



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

SENATE INSURANCE COMMITTEE

LEGISLATIVE PUBLIC HEARING TESTIMONY

REGARDING NO-FAULT FRAUD IN NEW YORK STATE

ON

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AT

LEGISLATIVE OFFICE BUILDING HEARING ROOM A

ALBANY, NY

TESTIMONY DELIVERED BY:

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PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA**

**New York Senate Legislative Hearing
Regarding No-Fault Fraud in New York State
Testimony of Paul Blume, Jr.
Property Casualty Insurers Association of America**

Good morning Chairman Breslin. I am Paul Blume. I work for the Property Casualty Insurers Association of American (PCI). PCI is a national trade association representing over 1,000 property/casualty insurers. PCI members write 46.3 percent of the New York state auto insurance market. Thank you very much for convening today's hearing.

Since New York made changes to its no-fault auto insurance system several years ago, there is a new epicenter for the fraud problem. It is not the kind of insurance fraud that usually comes to mind with staged accidents or "jump-ins." Today's fraud mainly involves Downstate medical providers, doctors and attorneys – largely collections lawyers – who have creatively developed sophisticated ways to "game" the system. Through overutilization of health care services and lawsuit abuse, this team of fraud schemers is causing costs to once again skyrocket in the no-fault system. As a result, dedicated, hardworking Downstate New York drivers are paying higher automobile insurance premiums that end up lining the pockets of these irresponsible health care providers and collections lawyers. The gaming of the insurance system needs to be eliminated by enacting meaningful, comprehensive legislation this year.

My colleague, Bob Passmore, just went over some of the data that illustrates the stark contrast between Upstate and Downstate medical treatment patterns and trends for no-fault claims. What I would like to do is incorporate the attached document by reference and draw attention to the goals of no-fault, where the problems lie and highlight potential solutions.

New York No-Fault

New York went to a no-fault system in the 70s because system costs were out of control and automobile insurance premiums were on the rise. Lawmakers wanted to implement a system that provided prompt, quality medical care and fair compensation at an affordable price to the consumer irrespective of fault. It sounds relatively simple, but over the years troubling outliers in the medical and legal professions have managed to find ways to “work” the system to their advantage. Specifically, these abusers game the system to their gain, profit and enrichment using provisions of the law and regulations intended to improve the system and benefit the citizens of New York. All the while, honest, hardworking citizens of New York are paying for this abuse.

“New Fraud” Problems

As we have noted, the focal point of fraud has shifted to those Downstate health care providers who are driving the overutilization of medical services aided and abetted by a small group of collections law firms. The data presented in the earlier panel is clear and convincing evidence of this phenomenon and abuse. What’s more, the data clearly highlights that the activities of these parties have combined to cause no-fault losses to soar out of control.

It’s simple: higher no-fault loss costs generally translate into higher insurance prices, especially for Downstate drivers who are paying exceedingly more for coverage. This is not fair to responsible, hardworking consumers.

As a result of the growing numbers of provider-initiated lawsuits in New York City, some drivers are paying nearly 4 times more than the state average and 7 times more than drivers in Albany for

no-fault coverage. For example, a driver in the Bronx pays on average approximately \$730 vs. \$203 statewide and \$103 in Albany.

In order to properly address the already high and rapidly accelerating no-fault costs in New York, it is important that lawmakers understand who the major perpetrators of the new fraud are and the financial repercussions caused by their scams. In 2009 alone, no-fault fraud is estimated to have added almost \$229 million in costs to the auto insurance system. It is time to put responsible citizens first and curtail the actions of unethical medical providers and collections attorneys who are abusing the system. Comprehensive, meaningful, effective solutions are needed to curb the new no-fault fraud and protect the state's consumers.

Potential Solutions

It is the consensus of PCI members, and we believe the industry, that a number of aspects of the New York no-fault system are in need of reform.

1. Elimination of Preclusion – The New York no-fault law provides that claims for benefits must be paid or denied within 30 days of receipt and provides for interest as a penalty for the failure of an insurer to meet that standard. The intent of that provision is prompt payment of meritorious claims. Case law has added an additional penalty that precludes an insurer from denying a claim, or asserting any defense if it has violated the 30-day rule. The result is the payment of excessive and even fraudulent claims, such as services that were billed but never provided¹.

