

New York State  
Seal

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

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Governor

Gregory V. Serio  
Superintendent

**Circular Letter No. 8 (2004)**  
**October 5, 2004**

**TO: ALL MOTOR VEHICLE AUTOMOBILE SELF-INSURERS, AND INSURERS AUTHORIZED TO WRITE MOTOR VEHICLE INSURANCE IN NEW YORK STATE AND THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION**

**RE: REVISION TO THE NO-FAULT FEE SCHEDULES - ADOPTION OF THE 28<sup>th</sup> AMENDMENT TO REGULATION 83**

**STATUTORY REFERENCE: SECTION 5108 OF THE INSURANCE LAW**

The purpose of this Circular Letter is to inform providers of No-fault benefits that the Department has promulgated the [28<sup>th</sup> Amendment to Regulation No. 83](#), effective October 6, 2004.

**Background:**

The prior fee schedule for durable medical equipment and supplies contained in Regulation 83 failed to definitively establish consistent and reasonable values for the cost of durable medical equipment and supplies, resulting in numerous disputes between providers and insurers many of which proceeded to no-fault arbitration and the courts for resolution. The adoption of an established fee schedule that is updated as necessary to reflect increased costs and to include newer products as they are developed will provide for more timely payment of health care provider charges and result in a significant reduction in litigation costs that are being incurred due to the variable nature of the current fee schedule rule used to establish these costs. Utilization of the established New York State Medicaid fee schedules for durable medical equipment, medical/surgical supplies, orthopedic footwear and orthotic and prosthetic appliances should significantly reduce the number of disputes between insurers and health care providers, resulting in more uniform, efficient and

cost effective processing and payment of no-fault claims.

The Amendment:

- Establishes a fee schedule for durable medical equipment that providers of No-fault benefits are required to follow in reimbursing applicants for these items.
- Formally codifies an opinion that the Department's Office of General Counsel has previously expressed concerning payments for health services under the New York No-Fault law. In accordance with Counsel's position, the Regulation provides that health services performed by a non-physician employee of a physician may be billed by a medical professional corporation only at the No-fault fee schedule rate established for the licensed treating provider who actually provides the services, not at the supervising licensed physician rate. See General Counsel Opinions [4-24-2002 \(#26\)](#) and [3-7-2003 \(#26\)](#).

However, the Regulation includes an exception to this rule. If the Workers' Compensation Board fee schedule contains a ground rule permitting a licensed non-physician employee to bill under the licensed health provider's fee schedule for the services performed by a licensed non-physician employee, then the insurer is required to pay the bill using the fee schedule required by the Workers' Compensation fee schedule ground rule.

All insurers and self-insurers must ensure that the new rules contained in the 28<sup>th</sup> Amendment to Regulation 83 will be applied properly.

If you have any questions regarding the contents of this circular letter or the 28<sup>th</sup> amendment to Regulation 83, please contact:

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Very truly yours,

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