

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH OCTOBER 24, 2003 ***

TITLE 11. INSURANCE DEPARTMENT

CHAPTER III. POLICY AND CERTIFICATE PROVISIONS

SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE

PART 65. * (REGULATION 68) REGULATIONS IMPLEMENTING THE COMPREHENSIVE
MOTOR VEHICLE INSURANCE REPARATIONS ACT

11 NYCRR § 65.17 (2003)

§ * 65.17 Optional arbitration procedures under section 5106(b) of the Insurance Law with respect to personal injuries sustained on and after December 1, 1977 for arbitrations filed with the Insurance Department on and after July 1, 1988 through and including November 30, 1999

** NB Effective until June 5, 2002

*65.17 **Optional arbitration procedures under section 5106(b) of the Insurance Law with respect to personal injuries sustained on and after December 1, 1977 for arbitrations filed with the Insurance Department on and after July 1, 1988.

** NB Effective June 5, 2002

(a) Application. This section shall apply to insurers, and the term insurer, as used in this section, shall include both insurers and self-insurers, as those terms are defined in this Part and article 51 of the Insurance Law, and shall also include the Motor Vehicle Accident Indemnification Corporation (MVAIC) created pursuant to article 52 of the Insurance Law and any company or corporation providing insurance pursuant to section 5103(g) of the Insurance Law.

(b) Procedures.

(1) Initiation of arbitration.

(i) An applicant for benefits may initiate arbitration proceedings by mailing a copy of the denial of claim form prescribed by section 65.15(c) of this Part, upon which the applicant has entered the reason(s) for contesting the denial, together with a detailed listing and calculation of all incurred expenses in dispute, indicating the dates upon which the claims for incurred expenses were submitted to the insurer, to:

New York State Insurance Department
Post Office Box 440
Canal Street Station
New York, NY 10013

If there is a dispute with respect to any matter which is arbitrable pursuant to section 5106 of the Insurance Law and a denial of claim form has not been issued, the applicant

may initiate arbitration by completing a prescribed no-fault arbitration request form (NYS form AR-1) and forwarding the original and one copy to the department at the above address, and one copy to the insurer against which arbitration is being requested.

(ii) The denial of claim form or the arbitration request form shall be accompanied by a check or money order for \$ 40 payable to the New York State Insurance Department. This filing fee shall be returned to the applicant directly by the insurer, if the applicant prevails in whole or in part.

(iii) As a condition precedent to arbitration where there is no denial of claim by an insurer, evidence of attempts to settle the dispute must be detailed on the arbitration request form.

(iv) As a condition precedent to arbitration, where health care services have been denied by a certified managed care organization or by an insurer pursuant to an approved managed care program, the internal dispute resolution procedures applicable to the insurer's managed care program must be exhausted and evidence of efforts to resolve the dispute through such procedures must be detailed on the arbitration request form or be attached to the denial of claim form.

(v) In the absence of a denial of claim form, a dispute shall be considered arbitrable if the claim is overdue as described in paragraph (g) (1) of section 65.15 of this Part and a demonstrable attempt was made by the applicant to obtain payment or an explanation from the insurer of the continued nonpayment of the claim.

(vi) All items on the no-fault arbitration request form (NYS form AR-1) must be completed in full. An explanation must be provided for any omitted spaces on the form, which may be obtained, upon request, from the Insurance Department by writing to the address set forth in subparagraph (i) of this paragraph.

(2) Initial review by the Insurance Department.

(i) The Insurance Department shall review all requests for arbitration and assign file numbers thereto, which shall be used by the arbitration forums and parties to identify the case.

(ii) Each insurer shall designate, for each claims office used by the insurer to handle New York no-fault claims, a responsible staff member whom the department can contact to determine whether the no-fault dispute for which arbitration has been requested can be resolved without the need for arbitration. Since department staff will attempt to resolve the dispute by telephone, the insurer's representative shall

have the authority to bind the insurer to any agreement reached over the telephone. The insurer shall notify the department of such representative in writing and immediately notify the department of any change in such designation.

(iii) If it appears, after review, that the dispute may be resolved without arbitration, the Insurance Department will communicate with the parties and attempt through conciliation to resolve the dispute.