¹ Fair Price v Travelers 42 AD3d at 285

This problem could be addressed by amending the 30-day rule statute to provide that interest is the exclusive remedy when an insurer fails to issue a timely payment or denial, and that a denial of claims and the insurers' defenses, such as a lack coverage or fraud, not be precluded. Often, a timely denial is issued, but it is invalidated by non-substantive errors. The penalties for failure to promptly pay or deny claims would be maintained, but insurers would be afforded the opportunity to defend against claims that are not medically necessary or fraudulent, claims that were never intended to be paid for by the no-fault insurance system.

2. Burden of Proof – Our civil legal system places the burden on the plaintiff to prove the basic elements of their case in order to prevail. Over the years, no-fault case law in New York has shifted that burden of proof to the insurer to the point whereby a medical provider (as an “assignee” under an “assignment of benefits”) needs only provide a bill to establish their claim for benefits. The burden is on the insurer to request information to “verify” that the services billed for are medically necessary and in accordance with the no-fault law. Frequently, a lengthy exchange of paperwork ensues with a myriad of requirements for second requests and follow-ups providing more opportunities to generate the kind of non-substantive technical errors that have little bearing on the merits of the claim presented. However, they serve as a basis to deny any defense to the claim.

This problem could be addressed by amending the statute to require an assignee to present admissible evidence that the services billed were medically necessary and provided by a properly licensed practitioner. Furthermore, the statute should establish that these claims for no-fault benefits have been duly assigned to the provider and are billed according to the applicable fee schedule and all applicable regulations.

3. Assignment of Benefits – An “assignment of benefits” is common in all types of medical claims. In all likelihood you sign such a document whenever you visit a doctor or dentist. In such a document the patient/claimant authorizes the medical provider to submit charges for payment to an insurer, provide information to support the claim and receive benefits directly from the insurer on behalf of the patient. The provider does not receive a right to sue any third party independently; that right remains with the patient/claimant, but the provider does have the right to seek payment from the patient, or assert a lien against any proceeds of an action against a third party.

The assignment used in New York no-fault claims differs substantially from those commonly used and consumers may not even be aware that it assigns “all rights and privileges and remedies” to the provider to pursue benefits under the no-fault law. This allows the provider “assignee” the right to contest all issues, including “policy” issues such as coverage eligibility and the patient/claimant/assignor’s duties to comply with policy conditions, even issues such as the claimants’ attendance at independent medical examinations or examinations under oath. The result is a huge amount of litigation instigated by the providers/assignees with little or no involvement from the injured party.

An appropriate solution to this deceptive problem would be amending the statute so that the right to contest denials of claims involving policy issues should belong to the claimant only. This limitation of assignment would only apply to “policy” issues resulting in a denial of coverage to an injured party, and not to denials to the provider for charges not medically necessary, or their own failure to comply with policy terms.

4. Anti-Fraud Measures – There are a number of anti-fraud measures that would be valuable tools in fighting no-fault fraud. One example is the enforcement of existing law which requires decertification of providers who commit fraud. Another example is legislation to prohibit individuals from acting as or employing “runners” to recruit clients such as Senate Bill 637, which includes strong penalties for violations. Application fraud is a problem in personal lines auto. An example of this would be New York residents registering and insuring cars in other states, then making no-fault claims in New York after they are involved in an accident. Enactment of legislation to amend the definition of insurance fraud to include personal lines insurance and allow retroactive cancellation of policies obtained through material misrepresentation, as permitted in other types of insurance, would go a long way toward discouraging such unethical, fraudulent activities.

There are a number of other concepts for reform that we believe should be considered, such as:

1. Dedicated Dispute Resolution – New York should review a dedicated dispute resolution for medical provider disputes. The often highly technical proceedings could be streamlined to allow the parties to submit their evidence on paper, saving time and money for both providers and insurers.
2. Treatment Guidelines – As have been developed for workers compensation in New York and other states.
3. Consumer Choice No-Fault – Allowing consumers to save by choosing the level of coverage based on their needs.

Conclusion

PCI strongly believes that responsible consumers need to come first and that careful, comprehensive reforms are necessary immediately to deal with this “new no-fault fraud”. New Yorkers are paying for an auto insurance system with costs that are spiraling out of control and no real benefit is going back to the conscientious consumer – they do not like fraud and don’t want to pay for it. PCI urges you and your colleagues to enact comprehensive, systematic reforms – reforms that will eliminate disturbing outlier abuse so New York can go back to the true intent of the no-fault system — prompt and fair compensation following an accident at an affordable price.

Thank you for your time and I would be happy to answer your questions.