



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

Insurance Circular Letter No. 1 (2015)
February 3, 2015

TO: All Insurers Licensed to Write Motor Vehicle Insurance in New York, Motor Vehicle Self-Insurers, and the Motor Vehicle Accident Indemnification Corporation (collectively, “no-fault insurers”)

RE: Claims for Personal Injury Protection Benefits Insurance in New York State

STATUTORY AND REGULATORY REFERENCES: N.Y. Insurance Law § 2601 and Article 51; and 11 NYCRR 65 (Insurance Regulation 68)

Introduction

The purpose of this circular letter is to provide guidance to no-fault insurers by clarifying various provisions in 11 NYCRR §§ 65-2 (Insurance Regulation 68-B) and 65-3 (Insurance Regulation 68-C) that concern notice/proof of claim, in light of the holdings in Sound Shore Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 106 A.D.3d 157 (2d Dep’t 2013), and Mount Sinai Hospital v. New York Cent. Mut. Fire. Ins. Co., 120 A.D.3d 561 (2d Dep’t 2014).

Background

11 NYCRR § 65-2.4(b) requires that, in the event of an accident, an insurer shall be provided with written notice identifying the injured person eligible for no-fault benefits, along with “reasonably obtainable information” regarding the time, place, and circumstances of the accident, from or on behalf of the eligible injured person, within 30 days of the accident. Pursuant to 11 NYCRR § 65-3.4(b), an insurer shall, within five business days of receiving notice of an accident, send to the eligible injured person the prescribed application for motor vehicle no-fault benefits (“NYS Form NF-2” or “NF-2”).

Pursuant to 11 NYCRR § 65-3.3(d), an insurer is deemed to receive notice of claim once it receives a completed NF-2 form from an eligible injured person or the corresponding completed hospital facility form, NYS form NF-5 (“NF-5”). Thereafter, the insurer has 30 days within which to pay or deny the claim, or else to request additional verification of the claim within the timeframes prescribed in 11 NYCRR § 65-3.5.

The prescribed form for submitting verification of a claim in response to an insurer’s request is either the NYS Form NF-3 (“NF-3”) (in the case of a treating physician or other health service provider), or else the NYS Form NF-4 (“NF-4”), in the case of a hospital facility. However, under 11 NYCRR § 65-3.5(f), an insurer must accept proof of claim submitted on a form other than the

prescribed form if that form contains substantially the same information as the prescribed form. An insurer may request that proof of claim be submitted on the prescribed form if the other form used does not contain substantially the same information.¹

In Sound Shore and Mount Sinai, the Appellate Division, Second Department held that notice/proof of claim, which begins the 30-day period to pay, deny, or request additional verification, was made only after the insurer received both the NF-5 and the UB-04 in accordance with 11 NYCRR § 65-3.5(g), rather than just the UB-04, because the UB-04 alone did not contain substantially the same information as that requested on the NF-5.

Obligation of No-Fault Insurers

As noted above, either the NF-2 completed by an eligible injured person or the NF-5 completed by a hospital facility serves as notice of claim to an insurer. This Department developed the NF-5 specifically for hospitals because the Department recognized that it is challenging for hospitals to ensure that an eligible injured person completes and sends to the insurer the NF-2 form necessary for the processing of no-fault claims. By law, hospitals must treat all injured persons, as opposed to other health service providers like physicians, who may refuse to treat an eligible injured person unless that person completes the requisite no-fault forms. Accordingly, the NF-5 is intended to satisfy a hospital's prima facie burden to establish notice/proof of claim, and triggers the insurer's obligation to pay or deny the claim within 30 days or else to seek additional verification of the claim.

Upon receipt of a UB-04 from a hospital facility that is unaccompanied by a prescribed form like the NF-5 or a substantially similar form, the insurer should provide the hospital with an opportunity to submit a completed NF-5² form to the insurer as soon as practicable, based on the clear and reasonable justification for late filing of notice/proof of claim prescribed in 11 NYCRR § 65-2.4(c). In the event the eligible injured person has previously submitted an NF-2 to the insurer, the insurer need not request an NF-5, but may seek additional verification as necessary by promptly sending the hospital an NF-4.

¹ 11 NYCRR § 65-3.5(g) states that an insurer shall accept a completed NF-5 (or NF-5 and uniform billing form (UBF-1)) from a hospital facility in lieu of a completed NF-2 and NF-4. The UB-04 form is the current uniform billing form used by hospitals for all claims.

² In the event that a hospital is unable to obtain an eligible injured person's signature on the NF-5 form with respect to assignment of benefits, release of treatment records, and release of no-fault forms, other stand-alone forms such as the assignment of benefits and HIPAA forms signed by the eligible injured person submitted with the NF-5 form are the equivalent to an NF-5, and pursuant to 11 NYCRR § 65-3.5(g), should be accepted.

Conclusion

The Department expects that no-fault insurers will be mindful of the clarifications set forth in this circular letter, which are intended to ensure the fair and expeditious resolution of no-fault claims. Please direct any questions regarding this letter to Christopher Maloney, Supervising Insurance Examiner, by mail at New York State Department of Financial Services, Property Bureau, One State Street, New York, NY 10004, or by e-mail at chris.maloney@dfs.ny.gov.

Very truly yours,

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Deputy Superintendent
Property and Casualty Insurance