(a) If all the issues in dispute are resolved through Insurance Department conciliation, by the insurer agreeing to pay and the applicant agreeing to accept all or a portion of the amount in dispute, the insurer shall, in addition, return the filing fee to the applicant. If the claim was overdue, the insurer shall also pay the applicable interest.

(b) If the arbitration was initiated by use of a no-fault arbitration request form (NYS form AR-1) and it is subsequently established that the claim and any applicable interest and attorney fees were paid at least 20 calendar days prior to the submission of the completed AR-1 form, the filing fee shall not be returned to the applicant. In such instance, an additional \$ 100 service and processing fee shall be payable by the applicant to the New York State Insurance Department.

(iv) If it appears to the Insurance Department that the dispute cannot be resolved through conciliation within 45 days, the department will refer the request for arbitration to the appropriate arbitration forum for resolution as prescribed in this section and the applicant shall be so advised. The department may, however, withhold such referral pending receipt from the applicant of pertinent and available information which has been requested.

(3) Jurisdiction of arbitration forums.

(i) Insurance Department Arbitration (IDA) forum. IDA jurisdiction shall include only those disputes where the remaining issues after expiration of the conciliation period set forth in subparagraph (2) (iv) of this subdivision involves:

(a) correct computation of health service provider fees, whether or not such fees are specifically covered by the fee schedules promulgated in Part 68 of this Title (Regulation 83);

(b) where the amount in dispute is less than \$ 400 and such dispute does not involve a coverage question or affect the outcome of any other portion of the applicant's claim; or

(c) whether the claim was overdue at the time it was paid, how long the claim was overdue, or whether the correct amount of interest or attorney's fee on an overdue claim was paid.

(ii) American Arbitration Association (AAA) forum. All disputes remaining after expiration of the conciliation period, involving issues other than those to be resolved pursuant to subparagraph (i) of this paragraph, shall be forwarded to the AAA which shall be the forum for their resolution.

(iii) Where a request for arbitration involves issues which fall within the jurisdiction of both of the forums specified in this paragraph, the dispute shall be resolved by AAA arbitration, except disputes specified in clause (i) (a) of this paragraph shall be resolved by IDA arbitration.

(iv) No-Fault Optional Arbitration Advisory Committee. The superintendent shall select an advisory committee composed of 12 members to review the operations and the actual costs of the arbitration forums set forth in this section. Not more than four of the members of the advisory committee shall be representatives of self-insurers.

(4) Insurance Department Arbitration (IDA) forum procedure.

(i) Notice. Upon expiration of the conciliation period set forth in paragraph (2) (iii) of this subdivision, the parties will be notified by the IDA, in writing, that the dispute will be resolved by arbitration on the basis of written submissions of the parties. All such submissions shall be received by the IDA within 30 calendar days of the date of mailing of the notice. No oral arguments will be permitted. In order to facilitate receipt of evidence by IDA, the parties may forward their submissions prior to receipt of the above notification.

(ii) Consolidation. The IDA may consolidate disputes if the claims arose out of the same accident and involve common issues of fact.

(iii) Designation of arbitrators. The arbitrator shall be a senior member of the Insurance Department staff designated by the superintendent to serve as an IDA arbitrator and shall not be the same person who attempted to conciliate the dispute.

(iv) Qualifications of the arbitrator. Every IDA arbitrator shall be an examiner who regularly administers article 51 of the Insurance Law or an attorney. If the issue in dispute includes a request for an additional attorney's fee pursuant to paragraph (6)(vi) of this subdivision, the IDA arbitrator shall be an attorney. No person shall serve as an arbitrator in any arbitration in which such person has any financial or

personal interest. An arbitrator shall disclose to the IDA any circumstance which is likely to create an appearance of bias or which might disqualify such arbitrator. Upon receipt of such information, the IDA shall immediately disclose it to the parties. If a party challenges an arbitrator, the specific grounds for the challenge shall be submitted in writing to the superintendent. The superintendent shall determine whether the arbitrator should be disqualified and shall inform the parties of that determination, which shall be conclusive. If an arbitrator should resign, be disqualified or be otherwise unable to perform necessary duties, the superintendent shall designate another arbitrator to resolve the dispute.

