



January 29, 2010

Lawrence Fuchsberg
Principal Attorney
New York State Insurance Department
25 Beaver Street
New York, NY 10004

**PROFESSIONAL
INSURANCE
AGENTS**

RE: Comments on 11/17/09 Draft of proposed Regulation 68—No-fault reform

Dear Mr. Fuchsberg:

PIANY supports no-fault reform

PIANY supports the department's endeavor to address the ever-growing problem of automobile no-fault fraud through proposed changes to Regulation 68. As an association, we were supportive of the adoption of the no-fault system in 1974, and again when the last substantial no-fault reform was adopted in 2002 through an amendment to Regulation 68. The reduction of time frames embodied in the 2002 reforms came at a time when no-fault fraud was at historically high levels and had a direct impact on lowering automobile insurance premiums. Now, once again, New York state is experiencing steep increases in no-fault fraud, evidenced by a 56 percent increase in typical no-fault payments for medical care of accident victims in the last five years. As a result, the costs associated with fraud and abuse of the state's no-fault system are ultimately borne by policyholders, our members' clients, and are now the second highest in the country and 111 percent higher than the U.S. average.

Fix no-fault, don't scrap it

Now is the time to enact comprehensive and systemic reform of the no-fault system, while preserving the benefits that justified its adoption 36 years ago—reducing costs and delays in paying claims. The statement conveyed to the department by PIANY back in 2001 is once again true today: *it is clear that the scourge of no-fault fraud threatens to destroy New York's once-healthy and competitive auto insurance marketplace unless public policy-makers act with resolve.* PIANY is extremely concerned about preserving the integrity of the no-fault system, which we believe is currently threatened by rampant fraud. We believe a comprehensive reform of the regulation, combined with the adoption of key legislative changes long advocated by PIANY, will benefit the vast majority of honest insureds and claimants, and strengthen insurers' hands in investigating suspected fraud. To abandon the entire system in favor of returning to an expensive and time-consuming system focused on determining who is at fault and legally liable when accidents occur, as opposed to the timely payment of claims, would be shortsighted and a detriment to all policyholders.

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The no-fault system brings direct benefits for policyholders

The move toward no-fault swept the country in the 1970s as policy-makers recognized the need to pay medical claims in a timely fashion while, at the same time, reducing the costs for carriers associated with litigating claims. No-fault insurance has the goal of lowering premium costs by avoiding expensive litigation over the causes of accidents, while providing quick payments for injuries. Insureds are indemnified for losses by their insurance company, regardless of fault in the incident-generating losses. Moreover, a policyholder also is restricted in their right to seek recovery through the civil-justice system for losses caused by other parties. New York's no-fault system was adopted in 1974 and was carefully designed to eliminate delays and uncertainties associated with the payment of medical claims and wage losses inherent in the prior tort-based system.

No-fault takes claims out of the court system

The no-fault system is intended to lower the cost of automobile insurance by taking small claims out of the courts. The benefits this system brought initially were widespread: insurers were able to pay claims more quickly and efficiently by moving away from clogged courts and policyholders were compensated for their losses in a much more timely fashion. Our member agents also were well-served by these changes as the policies we sold were able to more quickly prove their value in the event of an accident. Moreover, our policyholders (whether a cause or a victim of the accident) were spared a costly and inconvenient negligence-based system in the courts. Instead, New York's no-fault provided immediate relief for our clients' biggest worries: medical bills and loss of income.

No-fault remains sound public policy and its existence remains threatened if excessive costs from illegitimate claims payments are allowed to continue unchecked.

Previous reforms worked

The state Insurance Department has repeatedly recognized the benefits of maintaining the no-fault system in New York state and should be credited with substantive changes adopted in 2002, which PIANY supported, to reduce the number of fraudulent claims. In 2002, the Insurance Information Institute found that one in four New York PIP claims appeared to involve some kind of fraud or buildup through exaggeration of medical expenses, unnecessary treatment or padding claim-related costs. Meanwhile, claims rose seven percent in New York, while declining 2 percent in other no-fault states.

