

Regulatory Impact Statement for the Thirty-Fifth Amendment to 11 NYCRR 68 (Insurance Regulation 83).

1. Statutory authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 2601, 5221, and Article 51.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”).

Financial Services Law Section 302 and Insurance Law Section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting 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. Section 5108(b) specifically authorizes the Superintendent to adopt the fee schedules prepared and established by the Chairman of the Workers’ Compensation Board (the “Chair”) or to promulgate fee schedules for health care benefits payable under the no-fault system for any services for which the Chair has not prepared and established; and subsection (c) prohibits a provider of health services, as defined in Article 51, from demanding or requesting any payment in addition to the amount authorized pursuant to Insurance Law Section 5108.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the need to establish schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and pursuant to Insurance Law Section 5108(b), the Superintendent

adopted those fee schedules promulgated by the Chair. In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

Since 1977, the workers' compensation fee schedules underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83 that prescribed that any changes the Chair made to the workers' compensation fee schedules would apply automatically to no-fault, and therefore, no longer necessitated the adoption of the workers' compensation fee schedules as changes were made to them.

3. Needs and benefits: In April 2019, Workers' Compensation Law Section 13-b was amended to permit licensed acupuncturists, nurse practitioners and licensed clinical social workers to become authorized to treat injured workers, starting in 2020. In turn, on November 19, 2019, the Chair adopted amendments to its fee schedules effective January 1, 2020 to add a new fee schedule for acupuncturists, physical therapists, and occupational therapists, as well as to establish fee schedules for self-employed nurse practitioners, physician assistants and licensed clinical social workers. Additionally, the Chair amended its chiropractic fee schedule to align with the fees of similar providers.

Although the recent amendments to the workers' compensation fee schedules may be necessary to maintain quality health services for the workers' compensation system, the immediate adoption of a new fee schedule that covers acupuncturists, physical therapists, and occupational therapists, coupled with the substantial increase in chiropractic fee schedule rates, will have a significant adverse impact on the no-fault system, to wit: insurers will not have an opportunity to study the cost impact from a substantial increase in chiropractic rates; insurers and providers will not be afforded sufficient time to change their internal bill processing systems to comport with the Chair's most recent significant amendments to the fee schedules; and the adoption of those fee schedules for use

in no-fault beginning January 1, 2020, while other fee schedules have been delayed for use in no-fault until October 1, 2020, likely will result in inaccurate billing by providers and incorrect reimbursements from insurers. These issues ultimately will increase fee schedule disputes in arbitration and the courts.

In order to mitigate the problems to the no-fault system stemming from the immediate adoption of the Chair's most recent amendments to the workers' compensation fee schedules, the Superintendent deems it necessary to delay the adoption of the new fee schedules, as well as changes made to existing fee schedules that the Chair has prepared and established to take effect on January 1, 2020. Therefore, those fee schedules shall take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law Section 5108, which will coincide with workers' compensation fee schedules already scheduled to take effect on October 1, 2020.

4. Costs: This amendment should have no compliance cost impact on applicants for no-fault benefits, insurers, self-insurers, or state and local governments. With respect to any cost impact to health service providers not regulated by the Department, participation in the no-fault system is optional, and the Department has imposed no preauthorization or reporting requirements on these applicants for no-fault benefits. Nevertheless, this rule only delays the adoption of changes that the Chair has made to the workers' compensation fee schedules, which the Department is required to adopt pursuant to Insurance Law Section 5108.

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: The Superintendent carefully evaluated alternatives to a delay in adopting the workers' compensation medical fee schedules. The Superintendent determined that adopting the workers' compensation fee schedules for use in no-fault on January 1, 2020 will result in significant systems issues for both insurers and health service providers, from having to utilize separate fee schedules and apply different ground rules. The

Superintendent also considered a shorter implementation delay period but determined, based on the Superintendent's expertise as insurance regulator, that a delay until October 1, 2020 was most appropriate to permit insurers sufficient time to study the cost impact of the fee schedule changes in order to determine when and how to adjust their rates. Furthermore, delaying the adoption of the fee schedules will result in parity among the providers whose fee schedules are scheduled to take effect on October 1, 2020.

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: This amendment shall take effect upon filing with the Department of State.

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

1. Effect of the rule: This rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of “small business” as defined in State Administrative Procedure Act Section 102(8), because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department of Financial Services (the “Department”) does not have any information to indicate that any self-insurer is a small business.

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no requirements under the State’s financial security laws requiring local governments to report to the Department or the Department of Motor Vehicles that they are self-insured. Therefore, the Department has no way of estimating how many local government units are self-insured for no-fault benefits.

The types of small businesses affected by this rule are applicants for no-fault benefits, who are typically health service providers. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Nevertheless, this rule only delays the adoption of the most recent amendments to the workers’ compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108, until October 1, 2020. Although this amendment may have a temporary impact on certain small businesses, such as chiropractic offices, acupuncturists, physical therapists, and occupational therapists, in that they may not bill at the higher fee schedule rate for their services until October 1,

2020, such an impact is outweighed by the need to give no-fault insurers sufficient time to study the impact that the fee schedule changes will have on loss costs so that they may appropriately adjust premiums to cover those costs and change internal processing systems to comport with the Chair's most recent significant amendments to the fee schedules. Additionally, the adoption of the Chair's fee schedules for use in no-fault beginning January 1, 2020, while other fee schedules have been delayed for use in no-fault until October 1, 2020, likely will result in inaccurate billing by providers and incorrect reimbursements from insurers. These issues ultimately will increase fee schedule disputes in arbitration and the courts.

2. Compliance requirements: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on any small business or self-insured local government affected by this rule.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This amendment does not impose any additional compliance costs on small businesses or self-insured local governments.

5. Economic and technological feasibility: There should not be any issues pertaining to economic or technological feasibility because this rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use in the no-fault system pursuant to Insurance Law Section 5108.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments affected by this amendment because the amendment only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use in the no-fault system pursuant to Insurance Law Section 5108. The Department anticipates that no small business subject to the rule, if any, or self-insured local government will experience any cost increase because of this amendment.

7. Small business and local government participation: Interested parties, including small businesses and local governments, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register and posted to the Department's website.

Rural Area Flexibility Analysis for the Thirty-Fifth Amendment to 11 NYCRR 68 (Insurance Regulation 83).

1. Types and estimated numbers of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(10). Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on insurers, self-insurers, self-insured local governments, or health service providers affected by this rule.

Insurers, self-insurers, self-insured local governments, and health service providers affected by this rule should not need to retain professional services to comply with this rule. This rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108, until October 1, 2020.

3. Costs: This amendment does not impose any additional costs on no-fault insurers, self-insurers, self-insured local governments, and health service providers, because this rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108, until October 1, 2020.

4. Minimizing adverse impact: This rule uniformly affects insurers, self-insurers, self-insured local governments, and health service providers throughout New York State. Therefore, it does not impose any adverse impact on rural areas.

5. Rural area participation: Interested parties, including those located in rural areas, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register and posted on the Department of Financial Services' website.

Statement setting forth the basis for the finding that the Thirty-Fifth 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 only delays until October 1, 2020 the adoption of workers' compensation fee schedules for use in the no-fault system pursuant to Insurance Law Section 5108.