

Regulatory Impact Statement for the Thirty-Fourth 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(b) specifically authorizes the Superintendent to adopt or promulgate fee schedules for health care benefits payable under the no-fault system and subsection (c) prohibits a provider of health services, as defined in Article 51, in addition to the amount authorized pursuant to such section.

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, and in accordance with Insurance Law section 5108(b), the Superintendent adopted those fee schedules that are promulgated by the Chair of the Workers' Compensation Board (the “Chair”). In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which schedules have not been prepared and established by the Chair.

3. Needs and benefits: The workers' compensation fee schedules initially adopted in 1977 underwent annual revisions until the mid-1990s in order to reflect inflationary increases and to incorporate other necessary enhancements. Such periodic revisions to the various fee schedules were promulgated by the Superintendent through amendments to Insurance Regulation 83. The promulgation of the 26th amendment to Regulation 83 in 2002 no longer made it necessary to promulgate an amendment for the purpose of ensuring fee schedule parity between the two insurance systems for those health care provider specialties for which the Chair has established fee schedules. Rather, the amendment implemented a regulatory mandate that changes to fee schedules promulgated by the Chair would automatically apply to the same health care provider specialties under the no-fault insurance system.

The Chair has proposed to increase the fees to the various fee schedules applicable for all health providers for the first time in more than two decades. This proposal will contain varied fee schedule rate increase across all health care provider specialties. Physical therapists, acupuncturists and chiropractor specialties will incur some of the highest increases at approximately 25%. Historically, the largest proportion of no-fault health provider-related costs has been attributable to these specialties. Furthermore, unlike workers' compensation, over 90% of loss costs in no-fault can be attributed to payment of claims from services rendered by health providers. Therefore, it is reasonable to conclude that the overall impact of the new fee schedule increases will be skewed significantly higher for no-fault as compared to workers' compensation.

The workers' compensation fee schedule changes will be applicable to claims with a date of service occurring on or after the effective date of the Chair's promulgation of the new fee schedules, even if the accident date occurred prior to that date. This could not have been anticipated by motor vehicle insurers when premium rates were established for policyholders. Therefore, in order to mitigate the effect of unforeseen rate increases, the Superintendent deems it necessary to delay the implementation of the Chair's fee schedule changes for a period of 18 months after the effective date of the increases established by the Chair so that the underwriting

impact will be reduced and costs will be contained. The amendment permits the Superintendent upon notice in the State Register to adopt any such charge increases prior to the expiration of the 18-month period if the Superintendent determines that it would be in the best interest of consumers, which allows the Superintendent to monitor the market.

4. Costs: This amendment does not impose any additional costs on no-fault insurers, including self-insurers and self-insured local governments, and health care providers affected by this rule that are not already required by the current regulation. This regulation does not apply to any state governments.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

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 become effective immediately; however, the 18-month period delaying the fee increases for no-fault should commence on October 1, 2018 when the Chair is expected to establish the revised fee schedules for workers' compensation.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Thirty-Fourth Amendment to 11 NYCRR 68 (Insurance Regulation 83).

1. Effect of the rule: This amendment to the regulation applies to no-fault insurers, which includes self-insurers and self-insured local governments, and health care providers.

Most health care providers, other than large institutions, such as hospitals, fall within the definition of a “small business” as defined by State Administrative Procedure Act Section 102 because most health care providers are both independently owned and employ fewer than 100 persons. As such, the Department finds that this rule will have a temporary adverse economic impact on some small businesses as it will delay the fee schedule increases that will go into effect for the reimbursement of health services rendered to workers’ compensation patients, in order to contain costs incurred under current policies in effect for no-fault coverage.

This amendment will effect an immediate positive economic impact on no-fault insurers, including self-insurers and self-insured local governments, in that they will benefit from the delayed fee schedule increases for 18 months. The Department believes that there are few no-fault insurers that are small businesses because most no-fault insurers do not fall within the definition of a “small business” as defined by State Administrative Procedure Act Section 102(8).

2. Compliance requirements: This amendment does not impose any additional reporting, recordkeeping or other compliance requirements on small businesses or local governments that are not already required by the current regulation.

3. Professional services: It is not anticipated that no-fault insurers, including self-insurers and self-insured local governments, and health care providers, affected by this rule will need to retain professional services to comply with this amendment.

4. Compliance costs: This amendment does not impose any additional compliance costs on no-fault insurers, including self-insurers and self-insured local governments, and health care providers affected by this rule that are not already required by the current regulation. This regulation does not apply to any state governments.

5. Economic and technological feasibility: No small business affected by this rule should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The Department considered the criteria in State Administrative Procedure Act (“SAPA”) section 202-b(1) but the Department could not design the amendment to minimize any adverse impact on health care providers. However, the adverse economic impact is only temporary.

7. Small business and local government participation: The Department will comply with SAPA section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on the Department’s website.

Rural Area Flexibility Analysis for the Emergency and Proposed Thirty-Fourth Amendment to 11 NYCRR 68 (Insurance Regulation 83).

1. Types and estimated numbers of rural areas: No-fault insurers, which includes self-insurers and self-insured local governments, and health care providers affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment does not impose any additional reporting, recordkeeping or other compliance requirements on no-fault insurers, which includes self-insurers and self-insured local governments, and health care providers affected by this rule that are not already required by the current regulation.

No-fault insurers, including self-insurers and self-insured local governments, and health care providers affected by this rule should not need to retain professional services to comply with this rule, including those located in a rural area.

3. Costs: This amendment does not impose any additional costs on no-fault insurers, including self-insurers and self-insured local governments, and health care providers affected by this rule that are not already required by the current regulation, including those located in a rural area.

4. Minimizing adverse impact: This rule uniformly affects no-fault insurers, including self-insurers and self-insured local governments, and health care providers located in both rural and non-rural areas of New York State.

5. Rural area participation: No-fault insurers, including self-insurers and self-insured local governments, and health care providers, including those located in rural areas, will have an opportunity to participate in the rule-making process when the notice of emergency adoption and proposed rulemaking are published in the State Register and posted on the Department's website.

Statement setting forth the basis for the finding that the Emergency and Proposed Thirty-Fourth Amendment to 11 NYCRR 68 (Insurance Regulation 83) will not have a substantial adverse impact on jobs and employment opportunities.

This rule should not adversely impact jobs or employment opportunities in New York State. The amendment merely delays for 18 months the adoption of the workers' compensation fee schedule increase for no-fault reimbursement.