



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

**Circular Letter No. 36 (2001)
December 31, 2001**

TO: All Motor Vehicle Self-insurers and Insurers Licensed to Write Motor Vehicle Liability Insurance in New York State

RE: No-Fault Arbitration Reform and Submission of an Action Plan for No-Fault Conciliation and Arbitration

Statutory Authority: Article 51, Sections 201, 301, and 308.

Effective December 1, 1999, the Insurance Department contracted with the American Arbitration Association (AAA) to handle day-to-day responsibility for the conciliation function of the No-Fault arbitration system. One of the goals of this transfer was to improve the efficiency of the process and enable the Department to improve its oversight of the No-Fault reparations system.

[Circular Letter No. 30 of 1999](#), which advised insurers and self-insurers of the transfer of the conciliation function, also directed each self-insurer and insurer to designate, for each No-Fault claims office, a responsible staff member who the AAA could contact to attempt immediate resolution of disputes. However, it has been the AAA's experience that its conciliators have often been unable to contact knowledgeable claims personnel or that insurers have not designated responsible supervisory personnel to oversee whether their staff has expended the effort needed to review the merits of the disputes in conciliation. Furthermore, too many disputes have proceeded to the arbitration stage without any meaningful communication occurring between the parties until the dates of the arbitration hearings.

The Insurance Department has engaged in a comprehensive review of the No-Fault arbitration process. Currently, the No-Fault arbitration inventory of pending cases has been caused by a dramatic increase in the number of filings by health care providers. The Department is committed to significantly reducing the arbitration case inventory and the resulting delays in the scheduling of hearings.

In furtherance of this goal the Department is proceeding with the following initiatives:

- The appointment of an additional 40 to 50 new No-Fault arbitrators;
- Improved efficiency in the scheduling of arbitration hearings by batching cases that involve the same applicant and the same insurer and linking cases that involve claims arising out of the same accident;
- Amendment to Regulation 68 (11 NYCRR 65) to require the submission of documents during the conciliation phase of the arbitration process in order to provide earlier disclosure of the positions of the parties;
- Amendment to Regulation 68 (11 NYCRR 65) in order to expedite the scheduling of hearings for those who request arbitration promptly after a claim is denied or becomes overdue;
- Amendment to Regulation 68 (11 NYCRR 65) to permit arbitrators to impose the costs of administration upon an applicant if the arbitrator concludes that the applicant has filed an arbitration that was frivolous or totally without merit; and
- Amendment to Regulation 68 (11 NYCRR 65) to permit insurers to negotiate attorneys' fees, subject to specified limitations, in order to resolve disputed claims prior to the transmittal of disputes to arbitration.

The [25th Amendment to Regulation 68 \(11 NYCRR 65\)](#) is attached.

The Department recognizes and is addressing abuses of the No-Fault system by some claimant health

care providers and their attorneys. The Department has also noted that many insurers frustrate the purpose of the streamlined No-Fault system by making little effort to resolve claims at the conciliation phase of the arbitration process and then agreeing to consent awards after the case is transmitted to arbitration. Such behavior impedes the efficiency of the no-fault system and also increases administrative and defense costs of insurers. More than 2/3 of the cases that are scheduled for hearings before arbitrators result in either consent awards or withdrawal of the arbitration request.

The improvement of the arbitration process will require a substantial commitment of resources for many insurers. Several insurers have thousands of cases pending in the No-Fault arbitration system. To address this caseload effectively, insurers must have as their goals:

- Expedient response and effective communication with the AAA during the conciliation process, to 100% of the cases that have been and will continue to be filed with the AAA's Conciliation Center;
- The review of all pending cases that have been transmitted to arbitration with the goal of resolving those that should not require an arbitration hearing; and
- The presentation of an effective defense in those cases that require an arbitration proceeding.

In order to improve communication between insurers, the AAA and the Department, each insurer and self-insurer is required to submit an action plan that will detail the manner in which it will respond to its pending caseload in both conciliation and arbitration. That action plan must designate a single individual who will be responsible for coordination of the insurer or self-insurer's No-Fault arbitration program. This individual will be responsible for addressing issues that may arise with either the AAA or the Department. The plan must include the measures that will be taken to assure adequate response to conciliation efforts and to arbitration proceedings, including the measures that are in place to assure that the goals, noted above, will be attained.

The action plan must be submitted in writing no later than January 21, 2002 to Holford Marshall, Senior Examiner, Property Bureau (2nd Floor), New York State Insurance Department, 25 Beaver Street, New York, NY 10004. Any questions regarding this Circular Letter can be directed to Mr. Marshall at this address or by telephone at 212-480-5660.

Very truly yours,

Janet E. Glover
Deputy Chief
Property Bureau