

**NEW YORK STATE
INSURANCE DEPARTMENT**

**THIRD AMENDMENT TO REGULATION 68-C
(11 NYCRR 65-3)**

CLAIMS FOR PERSONAL INJURY PROTECTION BENEFITS

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted under Sections 201, 301, 2601, 5106, and 5221 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law, do hereby promulgate the following emergency Third Amendment to subpart 65-3 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 68-C) to take effect upon filing with the Secretary of State, to read as follows:

(Matter in bracket is deleted; new matter is underlined)

Subdivisions (b) and (c) of Section 65-3.12 is amended to read as follows:

(b) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(c) If the source of first-party benefits is at issue because the status of the injured person as a pedestrian or an occupant of a motor vehicle is in dispute, the insurer to whom notice of claim was given or if such notice was given to more than one insurer, the first insurer to whom notice was given shall, within 15 calendar days after receipt of notice, obtain an agreement with the other insurer or insurers as to which insurer will furnish no-fault benefits. If such an agreement is not reached within the aforementioned

15 days, then the insurer to whom such notice was first given shall process the claim and pay first-party benefits and resolve the dispute in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

Paragraphs (2), (3) and (4) of Section 65-3.13(a) are amended to read as follows:

(2) An applicant who is a named insured or a relative of a named insured covered by additional personal injury protection benefits, and who, while an operator or occupant of a motor vehicle, sustains a personal injury arising out of the use or operation of such motor vehicle outside of New York State, shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(3) An applicant who is a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury through the use or operation of a motor vehicle or a motorcycle shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(4) An applicant who is not a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is an occupant of an insured motor vehicle covered for additional personal injury protection benefits or a motor vehicle operated by a person covered for additional personal injury protection benefits, and who sustains a personal injury through the use or operation of the insured motor vehicle outside of New York State, shall institute the claim against the insurer of the owner or operator of the insured motor vehicle. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under

option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Third Amendment to 11 NYCRR 65-3 (Regulation No. 68-C), promulgated by me on November 27, 2006 pursuant to the authority granted by Sections 201, 301, 2601, 5106, and 5221 of the Insurance Law and 2407 of the Vehicle and Traffic Law, to take effect upon filing with the Secretary of State. This regulation was previously promulgated on an emergency basis on October 4, 2005, December 29, 2005, March 27, 2006, June 23, 2006, and September 1, 2006 with changes.

Pursuant to Section 202 (6) of the State Administrative Procedure Act, this Third Amendment to 11 NYCRR 65-3 (Regulation No. 68-C) is being promulgated as an emergency measure for the preservation of the public welfare. A Statement of Reasons for Emergency Measure is attached.

Howard Mills
Superintendent of Insurance

November 27, 2006

STATEMENT OF REASONS FOR EMERGENCY MEASURE

THIRD AMENDMENT TO 11 NYCRR 65-3 (REGULATION NO. 68-C)

Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the eligible insurer's liability to pay first party benefits. Section 11 codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the terms "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the mechanism for informing applicants of the availability of the special expedited arbitration option.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Howard Mills
Superintendent of Insurance

November 27, 2006