

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
THIRTY-SIXTH AMENDMENT TO 11 NYCRR 68
(INSURANCE REGULATION 83)**

CHARGES FOR PROFESSIONAL HEALTH SERVICES

I, Adrienne A. Harris, 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-Sixth 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 the publication of the Notice of Adoption in the State Register.

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

Section 68.1(b)(1) is amended to read as follows:

(b)(1) The charges for services specified in Insurance Law section 5102(a)(1) and any further health service charges that are incurred as a result of the injury and that are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents that are in effect for purposes of no-fault at the time the charges are incurred. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply to no-fault, e.g., requirements that provide for authorization to perform surgical procedures. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules that refer to workers' compensation claim forms, pre-authorization approval, time limitations within which health services must be performed, enhanced reimbursement for providers of certain designated services, durable medical equipment being provided by a New York State Medicaid-enrolled supplier, and dispute resolution guidelines do not apply, unless specified in this Part.

A new Part E of Appendix 17-C is added to read as follows:

Part E. Durable medical equipment fee schedule.

(a) This Part shall apply to durable medical equipment not listed in the Official New York Workers' Compensation Durable Medical Equipment Fee Schedule¹ and to durable medical equipment listed in the Official New York Workers' Compensation Durable Medical Equipment Fee Schedule for which no fee for purchase, rental, or both has been assigned.

¹ The Official New York Workers' Compensation Durable Medical Equipment Fee Schedule ("Fee Schedule"), published by the New York State Workers Compensation Board, is hereby incorporated by reference in this Part. The Fee Schedule is readily available without charge at the following internet address: <http://www.wcb.ny.gov/content/main/hcpp/MedFeeSchedules/DME/dme-fee-schedule-2022-04-04.pdf>. The Fee Schedule is also available from the New York State Department of Financial Services, One State Street, New York, NY 10004.

(b) As used in this Part, acquisition cost means the line-item cost to the provider from a manufacturer or wholesaler net of any rebates, discounts or valuable consideration, mailing, shipping, handling, insurance costs or sales tax.

(c) The maximum permissible purchase charge for such durable medical equipment shall be the lesser of the:

(1) acquisition cost plus 50%; or

(2) usual and customary price charged by durable medical equipment providers to the general public.

(d)(1) On and after June 1, 2023, the maximum permissible monthly rental charge for such durable medical equipment shall be one-tenth of the acquisition cost to the provider. Rental charges for less than one month shall be calculated on a pro-rata basis using a 30-day month.

(2) The total accumulated rental charge for such durable medical equipment shall be the least of the:

(i) acquisition cost plus 50%;

(ii) usual and customary price charged by durable medical equipment providers to the general public;
or

(iii) purchase fee for such durable medical equipment established in the Official New York Workers' Compensation Durable Medical Equipment Fee Schedule.

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the foregoing is the Thirty-Sixth Amendment to Part 68 (Insurance Regulation 83) of Title 11 of the Official Compilation of the Codes, Rules and Regulations of the State of New York, signed by me on January 25, 2023 pursuant to the authority granted by Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 2601, 5221, and Article 51, to take effect upon the publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on October 12, 2022. No other publication or prior notice is required by statute.

Signed copy filed with Department of State
Adrienne A. Harris
Superintendent of Financial Services

Date: January 25, 2023