverage from the same insurer and get into an accident with each other. Each alleges the other is responsible. The claims against Lucas and Maria should be handled by different claim reps that can make liability determinations independently of one another*.

## Claims Handling Competency and Continuing Education

Claims representatives who lack competency can commit ethical improprieties by paying claims that are not covered, overpaying claims because of poor investigation or negotiation, and denying claims that should be covered.

Claims representatives should be aware of **the five factors that can affect their claims handling competency include changes in the claims environment, changes in job responsibilities, attrition of knowledge over time, limited insurer resources, and rewards and promotions**.

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| **Factor** | **Effect on Claims Handling Competency** |
| **Changes in the Claims environment**  **(Insurance Professional)** | **Consumer, social, and political forces influence insurance coverage, legal liability, damages, and technology**.   * Coverage may have been broadened * New court interpretations * Changes in property evaluation   Failure to be alert to changes can lead to errors in evaluating coverage and damages and settling claims |
| **Changes in job responsibilities** | Claims representatives’ responsibilities can change when they are promoted or reassigned or take a job with a new employers. Some employers offer little formal training to experienced claim reps. Should work with managers to identify areas where additional training is necessary |
| **Attrition of knowledge over time**  **(Adjuster Competency)** | **There is a tendency for people to lose knowledge over time, especially knowledge that may be fundamental but is not used on a daily basis**. Continuing education can reinforce the basics of claims work, refresh knowledge, and enhance skills already mastered. **Should also know how to locate resources such as statutes and procedures rather than relying on memory.** |
| **Limited insurer resources** | Insurers vary in the amount of training offered as well as their expectations of claims representatives. It is important for claims representatives to be aware of the resources available through their insurer, but not to rely on them entirely for their training. |
| **Rewards and promotions** | Although claim reps may aspire to receive rewards such as bonuses or promotions, it is important that they recognize the intrinsic value of competent claims handling apart from financial and advancement opportunities. Ideally claim representatives who perform their work at a high level of ethical competency will be rewarded by the management of their organizations. However, even in less than ideal employment circumstances, claim representatives have an ethical obligation to perform their work competently. |

Claims representatives faced with conflicting demands on their time may be reluctant to take the necessary to pursue continuing education, **but continuing education is important to maintain competency. Many states even require continuing education for claims representatives, and some insurers have additional requirements. Claims can have profound effects on individuals and organizations, and is an ethical responsibility for claims reps to obtain continuing education to keep their knowledge and skills current**.

## Licensing

State licensure laws vary regarding who is required to be licensed and the procedures and requirements for licensing. Some state require licenses only for independent adjusters and public adjusters. Other states require staff claims representatives, vehicle damage appraisers, and property appraisers to have licenses. Licensing laws may require claims representatives to pass an examination, pay fees, and provide evidence of continuing education. States often grant temporary licenses to out-of-state claim reps for catastrophe claims handling.

**State laws relating to licensing of inside claim representatives can be ambiguous. Licensure-related to ethical concerns can arise when a manager or supervisor asks a claims representative to assume claims handling responsibilities in a territory in which the claim representative is not licensed. A claims manager may believe the claims representative can legally take on the assignment, while the claims representative may have ethical concerns**. As a result, the claim representative may want to consult with professional claims associations, published guidelines from regulators, or an attorney to address any concerns.

## Customer Service

Claim representatives can also encounter ethical concerns regarding customer service. Customers have high expectations about the quality and timeliness of claims service, and these expectations can create ethical and professional issues.

Because of caseloads and competing demands, claim representatives may be unable to provide the same level of service to all customers. Example: if asked to make a major insured’s claim a priority, the claim rep may have to set aside the claim of a smaller insured. Claim representatives should try to treat all insureds equally, yet achieve a balance between customer demands and sound business practices, without compromising good-faith claims handling practices.

## Communication with Represented Claimants

Another area of ethical concern is when a claims representative communicates with a claimant who is represented by an attorney without the attorney’s consent. Some states have direct prohibitions against such contacts to avoid the unlicensed practice of law by claims representatives and the potential for conflicts of interest. Some state without such regulation have a rule that restricts an attorney from contacting an adverse party without the consent of that party’s counsel; often, that rule is also applied to claims professionals by analogy.

