



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

Circular Letter No. 9 (2002)
April 9, 2002

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

RE: Court Lifts Stay Against Implementation of the Revised No-Fault Regulation 68

On April 4, 2002, the Appellate Division, First Department unanimously denied petitioners' motion seeking injunctive relief pending appeal of Justice Wetzel's decision upholding the Department's promulgation of revised Regulation 68 and also vacated the interim stay in effect against implementation of the revised Regulation 68. As a result of this decision, [revised Regulation 68](#) is effective as of April 5, 2002.

This regulation makes adjustments to the manner in which No-Fault claims are presented and processed in order to address practices that have resulted in fraud and abuse in the New York automobile insurance marketplace.

The purpose of this Circular Letter is to provide guidance to insurers and self-insurers in implementing the regulation in a manner consistent with its intent of preventing fraud and abuse while ensuring that valid claims of eligible injured claimants are processed and paid in a timely manner. Insurers and self-insurers are expected to provide adequate and timely notice to insureds and other individuals who may be impacted by the changes set forth in this regulation. Such notice shall include prominent notice in policyholder materials and in policy forms.

By acting responsibly in applying these new rules, insurers and self-insurers will contribute to a reduction in acts of fraud and abuse, which should ultimately result in lower costs to all New York consumers.

Effective Dates

The revision consists of four subparts and regulations: (1) Regulation 68-A/Subpart 65-1, New endorsements; (2) Regulation 68-B/Subpart 65-2, Rules applicable to self-insurers; (3) Regulation 68-C/Subpart 68-3, Claims practice rules; and (4) Regulation 68-D/Subpart 68-4, Arbitration provisions.

While the regulation is effective as of April 5, 2002, not all claims made on and after April 5, 2002 will be subject to the new requirements on that date. Since Subpart 68-A provides for revised endorsements with new notice provisions, these new provisions will not be applicable to claims until new policies containing the revised endorsements are issued or renewed. The revised endorsements are deemed approved under section 2307 of the Insurance Law and may be used by insurers after notice to the Department. As an alternative, insurers may file these new prescribed endorsements with the Department for approval. In either case, the insurer must advise the Department of the effective date for issuance of the new endorsements. When filing for approval, insurers are encouraged to file in accordance with the Speed to Market procedures set forth in Supplement No. 3 to Circular Letter 11 (1998) dated August 21, 2000.

However, Regulation 68-B/Subpart 65-2, which applies to self-insurers and also provides for the new notice provisions, may be applied to all such claims on and after April 5th inasmuch as the submission of claims to self-insurers is not subject to the contractual requirements that exist in an insurance policy.

With respect to those claims practice rules contained in Regulation 68-C/Subpart 65-3 and those arbitration rules contained in Regulation 68-D/Subpart 65-4 that are related to the revised Notice of Claim and Proof of Claim provisions, the applicable rules will be governed by the policy endorsement that is in effect.

The new claims practice and arbitration rules mandated by the 25th amendment to Regulation 68 will remain in effect by means of a new emergency adoption of amendments incorporating these provisions in the revised Regulation 68.

Notice Requirements and Standards

The new regulations contain new time limits for providing notice of the motor vehicle accident to an insurer or self-insurer and for the submission of No-Fault claims. The Department recognizes that in some instances applicants for benefits will not be able to comply with these new requirements. By way of example, insurers and self-insurers should note that the Department recognizes that in cases where a pedestrian is injured, the injured person may be unable to ascertain the name of the vehicle's insurer within the prescribed period for notice. Similarly, an unrelated injured passenger may have difficulty ascertaining the name of the vehicle's insurer.

To prevent injured claimants from unfairly losing benefits due to circumstances beyond their control, the Department has included in the revised regulation a provision which excuses late notice when warranted by underlying facts. Where there is a failure to meet the new time frames, a claimant who demonstrates "clear and reasonable justification" for the failure to comply must be excused from the requirement. Insurers and self-insurers are obligated to apply this reasonableness standard, which will require a case-by-case factual review of each instance where an explanation for late notice is made. In those instances where a claim is denied due to late notice, an expedited arbitration procedure has been incorporated in the regulation to permit these disputes to be resolved expeditiously.

Insurers are expected to:

- (1) supply clear and timely notice to their policyholders emphasizing the new policy conditions before implementation of these new conditions;**
- (2) create and clearly define reasonableness standards to their claims staff and implement expedited internal review procedures for affected claims to ensure that they are consistent and fair to all applicants for No-Fault benefits; and**
- (3) provide notice to claimants of their right to an expedited arbitration for disputes involving denials for late notice of claim where the claimant contends that there was reasonable justification for the failure to give timely notice.**

INSURERS ARE ADVISED THAT THE DEPARTMENT WILL CLOSELY MONITOR COMPLIANCE WITH THIS STANDARD AND WILL TAKE APPROPRIATE DISCIPLINARY ACTION AGAINST THOSE INSURERS FOUND TO HAVE UTILIZED THE NEW NOTICE REQUIREMENTS TO IMPROPERLY AVOID THE PAYMENT OF LEGITIMATE CLAIMS.

Insurers and self-insurers are also reminded that usage of the examination under oath procedure should not be ordered routinely, but should only be used when specifically warranted under reasonable and objective guidelines established by the insurer. Insurers and self-insurers shall maintain such guidelines on-site and available for inspection by Department personnel on request.

Insurers are reminded of the applicable penalties for engaging in unfair claims payment practices; the 2% per month interest penalty for late payment of bills; and possible Insurance Department administrative penalties for dilatory claims payment practices.

Please acknowledge receipt of this circular letter, no later than April 29, 2002, to:

Mr. Holford Marshall
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Any question regarding this Circular Letter should be directed to Mr. Marshall at (212) 480-5660.

Very truly yours,

Mark Presser
Assistant Deputy Superintendent & Chief
Property Bureau