

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES**

**THIRTY-FIFTH AMENDMENT TO 11 NYCRR 68
(INSURANCE REGULATION 83)**

CHARGES FOR PROFESSIONAL HEALTH SERVICES

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 2601, 5221, and Article 51 of the Insurance Law, do hereby promulgate the following Thirty-Fifth Amendment to Part 68 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 83), to take effect upon filing with the Secretary of State of New York, to read as follows:

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

Subparagraph 68.1(a)(2)(i) is amended to read as follows:

§ 68.1 Adoption of certain workers' compensation schedules

(a)(2)(i) Notwithstanding paragraph (1) of this subdivision, and except as provided in subparagraph (ii) of this paragraph, the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of Title 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, and the amendments to the fee schedules set forth in Parts 329, 333, and 348 of Title 12 NYCRR that were adopted by the chair of the Workers' Compensation Board on November 19, 2019, shall take effect for purposes of Insurance Law section 5108 on October 1, 2020, and shall only apply to all charges for health services performed on or after October 1, 2020.

**Statement of the Reasons for the Emergency Measure
Thirty-Fifth Amendment to 11 NYCRR 68 (Insurance Regulation 83)**

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 in accordance with Insurance Law section 5108(b), the Superintendent of Financial Services (“Superintendent”) adopted medical fee schedules promulgated by the Chairman 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 the Chair has not prepared and established fee schedules.

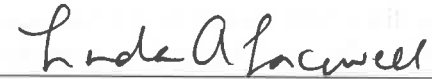
The Chair’s medical fee schedules initially adopted in 1977 underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, 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 the no-fault system, and as such, no longer necessitated adoption of the workers’ compensation fee schedules as changes were made to them.

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 of the Workers’ Compensation Board (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 the no-fault system beginning January 1, 2020, while other fee schedules have been delayed for use in the no-fault system 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 the no-fault system pursuant to Insurance Law Section 5108, which will coincide with the workers’ compensation fee schedules already scheduled to take effect on October 1, 2020.

For the reasons stated above, emergency action is necessary for the preservation of the general welfare.



Linda A. Lacewell
Superintendent of Financial Services

Dated: December 17, 2019



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the Thirty-Fifth Amendment to Part 68 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 83), entitled Charges for Professional Health Services, signed by me on December 17, 2019, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 2601, 5221, and Article 51 of the Insurance Law, to take effect upon filing with the Secretary of State of New York.

Pursuant to Section 202(6) of the State Administrative Procedure Act, this amendment is being promulgated as an emergency measure for the preservation of the general welfare. A statement of the specific reasons for the finding of the need for emergency action is attached.

Linda A. Lacewell
Superintendent of Financial Services

Dated: December 17, 2019