

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES**

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

**ARBITRATION**

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 5201 and Article 51 of the Insurance Law, do hereby promulgate the following Sixth Amendment to Subpart 65-4 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 68-D), to take effect upon publication in the State Register, to read as follows:

**(NEW MATTER IS UNDERSCORED; MATTER IN BRACKETS IS DELETED)**

Section 65-4-6 is amended to read as follows:

**Section 65-4.6 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:

(a) 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.

(b) If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator 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:

(1) If the resolved claim was initially denied, the attorney's fee shall be \$80.

(2) 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.

(3) 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.

(4) Notwithstanding the limitations of this subdivision, the insurer may, at its discretion, offer a higher attorney's fee, subject to the limitations of subdivisions (d) or (e) of this section, in order to resolve the dispute during conciliation.

(c) Except as provided in subdivisions (a) and (b) of this section, the minimum attorney's fee payable pursuant to this subpart shall be \$60.] to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360.

[(d)] (c) For disputes subject to arbitration [by the No-Fault Arbitration forum] or court proceedings, where one of the issues involves a policy issue as enumerated on the prescribed denial of claim form (NYS form NF-10), subject to [the provisions of subdivisions (a) and (c) of] this section, the attorney's fee for the arbitration or litigation of all issues shall be limited [as follows:] [(1) for preparatory services relating to the arbitration forum or court, the attorney shall be entitled to receive] to a fee of up to \$70 per hour, subject to a maximum fee of \$1,400.]; and

(2) in] 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.

[(e)] (d) For all other disputes subject to arbitration or court proceedings, subject to the provisions of [subdivisions] subdivision (a) [and (c)] of this section, the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding [awarded by the arbitrator or court], subject to a maximum fee of [\$850] \$1,360. If the nature of the dispute results in an attorney's fee [which] that could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable. [However, if the insurer made a written offer pursuant to section 65-4.2(b)(4) of this Subpart and if such offer equals or exceeds the amount awarded by the arbitrator, the attorney's fee shall be based upon the provisions of subdivision (b) of this section.

(f) (e) Notwithstanding the limitations [listed] specified in this section, 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 section. An excess fee award shall detail the specific novel or unique nature of the dispute [which] that justifies the award. An excess award of an attorney's fee by an arbitrator shall be appealable to a master arbitrator.

[(g)] (f) If a dispute involving an overdue or denied claim is resolved by the parties after it has been forwarded [by the Department of Financial Services or the] to the conciliation center [to] of the appropriate arbitration forum or after a court action has been commenced, the [claimant's] attorney for the applicant shall be entitled to a fee, which shall be computed in accordance with the limitations set forth in this section.

[(h)] (g) No attorney shall demand, request or receive from the insurer any payment of fees not permitted by this section.<sup>FNI</sup>

[(i)] (h) Notwithstanding any other provision of this section and with respect to billings on and after the effective date of this regulation, if the charges by a health care provider, who is an applicant for benefits, exceed the limitations contained in the schedules established pursuant to section 5108 of the Insurance Law, no attorney's fee shall be payable by the insurer. This provision shall not be applicable to charges that involve interpretation of such schedules or inadvertent miscalculation or error.

(FN1) Attorneys should be aware of the Appellate Division Rules prohibiting fees in connection with the collection of first-party no-fault benefits (22 NYCRR sections 603.7(e)(7), 691.20(e)(7), 806.13(f) and 1022.31(f)).



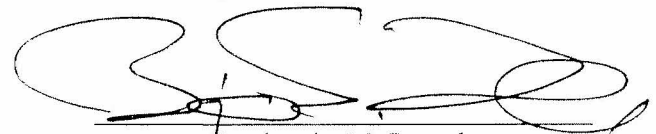
NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the Sixth Amendment to Part 65-4 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 68-D), signed by me on January 20, 2015, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 5201 and Article 51 of the Insurance 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 July 23, 2014. No other publication or prior notice is required by statute.



Benjamin M. Lawsky  
Superintendent of Financial Services

Date: January 20, 2015