

Regulatory Impact Statement for the Thirty-Third Amendment to 11 NYCRR 68 (Insurance Regulation 83).

1. Statutory authority: Sections 202 and 302 of the Financial Services Law, and Sections 301, 2601, 5221, and Article 51 of the Insurance Law.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the “Superintendent”) to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents, and Section 5108 specifically authorizes the Superintendent to adopt or promulgate fee schedules for health care benefits payable under the no-fault system.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits in order to contain the costs of no-fault insurance. To that end, in accordance with Insurance Law section 5108(b), the Superintendent adopted those fee schedules that are promulgated by the Chairman of the Workers' Compensation Board (the “Chairman”). In addition, the Superintendent, after consulting with the Chairman and the Commissioner of Health, established fee schedules for those services for which schedules have not been prepared and established by the Chairman.

3. Needs and benefits: The current rule provides that the maximum permissible charge for health care services rendered outside this State to a person eligible for New York no-fault benefits shall be the prevailing

fee in the geographic location of the provider. The proposed rule limits insurers' reimbursement of no-fault health care services provided outside the State at the election of a New York State eligible injured person to the fees set forth in the region of this State that has the highest value in the fee schedule for those services. An exception to the proposed amendment would be when the health care services constitute emergency care, are provided to an eligible injured person who does not reside in this State, or are provided to an eligible injured person who is a resident of this State and who is outside the State for a continuous period of at least 14 days for reasons unrelated to the treatment. In such cases, the current rule will continue to apply.

There has been no uniform interpretation of the prevailing fees outside the State. As a result, no-fault claimants are being referred to certain health care providers outside New York, usually in New Jersey, who take advantage of the absence of specific fee schedules and submit excessive charges under exaggerated claims, well above the corresponding New York State fee schedules applicable to those health care services rendered. Since basic personal injury protection coverage under no-fault is only \$50,000, the higher the bills, the sooner the injured person will find coverage exhausted. This results in no-fault benefits available to injured persons being depleted more quickly, to their detriment.

Representatives of both the insurance industry and the medical profession have conveyed to the Department that amending the current regulation is necessary in order to close these loopholes that have resulted in increased no-fault claim bills. In addition, numerous arbitrators that serve on the Department's no-fault arbitration panel have indicated that this issue has generated a significant number of disputes due to the significant disparity between the excessive fees being charged by out of state health care providers and those permitted under the current rule. By setting a maximum fee that out-of-state health care providers may receive as reimbursement for no-fault-related health services, this amendment should lead to reduced arbitration and litigation costs for insurers and self-insurers, which are typically passed to consumers in the form of higher premiums, as well as help to stem the rapid depletion of no-fault benefits available to eligible injured persons.

4. Costs: This rule imposes no compliance costs upon state or local governments. However, the rule will impact out-of-state health care providers who will now be reimbursed for health services pursuant to the applicable fee schedule prescribed in the proposed rule.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district. However, local governments who are self-insurers for no-fault coverage shall only be required to reimburse out-of-state health care providers at the rates prescribed in the proposed rule, rather than the subjective prevailing rate in the geographic location of the out-of-state provider.

6. Paperwork: This rule does not impose any additional paperwork on any persons affected by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: In order to effectuate the cost savings goals of New York's no-fault laws, the Department has determined that there are no other viable alternatives to this rule.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: The rule will be effective 90 days after publication of the notice of adoption in the State Register, so as to provide enough lead time for insurers, self-insurers and out-of-state licensed health care providers to obtain copies of the applicable fee schedule and implement the rule.