Claims representatives sometimes face ethical concerns about avoiding such inappropriate communications when attempting to acquire information necessary to provide a required benefit, such as an address change for workers compensation benefits or first-party medical payments. Some insurers have customer service representatives, other than claim representative who can assist claimants with basic inquiries like this and, thus help, avoid the questionable discussions. Claim representatives should consult with their managers or attorneys for guidance on ow to handle these types of communications.

## Billing Practices

Ethical concerns can arise from claim representatives when authorizing and allocating bills from service providers and experts, such as attorneys, medical providers, expert witnesses, and investigators. **Claims representative have an ethical duty to make sure service providers and experts follow insurer billing guidelines and understand the scope of their assigned duties so bills are not inappropriate or excessive**. When a provider, sch as an attorney, submits a bill for work on multiple claims, the claim representative has an ethical responsibility to ensure the charges are allocated correctly to each claim and insured.

## Privacy

Matters of privacy can raise ethical concerns. Claim representatives have access to and acquire personal, medical, and financial information about others in the course of handling claims. The information may come from the insured, claimant, or other sources.

**Information gathered by claim representatives may be protected by privacy laws or may be of such a sensitive nature that tis disclosure would be harmful. In addition, claim representatives must be aware that some individuals may be concerned about information that may not seem personal or confidential to others.** Example: an insured may not want a relative to know the value of her home, business, or other belongings. Even accidental or unintentional disclosure can be harmful. As a result, claims representatives must acquire only the information needed to investigate and settle a claim, and should not misuse acquired information or make it available to anyone who does not need it.

## Fraud Detection

Fraud is illegal, and claim representatives often assume there are not ethical concerns involved in their work that deal with fraud. However, the investigation and management of potential fraud issue can lead to significant ethical concerns.

A claim representative suspects that an insured has committed fraud in submitting a claim for stolen property by including items that were not stolen. The claim representative believes that the insurer can deny the claim because of this fraud but does not have sufficient evidence to meet the legal standard to prove fraud. The claim representative considers offering less than a fair amount to settle the claim in hopes the insured will accept the settlement. This course of action would reduce the insurers’ loss from a fraudulent claim, close the claim, and avoid costs associated with trying to prove fraud. However, despite the claim representative’s suspicions, the insured may not be guilty of fraud and may be entitled to the full amount of the claim.

A claim representative is handling a claim for XYZ Company, which has a policy written through a profitable and highly respected insurance agency. The agent, who is the claims representative’s brother-in-law and who owns the agency, makes it clear to the claim representative that XYZ Company should be given special treatment because it is an important customer. The claim representative’s estimate of the damages shows that the policy does not cover about 5% of the damage or about $2,000. The claim representative gives the agent this information, and the agent indicates that he will take care of it.

Later the insured submits a damage estimate from another source that is $2,000 high than the previous one. If the claim representative accepts the insured’s damage estimate, the insured is compensated fully for the loss; the brother-in-law is happy and family harmony is maintained; and the claims representative can close the claim file with the adequate documentation to support the payment. However, the ethical dilemma is that the latter estimate may be inflated (fraudulently) in order to cover the entire amount of damages. The claims representative must determine the appropriate course of action based on ethical and professional standards.

# 5 – Codes of Ethics and Quality Claims Practices

**Objective**: Explain how each of the following promotes high ethical and professional standards: Codes of Ethics; Quality Claims Practices; and compliance with Laws and Regulations

Claims representatives are required to handle claims in good faith, and insurers and claims management play a critical role in their success. Clearly defined best practices and timely and relevant information about claims regulations provide claims representatives with a road map for professional behavior.

Good-faith claims handling is consistently handling claims according to high ethical and professional standards. Three pillars can establish a framework to achieve consistent good-faith claims handling.

* Code of ethics
* Quality claim practices
* Compliance with laws and regulations

## Code of Ethics

**It is important that insurers and claims representatives have well-defined codes of ethics that from the guidelines of good-faith claims handling. A focus on handling claims ethically, rather than a defensive focus of avoiding bad faith, is the best protection for individual claims representatives and their employers from allegations of bad faith**.

**Almost all insurers have published codes of ethics for their companies**. Some larger insurers have ethics officers who implement codes of ethics and advise management and employees on ethical matters. Both the society of Registered Professional Adjusters and the National Association of Public Insurance Adjusters have codes of conduct to which their members must adhere.

