



**PROFESSIONAL  
INSURANCE  
AGENTS**

25 CHAMBERLAIN ST.  
P. O. BOX 997  
GLENMONT, NY 12077-0997  
(800) 424-4244  
FAX: (888) 225-6935  
WEB: [www.pia.org](http://www.pia.org)  
E-MAIL: [pia@pia.org](mailto:pia@pia.org)

Statement re: No-fault Fraud in New York state

To: New York State Senate Standing Committee on Insurance

By: Professional Insurance Agents of New York State Inc.  
Kevin M. Ryan, CIC  
President

On: Feb. 4, 2010  
Albany, New York

My name is Kevin Ryan I am speaking today on behalf of the Professional Insurance Agents of New York State, a trade association representing approximately 20,000 insurance professionals throughout the state. Thank you for the opportunity to testify today regarding no-fault reform.

**PIANY supports no-fault reform**

Let me first reiterate that PIANY supports reform of the no-fault system, and has consistently done so. PIANY, through its participation in the New York First Automobile Insurance Fraud Coalition supports both the Legislature's as well as the department's endeavor to address the ever-growing problem of no-fault fraud. As has been accurately pointed out, true comprehensive reform of the system is needed, and this degree of reform can only be accomplished through a coordinated and bifurcated approach, by both reforming Regulation 68 and modifying the statutory frame-work of no-fault through legislation.

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. Moreover, we supported the last statutory changes to the no-fault system enacted in 2005 relative to the decertification of certain providers who commit fraud.

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.

- continued -

Nonetheless, New York's no-fault system remains sound public policy, but its viability could be threatened if excessive costs from illegitimate claims payments are allowed to continue unchecked.

### **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. Moreover, policyholders also are restricted in their right to seek recovery through the civil-justice system for losses caused by other parties unless "serious injury" is sustained. 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**

To facilitate the payment of claims in an effective and efficient manner, no-fault was designed as a carve-out from the tort system and, with it, the added costs associated with the involvement of attorneys. 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, including, and perhaps most notably, any proposals to incentivize increased participation of attorneys (and the costs associated therewith) in the 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.

### **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.

### **No-fault must be rid of fraud and abuse**

The time has come, once again, for substantive change of the no-fault system through both legislation and 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.

### **Comprehensive no-fault reform needs both legislative and regulatory changes**

As the most recent Insurance Information Institute report reiterated, comprehensive reform of the no-fault system requires more than just regulatory changes, but also changes in the law. Moreover, some of the very changes that PIANY has long endorsed and advocated for have been identified by the Insurance Information Institute (and for that matter, the department as well) as a necessary component of any comprehensive reform package. The I.I.I. changes, which we support, are as follows:

- 1) requiring the use of medical guidelines for specific auto-related injuries to reduce over-treatment and unnecessary procedures. The State of New Jersey adopted medical guidelines after months of research and dialogue with state boards that license various medical professionals. The department approved a set of medical treatment guidelines and a list of valid diagnostic tests. New Jersey's rules ensure that injured auto accident victims receive prompt medical treatment from responsible medical professionals while adding reasonable controls to prevent widespread fraud and abuse. New York should explore New Jersey's system as a possible model in this respect;
- 2) requiring that disputes involving lesser amounts be resolved by arbitration to speed up the resolution of claims and avoid the costs and uncertainty of a trial;
- 3) 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;
- 4) strengthening the penalty for acting as a runner and facilitating fraudulent transactions to a felony; and
- 5) 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.

### **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

Statement re: No-fault fraud in New York state  
Feb. 4, 2010  
Page 4

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.

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

2/10