



**STATE OF NEW YORK
INSURANCE DEPARTMENT
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**Circular Letter No. 3 (2009)
February 19, 2009**

TO: All Motor Vehicle Self-Insurers and Insurers Writing Motor Vehicle Insurance in New York State

RE: Unfair Claims Settlement Practices - No-Fault Notice of Claim Provisions

STATUTORY REFERENCE: Article 51 and Section 2601 of the New York Insurance Law; 11 NYCRR § 65 (Regulation 68)

[Circular Letter No. 9 \(2002\)](#), issued April 9, 2002, provided guidance to insurers and self-insurers in implementing a revised no-fault insurance regulation, 11 NYCRR Pt 65 (Regulation 68), which took effect on April 5, 2002. The Circular Letter advised of a new time limit for providing notice of a motor vehicle accident to an insurer or self-insurer, and provided guidance to insurers and self-insurers for establishing standards for excusing late notice where there is clear and reasonable justification for the failure to comply with the required timeframe.

The purpose of this Circular Letter is to remind insurers and self-insurers of their obligations with respect to the notice of claim provisions set forth in 11 NYCRR § 65-3.3, and to provide further guidance with regard to those requirements.

NYS Form NF-2 Submission

Regulation 68 does not establish a required time frame in which a claimant must return an NF-2 form to an insurer. 11 NYCRR § 65-3.3(e) permits an insurer to issue a denial for failure to provide timely written notice of claim within 30 days of the accident. However, as noted in the June 2, 2008 opinion of the Department's Office of General Counsel ("OGC") (OGC Op. No. 08-06-01), neither the Insurance Law nor the regulations promulgated thereunder authorize an insurer to issue a denial on the ground that the claimant failed to return a completed NF-2 to the insurer when the claimant has otherwise submitted timely written notice within 30 days of the accident in accordance with 11 NYCRR § 65-1.1.

Satisfaction of Written Notice

11 NYCRR § 65-3.3(d) allows for satisfaction of the written notice requirement through the insurer's receipt of an NF-2 or completed hospital facility form (NYS Form NF-5). But the written notice requirement may be satisfied in other ways as well. Indeed, 11 NYCRR § 65-3.3(c) provides that the receipt by an insurer of a Department of Motor Vehicles Accident Report 104 (MV-104) or other accident report indicating injuries to an

eligible injured person shall satisfy the written notice requirement. Further, pursuant to 11 NYCRR § 65-3.5(g), an insurer must accept a completed hospital facility form (NYS Form NF-5) submitted on behalf of a provider of health services in lieu of a prescribed NF-2.

Standards for Excusing Late Notice of Claim

In accordance with 11 NYCRR § 65-1.1, the 30-day written notice requirement must be excused if the claimant submits written proof of clear and reasonable justification for the failure to comply. Moreover, 11 NYCRR § 65-3.5(l) requires insurers to establish standards for review of determinations where an applicant has provided late notice of claim. Such standards must be available for review upon request by Department examiners.

Self-Insurers

All of the aforementioned notice regulatory provisions apply equally to self-insurers, as set forth in 11 NYCRR § 65-2-4.

Additional Requirements

Insurers also are reminded that in accordance with 11 NYCRR § 65-3.2(g), insurer personnel responsible for the handling and settlement of claims must be thoroughly familiar with the provisions of Regulation 68. Insurers should review their claims handling procedures to ensure that their processes conform to Regulation 68.

Please direct any questions or comments regarding the contents of this Circular Letter to:

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Very truly yours,

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