



*Dedicated to protecting access to quality healthcare for automobile accident victims*

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May 7, 2010

On May 5, 2010, Assemblyman Joseph D. Morelle, Chair of the Assembly Committee on Insurance, and Senator Neil D. Breslin, Chair of the Senate Committee on Insurance, hosted the first of at least three scheduled round table discussions on reforming the No-Fault system. NYFAIR was represented by Stuart Israel and William Purdy.

Senator Breslin set the tone for the meeting by announcing that they were on the brink of enacting “monumental legislative change.” It should be noted that these changes are separate and apart from the proposed working draft of revisions to the No-Fault regulations that the NYS Insurance Department (SID) has been drafting. NYFAIR has previously commented on and met with SID to advise the Department of problems and concerns.

Lawrence M. Fuchsberg, Principle Attorney from the State Insurance Department, followed with comments that the No-Fault system had become more of an “adversarial system than had ever been envisioned.” Mr. Fuchsberg indicated that the Department “strongly supported” removing the claimant’s right to pursue actions in Court and that arbitration should be the sole remedy.

In response to a question from Assemblyman Morelle, Ed Ferrity, an attorney with SID Frauds Bureau, while acknowledging that “runners” had been prosecuted under existing insurance fraud statutes, indicated a desire for a specifically designated crime to help judges and juries pigeon hole the offence and give prosecutors another charge to add to a prosecution.

Crystal Kastberg, from Progressive Insurance, speaking on behalf of the insurance industry, presented the following proposals:

- **Mandatory Arbitration.** Accident victims and their doctors could no longer sue the carrier for claims under \$5,000.
- **Increase the Burden of Proof** to require every claimant to demonstrate they are properly licensed, the services were rendered, necessary, assigned and mailed to the carrier.
- **Prevent accident victims from assigning their claims to their doctors** where the carrier thinks there has been a policy violation. This would prevent doctors from challenging the carrier’s decision, and make the patient responsible for paying the

doctor out of her own pocket. If the patient wanted to challenge the carrier, she would have to find her own lawyer.

- Eliminate the 30 day preclusion penalty and allow carriers to come up with new reasons to defend their refusal to pay at any time.
- Treatment Guidelines as the standard of care for auto accident victims.
- SID decertification of Providers from billing and collecting no-fault benefits.

During a heated discussion on the issue of Mandatory Arbitration, Stuart Israel forcefully pressed the NYFAIR position that the arbitration system should be improved so that market forces, and not a government mandate, encouraged greater use of the arbitration system. In the last quarter, he noted, arbitration filings are up. Mr. Israel also pointed out that the current arbitration system is insufficient to handle the large number of denied claims, and pointed to the 18 to 24 month backlog that existed in 2000 and 2001. Mr. Israel urged that that much of the problem stemmed from the insurance industry practice of denying so many claims. If the arbitration process were perceived as fair, more people would utilize it.

Both Mr. Fuchsberg and Adam Karol, from Liberty Mutual, argued that arbitrators no longer disregarded the law. According to Messrs. Fuchsberg and Karol that problem was “in the past”, and in the last two years arbitrators have more consistently applied substantive law.

Marc Dittenhoefer, on behalf of the New York State Trial Lawyers Association, repeatedly stated their opposition to a system of mandating arbitration. Mr. Dittenhoefer urged that, “Our constitutional system mandates that Judges have the final say on what the law is.”

Syracuse physician Jeffrey Kahn, speaking on behalf of the Medical Society of the State of New York, complained about abuses on both sides of the no-fault system. Dr. Kahn noted the low rate of compensation under no-fault and workers compensation and told of a large group of Rochester doctors that withdrew from the workers compensation system when recent regulations mandated a form similar to the one initially proposed by SID.

In an alarming development, Dr. Kahn indicated support for the adoption of treatment guidelines which would establish parameters for what could and could not be paid for under No-Fault. It was not clear whether Dr. Kahn was voicing his own personal opinion, or if the Medical Society is formally supporting the adoption of the Workers Compensation treatment guidelines for No-Fault claims.

The chairpersons have asked NYFAIR to submit its ideas for improving the arbitration system.

Given the tenor of comments by the two Insurance Chairs and SID, it seems that The Insurance Industry is on the verge of enacting monumental changes that will have a devastating impact on the ability of accident victims to received quality healthcare. The time to act is now!

What can you do?

Anyone that is concerned about the Insurance Industry's proposals should contact the following legislators and let them know you care about the effect it will have on the ability of New Yorker automobile accident victims to get access to quality healthcare:

Assemblyman Joseph D. Morelle [morellej@assembly.state.ny.us](mailto:morellej@assembly.state.ny.us)

Senator Neil D. Breslin [breslin@senate.state.ny.us](mailto:breslin@senate.state.ny.us)

Visit our website at [www.newyorkfair.org](http://www.newyorkfair.org) to learn more about the Insurance Industry proposals and our positions.

Doctors who are members of the Medical Society should immediately contact the Society and urge them to reconsider Dr. Kahn's support of medical guidelines limiting the healthcare automobile accident victims receive.

Providers and lawyers experienced with arbitration should contact us with "horror stories" of how unfair arbitration can be. NYFAIR needs to hear from you so that we can educate policymakers about the pitfalls of mandatory arbitration.

We also need ideas on how to improve the arbitration system. What changes would you recommend to make arbitration a more desirable forum?

The Legislature is likely to consider these issues in the next two months. The time to act is now!



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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:

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