Individual claims representatives should have personal codes of ethics, beyond those established by their employers. The institutes provide a comprehensive code of ethics for all insurance professionals. **Adhering to both the spirit and the letter of personal code of ethics offers the best protection for individual claims representatives, as well as their employers, from regulatory penalties or bad-faith lawsuits**.

**Code of Professional Ethics of the Institutes – Ethical Guidelines for Insurance Professionals**

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| **Cannon 1**  **(Quality)** | **Insurance professionals should endeavor at all times to place the public interest above their own** |
| Cannon 2 | Insurance professionals should seek continually to maintain and improve their professional knowledge, skills, and competence |
| **Cannon 3 (Regulations)** | **Insurance professionals should obey all laws and regulations, and should avoid any conduct or activity that would cause unjust harm to others** |
| **Cannon 4**  **(Quality)** | **Insurance professionals should be diligent in the performance of their occupational duties and should continually strive to improve the functioning of the insurance mechanism** |
| Cannon 5 | Insurance professionals should aspire to raise the professional and ethical standards in the insurance business |
| Cannon 6 | Insurance professionals should strive to establish and maintain dignified and honorable relationships with those whom they serve, with fellow insurance practitioners, and with members of other professions |
| Cannon 7 | Insurance professionals should assist in improving the public understanding of insurance and risk management |

## Quality Claim Practices

**The insurance produce is unique. Instead of providing an immediate, tangible good or service, insurers provide a promise. Individuals and organizations pay premiums, usually for many years, in expectation that insurers will fulfill the promise in the event of a loss. The fundamental basis for good-faith claims handling is to meet the promise the insurer has made to the insured**. The claims representative also has an ethical responsibility to the insurer not to pay fraudulent or unreasonable claims or to overpay legitimate claims. **The best way for the claims representative to balance duty to the insured and the insurer is to perform a fair, unbiased, and thorough claim investigation**.

Most insurers have best practices that outline the duties of claims representatives and time frames for completion of claims activities. Performing these practices conscientiously within the framework of an ethical code provides protection against allegations of bad faith

A combination of Cannons 1 and 4 of the Ethical Guidelines describes how claims representatives should carry out the best practices of claims handling. It is important for claims representatives, who often face time constraints in their work, to continuously keep in mind the perspective of insureds and claimants. A family who has just lost a home and all personal possessions in a fire is in dire need of prompt fulfillment of the insurer’s promise to pay for a covered loss. Delays and inaction on the part of the claim representative can cause significant additional distress.

Unintentional action or inaction that does not comply with best practices for claims handling can give rise to allegations of bad faith. Conversely, **consistent and ethical application of best practices will provide quality and good-faith claims handling** and make bad faith allegations unlikely to occur.

## Compliance With Laws and Regulations

As stated in Cannon 3 of the Ethical Guidelines, ethical conduct involves obeying all laws and regulations. **Because insurance is essential to the functioning of modern society and provides critical restoration to consumers after devastating loss, there are laws that regulate claims activities**.

### Unfair Claim Settlement Practices Laws

Most states have enacted a version of the National Association of Insurance Commissioners (NAIC) Model Unfair Claim Settlement Practices Act. Most state versions of this act extend authority to state insurance commissioner to investigate potential violations of the act and to impose penalties and sanctions for violations. Financial penalties vary by state and typically range from $1,000 to $250,000.

**Provisions of Typical Unfair Claim Settlement Practices Laws:**

* Misrepresenting facts or policy provisions to insureds or claimants
* Failing to promptly acknowledge communications related to claims
* Failing to affirm or deny coverage within a reasonable time (states may specify the time period)
* Failing to provide reasonable explanation for claims denials or compromise settlement offers
* Failing to provide necessary claims forms promptly
* Not attempting to prompt, fair, and equitable settlement of claims in good faith when liability is reasonably clear
* Compelling insureds or beneficiaries to file suit to recover amounts due under policies by offering settlements that are significantly less than the awards recovered through lawsuits
* Failing to conduct a reasonable investigation before denying a claim
* Settling or attempting to settle a claim for less than a reasonable person would believe the insured or beneficiary was entitled with reference to the advertising materials accompanying the insurance policy
* Settling or attempting to settle a claim based on an application that was altered without the knowledge or consent of the insured
* Making claim payment without indicating the coverage under which the payment is made
* Unreasonably delaying the investigation of a claim or payment of claims by requiring duplicate information or verification

In addition to unfair claim settlement practices laws, there are other federal and state laws that relate to claims handling. Some of these laws contain the possibility of fines or penalties, while others form the basis for bad-faith lawsuits.