The amendments to Regulation 68 adopted by the department shortened the time period in which claims must be reported, from 90 days to 30 days as well as reducing the time period in which medical bills must be submitted to insurers, from 180 days to 45 days and mandated that lost-wage claims must be submitted within 90 days. The new regulation also included provisions for the electronic data transmission of claim information, and revised rules concerning the wording and acceptance of no-fault assignments. In addition, the revised regulation modified many of the administrative procedures in connection with no-fault arbitration and conciliation.

But fraud is still rampant in the no-fault system

Unfortunately, however, the very strengths of the no-fault system (expedited payment without needing to prove responsibility for an accident) also made it a target for the unscrupulous; as staged accidents, medical mills and dishonest health-care providers and attorneys exploit the system for personal gain.

No-fault litigation is reported to constitute 25 percent of all lawsuits filed in the New York City Civil Court. A “billion-dollar-a-year” no-fault industry has emerged, in which criminal rings recruit conspirators to stage accidents. This industry employs medical clinics to supply unnecessary, questionable or redundant treatment or medical supplies. Medical bills are then sent en masse to no-fault insurers, and when payment is denied, massive numbers of lawsuits are commenced by attorneys specializing in these types of claims. So in an ironic development, auto-related lawsuits once more clog our court system, adding to defense costs and prompting bogus claims to be settled.

Carriers must be given the tools to combat fraud and abuse

The time has come, once again, for substantive change of the no-fault regulation. PIANY supports changes to New York’s laws and regulations to fight the epidemic of insurance fraud that is attacking the state’s no-fault system. Some of these tools are embodied in the new proposed Regulation 68. Proposals such as reducing the need for additional verification by the insurer, increasing carriers’ ability to deny claims involving questionable health services, and simplifying the procedures required for insurers to suspend payments for claims when submitted by the owner of medical clinics suspected of fraud, all represent significant steps in this direction.

But some of the proposals move away from this goal and would actually contribute to the existing problems our no-fault system is experiencing. Perhaps, most notably are the provisions related to increasing attorney compensation by raising the maximum attorney fee. The no-fault system is designed to avoid litigation or the involvement of attorneys except in cases where losses exceed the verbal threshold. Despite this laudable (and fundamental) goal, unscrupulous attorneys have successfully invented ways in which to circumvent the system to bring an overwhelming number of no-fault claims back into the judicial system, to the extent they are now literally clogging our courts. Any move to further incentivize the involvement of attorneys in the no-fault system, by increasing attorney fees for instance, works against efforts to fundamentally reform no-fault and eliminate fraud. Similarly, the removal of existing penalties associated with billing in excess of the fee schedule, particularly when an attorney perpetuates the wrongful act of the provider by either presenting the bill or filing an arbitration or lawsuit in excess of the fee schedule, would further work against efforts to remove fraud. The existing penalty should be retained in the above-referenced scenarios.

No-fault reform needs more than just regulatory changes

As the Insurance Information Institute report recently reiterated, comprehensive reform of the no-fault system requires more than just regulatory changes, but also changes in the law. Moreover, some the very

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changes that PIANY has long endorsed and advocated for have been identified by the Insurance Department as a necessary component of any comprehensive reform package. The I.I.I. changes are:

- requiring the use of medical guidelines for specific auto-related injuries to reduce over-treatment and unnecessary procedures;
- requiring that disputes be resolved by arbitration to speed up the resolution of claims and avoid the costs and uncertainty of a trial;
- permitting those with claims for less than \$5,000 to submit proof based on a doctor's sworn affidavit instead of requiring physicians to appear in person;
- strengthening the penalty for acting as a runner and facilitating fraudulent transactions to a felony; and
- raising the burden of proof for receipt of no-fault benefits by requiring the plaintiff to produce a witness with personal knowledge of the facts alleged in the complaint.

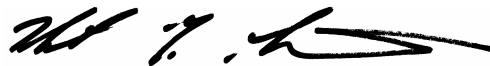
No-fault was designed as a carve-out from the tort system and the added cost of attorney involvement. It was designed as a system with minimum friction in the claims process. And it continues to represent a viable system to ensure that injured policyholders' claims are paid in an effective and efficient manner. We question any changes that could work against that principle.

Please work to adopt the aforementioned reforms to fix no-fault, don't scrap it.

Sincerely,



KEVIN M. RYAN, CIC
President, PIANY



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