

Alert | Health Care & FDA Practice

October 2017

New York Limits No-Fault Payments to Out-of-State Medical Providers

New York State's Department of Financial Services (DFS) has finalized **new regulations** that may help to curtail the problem of steering patients injured in auto accidents in New York to receive high cost medical services from out-of-state medical providers.

As a no-fault state, automobile insurance policies in New York reimburse for medical services received by a policyholder who is injured in a car accident regardless of who is at fault. Payments for medical services provided to an injured person in New York are subject to a comprehensive fee schedule promulgated by DFS. In other words, the provider is not paid what the provider may normally charge, but an amount set by DFS. This fee schedule varies somewhat from region to region within New York.

To get around this fee schedule, some physicians in New York have been referring (*i.e.*, steering) patients injured in auto accidents to physicians and medical facilities in other states. Up until now, the out-of-state medical providers were not limited to what they could charge, and often charged excessive fees, which no-fault insurers ended up paying. Often, incentives were offered to the patients, such as free transportation, to persuade them to travel to receive services from out-of-state medical providers and facilities. In many cases, there have been questions about the necessity of some of the expensive medical services that were provided to patients. According to DFS, excessive charges have resulted not only in inflated medical claims, but also in depleting the policyholder's coverage, raising auto insurance premiums, and triggering litigation over the excessive charges.

New Regulation

The new regulation amends 11 NYCRR § 68.6 to limit the amount that an insurer has to reimburse an out-of-state medical provider to the lowest of the following:

- The amount of the fee set forth in the region of New York that has the highest applicable amount in the DFS fee schedule for that medical service;
- The amount actually charged by the provider;
- The prevailing fee in the geographic region where the provider is located.

If the medical provider is located in another no-fault state that has an established fee schedule applicable to the medical services being provided, the new regulation requires that the provider can only receive the amount specified in that state's fee schedule.

The new regulation states that if a covered medical service is performed outside of New York State, the no-fault insurer is required to pay the lower of the amount normally charged by the provider or the prevailing fee in the provider's geographic area if the services:

- (i) constitute emergency care;¹ or
- (ii) are provided to an eligible injured person who is not a New York resident; or
- (iii) are provided to an eligible injured person who is a New York resident and who, at the time of treatment, is residing in the jurisdiction where the treatment is being rendered for reasons unrelated to the treatment.

DFS Superintendent Maria Vullo, in a press release announcing the final regulations, stated:

By limiting the amounts reimbursable under no-fault law to New York parameters, the regulation eliminates abuses and insures that policy limit amounts will provide for necessary policyholder benefits and lost wages, while leveling the playing field for New York insurers.

Effective Date

The DFS website lists the effective date of the new regulation as Jan. 23, 2018.

Conclusion

All no-fault insurers in New York should be aware of the new regulation, and monitor whether it helps to lower claims for excessive reimbursement from out-of-state medical providers. Medical providers in New York who routinely refer car accident victims to other states for follow-up treatments should be aware that payments for such services are now capped.

¹ The regulation defines emergency care as follows:

...emergency care means all medically necessary treatment initiated within 48 hours of a motor vehicle accident for a traumatic injury or a medical condition resulting from the accident, which injury or condition manifests itself by acute symptoms of sufficient severity such that absence of immediate attention could reasonably be expected to result in: death; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part.

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