### Unauthorized Practice of Law

Popular recent allegations by plaintiff attorney concern the unauthorized practice of law by claims representatives. Although states have different definitions of unauthorize practice of law, the area that usually affects claims representatives arises from the direction of legal strategies, either directly through instructions or indirectly through billing guidelines. Another area that can affect claims representatives is related to settlement negotiated with unrepresented claimants.

There have been many instances in which courts have found that the practices of claims representatives constituted the unauthorized practice of law. In these cases, the court found that the insurers breached the implied covenant of good faith and fair dealing. Some courts have also found that failure on an insurer to follow the advice of the insurer’s defense counsel is evidence of bad faith. Conversely, there are also cases that find the reliance on the advice of counsel is not defense for bad faith and that such reliance must be reasonable under the circumstances.

### License and Continuing Education Requirements

**Many states require that claims representatives who are employed by an insurer or a third-party administrator (TPA) be licensed**. Most states require that independent and public adjusters be licensed. Failure to meet licensing requirements can result in penalties for employers as well as for individual adjusters

**Those states that require licensing of claim representatives who are employed by an insurer or a claims administrator also typically require continuing education credit to maintain adjuster licenses**.

Additionally, states that require adjuster licensing typically require all adjusters to adhere to the state’s claim practices law and to take continuing education courses regularly on ethics. Failure to follow state laws regarding claims handling practices can result in loss of license and other actions against individual claims adjusters as well as their employers.

### Federal Laws

Various federal laws apply directly to claims handling, and many others could be construed to apply to the professional activities of claims representatives.

Federal Laws, such as the Gramm-leach-Bliley Act and HIPPA, in addition to state laws and the common law, impose requirements regarding the privacy of medical, financial, and other personal information.

A federal law that has an impact on certain claims settlements is the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). This act amends the Medicare Secondary Payer provision of the Social Security Act and requires that Medicare’s interest be protected in injury settlements involving recipients or potential recipients of Medicare or Medicaid benefits. Potential fines against insurers who do not follow the guidelines in these settlements can be significant (Example: double the amount of the settlement). Failing to follow federal guidelines could have an adverse financial impact on certain insureds in addition to insurers.

Other federal laws can be involved in Claims handling due to offsets to Social Security for certain types of benefits, requirements to pay court-ordered child support when paying certain benefits or settlements, and laws regarding the recording of conversations.

There have also been some recent attempts to bring cases against insurers for certain claims practices under the Racketeer Influenced and Corrupt Organized (RICO) Act. These types of cases indicate the aggressiveness of plaintiff attorneys in pursuing allegations of bad-faith claims.

# 6 - Case Study: Ethical And Professional Dilemmas of Claim Representatives

**Objective**: Given a claim, explain why a situation presents and ethical or professional dilemma

Although choices between two right courses of action can be difficult, claim representatives can use frameworks for resolving ethical dilemmas.

Claim representatives can answer a series of questions about the ethical dilemma and possible solutions, such as:

* Who are the stakeholders, and what are their rights?
* Is the information about the dilemma reliable and accurate?
* Who should be involved in making the decision?
* How would I feel is my mother (or children) knew of my decision?
* What would a person whom I respect do in this situation?
* Am I using this decision for my own personal gain?

Claim representatives can evaluate the types of effects that decisions can have:

* The maximizing effect provides the greatest benefit to the greatest number of people
* The normalizing effect focuses on determining the most common, acceptable standard of behavior
* The empathizing effect seeks to treat someone in the same way one wants to be treated in the same situation

Dilemmas that the Employee faces:

* Need for education vs fear of supervisor
* Need for adjusting license versus belief that she has her license
* Acceptance of gifts from vendor versus need to maintain good relationship with vendor
* Desire for friendship with vendor versus possible undue influence by vendor
* Violation of code of business conduct versus doing what is generally accepted as a business practice
* Showing preference to agents versus returning deductible to insured