



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

**George E. Pataki
Governor**

**Howard Mills
Superintendent**

The Office of General Counsel issued the following opinion on May 26, 2005, representing the position of the New York State Insurance Department.

RE: Physician Acceptance of No-Fault Fee Schedule

Question Presented

May a physician who provides emergency health services to a patient injured in a motor vehicle accident in New York bill the patient directly at a rate consistent with the physician's normal billing rates, which are in excess of the applicable rates permissible under No-Fault?

Conclusion

No. A physician who bills for emergency services in an amount in excess of the applicable fee schedule limitations established under No-Fault is in violation of Sections 5108(a) & (c) of the Insurance Law.

Facts Presented

A child was injured in a school bus accident which caused the child to be taken to a hospital emergency room for treatment of resultant facial injuries. Medical treatment was provided by a plastic surgeon who was "on-call" for the emergency room. After the child's No-Fault insurer paid the doctor for his services at the applicable No-Fault reimbursement rate, the doctor claimed that, since he did not have an assignment of No-Fault benefits from his patient, he was not bound to accept the No-Fault fees as payment in full. The doctor then billed the child's parents for the difference between the No-Fault rate and his usual rate in private practice.

Analysis

Section 5108 of the Insurance Law establishes limits upon charges by health service providers under the No-Fault system in New York.

N.Y. Ins. Law § 5108(a) states that:

(a) The charges for services specified in paragraph one of subsection (a) of section five thousand one hundred two of this article and any further health service charges which are incurred as a result of the injury and which are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chairman of the workers compensation board for industrial accidents, except where the insurer or arbitrator determines that unusual procedures or unique circumstances justify the excess charge.

N.Y. Ins. Law § 5108(c) further states that "No provider of health services...may demand or request any payment in addition to the charges authorized pursuant to this section. Every insurer shall report to the commissioner of health any patterns of overcharging, excessive treatment or other improper actions by a health provider within the thirty days after such insurer has knowledge of such pattern."

When medically necessary health care services are performed on a person injured as a result of a motor vehicle accident in New York, Section 5108(a) makes it clear that a physician may not charge in excess of the permissible fee schedules for services rendered. Further, Section 5108(c) not only forbids a doctor from demanding additional payment from a No-Fault patient over the amount reimbursable under the fee schedules, but makes such action reportable to the Department of Health.

Finally, the acceptance or existence of an assignment of benefits from the patient to the treating physician has no applicability to the fee schedule limitations established under Section 5108.

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