

Assessment of public comments for the Thirty-Third Amendment to 11 NYCRR 68 (Insurance Regulation 83).

The Department of Financial Services (“Department”) received four comments from various property/casualty insurers and trade associations comprised of New York State automobile insurers in response to its publication of the proposed rule in the New York State Register.

All of the commenters applauded the Department for its proposed amendments to Insurance Regulation 83, which addresses the ongoing exploitation of New York’s no-fault system by out-of-state providers who, taking advantage of current provisions in the regulation, submit grossly inflated bills for services rendered, thus quickly depleting the \$50,000 no-fault coverage limit available to an eligible injured party (“EIP”). Commenters asserted that this abuse results in numerous fee disputes in arbitration and the courts, and drives up insurance costs.

Summaries of the comments received on the proposed amendment and the Department’s responses thereto are as follows:

Proposed 11 NYCRR Section 68.6(c) (definition of “prevailing fee”)

Comments

Two commenters asserted that clarification is needed with respect to the manner in which proposed section 68.6 (c) relates to the definition of “prevailing fee,” referenced in subdivisions (a) and (b). The concern is that subdivision (c) could be interpreted as a replacement for subdivisions (a) and (b), rather than merely defining “prevailing fee” in subdivisions (a) and (b). One commenter proposed that the wording should be amended as follows: “... the DEFINITION OF prevailing fee IN SECTIONS (A) AND (B) shall be the amount prescribed in that jurisdiction’s fee schedule for the respective service”. [Emphasis in original.]

Department’s Response

The Department has amended subdivision (c) to clearly define the amount that an insurer is obligated to reimburse an out-of-state provider, and has clarified the meaning of “prevailing fee.”

Proposed 11 NYCRR Section 68.6(a)(1)(ii) and (iii) (services for which the proposed reimbursement is eligible)

Comments

One commenter suggested that the word “or” be substituted for the word “and” in the following passage: “(a)(1) If a professional health service reimbursable under [section 5102(a)(1) of the] Insurance Law section 5102(a)(1) is performed outside [New York] this State, the [permissible charge] amount that the insurer shall reimburse for [such] the service shall be the lower of the amount charged by the provider (and) or the prevailing fee in the geographic location of the provider with respect to services.” The commenter suggested that the change in wording would avoid confusion.

Department’s Response

The Department believes that the wording as written is clear in its meaning and intent, so that when a professional health service is performed outside of New York, the insurer’s reimbursement rate will be either one of two distinct charges between the lower of the amount charged by the provider and the prevailing fee in the geographic location of the provider, whichever is lower.

Proposed 11 NYCRR Section 68.6(a)(2) (definition of “emergency care”)

Comments

One commenter, which represents hospitals in No-Fault disputes, argued that the inclusion of a 48-hour time frame after a motor vehicle accident until the time of hospital admission for the performance of emergency medical services, in order to be considered as “emergency care” for purposes of billing for out-of-state health services rendered, undermines the definition of emergency medical services for the purpose of insurance reimbursement to hospitals in New York. The commenter therefore argued that there should not be any time limitation established.

Department’s Response

The Department disagrees that there will be an adverse impact upon New York hospitals because of this out-of-state limitation. The amendment makes explicit that the 48-hour time frame will only address very limited

circumstances, in which emergency services are provided a few days after an accident occurs. In many instances, a New York resident injured in, for example, New Jersey would have returned to New York and would not then visit a New Jersey hospital for emergency treatment, but would instead visit a local New York hospital for emergency services. In fact, the services provided after 48 hours will still be billed and paid for as emergency services, based upon the applicable rate. The amendment should have no impact upon treatment provided to injured persons.