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**Supplement No. 1 to Circular Letter No. 9 (2008)  
September 19, 2008**

**TO: All Motor Vehicle Automobile Self-Insurers, Insurers Authorized to Write Motor Vehicle Insurance in New York State, and the Motor Vehicle Accident Indemnification Corporation**

**RE: Workers' Compensation Board Adoption of a new Pharmaceutical Fee Schedule applicable to no-fault claims**

**STATUTORY REFERENCE: Section 5108 of the Insurance Law**

The purpose of this Supplement is to inform insurers and providers of no-fault health services benefits that the Workers' Compensation Board has adopted, by emergency regulation, a new pharmaceutical fee schedule that is therefore also applicable to all no-fault prescription drugs dispensed on or after July 7, 2008.

Section 68.1 of 11 NYCRR 68 (Regulation No. 83), entitled "Adoption of certain workers' compensation schedules," states, in relevant part:

- (a) The existing fee schedules prepared and established by the chairman of the Workers' Compensation Board for industrial accidents are hereby adopted by the Superintendent of Insurance with appropriate modification so as to adapt such schedules for use pursuant to the provisions of section 5108 of the Insurance Law.

Insurance Law Section 5108(a) limits the fees that a health service provider may charge for services specified in Insurance Law Section 5102(a)(1) to the permissible charges established under the Workers' Compensation Board's fee schedules (unless an insurer or arbitrator determines that unusual procedures or unique circumstances justify a higher payment). That limitation applies to services incurred as a result of the motor vehicle injury, regardless of whether these fees are part of, or in excess of, a claimant's basic economic loss. Since the

Workers' Compensation Board has established a fee schedule, reimbursement of prescription drugs dispensed to no-fault eligible injured parties is subject to the fee schedule, which has been in effect since July 11, 2007.

Pursuant to Workers' Compensation Law Section 13-o, which was added by Chapter 6 of the Laws of 2007, the Workers' Compensation Board promulgated a new pharmaceutical fee schedule, effective July 7, 2008. In accordance with the new fee schedule, the maximum reimbursement for prescription drugs dispensed on or after July 7, 2008, under the no-fault system, shall be the Average Wholesale Price (AWP) minus 12% plus a dispensing fee of four dollars for brand name prescription drugs and medicines; and the AWP minus 20% plus a dispensing fee of five dollars for generic prescription drugs and medicines. AWP means the average wholesale price of a prescription provided in the Red Book by Thomson Media, Medi-Span Master Drug Database, Blue Book by First Databank, or other nationally recognized drug pricing index adopted by the Chair of the Workers' Compensation Board or the Chair's designee.

As stated in Circular Letter No. 9 (2008), the 30<sup>th</sup> Amendment to 11 NYCRR 68 (Regulation No.83) repeals parts E and F of appendix 17-C of the regulation, which set forth the fee schedules. Therefore, prescription drugs dispensed on or after July 11, 2007 through July 6, 2008 must be reimbursed in accordance with the Medicaid fee schedule as previously adopted by the Workers' Compensation Board, and prescription drugs dispensed prior to July 11, 2007 must be reimbursed under the fee schedules previously established by the Superintendent.

All insurers and self-insurers must ensure that the new pharmaceutical fee schedule adopted by the Workers' Compensation Board is properly applied to no-fault prescription drug claims. Section 68.1(b)(1) establishes the rules to be utilized in applying the Workers' Compensation fee schedules to no-fault claims. That provision states in part:

However, references to workers' compensation reporting and procedural requirements in such schedules do not apply, e.g., requirements that provide for authorization to perform surgical procedures, is not applicable to no-fault. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules which refer to workers' compensation claim forms, pre-authorization approval and dispute resolution guidelines do not apply, unless specified in this Part.

In addition, references in 12 NYCRR 440.3 of the Workers Compensation Board's pharmacy fee schedule regarding designated pharmacies that an injured person must use to obtain prescription drugs are not applicable to no-fault benefits.

It should be noted that in accordance with Section 68.1(b)(3), no-fault insurers should reimburse pharmacists that have assignments.

Please direct any questions or comments regarding this Supplement to:

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Very truly yours,

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