



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
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The Office of General Counsel issued the following opinion on May 25, 2004, representing the position of the New York State Insurance Department.

Re: Date of Issuance of No-Fault Denial

Question Presented:

In determining whether the thirty-day time period for a No-Fault insurer to pay or deny a claim is timely, is the time period calculated based upon the date that the prescribed denial form is dated or the date that the denial is mailed to the applicant for No-Fault benefits?

Conclusion:

In order for a denial to be deemed timely in accordance with Section 5106(a) of the Insurance Law and Section 65-3.8(a)(1) of No-Fault Regulation 68, which requires that a claim must be paid or denied within 30 calendar days after the insurer receives proof of claim, timeliness should be determined by the date the denial is actually sent (i.e. mailed) to the applicant for benefits.

Analysis:

N.Y. Ins. Law § 5106(a) (McKinney 2000) states that "[p]ayments of first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained"

N.Y. Codes Rules & Reg. tit. 11, § 65-3.8(a)(1), entitled "Payment or denial of claim (30 day rule)" states that "No-Fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to Section 65-3.5 of this subpart."

Similarly, it should be noted that with respect to the obligation of an applicant for benefits to give notice of claim to the No-Fault insurer, under the prescribed No-Fault endorsement required by N.Y. Comp. Codes R. & Regs. tit. 11, § 65-1.1(d), the relevant provision states that:

Notice. In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation.

The Department's web site (www.ins.state.ny.us) provides guidance regarding the start date of the notice and whether the notice is effected by mailing to or by the No-Fault insurer's receipt, within the component of "Consumer Frequently Asked Questions" that focuses on "Regulation 68". The relevant question and answer is:

Do the new time requirements run from the date that notice or submission of claims are made to the insurer or from the date that notice or submission of claims are received by the insurer?

The new time requirements apply as of the date that notice or submission of claims are made to the insurer. For example, if the accident occurs on January 1, notice of the claim must be mailed or submitted to the insurer no later than January 31 to comply with the notice requirement, which begins the day after the accident.

The purpose of the No-Fault statute was to establish a quick, sure and efficient system for the payment of claims resulting from an automobile accident. Therefore, the date governing when notice of claim must be given, the date of mailing, should also be applicable to the effective date of the denial, which would be the date the denial is mailed.

This conclusion was also reached in the recent case of Damadian MRI in Canarsie, P.C. v. Countrywide Insurance Company, 755 N.Y.S. 2d 585, (N.Y. Civ. Ct. Queens Cty.) (2003). In this case, the applicant for benefits submitted a notice of claim to the insurer, which did not mail its denial of claim until six days after the denial was dated (which was the 30th day after the notice of claim was received). In issuing his decision, Justice Agate limited the sole issue before him as to whether the No-Fault statute requires the issuance of a denial within 30 days or to be mailed within 30 days. Justice Agate, in his analysis, stated that:

Upon reviewing the Insurance Regulations, legislative history and case law, it must be inferred that the issuance of a denial included the generation and mailing of the denial. While there is no law defining "issue" in this matter, it is clear that the generation of a denial form and its mailing are separate and distinct aspects of "issuing" a denial. (See Hospital for Joint Diseases v Nationwide Mut. Ins. Co., 284 A.D. 2d 374, 726 N.Y.S.2d 443 [2d Dept 2001] [defendant insurance company presented evidence regarding whether denial of claim forms were mailed on the date issued]. (Id. at 586)

In conclusion at p. 586, the court stated that:

Therefore, to issue a timely denial, defendant must generate its denial and mail it

to plaintiff within 30 days. Any other interpretation of the statute would render the time limit meaningless, as defendant could backdate its denial and mail it days or weeks later, and still have issued a timely denial. The purpose of having the time requirement is to foster the expeditious processing of claims by the insurance carrier, a purpose that would be thwarted if defendant's position were accepted. By finding that defendant issued a timely denial simply by generating the document belies logic and any reasonable interpretation of the law.

The Department concurs with both the analysis and conclusion of the Damadian MRI case. It is presumed that, in the normal course of business, a No-Fault insurer will mail a denial on the date of issuance of the denial, subject to any evidence presented to the contrary.

For further information you may contact Supervising Attorney Lawrence M. Fuchsberg at the New York City Office.