

NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES

11 NYCRR 65-5  
(INSURANCE REGULATION 68-E)

UNAUTHORIZED PROVIDERS OF HEALTH SERVICES

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Section 202 and Articles 3 and 4 of the Financial Services Law, and Sections 301, 5109, and 5221 and Articles 4 and 51 of the Insurance Law, do hereby promulgate the following new subpart 65-5 to Part 65 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Insurance Regulation 68-E) to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

**Section 65-5.0 Preamble.**

(a) For years, certain owners and operators of professional service corporations or other similar business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. This fraud costs no-fault insurers tens if not hundreds of millions of dollars, which insurers ultimately pass on to New York consumers in the form of higher automobile insurance premiums. It also threatens the affordability of health care and the public's health, safety, and welfare.

(b) Insurance Law section 5109 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health and the Commissioner of Education, to establish standards and procedures for the investigation and suspension or removal of a provider of health services' authorization to demand or request payment for health services provided under Insurance Law article 51. This Subpart implements Insurance Law section 5109.

**Section 65-5.1 Definitions.**

As used in this Subpart, the following terms shall have the meaning ascribed to them:

(a) "*Health services*" or "*medical services*" means services, supplies, therapies, or other treatments as specified in Insurance Law section 5102(a)(1)(i), (ii), or (iv).

(b) "*Insurer*" shall have the meaning set forth in Insurance Law section 5102(g), and also shall include the motor vehicle accident indemnification corporation and any company or corporation providing coverage for basic economic loss, as defined in Insurance Law section 5102(a), pursuant to Insurance Law section 5103(g).

(c) "*Noticing commissioner*" means the Commissioner of Health or the Commissioner of Education, whomever sends a notice of hearing under this Subpart.

(d) “*Provider of health services*” or “*provider*” means a person or entity who or that renders or has rendered health services.

(e) “*Superintendent*” means the Superintendent of Financial Services.

**Section 65-5.2 Investigations.**

(a) The superintendent may investigate any reports made pursuant to Insurance Law section 405, allegations, or other information in the superintendent’s possession, regarding providers of health services engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). After conducting an investigation, the superintendent will send to the Commissioner of Health or the Commissioner of Education, as appropriate, a list of any providers who or that the superintendent believes may have engaged in any of the unlawful activities set forth in Insurance Law section 5109(b), together with a description of the grounds for inclusion on the list. Within 45 days of receipt of the list, the Commissioner of Health or Commissioner of Education shall notify the superintendent in writing whether he or she confirms that the superintendent has a reasonable basis to proceed with notice and a hearing for determining whether any of the listed providers should be deauthorized from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51.

(b) The Commissioner of Health and the Commissioner of Education also may investigate any reports, allegations, or other information in their possession, regarding providers engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). If either commissioner conducts an investigation, then that commissioner, or the superintendent, if requested by the commissioner, shall be responsible for providing notice and an opportunity to be heard to the providers of health services that they are subject to deauthorization from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51. Nothing in this section, however, shall preclude the superintendent, Commissioner of Health, or Commissioner of Education from conducting joint investigations and hearings, or the Commissioner of Health or Commissioner of Education from conducting professional misconduct proceedings against the providers of health services pursuant to the Public Health Law or Title VIII of the Education Law.

**Section 65-5.3 Notice; how given.**

(a)(1) The superintendent, Commissioner of Health, or Commissioner of Education shall give notice of any hearing to a provider at least 30 days prior to the hearing, in writing, either by delivering it to the provider or by depositing the same in the United States mail, postage prepaid, registered or certified, and addressed to the last known place of business of the provider or if no such address is known, then to the residence address of the provider.

(2) The notice shall refer to the applicable provisions of the law under which action is proposed to be taken and the grounds therefor, but failure to make such reference shall not render the notice ineffective if the provider to whom it is addressed is thereby or otherwise reasonably apprised of such grounds.

(3) It shall be sufficient for the superintendent or noticing commissioner to give to the provider:

(i) notice of the time and the place at which an opportunity for hearing will be afforded; and

(ii) if the person appears at the time and place specified in the notice or any adjourned date, a hearing.

