



LEGISLATIVE POSITION

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Allow insurers additional time to investigate fraudulent no-fault automobile insurance claims

Memorandum in support of: A.3387-Heastie/S.2638-Seward

An act to amend the Insurance Law, in relation to payment of interest penalty and attorney fees to a claimant when a claim is overdue and the ability of an insurer to assert a defense or deny a claim if timely payment is not made within 30 days after proof of claim has been submitted.

PIANY supports this bill to clarify that a no-fault insurer can take more than 30 days to pay or deny a claim when the carrier suspects fraud. This bill would clarify the legislative intent of Insurance Law Section 5106(a) as interpreted by the Court of Appeals in *Presbyterian Hospital v. Maryland Casualty*, which held that an insurer may be precluded from interposing a statutory exclusion defense for failure to deny a claim within 30 days as required by Insurance Law Section 5106(a) and 11 NYCRR 65.15(g)(3). This decision forced carriers to make decisions within 30 days even in cases of suspected fraud.

According to the Insurance Information Institute, more cars are insured in New York—8.6 million—than in any state except California. For this reason, the state's \$8.2 billion private passenger auto insurance market has been a target for fraud. Investigations by insurers and law-enforcement agencies show that organized crime rings along with a small number of unscrupulous medical providers and attorneys are manipulating the personal injury protection (PIP) part of the New York state no-fault auto insurance system at the expense of the state's policyholders. These elements are actually imposing a tax on every honest driver in New York state. Sadly and ironically, the current New York system is enabling this explosion of abuse.

Fraud is at the heart of the problems besetting New York's auto insurance market. Each time a legislative office gets a complaint about auto insurance costs, an underlying reason is the degree to which fraud still has not been brought under control, despite significant progress on this front. The Insurance Department has said that fraud adds over \$1 billion to New York's auto insurance tab annually. Most of this fraud involves staged accidents and phony or exaggerated medical bills. Despite stepped-up investigation and prosecution, insurance companies and law-enforcement agencies are handicapped by a lack of tougher laws.

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For example, New York state law permits medical providers to build up a claim for up to 180 days before proof of expenses must be submitted to insurers. Insurers, however, faced with a mountain of medical expenses from a myriad of medical providers must decide within 30 days whether to accept or deny the claim. Moreover, claims suspected of fraud are not exempted from this 30-day rule.

This bill would clarify that a no-fault insurer can take more than 30 days to pay or deny a claim when the carrier suspects fraud (and has reported the claim to the Insurance Frauds Bureau) or the carrier is questioning the causality of injuries in the accident. In effect, this bill would remedy the Court of Appeals decision in *Presbyterian Hospital v. Maryland Casualty*, which forces 30-day decisions even in cases of suspected fraud.

In fact, the court specifically called for legislative clarification in the majority's opinion: "We are persuaded that, until and unless the Legislature clearly declares otherwise, the preclusion analysis ... should also be discretely applicable with respect to the 30-day requirement in the no-fault context of the instant case." Further, the court invited legislative action, saying: "if more harmony and clarity are to be achieved, we earnestly invite the Legislature to study and remedy the Rube-Goldberg-like maze."

This bill, by extending time for fraud challenges, will address the court's call for harmony and clarity and give insurers a better opportunity to spot a questionable claim and assert a defense.

For all of these reasons, PIANY supports this legislation and urges its favorable consideration.