



Dedicated to protecting access to quality healthcare for automobile accident victims

June 8, 2012

NEW PROPOSED NO-FAULT REGULATIONS

The Department of Financial Services (“DFS”, previously known as The Insurance Department) has announced its intention to revise the Regulations governing payment of No-Fault claims. The proposed changes may go into effect as early as June 30, 2012.

The floor is now open for public commentary, and we cannot allow these changes to be adopted without our voices being heard. Crafted to benefit the Insurer to the detriment of the accident victim and their health care providers, these proposals include:

- Imposing a strict 120-day time constraint on applicants to respond to any verification request by providing anything in applicants’ possession, or written proof establishing a reasonable justification for the failure to comply.
- Permitting insurers to ignore the merits of a claim and deny a claim based solely upon failure to comply with a verification request.
- Excusing carriers from complying with the Department’s own Regulations when issuing verification requests; i.e. excusing defects, omissions and timing errors on the part of the carrier.
- Denying applicant the opportunity to cure any defect, omission, or timing error by reasonable justification after the claim is denied.
- Failing to provide the applicant with a forum, such as expedited arbitration, where an applicant can get an advance ruling about abusive verification requests.
- Permitting a carrier to request verification at any time, including on overdue claims, essentially eliminating the requirement to pay or deny within 30 days.
- Eliminating the need for a denial in instances where the insurer alleges the services were billed in excess of fee schedules – in these cases, proof of claim is deemed not supplied.
- Preserving the validity of a denial despite an insurer's non-substantive technical or immaterial defect or omission, while providing no guidance for applicants to identify which defects are material or immaterial.

Under the proposed changes, the rules governing the conduct of the carrier are virtually obliterated, excusing defects, omissions and timing errors on the part of the carrier. Such lax rules incentivize carriers to engage in the careless processing of claims, and provide

no safeguard for the applicant from the abuses perpetrated by some insurers to avoid the payment of legitimate claims.

Conversely, the injured insured patient or medical professionals who treat them, are required to comply with strict time constraints, suffering harsh punishments for failure to comply. Unlike the “room for error” granted to the carriers, applicants are not afforded **any** opportunity to cure defects or provide reasonable justification for failure to comply once a claim is denied.

The proposed regulation may be viewed at:

http://www.dfs.ny.gov/insurance/r_prop/pdf/rp68ca4t.pdf

This page explains comment period and gives links to contact etc:

<http://www.dfs.ny.gov/insurance/rproindx.htm#bm>

The DFS press release is available here:

<http://www.dfs.ny.gov/about/press/pr1205011.htm> thi

NYFAIR’s detailed comment on the proposed changes is available for your review at www.newyorkfair.org.

In the interest of justice and equality, the one-sided proposals solely reflecting the agenda of the insurance carriers must be reformulated to a more balanced approach that addresses the legitimate concerns of the carriers, while still protecting accident victims’ access to the benefits they are entitled to, including quality healthcare.

The Proposals Must Not Be Ratified Without Your Voice Being Heard

Clearly, the insurance industry has captured the attention of the Department, using the magic word “fraud” in order to push the Department into self-serving, one-sided changes that unequivocally favor the carrier. It is time the accident victims and their healthcare providers grab the ear of the Department and offer them a more balanced insight into the No-Fault system.

The proposed changes assume insurance adjusters always send legitimate requests for verification. In fact, the Press Release regarding these changes states the 120-day deadline will “prevent healthcare providers from ignoring requests for evidence that the treatments they are providing are medically necessary.” As a participant in the No-Fault system, you are aware this is simply not the case. You must act now and alert the Department to the grave transgressions committed by the carriers in requesting onerous, burdensome, vague, and invalid verification requests.

The proposed changes also leave applicants with no recourse once a denial is issued. An applicant must make a decision regarding compliance in complete ignorance of the context of the request. The penalty for guessing incorrectly is forfeiture of the claim.

This framework is fundamentally unfair and violates basic concepts of due process. We cannot allow such an imbalance of justice, where carriers' bad behavior is excused at every turn, and applicants are forbidden from challenging that behavior.

We simply cannot allow changes that so severely tilt the scales of justice--excusing the sophisticated carrier, whose job is to process claims, from compliance with regulations--yet leaving the unsophisticated accident victim or provider with absolutely no remedy for honest errors.

How Can You Get Involved?

There can be meaningful reform of the No-Fault law that will address the legitimate concerns of the Insurance Industry, while allowing accident victims access to the benefits they paid for and deserve. But this will not happen on its own. The failure to address these proposals will give the Department the impression that you agree with the changes as they are written.

We need your help. Please provide your financial support by returning the attached form, along with a donation consistent with the scope of your involvement with No-Fault, and let us know how you can help.

This may be your last opportunity. Do not wait until it is too late. Enactment of these regulations as they are written could have a devastating impact on the ability of honest accident victims to access quality healthcare.

This is your chance to be sure the voices of the Insurance Industry are not the only voices that are heard.

Act now by sending your comments, including what effect this regulation will have on your practice, to the Department of Financial Services before June 22, 2012 to Hoda Nairooz, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: hoda.nairooz@dfs.ny.gov Please remember to also send a copy of your comments to NYFAIR at 11 Grace Avenue, Suite 111, Great Neck, NY 11021 or info@newyorkfair.org



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To join New Yorkers for Fair Automobile Insurance Reform and express your concern about the regulatory and legislative changes to the No-Fault system currently being considered in Albany, please complete this form and return it along with your donations to:

New Yorkers for Fair Automobile Insurance Reform
11 Grace Avenue, Suite 111
Great Neck, NY 11021

First Name: _____ Last Name: _____

Generic Title (e.g., Health Care Provider, Concerned Citizen, Former Accident Victim, Lawyer, Representative of a Professional Association):

Email address: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Phone: _____ Fax: _____

I would like to help by providing the following:

My Donation of: \$5,000 \$1,000 \$500 \$250 \$100 \$: _____
is enclosed.

Other assistance I can provide:

Contributions or gifts to NYFAIR are not tax deductible as charitable contributions

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