

New York State
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**STATE OF NEW YORK
INSURANCE DEPARTMENT**

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NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Acting Superintendent

The Office of General Counsel issued the following opinion on March 15, 2005, representing the position of the New York State Insurance Department.

Re: Requirement of Submission of Additional Application (NF-2) for No-Fault Benefits by Insurer

Question:

May a No-Fault insurer require as part of its standard practice that an eligible injured person ("EIP") complete an additional prescribed NF-2 form ("Application For Motor Vehicle No-Fault Benefits"), where the insurer has already received a completed and facially valid prescribed NF-2 form that has been signed by the EIP and sent to the insurer on the EIP's behalf by a health care provider?

Conclusion:

No. An insurer may not require, as part of its standard practice, that an EIP complete and submit an additional NF-2 form when they have previously received a completed, signed and otherwise facially valid NF-2 form that was sent by a health care provider on behalf of the EIP. Such requirement is violative of the notice of claim provision and claims principles contained in No-Fault Regulation 68.

Facts:

The inquirer represents a No-Fault insurer and have indicated that it is such company's standard practice that whenever it receives a completed and signed, facially valid prescribed Application for Motor Vehicle No-Fault Benefits ("NF-2") sent by a health care provider on behalf of an EIP to send an additional NF-2 form directly to the EIP with instructions that it be completed and sent to such company. This procedure is followed in every instance without individual review of the NF-2 forms submitted. The inquirer's company does not begin to process the claim until the second NF-2 is received back from the EIP. Health care providers have filed complaints with the Department as to the inquirer's use of this procedure, which has resulted in a delaying of payment of claims for reimbursement submitted by providers to the inquirer's company. The inquirer has asked the Department whether this standard procedure is permissible.

Analysis:

In the No-Fault prescribed endorsement found in N.Y. Comp. Codes. R. & Regs. tit. 11 § 65-1.1(h) (Regulation 68-A) (2005), it provides in pertinent part:

In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation.

N.Y Comp. Codes R. & Regs. tit. 11 § 65-3.3 (Regulation 68-C) (2005) further provides in pertinent part:

(d) The written notice required by...the mandatory and additional personal injury protection endorsement(s) shall be deemed to be satisfied by the insurer's receipt of a completed prescribed application for motor vehicle no-fault benefits (NYS Form N-F 2) forwarded to the applicant pursuant to subdivision 65-3.4(b) of this subpart...

Therefore, the submission of an NF-2 form signed by the EIP to a No-Fault insurer within 30 days after the date of accident meets the notice of claim required established under the No-Fault regulation. There appears to be an assumption made by the inquirer's company that in situations where it appears that the health care provider or an employee of the provider may have assisted the EIP in filling out the person's application for No-Fault benefits, as evinced by the simple fact that it is mailed to the insurer by the provider along with a bill for medical services rendered, makes the application form inherently suspicious in that it suggests that the EIP may not exist or have been in an accident, or has engaged in some type of improper collusive act with the provider. Under this rationale, there is then a presumption that in all instances the authenticity of the signature of the EIP is questionable. Therefore, it has become standard procedure for the inquirer's company to require that an EIP complete and return (to the inquirer) an additional NF-2, that has been mailed directly to the EIP, in all instances after the inquirer has been sent a NF-2 form by a health care provider on behalf of the EIP along with a NF-3 form. The inquirer stated that the authority for this practice is N.Y. Comp. Codes R. & Regs. tit. 11 § 65-3.5(c)(2005) which provides:

(c) The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested.

However, this provision does not refer to the prescribed NF-2 form which provides the insurer with notice of claim. Rather it is intended to refer to additional verification an insurer may seek to establish proof of claim. It does not support the practice of an insurer asking an EIP to send in duplicate information already received from the previously submitted NF-2 form, as a matter of standard practice.

The applicable provision which governs the submission of an EIP's completed NF-2 form is contained in the prescribed No-Fault endorsement. As previously cited above, the Notice provision contained under the Conditions section of the endorsement, contained in Section 65-1.1(h) (Regulation 68-A), states that "In the event of an accident, written notice... shall be given by, or on behalf of, each eligible person, to the Company...in no event more than 30 days after the date of the accident,...". (Emphasis added). And, as previously cited, Section 65-3.3(d) (Regulation 68-C) provides that written notice is deemed satisfied by the

insurer's receipt of a completed, prescribed NF-2 form.

Therefore, it is clear that the regulation does permit a health care provider to send, on behalf of an EIP, the NF-2 directly to the insurer, which may help in ensuring that the EIP meets the written notice requirement necessary to receive No-Fault benefits.

In addition, the standard practice described is inconsistent with claims practice principles for the payment of No-Fault claims. N.Y. Comp. Codes. R. & Regs. Tit. 11 § 65-3.2 (Regulation 68-C) (2005), sets forth the claim practice principles to be followed by no-fault insurers, provides in pertinent part:

- (a) Have as your basic goal the prompt and fair payment to all automobile accident victims.
- (b) Assist the applicant in the processing of a claim. Do not treat the applicant as an adversary.
- (c) Do not demand verification of facts unless there are good reasons to do so. When verification of facts is necessary, it should be done as expeditiously as possible.

The mere submission of a facially valid NF-2 by a health care provider, on behalf of an EIP, does not constitute sufficient cause for an insurer to require the submission of an additional duplicative application form. The standard policy of the inquirer's company appears to assume that all NF-2 forms sent from health care providers on behalf of an EIP are inherently fraudulent is overly broad and contrary to the intent of the Regulation. It fails to consider that the assistance of a health provider or member of the provider's staff in completing and/or submitting the form may well be of benefit to the EIP. The company's standard claims procedure of requiring an additional NF-2 as outlined above serves to delay the timely payment of no-fault benefits and treats the EIPs in an adversarial manner, without differentiation between persons, by requiring the re-submission of information already received by the insurer in every case.

Where an insurer has reasonable cause to doubt the authenticity of a NF-2 form or of the validity of the EIP's signature, the No-Fault Regulation provides insurers with other means by which they can investigate and establish the truth or validity of a claim. Of course, an insurer may always require the submission of missing information from the EIP when an NF-2 form is incomplete.

Also, it should be noted that when an insurer receives a completed and signed NF-2 form from the provider on behalf of the EIP, the insurer is still required to send all EIP's the Prescribed Cover Letter ("NF-1"), which describes No-Fault benefits, upon receipt of notice of claim.

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