(v) Evidence. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may subpoena documents upon the arbitrator's own initiative or upon the request of any party when the issues to be resolved require such documents. Copies of all documents submitted to the arbitrator shall be simultaneously transmitted to the other parties.

(vi) Form and scope of award. The award, which shall be in writing and signed by the arbitrator, shall state the issues in dispute and contain the arbitrator's findings, conclusions and decision based on the Insurance Law and Insurance Department regulations. In the event that the applicant prevails in whole or in part on the claim, the arbitrator shall also direct the insurer to:

(a) reimburse the applicant for the amount of the filing fee paid, unless the filing fee had already been returned to the applicant;

(b) if due under section 5106 of the Insurance Law, pay a reasonable attorney's fee in accordance with the limitations set forth in paragraph (6) of this subdivision; and

(c) in an award of interest, the arbitrator shall compute the amount due for each element of first-party benefits in dispute, commencing 30 days after proof of claim therefor was received by the insurer and ending with the day of payment of the award, subject to the provision of section 65.15(h) (3) of this Part (stay of interest).

(vii) Time of award. The award shall be issued no later than 30 calendar days from the final date submissions must be received. Failure to adhere to the prescribed time limit shall not nullify the award.

(viii) Delivery of award to parties. The award shall be transmitted to the parties, which shall accept as delivery

of the award the placing of the award or a true copy thereof, in the mail, addressed to the parties and their designated representatives at their last known addresses, or by any other form of service permitted by law. The IDA shall note on such award or transmittal letter thereof the date of mailing, and keep a record of same.

(ix) Interpretation and application of procedures. The arbitrator shall interpret and apply these procedures insofar as they relate to the arbitrator's powers and duties. All other procedures shall be administered by the Insurance Department.

(x) Payment of award. Insurers shall, within 30 calendar days of the date of mailing of the award, either pay the amounts set forth in the award or, where grounds exist, appeal to the master arbitrator as provided for in this Part, which appeal shall stay payment of the award. The award need not be confirmed into judgment.

(xi) Financing. The Insurance Department shall bill the insurer the sum of \$100 whenever the applicant prevails in whole or in part on the disputed claim. Such fee shall be payable within 30 days after the billing date and shall be utilized to defray the operating expenses of the department.

(5) American Arbitration Association (AAA) forum procedure.

(i) Consolidation. The AAA shall, except where impracticable, consolidate disputes for which a request for arbitration has been received, if the claims involved arose out of the same accident and involve common issues of fact.

(ii) Qualifications of arbitrators for a hearing held in New York State.

(a) No-Fault Arbitrator Screening Committee. The superintendent shall appoint an advisory committee composed of six members, who will review the qualifications of applicants for the position of no-fault arbitrator for hearings to be held in New York State and review the performance of the appointed arbitrators. The screening committee shall make recommendations to the superintendent pertaining to the appointment and dismissal of no-fault arbitrators. The committee shall consist of one representative of the New York State Bar Association, one representative of the New York State Trial Lawyer's Association, two representatives of the insurance industry selected by the No-Fault Optional Arbitration Advisory Committee, a nonvoting AAA representative and a nonvoting representative of the Insurance Department. Tie votes shall be reported as such to the superintendent.

(b) A no-fault arbitrator shall be an attorney, licensed to practice law in New York State, with at

least 10 years' experience which the No-Fault Arbitrator Screening Committee has determined qualifies such attorney to review and resolve the issues involved in no-fault insurance disputes. Documentation of such experience shall be submitted to, and reviewed by, the superintendent prior to the appointment of an arbitrator.

(c) All no-fault arbitrators shall be appointed by, and serve at the pleasure of, the superintendent. An arbitrator candidate shall disclose to the superintendent any circumstance which is likely to create an appearance of bias or which might disqualify such person as an arbitrator, and the superintendent shall determine whether the candidate should be disqualified. The superintendent shall forward the name of all no-fault arbitrators to the AAA, and promptly inform the AAA of all additions to, and deletions from, the panel.

(d) No person shall, during the period of appointment as an arbitrator, have any practice or professional connection with any firm or insurer involved in any degree with automobile insurance or negligence law. The No-Fault Arbitrator Screening Committee, subject to the approval of the superintendent, shall establish any additional qualifications for appointment as a no-fault arbitrator.