(b) At least ten days prior to the hearing date fixed in the notice, the provider may file an answer to any charges with the superintendent or noticing commissioner.

(c) Any hearing of which such notice is given may be adjourned from time to time without other notice than the announcement thereof at such hearing.

(d) The statement of any regular salaried employee of the Department of Financial Services, Department of Health, or Department of Education, subscribed and affirmed by such employee as true under the penalties of perjury, stating facts that show that any notice referred to in this section has been delivered or mailed as hereinbefore provided, shall be presumptive evidence that such notice has been duly delivered or mailed, as the case may be.

### **Section 65-5.4 Hearings.**

(a) Unless otherwise provided, any hearing may be held before the superintendent, Commissioner of Health or Commissioner of Education, any deputy, or any designated salaried employee of the Department of Financial Services, Department of Health, or Department of Education who is authorized by the superintendent or noticing commissioner for such purpose. The hearing shall be noticed, conducted, and administered in compliance with the State Administrative Procedure Act.

(b) The person conducting the hearing shall have the power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence, and shall report his or her findings, in writing, to the superintendent or noticing commissioner with a recommendation. The report, if adopted by the superintendent or noticing commissioner, may be the basis of any determination made by the superintendent or noticing commissioner.

(c) Every such hearing shall be open to the public unless the superintendent or noticing commissioner, or the person authorized by the superintendent or noticing commissioner to conduct such hearing, shall determine that a private hearing would be in the public interest, in which case the hearing shall be private.

(d) Every provider affected shall be permitted to: be present during the giving of all the testimony; be represented by counsel; have a reasonable opportunity to inspect all adverse documentary proof; examine and cross-examine witnesses; and present proof in support of the provider's interest. A stenographic record of the hearing shall be made, and the witnesses shall testify under oath.

(e) Nothing herein contained shall require the observance at any such hearing of formal rules of pleading or evidence.

### **Section 65-5.5 Report of hearing and findings.**

(a) Pending a final determination by the superintendent, Commissioner of Health, or Commissioner of Education, if the superintendent or noticing commissioner believes that the provider has engaged in any activity set forth in Insurance Law section 5109(b), then the superintendent or noticing commissioner may temporarily

prohibit the provider from demanding or requesting any payment for medical services under Insurance Law article 51 for up to 90 days from the date of the notice of such temporary prohibition pursuant to Insurance Law section 5109(e).

(b) The hearing officer shall issue to the superintendent or noticing commissioner the report described in Section 65-5.4(b) of this Subpart, with a recommendation. The superintendent or noticing commissioner may adopt, modify, remand, or reject the hearing officer's report and recommendation.

(c)(1) Upon consideration of the hearing officer's report and recommendation, the superintendent or noticing commissioner may issue a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51 and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Insurance Law article 51, for a period specified by the superintendent or noticing commissioner.

(2) If the superintendent or noticing commissioner issues a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51 and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Insurance Law article 51, for a period longer than three years, then the provider may, after the expiration of three years, submit a written application to the superintendent or noticing commissioner requesting that the superintendent or noticing commissioner reconsider his or her order. The written application shall explain why revising the order would not jeopardize the health, safety, and welfare of the people of this State.



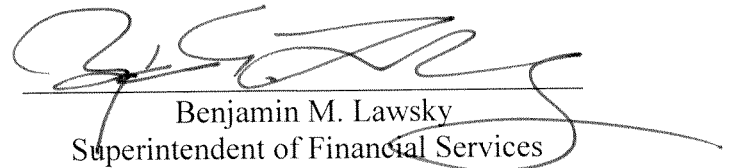
NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is a new subpart 65-5 to Part 65 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Insurance Regulation 68-E), entitled "Unauthorized Providers of Health Services," signed by me on October 24, 2013, pursuant to the authority granted by Section 202 and Articles 3 and 4 of the Financial Services Law, and Sections 301, 5109, and 5221 and Articles 4 and 51 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to Section 202(6) of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on August 7, 2013. No other publication or prior notice is required by statute.

  
Benjamin M. Lawsky  
Superintendent of Financial Services

Date: October 24, 2013