



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

George E. Pataki
Governor

Howard Mills
Acting Superintendent

The Office of General Counsel issued the following opinion on January 13, 2005, representing the position of the New York State Insurance Department.

Re: Pharmacy Billing Under No-Fault

Question Presented:

When a pharmacy submits a claim to a No-Fault insurer for drugs dispensed to an eligible injured person, how is the actual cost determined?

Conclusion:

The No-Fault regulation does not define "actual cost" for purposes of reimbursement for drugs dispensed by a pharmacy. Rather, the actual cost is a question of fact, based upon relevant documentation and information presented.

Facts:

None.

Analysis:

With respect to prescription drugs under No-Fault, Part E of Appendix C to Department Regulation 83 states that:

Part E. Prescription drugs.

The maximum permissible charge for drugs, which are provided by a licensed pharmacist and require a prescription, is the actual cost of the drug to the druggist (not to exceed the cost shown in the American Druggist Blue Book or Drug Topic Red Book) plus a dispensing fee of \$5.00, except that for a compounded

prescription a \$2.00 compounding fee shall be added to the dispensing fee.

If an insurer wishes to determine what the actual cost of the prescription drug is for purposes of comparison with the costs shown in the Blue Book or Red Book, it may request relevant documentation from the billing pharmacy as verification of claim, such as invoices or any other relevant information, in order to determine the actual cost. If there is a dispute between the pharmacy and the insurer as to the actual cost of the drug, that is ultimately a question of fact to be determined by arbitration or a court.

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