(iii) Qualifications of arbitrators for a hearing held outside New York State. For a hearing which will be held outside New York State, the arbitrator shall be a licensed attorney in the State or Canadian province where the hearing is held.

(iv) Designation of arbitrator. The AAA shall designate an arbitrator who will hear the case, and shall submit the name of the arbitrator to each party to the arbitration. The AAA shall maintain a file containing the professional background of each of its no-fault arbitrators, and the information contained therein shall be available to any party to the arbitration upon written or oral request.

(v) Conflict of interest and disqualification of arbitrator. No person shall serve as an arbitrator in any arbitration in which such person has any financial or personal interest or bias. If a party challenges an arbitrator, the specific grounds for the challenge shall be submitted in writing to the AAA, which shall determine within 15 calendar days after receipt of the challenge whether the arbitrator shall be disqualified. Such determination shall be final and binding. If an arbitrator should resign, be disqualified or be otherwise unable to perform necessary duties, the AAA shall designate another arbitrator to the case.

(vi) Oaths. Arbitrators shall take an annual oath of office. Arbitrators shall require all witnesses to testify under oath or affirm that their statements are true under the penalties of perjury.

(vii) Time and place of arbitration. The arbitration hearing shall be held in the arbitrator's office or any other appropriate place selected by the AAA and, to the extent practicable, within the general locale of the applicant's residence but, in no event, more than 100 miles from such residence. The arbitrator shall fix the time and place for such hearing. At least 15 calendar days prior to the hearing, the AAA shall mail a notice of hearing to each party. Unless otherwise agreed by the parties, the hearing shall be scheduled to be held within 30 calendar days of the date of the appointment of the arbitrator. The parties to the arbitration shall not directly contact the arbitrator at any time prior to or subsequent to the hearing, but may submit to the AAA material intended for the arbitrator.

(viii) Postponements and adjournments. The arbitrator may for good cause postpone or adjourn the hearing upon request of a party or upon the arbitrator's own initiative. Each party may cause one adjournment without the payment of an adjournment fee, if the adjournment request is received by the AAA at least two business days prior to the scheduled arbitration. There shall be an adjournment fee of \$50 payable to the AAA by the party requesting any subsequent adjournment. An adjournment fee of \$100 shall be payable to the AAA by the party causing any adjournment within two business days prior to the scheduled hearing. Such fees shall be used to defray the cost of administration of the AAA forum.

(ix) Representation at arbitration. Any party may represent itself or may be represented by an attorney.

(x) Record of proceedings. A stenographic record of the arbitration proceedings shall not be required. However, a party requesting such a record shall inform the other party or parties of such intent, make the necessary arrangements, and pay the cost thereof directly to the person or agency making such record. Any other party or parties to the arbitration shall be entitled to a copy of such record upon agreeing to share the cost of the total stenographic expense. Whether or not a stenographic record of the proceeding is made, the arbitrator shall, at a minimum, record the exhibits offered by each party and the names and addresses of all parties and witnesses.

(xi) Interpreters. Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of such services.

(xii) Attendance at hearings. Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the arbitrator to permit the attendance of any other persons.

(xiii) Evidence.

(a) The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary.

(b) The arbitrator or an attorney of record in the arbitration may subpoena witnesses or documents upon the arbitrator's own initiative or upon the request of any party, when the issues to be resolved require such witnesses or documents.

(c) Copies of all documents to be submitted to the arbitrator shall be simultaneously transmitted to the other parties at least seven calendar days prior to the hearing. The arbitrator shall determine if all parties received such documents prior to the commencement of the hearing.

(d) If a party to the arbitration intends to introduce an expert witness at the hearing, the identity of the expert witness must be given to all parties at least seven calendar days prior to the hearing.

(xiv) Arbitration in the absence of a party. The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a postponement or adjournment. An award shall not be made in favor of an appearing party solely on the default of another party. The arbitrator shall require the appearing party to submit such evidence as may be required for the making of an award. The arbitrator may require the appearance of a party at the hearing if the arbitrator determines that the party's appearance is necessary to realize a fair and just resolution of the dispute and to afford all parties due process.

(xv) Reopening of hearing. The hearing may be reopened by the arbitrator, for good cause, at any time before the award is made.

