

**NEW YORK STATE
INSURANCE DEPARTMENT**

**FOURTH AMENDMENT TO REGULATION 68-D
(11 NYCRR 65-4)**

ARBITRATION

I, Eric R. Dinallo, Acting Superintendent of Insurance of the State of New York, pursuant to the authority granted under Sections 201, 301, 2601, 5106, and 5221 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law, do hereby promulgate the following Fourth Amendment to subpart 65-4 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 68-D) to take effect upon publication in the State Register, to read as follows:

(Matter in bracket is deleted; new matter is underlined)

Subdivision (b) of Section 65-4.5 is amended to read as follows:

(b) *Special expedited arbitration.*

(1) Special expedited arbitration shall be available for disputes involving [the]:

(i) The failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and

(ii) The proper application of subdivisions (b) and (c) of Section 65-3.12 of this Part and of paragraphs (2), (3) and (4) of Section 65-3.13(a) of this Part.

(2) (i) An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.

(ii)(a) In regard to disputes related to subdivisions (b) and (c) of Section 65-3.12 or paragraphs (2), (3) and (4) of section 65-3.13(a) of this Part, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a Denial of Claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.

(ii)(b) Special expedited arbitration required by clause (a) of this subparagraph shall only designate an insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and

regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of this Subpart.

~~(3)~~ (3) At the time of [such] a request for special expedited arbitration, the applicant shall make a complete written submission supporting his or her position. [No] Any further written submissions shall be accepted [unless requested by] into evidence at the discretion of the arbitrator.

~~[(3)]~~ (4) Applications for special expedited arbitration shall be submitted to the conciliation center of the designated organization and shall comply with the requirements for initiation of arbitration contained in [paragraph 65-4.2(b)(1)] subparagraph 65-4.2(b)(1)(iii) of this Subpart.

~~[(4)]~~ (5) The applicant's submission shall be forwarded by the conciliation center to the insurer within 3 business days of receipt. The insurer may provide the center with reasonable special mailing or transmittal instructions to facilitate the processing of these arbitration requests.

~~[(5)]~~ (6) The insurer shall respond in writing to the applicant's submission within 10 business days after the mailing by the center. No further submissions shall be accepted unless requested by the arbitrator.

~~[(6)]~~ (7) The dispute shall be resolved solely upon the basis of written submissions unless the arbitrator concludes that the issues in dispute require an oral hearing.

~~[(7)]~~ (8) The arbitrator shall issue a written decision within 10 business days after receipt of all written submissions from the parties or at the conclusion of an oral hearing.

~~[(8)]~~ (9) For the purpose of special expedited arbitration, the superintendent may appoint arbitrators, qualified in accordance with the provisions of this section, to serve on a per diem basis. Such arbitrators shall contract with the designated organization. The rate of per diem compensation shall be determined by the designated organization, after consultation with the no-fault arbitrator screening committee subject to the approval of the superintendent. Such arbitrators shall be independent contractors, and shall not be employees or agents of the designated organization or the Insurance Department.

I, Eric R. Dinallo, Acting Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Fourth Amendment to subpart 65-4 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 68-D), entitled "Arbitration", promulgated by me on February 22, 2007, pursuant to the authority granted by Sections 201, 301, 2601, 5106, and 5221 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on December 27, 2006. No other publication or prior notice is required by statute.

Eric R. Dinallo
Acting Superintendent of Insurance

February 22, 2007