



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

George E. Pataki
Governor

Gregory V. Serio
Superintendent

The Office of General Counsel issued the following opinion on October 6, 2004, representing the position of the New York State Insurance Department.

Re: No-Fault Fee Schedule Billings for Licensed Acupuncturists

QUESTION PRESENTED:

Is a licensed acupuncturist, who provides health services to an eligible injured person under No-Fault, entitled to reimbursement based solely upon prevailing rates charged by licensed acupuncturists in the same geographic region, or are those charges subject to reduction when they are in excess of charges permissible for similar procedures which are established in existing fee schedules?

CONCLUSION:

While a licensed acupuncturist may bill a No-Fault insurer for services rendered at a fee based upon the prevailing rate charged by other licensed acupuncturists in the same geographic area, such billed fees may be reduced by insurers to those fees established in existing fee schedules for similar procedures reimbursable at fee rates in existing fee schedules, pursuant to section 68.6(b) in Department Regulation 83.

FACTS:

It has been argued that an opinion issued by the Office of General Counsel on January 4, 2004 supports the right of a licensed acupuncturist to be reimbursed under No-Fault at a rate solely established by prevailing rates in the same geographic area.

ANALYSIS:

On October 1, 2003, the Worker's Compensation Board adopted a fee schedule for acupuncture

services performed by medical doctors certified to practice acupuncture and chiropractors certified to perform acupuncture. Depending on the geographic area where services were performed, the fees in the Workers' Compensation Board Fee Schedule established for medical doctors ranged from approximately \$33-\$43 for acupuncture without electrical stimulation and \$44-\$54 with electrical stimulation. The fees established in the Workers' Compensation fee schedule for chiropractors were approximately \$23-\$29 for acupuncture without electrical stimulation and \$28-\$37 with electrical stimulation. The Workers' Compensation Board has not established a fee schedule for a licensed acupuncturist.

In the Office of General Counsel's opinion of January 5, 2004, the Department concluded that since acupuncture procedures performed by a licensed acupuncturist in New York were covered services for purposes of No-Fault reimbursement, and since the Workers' Compensation Board and Superintendent had not adopted a fee schedule for licensed acupuncturists under No-Fault, the rate of reimbursement that licensed acupuncturists were eligible for would be established pursuant to N.Y. Codes R. & Regs. tit. 11, § 68.6(b) (2003) (Regulation 83) which provides that:

(b) if the superintendent has not adopted or established a fee schedule applicable to the provider, then the permissible charge for such service shall be the prevailing fee in the geographic location of the provider subject to review by the insurer for consistency with charges permissible for similar procedures under schedules already adopted or established by the superintendent. (Emphasis added).

It has been argued that licensed acupuncturists in a particular geographic location had been billing at a rate of \$120 per treatment (it is unclear whether or not this included electrical stimulus), which represented the prevailing fee in that region prior to the changes in the Worker's Compensation Fee Schedule on October 1, 2003, and that the Department's opinion supported the right of licensed acupuncturists to continued reimbursement at the same prevailing region rate after the October 1 changes.

However, the Department's opinion emphasized the fact that the right to reimbursement at the prevailing rate was, pursuant to Regulation 83, Section 68.6(b), "subject to review by the insurer for consistency with charges permissible for similar procedures under schedules already adopted or established by the superintendent." Since the No-Fault fee schedule now includes the October 1, 2003 permissible fees established for acupuncture services provided by doctors and chiropractors licensed to perform acupuncture, it would be reasonable and appropriate, as well as consistent with the intent of Section 68.6(b), for an insurer to reduce a prevailing regional rate when there is an established fee schedule for similar services. Applying this provision to the situation posed here with respect to licensed acupuncturists, under the revised fee schedule, licensed acupuncturists do not have a right to reimbursement at the prevailing regional fee rate in effect prior to October 1, 2003 (\$120 per service in the factual description you described above). Under Section 68.6(b), were a No-Fault insurer to review and equate services provided by a licensed acupuncturist as similar to acupuncture services provided by doctors or chiropractors, and such rate is less than the prevailing regional fee rate, it would be consistent with the regulation for an insurer to limit the reimbursable fee for necessary services provided by a licensed acupuncturist to the rates established for doctors and chiropractors performing a similar service.

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