(xvi) Time of award. The award shall be made and delivered no later than 30 calendar days from the date the hearing is completed. Failure to adhere to this time limit shall not nullify the award.

(xvii) Form and scope of award. The award shall be in writing in a format approved by the superintendent. It shall

state the issues in dispute and contain the arbitrator's findings and conclusions based on the Insurance Law and Insurance Department regulations. It shall be signed by the arbitrator and shall be transmitted to the parties by the AAA with a copy to the Insurance Department. The award shall contain a decision on all issues submitted to the arbitrator by the parties. In the event that the applicant prevails in whole or in part on the claim, the arbitrator shall also direct the insurer to:

(a) reimburse the applicant for the amount of the filing fee paid, unless the filing fee had already been returned to the applicant;

(b) if due under section 5106 of the Insurance Law, pay a reasonable attorney's fee in accordance with the limitations set forth in paragraph (6) of this subdivision; and

(c) in an award of interest, compute the amount due for each element of first-party benefits in dispute, commencing 30 days after proof of claim therefor was received by the insurer and ending with the date of payment of the award, subject to the provisions of section 65.15(h) (3) of this Part (stay of interest).

(xviii) Award upon settlement.

(a) If the parties settle their dispute during the course of arbitration, the arbitrator shall set forth the terms of the agreed settlement in an award, which shall provide that the parties agree that the settlement is final and binding and shall not be subject to review by a master arbitrator or by a court. If an attorney's fee is due under section 5106 of the Insurance Law, such fee shall be awarded in accordance with the limitations set forth in paragraph (6) of this subdivision. The award shall be signed by the arbitrator and shall be transmitted to the parties by the AAA, with a copy to the Insurance Department.

(b) The insurer shall provide the arbitrator with the terms of settlement no later than 30 calendar days following the scheduled date of the hearing.

(xix) Delivery of award to parties. The parties shall accept as delivery of the award the placing of the award or a true copy thereof in the mail, addressed to the parties or their designated representatives at their last known addresses, or by any other form of service permitted by law. The AAA shall note on such award or transmittal letter thereof the date of mailing and keep a record of same.

(xx) Interpretation and application of procedures. The arbitrator shall interpret and apply these procedures insofar as they relate to the arbitrator's powers and

duties. All other procedures shall be interpreted by the AAA, subject to consultation with and approval by the superintendent.

(xxi) Alternative legal remedies. The AAA shall not be made a party to a court proceeding relating to an arbitration award unless the AAA's presence as a party is pertinent to the issues raised in the litigation. The participation of a party in an arbitration proceeding shall be a waiver of any claim against an arbitrator or the AAA for any act or omission in connection with any arbitration conducted under these rules. The AAA shall transmit to the superintendent copies of any legal papers served upon AAA or an arbitrator, relating to any stay or appeal of an arbitration.

(xxii) Payment of award. Insurers shall, within 30 calendar days of the date of mailing of the award, either pay the amounts set forth in the award or, where grounds exist, appeal to the master arbitrator as provided for in this Part, which appeal shall stay payment of the award. The award need not be confirmed into judgment.

(xxiii) Arbitrator's compensation. Arbitrators shall contract on an annual basis with the AAA. The rate of annual compensation shall be determined by the AAA, after consultation with the No-Fault Arbitrator Screening Committee. Arbitrators shall be independent contractors, and shall not be employees or agents of the AAA.

(xxiv) Financing.

(a) The cost of administering the AAA arbitration forum shall be paid annually by insurers (including self-insurers and MVAIC) to the AAA upon receipt of a statement therefrom. This cost shall be distributed among insurers in an equitable manner approved by the Superintendent of Insurance. This distribution shall, to the extent practicable, be a function of the degree to which an insurer is named as a respondent in AAA arbitration proceedings.

(b) Semiannually, commencing July 1, 1988 and continuing every six months thereafter, the AAA shall prepare an estimate of the expenses expected to be incurred for the operation of the AAA forum during the subsequent six-month period. The projected cost of the AAA forum shall be assessed on a proportionate basis to those insurers named as respondents on cases forwarded to the AAA in the preceding calendar year and shall be subject to the approval of the superintendent. The AAA shall send to each applicable insurer a bill for the amount due and any payment due shall be made to the AAA within 30 days after billing date.

