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Learn more about Dr. Rosen's qualifications and experience, including contact information [here](#).

To: Scott Johnson
From: Dr. Gary Rosen

Sent from my iPad

On Nov 27, 2019, at 4:32 PM, gary rosen <freemoldtraining@gmail.com> wrote:

Richie Kidwell, RAF President, promoted a procedure that he considers can beat HB7065 and if you follow his procedure, the AOB is alive and well.

I briefly summarize his proposed procedure and then explain based on my reading of HB7065 why an AOB is very risky compared to other options.

I'm a restoration contractor and non-practicing IA. My critique / review is not legal advice but based on how a carrier adjuster might find cause to deny payment on a claim that follows Kidwell's recommended procedure.

Let's have a little discussion on the subject.

Kidwell's procedure is as follows:

1. Get AOB signed Day 1. This is during what is called the emergency services visit. Mop up bulk water. No drying. Bill as emergency services to stop further damage. Everything after this first day mopping up bulk water is considered Non-Emergency Services and billed separately
2. Come back the next day and start dry out. Under same AOB. Prepare a second bill for dry-out.
3. After dry-out perform mold remediation. Under same AOB, new bill for remediation.
4. Same idea for rebuild.

Playing the devil's advocate ... seems it could be easy for a Carrier to deny payment for the following technical reasons.

- Drying is an "emergency service" to stop mold growth. Just because you don't label a dry-out invoice as an emergency service does not make it a non-emergency service.

- The case will/can be made by the Carrier that if there is now mold, this was caused by your delaying Dry-Out for one day or faulty procedures. According to the EPA mold can start to grow after 48 hours.
- The Carrier can claim that if there is now mold it was caused by failed or delayed dry out and contractor is responsible for the cost of mold damage (remediation and rebuild).
- The Carrier can/will claim that because there is mold, the home is not inhabitable and therefore mold remediation is an emergency service.

Again, playing the devil's advocate ... seems it could be easy for a Carrier to deny payment for the following reasons related to specifics in HB7065.

2)(a) An assignment agreement must: 2. Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting a **written notice of rescission ...**

The homeowner, based on advice from a Carrier MRP can rescind the AOB even after work is done but you have no lien rights so you are screwed. See 7a below.

7)(a) The assignee and its subcontractors **may not collect or attempt to collect money** from an insured, maintain any action at law against an insured, **claim a lien** on the real property of an insured ...

c) If an assignor acts under an urgent or emergency circumstance to protect property from damage and executes an assignment agreement to **protect, repair, restore, or replace property or to mitigate** against further damage to the property,....

Clearly not only mitigation is an emergency service based on this bill. Restoration/replacement also considered urgent. To think that if you say otherwise Carrier will pay is dreaming.

c) continued: For purposes of this paragraph, the term "**urgent or emergency circumstance**" **means** a situation in which a loss to property, if not addressed immediately, will result in **additional** damage until measures are completed to prevent such damage.

Hard to have confidence that only mitigation is an emergency service based on this bill. To think that if you say otherwise Carrier will pay is dreaming.

(e) Must, as a condition precedent to filing suit under the policy, and, if required by the insurer, **participate in appraisal ...**

They can force appraisal. You get half of what you bill as the compromise if you use AOB.

3a Maintain records

If you don't **maintain records** ... they don't have to pay. How are these words " maintain records " defined in HB7065? They are not. Then look to the definition in IICRC S500-2015. Major effort to document a job properly and completely per IICRC. Carrier can tie you up for years til you broke arguing that you did not maintain records per IICRC .

9)(a) ... must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance **with accepted industry standards**.

Must perform the work in accordance with accepted industry standards. That would be IICRC S500-2015. Major cost to comply. Very complex. In fact not possible to comply under \$3k cap. The fact is that their Managed Repair Contractors NEVER do the work per IICRC. But that does not matter here. Again, Carrier can tie you up for years til you broke arguing that you did not perform work per IICRC .

Lastly, a few additional thoughts: Many or most districts in Florida it was explained at the RAF meet can require that a mortgage company agree to an AOB and if they do not , it's not valid.

Furthermore the Carrier while they are not supposed to, may put the homeowner and lender on the check just to screw you up and delay payment.

What attorney will want to, waste their time on this risky case when they have been telling everyone to do the work with direction to pay under an attorney. Your attorney will not pay the defense attorney fees if a jury decides to pay less than 25% because the work was not documented properly or performed properly. That could be >\$100K

Lastly, if the carrier wants to implement a scorched earth policy, they can sue your (mold assessor) E&O policy for not properly complying with IICRC records documentation or procedures.

In conclusion: HB 7065 is a Pandora's box . Don't open it.

Gary Rosen, Ph.D.

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