



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Gregory V. Serio
Superintendent

The Office of General Counsel issued the following opinion on February 18, 2003, representing the position of the New York State Insurance Department.

RE: Assignments & Authorizations to Pay No-Fault Benefits

Question Presented:

When a provider of health services has submitted a bill to a No-Fault insurer for payment for health services rendered, and wishes to bill such patient for the services when the insurer denies the bill based upon the lack of medical necessity for performing such services, by what method can the provider reserve the right to bill their patient for the services rendered?

Conclusion:

A No-Fault health service provider may reserve the right to bill their patient (eligible injured person) for health services provided, when the No-Fault insurer denies payment for medically unnecessary services rendered through the use of an authorization, executed by the eligible injured person to their No-Fault insurer, to make payments of benefits directly to the health service provider.

Facts:

The inquirer, a radiology facility, which sometimes renders health services to patients covered under the No-Fault system, accepts assignments of No-Fault benefits from eligible patients prior to performing MRI tests. Such patients are advised that they will be responsible for making direct payment of the bill for services rendered to the inquirer, after the inquirer has submitted claims to the No-Fault insurer, in the event that the insurer denies payment based upon a determination of lack of medical necessity for the services performed. The inquirer indicated that it did not wish to assume responsibility for submitting denials of claims to arbitration in order to resolve the payment disputes. The inquirer asked how it could retain the right to bill the patient when reimbursement by the insurer has been denied under these circumstances.

ANALYSIS

In order to address the inquiry, it is necessary to recognize the distinction made between an assignment of No-Fault benefits ("Assignment") from an eligible injured person (the patient) to their provider of health services, and an authorization by the patient ("Authorization") to their No-Fault insurer to pay benefits directly to their provider of health services, under the Department No-Fault Regulation 68.

Pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.11(b) (First Amendment to Regulation 68) (2003), entitled "Direct payments":

- (b) In order for a health care provider/hospital to receive direct payment from the insurer, the health care provider or hospital must submit to the insurer:

(1) a properly executed Authorization to Pay Benefits as contained on NYS Forms NF-3, NF-4 or NF-5 or other claim form acceptable to the insurer. Execution of an authorization to pay benefits shall not constitute or operate as a transfer of all rights from the eligible injured person to the provider; or

(2) a properly executed assignment on:

(i) the prescribed Verification of Treatment by Attending Physician or Other Provider of Service form (NYS Form NF-3); or

(ii) the prescribed Verification of Hospital Treatment form (NYS Form NF-4), or the prescribed Hospital Facility form (NYS Form NF-5); or

(iii) the prescribed No-Fault Assignment of Benefits form (NYS Form NF-AOB contained in Appendix 13 or an equivalent form containing non-substantive enhancements, but no changes may be made to the assignment language itself.

An agreement to accept either an Assignment or Authorization is always voluntary on the part of a No-Fault provider. A provider may require payment from their patient at the time that services are performed. However, if the patient and provider agree to an assignment of benefits, they must use the prescribed assignment language that appears in the above-referenced forms as required by Regulation 68. Specifically, the mandatory assignment language assigns to the health care provider "all rights, privileges and remedies to payment for health care services provided...under Article 51..." Further, the health provider states that they will not pursue payment directly from the patient after receiving a denial based upon a lack of medical necessity unless the assignment is revoked by the provider based upon the assignor patient's lack of coverage and/or violation of a policy condition due to the actions or conduct of the patient.

The effect of acceptance of an assignment of benefits by a health provider is that by accepting the transfer of the right to receive benefits, which were available directly to the eligible injured party, the health provider also assumes the right to, and responsibility for, pursuing available remedies when claims are denied, since the assignee provider now stands in the shoes of the eligible injured person. Therefore, after an assignment has been effected, an assignee provider, who has submitted a claim for services rendered, must be the party to request and pursue arbitration when the claim has been denied.

The rights and obligations imposed under an assignment of benefits do not exist under an Authorization to Pay Benefits form, which is executed by the eligible injured person. The optional authorization language in NYS Forms NF-3, NF-4 and NF-5 state: "I authorize payment of health benefits to the undersigned health care provider or supplier of services described below. I retain all rights, privileges and remedies to which I am entitled under Article 51 (the No-Fault provision) of the Insurance Law." (Emphasis added).

Under either an Assignment or Authorization, a patient is not required to pay their health service provider at the time that services are rendered. As stated above, while an Assignment serves to transfer all rights, privileges and remedies from the patient to the provider, no such transfer occurs under an Authorization. An authorization is no more than direction from an eligible injured person to their No-Fault insurer to send reimbursement directly to their health provider. Accordingly, if an Authorization is used, the provider retains the right to bill the patient directly when a denial has been issued for lack of medical necessity. In addition, unlike an assignment, where the right to dispute a denial through arbitration is transferred to the provider, the patient executing an authorization retains the right to dispute a denial.

The inquirer's facility does not wish to assume responsibility for pursuing arbitration to resolve disputed claims, and wishes to retain the right to bill the patient directly when a denial has been issued for lack of medical necessity. The appropriate instrument in such instance would be an execution by its patient of an authorization to pay benefits. Under these circumstances, the patient can exercise its right to arbitration to resolve any dispute concerning the medical necessity of services rendered.

For further information you may contact Supervising Attorney Lawrence M. Fuchsberg at the New York City