(c) On an annual basis, as of December 31st of each year, the AAA shall prepare a detailed analysis of the actual costs incurred for the operation of the AAA forum. This analysis shall be forwarded to the No-Fault Optional Arbitration Advisory Committee and the superintendent on or before April 30th of each year. The No-Fault Optional Arbitration Advisory Committee shall notify the AAA and the superintendent whether it accepts or rejects the AAA's cost analysis in whole or in part. In the event that the AAA and the No-Fault Optional Arbitration Advisory Committee cannot resolve any differences that may exist, such differences will be referred to the superintendent for resolution. The superintendent's decision shall be binding on the AAA and insurers.

(d) Once the AAA submits a final cost analysis that has either been approved by the No-Fault Optional Arbitration Advisory Committee or resolved by the superintendent in the event of a dispute, the AAA shall send to each applicable insurer an accounting of the actual assessment. Any adjustment shall be made to the bill for the subsequent estimated assessment, as illustrated by the following example:

EXAMPLE

(1) Total AAA cases closed during year	6,000
(2) Cases in which Insurer A was named as a respondent in the AAA arbitration proceeding	250
(3) Insurer A's Assessment Percentage=(2)/(1)	4.167%
(4) Actual Expenses of the AA	\$2,500,000
(5) Insurer A's actual expense=(3)x(4)	\$ 104,175
(6) Insurer A's Estimated Assessment	\$102,000
(7) Insurer A's Debit or (Credit)=(5)-(6)	\$2,175

(6) Limitations on attorney's fees pursuant to section 5106 of the Insurance Law. The following limitations shall apply to the payment by insurers of applicants' attorney's fees for services necessarily performed in the resolution of no-fault disputes:

(i) If an arbitration was initiated or a court action was commenced by an attorney on behalf of an applicant and the claim or portion thereof was not denied or overdue at the time the arbitration proceeding was initiated or the action was commenced, no attorney's fees shall be granted.

(ii) If the claim is resolved by the Insurance Department at any time prior to transmittal to an arbitration forum and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited as follows:

(a) If the resolved claim was initially denied, the attorney's fee shall be \$60.

(b) If the resolved claim was overdue but not denied, the attorney's fee shall not exceed the amount of

first-party benefits and any additional first-party benefits, plus interest thereon, which the insurer agreed to pay and the applicant agreed to accept in full settlement of the dispute submitted, subject to a maximum fee of \$ 60.

(c) In disputes solely involving interest, the attorney's fee shall be equal to the amount of interest which the insurer agreed to pay and the applicant agreed to accept in full settlement of the dispute submitted, subject to a maximum fee of \$ 60.

(iii) Except as provided in subparagraphs (i) and (ii) of this paragraph, the minimum attorney's fee payable pursuant to this section shall be \$ 60.

(iv) For disputes subject to AAA arbitration where one of the issues involves a policy issue as enumerated on the prescribed denial of claim form (NYS form N-F 10), subject to the provisions of subparagraphs (i) and (iii) of this paragraph, the attorney's fee for the arbitration of all issues shall be limited as follows:

(a) for preparatory services relating to the arbitration forum or court, the attorney shall be entitled to receive a fee of up to \$70 per hour, subject to a maximum fee of \$1,400; and

(b) in addition, an attorney shall be entitled to receive a fee of up to \$80 per hour for each personal appearance before the arbitration forum or court.

(v) For all other disputes subject to AAA and IDA arbitrations, subject to the provisions of subparagraphs (i) and (iii) of this paragraph, the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or court, subject to a maximum fee of \$850. If the nature of the dispute results in an attorney's fee which could be computed in accordance with the limitations prescribed in both subparagraph (iv) and this subparagraph, the higher attorney's fee shall be payable.

(vi) Notwithstanding the limitations listed in this paragraph, if the arbitrator or a court determines that the issues in dispute were of such a novel or unique nature as to require extraordinary skills or services, the arbitrator or court may award an attorney's fee in excess of the limitations set forth in this paragraph. An excess fee award shall detail the specific novel or unique nature of the dispute which justifies the award. An excess award of an attorney's fee by an arbitrator shall be appealable to a master arbitrator.

