



# Oregon

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## OREGON INSURANCE DIVISION BULLETIN INS 2010-3

TO: All Insurers

RE: Use of a Fraud or Misstatement Warning

**This Bulletin replaces INS 98-5**

### BACKGROUND:

The Rates and Forms Section of the Division receives form filings that include a wide variety of fraud or misstatement warnings. While the Oregon Insurance Code does not specifically address insurance fraud, the Division supports anti-fraud efforts generally and fraud or misstatement warnings specifically. This Bulletin is intended to provide guidance on acceptable fraud or misstatement warnings.

### GUIDELINES:

Warning statements may be included on insurance applications, claim forms and claim payments. They may appear in policies and declaration pages **only** if the statement is part of the application for insurance.

The Insurance Division reviews statements according to the following guidelines:

1. For remedies other than denial of a claim (e.g. rescission or cancellation, depending upon statute), fraud or misstatement warnings must assert that misstatements, misrepresentations, omissions or concealments on the part of the insured must either be fraudulent or material to the interests of the insurer in order for the insurer to assert a right to remedy.
2. Fraud or misstatement warnings must clarify that in order for an insurer to deny a claim on the basis of misstatements, misrepresentations, omissions or concealments on the part of the insured, the insurer must show that the misinformation is material to the content of the contract, that the insurer relied upon the misinformation *and* that the information was either material to the risk assumed by the insurer *or* that the misinformation was provided fraudulently (ORS 742.013).

3. Depending on the type of contract, fraud or misstatement warnings may need to include an acknowledgment that material misrepresentations must be willful or intentional in order to trigger the right to remedy (e.g. fire insurance, ORS 742.208).
4. Fraud or misstatement warnings must acknowledge that misstatements, misrepresentations, omissions or concealments on the part of the insured are not fraudulent unless they are made with intent to knowingly defraud.
5. Fraud or misstatement warnings using the term "deceptive" must clearly relate the term to activities that are material to the risk at issue or to the claim.
6. Fraud or misstatement warnings that connect fraud statements with criminal penalties must be phrased to avoid definite statements of guilt. Phrases such as, "**may be** guilty of insurance fraud," or "**may be** subject to prosecution for insurance fraud" are acceptable.
7. Fraud or misstatement warnings on life insurance policies must not conflict with the applicable two-year limit on contestability under Oregon law.
8. Fraud or misstatement warnings on health insurance policies must not conflict with the applicable two-year limit on contestability under Oregon law, except that they must disclose that there is no time limit on contestability in the event of fraud on the part of the insured.

This bulletin becomes effective immediately.

This bulletin is dated this 24<sup>th</sup> day of June, 2010, at Salem, Oregon.

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|---------------------------------|---------|
| (Signed)                        | 6/24/10 |
| Teresa D. Miller, Administrator | Date    |