



**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 4, 2004, representing the position of the New York State Insurance Department.

**RE: No-Fault Peer Review Organizations**

**Question Presented:**

Is an organization that serves as an intermediary between No-Fault insurers and peer reviewers, by receiving requests for peer reviews of claims from No-Fault insurers and referring those claims to New York licensed health care providers to review the claims for appropriateness and necessity of medical care, and then facilitates the transfer of information between the insurer and peer reviewer:

1. a "Utilization Review Agent" pursuant to N.Y. Ins. Law § 4900(i) (McKinney 2000) and thereby subject to the reporting requirements set forth within N.Y. Ins. Law § 4901 (McKinney 2000)?
2. a "Utilization Review Agent" pursuant to N.Y. Pub. Health Law § 4900-9 (McKinney 2002) and thereby subject to the registration requirements set forth within N.Y. Pub. Health Law § 4901 (McKinney 2002)?
3. an "Independent Adjuster" pursuant to N.Y. Ins. Law § 2101(g)(1) (McKinney 2000) and thereby subject to the licensing requirements of N.Y. Ins. Law § 2108 (McKinney 2000)?

**Conclusion:**

1. No. An organization that simply refers No-Fault claims from insurers to peer reviewers is not actually conducting utilization review and therefore is not a utilization review agent subject to the reporting requirements of N.Y. Ins. Law § 4901 (McKinney 2000).
2. No. An organization that simply refers No-Fault claims from insurers to peer reviewers is not actually

conducting utilization review and therefore is not a utilization review agent subject to the reporting requirements of N.Y. Pub. Health Law § 4901 (McKinney 2002). However, it should be noted that while we would interpret N.Y. Pub. Health Law § 4901 (McKinney 2002) as we do N.Y. Ins. Law § 4901 (McKinney 2000), the opinion of the Health Department should be sought to determine whether registration with the Health Commissioner is required.

3. No. An organization that simply refers No-Fault claims from insurers to peer reviewers does not exercise discretionary authority and is simply performing a ministerial act, therefore the organization is not an independent adjuster within the meaning of N.Y. Ins. Law § 2101(g)(1) (McKinney 2000) and not subject to the licensing requirements of N.Y. Ins. Law § 2108 (McKinney 2000).

### **Facts:**

The Department was asked whether a particular organization would need to register, become certified or obtain a license in order to operate in New York. Specifically, the question is whether the organization is required to satisfy any licensure or reporting requirements in order to refer New York No-Fault insurers to New York licensed health care professionals who will perform peer reviews of No-Fault claims. It was explained that the organization will work as an intermediary between automobile insurers and peer reviewers by referring No-Fault claims from the insurers to New York-licensed chiropractors and physical therapists, who will give their clinical opinion as to the appropriateness and necessity of care rendered by treating No-Fault health care providers. These peer reviewers will make their determination by reviewing medical records provided by the insurer. It was further explained that the organization will not bear risk or adjust claims. The organization will merely serve as a conduit, passing claims and records from No-Fault insurers to peer reviewers, who are licensed health care providers in New York, for evaluation. The health care records will be transferred from insurers to peer reviewers, selected from a list maintained, via an encrypted, password-protected Web site maintained by your organization. When the review is complete, the peer reviewers will then utilize the Web site to send the results of their analysis to the No-Fault insurer. The insurer will then determine whether to pay or deny the claim.

### **Analysis:**

#### **1 & 2. Reporting and Registration Pursuant to N.Y. Ins. Law § 4901 (McKinney 2000) and § N.Y. Pub. Health Law § 4901 (McKinney 2002).**

The New York Insurance and Health Laws define "utilization review" and "utilization review agents" in a very similar manner and as such, we interpret them similarly. N.Y. Ins. Law § 4900 (McKinney 2000) provides in pertinent part:

(h) "Utilization review" means the review to determine whether health care services that have been provided, are being provided or are proposed to be provided to a patient, whether undertaken prior to, concurrent with or subsequent to the delivery of such services

are medically necessary.

(i) "Utilization review agent" means any insurer subject to article thirty-two or forty-three of this chapter performing utilization review and any independent utilization review agent performing utilization review under contract with such insurer. (emphasis added).

N.Y. Pub. Health Law § 4900 (McKinney 2002) provides in pertinent part:

8. "Utilization review" means the review to determine whether health care services that have been provided, are being provided or are proposed to be provided to a patient, whether undertaken prior to, concurrent with or subsequent to the delivery of such services are medically necessary.

9. (e) "utilization review agent" means any company, organization or other entity performing utilization review except: any insurer subject to article thirty-two or forty-three of the insurance law and any independent utilization review agent performing utilization review under a contract with such insurer, which shall be subject to article forty-nine of the insurance law. (emphasis added).

N.Y. Ins. Law § 4901(a) (McKinney 2000) requires "every utilization review agent" to "biennially report to the superintendent of insurance." Additionally, N.Y. Pub. Health Law § 4901-1 (McKinney 2002) requires "every utilization review agent who conducts the practice of utilization review to biennially register with the (health) commissioner."

An organization that functions as a mere conduit or intermediary between no-fault insurers and the healthcare professionals performing utilization review is not itself "performing utilization review." See N.Y. Ins. Law § 4901 (h)-(i) (McKinney 2000); N.Y. Pub. Health Law § 4901 8-9 (McKinney 2002). Since the organization is not engaging in the actual utilization review it is not a utilization review agent and therefore not required to report to the Superintendent of Insurance pursuant to N.Y. Ins. Law § 4901 (McKinney 2000).

Additionally, N.Y. Ins. Law § 4901(i)(McKinney 2000) only applies to insurers subject to Article 32 or Article 43 of the Insurance Law. An organization serving as an intermediary between No-Fault insurers and peer reviewers is not subject to those articles and therefore not a utilization review agent subject

to the above reporting requirement.

It should be noted that while we would interpret N.Y. Pub. Health Law § 4901 (McKinney 2002) as we do N.Y. Ins. Law § 4901 (McKinney 2000) as they are similarly written, the opinion of the Health Department should be sought as to whether or not the organization should register with the Health Commissioner.

### **3. Licensure Pursuant to N.Y. Ins. Law § 2108 (McKinney 2000).**

N.Y. Ins. Law § 2101(g)(1) (McKinney 2000) defines "independent adjuster" as "any person, firm, association or corporation who, or which, for money, commission or other thing of value, acts on behalf of the insurer in the work of investigating and adjusting claims..."

Past opinions have indicated that the determination of whether the proposed activity constitutes investigating and adjusting claims hinges upon whether discretionary authority is exercised in investigating and adjusting claims rather than simply performing ministerial functions. These opinions are available for review on the Department's website at [www.ins.state.ny.us](http://www.ins.state.ny.us). Since data processing is a ministerial act and the organization will not be engaged in either investigating or adjusting, it will not be acting as an independent adjuster. Therefore licensure pursuant to N.Y. Ins. Law § 2108 (McKinney 2000) is not required.

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