(vii) If a dispute involving an overdue or denied claim is resolved by the parties after it has been forwarded by the Insurance Department to the appropriate arbitration forum or after a court action has been commenced, the claimant's attorney shall be entitled to a fee which shall be computed in accordance with the limitations set forth in this paragraph.

(viii) No attorney shall demand, request or receive from the insurer any payment of fees not permitted by this paragraph.*

(7) Independent health consultant.

(i) The AAA shall maintain a list of independent health consultants, who will review medical evidence or examine the eligible injured person upon the request of an IDA arbitrator or an AAA arbitrator.

(ii) The independent health consultant shall be selected by the AAA from its list and, to the extent practicable, shall be a specialist in the field requested by the arbitrator. If a medical examination is requested by the arbitrator, such examination shall be conducted at the health consultant's office, which shall be located in the general locale of the applicant's residence, or at a place agreed upon by the parties and the consultant.

(iii) Within 15 calendar days after the review of medical evidence or examination of the eligible injured person, the health consultant shall submit to the AAA a written report which shall contain the consultant's advisory opinion for consideration by the arbitrator. The AAA shall submit such report to the arbitrator and the parties.

(iv) The independent health consultant's fee shall include the written report and be paid by the AAA, with the cost of such fee charged as an administrative expense of the AAA forum.

(v) No person shall serve as an independent health consultant in any arbitration in which such person has any financial or personal interest or bias. An independent health consultant shall disclose to the AAA any circumstance which is likely to create an appearance of bias or which might serve to disqualify such expert. Upon receipt of such information, the AAA shall immediately disclose it to the parties. If a party challenges a health consultant, the specific grounds for the challenge shall be submitted in writing. The AAA shall determine whether the health consultant should be disqualified and shall inform the parties of its decision, which shall be final and binding. If a health consultant should resign, be disqualified or be otherwise unable to perform necessary duties, the AAA shall appoint another health consultant to the case.

(8) Witness fees.

(i) No witness fee shall be payable to a person who is a party to the arbitration.

(ii) The arbitrator shall not approve the payment of a fee to a witness appearing on behalf of an applicant or an assignee, unless the witness was subpoenaed by the arbitrator or, prior to appearance, the witness's presence was determined by the arbitrator to be necessary for resolution of the dispute.

(iii) Whenever a witness fee is determined by the arbitrator to be payable, the cost thereof shall be charged as an administrative expense of the AAA forum.

(iv) Any witness fee awarded pursuant to subparagraphs (ii) and (iii) of this paragraph shall be determined as follows:

(a) If the witness is testifying as an expert, the fee shall be calculated on the basis of such witness's documented usual and customary hourly charge for an appearance, plus necessary verified disbursements.

(b) Any other witness shall only be entitled to reimbursement for verified expenses and economic losses necessarily incurred in connection with an appearance before the arbitrator.

* FOOTNOTE: Attorneys should be aware of the Appellate Division Rules prohibiting contingent fees in connection with the collection of first party no-fault benefits (22 NYCRR 603.7 (e) (7), 691.20 (e) (7) and 806.12(f).)

* NB Reinstated effective February 1, 2000 per Medical Society of New York v. Neil D. Levin as Superintendent of Insurance, 712 NY2d 745 (Supreme Court, New York County).

Section statutory authority: Insurance Law, §5106, §A51, §A52, §5103 Renumbered 65.17 to be 65.18 on 6/08/88; added 65.17 on 6/08/88; amended 65.17 on 7/30/91; amended 65.17 on 5/15/92; amended 65.17 (b)(1)(iv) on 11/25/92; amended 65.17 (b)(5)(xvii)(c) on 11/25/92; amended 65.17 (1) on 8/16/95; repealed 65.17X on 11/03/99; amended 65.17 heading on 12/01/99, expired 90 days after filing; amended 65.17 heading on 1/20/00, expired 90 days after filing; amended 65.17 heading on 4/04/01, expired 90 days after filing; amended 65.17 heading on 6/25/01, expired 90 days after filing; amended 65.17 heading on 9/18/01, expired 90 days after filing; amended 65.17 heading on 12/12/01, expired 90 days after filing; amended 65.17 heading on 3/08/02, expired 90 days after filing.