

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

George E. Pataki  
Governor

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The Office of General Counsel issued the following opinion on September 5, 2006, representing the position of the New York State Insurance Department.

**No-Fault – Reimbursement For Services Rendered By Independent Contractor Health Service Providers**

**QUESTION PRESENTED**

Will the Department reconsider and modify its previously issued opinions that a professional corporation (hereinafter referred to as "P.C.") licensed to perform health care services may not, under the No-Fault law, bill for services rendered by health care providers who are independent contractors with the P.C., if there is a written contract between the P.C. and the provider establishing the responsibility for supervision of the provider's services by the P.C.?

**CONCLUSION**

No such reconsideration or modification of the Department's opinions is warranted. The Department's opinion has been referenced and relied upon in judicial decisions.

**FACTS PRESENTED**

By Office of General Counsel Opinions #01-02-13 (February 21, 2001), #02-02-03 (February 5, 2002) and #05-03-21 (March 21, 2005), the Office of General Counsel has opined that under the No-Fault law, while health service P.C.s may bill for services rendered by appropriately licensed employees of the P.C., such P.C.s may not bill for services rendered by licensed providers who are independent contractors utilized by the P.C. The inquirer requested that the Department reconsider and modify its interpretation of the No-Fault law. The inquirer also requested that the Department suggest "appropriate language" to written contractual agreements between a P.C. and independent contractors so as to equate such providers to the legal status of employees of the P.C. and thereby permit billings of independent contractors by the P.C.

**ANALYSIS**

Pursuant to Section 65-3.11(a) of N.Y. Comp. Codes R. & Regs. 11 Pt. 65 (Regulation 68), governing the direct payment of No-Fault benefits by an insurer

to the applicant for benefits, an eligible injured person may assign No-Fault benefits to be paid "directly to providers of health care services." Since a P.C. does not exercise the type of direct supervision and control over health services performed by independent contractors as that exercised over employees of the P.C., a PC is not deemed to be the provider of health services performed by independent contractors and may not, therefore, bill for such services. Under the prescribed verification of treatment forms mandated under N.Y. Comp. Codes R. & Regs. tit. 11 § 65-3.4, a treating provider must disclose the business relationship with a billing P.C. and indicate whether he or she is an employee of or independent contractor with the P.C. Under the regulation, whether the P.C. may be reimbursed for services rendered by a treating provider is governed solely by the contractual business relationship between the P.C. and treating provider and disclosed in the prescribed claim forms. It should be noted that a properly licensed independent contractor performing necessary health care services under No-Fault may bill an insurer for services rendered in his or her own name. While the inquirer mentioned IRS guidelines concerning the tax treatment of income generated by services provided by independent contractors, the categorization of independent contractors for such purpose is not controlling or dispositive with respect to the No-Fault law.

The Department's interpretation has consistently been referenced and relied upon by the courts. In A.B. Medical Services PLLC v. Liberty Mutual, 9 Misc. 3rd 36, 801 N.Y.S. 2d 690 (N.Y. App. Term, 2nd Dept.) (2005), the court, interpreting Section 65-3.11(a) and citing Department opinions, held that where the billing provider sought recovery for assigned No-Fault benefits for medical services that were not performed by it or its employees, but by an independent contractor identified as the treating provider on the prescribed claim form, the billing provider is not a provider of services entitled to recover direct payment of benefits from the insurer. In Craig Antell, D.O., P.C. v. New York Central Mutual, 11 Misc. 3rd 137A, 816 N.Y.S. 2d 694 (App. Term 1st Dept) (2006), that court, citing the Department's opinion of March 21, 2005, also held that where health services are not performed by the billing provider or its employees, but by a treating provider who is an independent contractor, the billing provider is not entitled to the direct payment of No-Fault benefits under Section 65.3-11(a).

The inquirer wished the Department to conclude that the P.C. and the provider may enter into a written agreement that would establish the responsibility for and supervision of the provider's services and, in such a case, the P.C. should be able to bill for the provider's services as if the provider was an employee. The inquirer also requested that the Department suggest appropriate language for such an agreement. It would not be appropriate nor within the purview of this Department to suggest contractual language for agreements between professional corporations and independent contractors for supervisory guidelines relating to the provision of health services, nor should it be inferred that the inclusion of any such language would alter the Department's view.

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