



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
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George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on August 22, 2006, representing the position of the New York State Insurance Department.

Re: No-Fault Request For Additional Verification

QUESTION PRESENTED

When a No-Fault insurer requests additional verification information from an applicant (the "claimant") for No-Fault benefits in order to establish proof of claim, and such information is not provided to the insurer by the claimant within the time frame prescribed by the insurer in which the claimant must return the requested verification, may the insurer issue a denial of benefits for failure to prove the claim at the conclusion of the time frame prescribed by the insurer?

CONCLUSION

No. An insurer may not prescribe or unilaterally establish a time frame for receipt of requested verification from a claimant and thereafter issue a denial on a submitted claim if the claimant fails to provide the requested verification within the insurer's prescribed time frame deadline, since a time frame for the return of requested verification information is not prescribed or authorized under N.Y. Comp. Codes R. & Regs. tit. 11, Part 65 (Regulation 68) or the Insurance Law. Moreover, 11 N.Y. Comp. Codes R. & Regs. tit. 11 § 65-3.8(b)(3) expressly prohibits an insurer from denying a claim prior to receiving all of the relevant verification requested.

FACTS

No facts presented.

ANALYSIS

Pursuant to N.Y. Ins. Law § 5106(a) (McKinney 2000), "Payments of first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied."

Under the No-Fault claims procedures established under Regulation 68, N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.5(b) provides that an insurer has the right to request "any additional verification required by the insurer to establish proof of claim", within 15 business days of receipt of prescribed verification forms. Section 65-3.5(b) further provides that "Any requests by an insurer for additional verification need not be made on any prescribed or particular form."

If the claimant does not provide the requested information, the insurer is obligated to follow-up with the claimant about the requested additional verification that has not been provided, pursuant to N.Y. Comp. Codes R. & Regs. tit. 11 § 65-3.6(b), which states that "the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested, either by telephone call, properly documented in the file, or by mail...." The insurer must also inform the applicant and the applicant's attorney of the reason for the delay by identifying in writing the missing verification and the party from whom it was requested.

After the insurer has met the requisite follow-up requirement, there is no time frame established in the statute or regulation by which the claimant must respond to the additional verification request. To the contrary, N.Y. Comp. Codes R. & Regs. tit 11, § 65-3.8(b)(3) (Regulation 68) expressly prohibits an insurer from denying a claim prior to receiving all of the verification requested, except as provided under Section 65-3.8(e), which allows an insurer to deny a claim if it has determined that benefits are not payable because there was no coverage on the date of the accident; if the circumstances of the accident are not covered by No-Fault; or the statutory exclusions contained in N.Y. Ins. § 5103(b) (McKinney 2000) apply.

However, it should be noted that where a claimant supplies at least a part of the information requested and the insurer is able to make a determination as to the sufficiency of proof as to part of the claim, Section 5106(a), as referenced above, requires the insurer to make a determination to pay or deny the part of the claim within 30 days after receipt of the requested verification.

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