NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
NINTH AMENDMENT TO 11 NYCRR 65-3
(INSURANCE REGULATION 68-C)

REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR VEHICLE INSURANCE REPARATIONS ACT – CLAIMS FOR PERSONAL INJURY PROTECTION BENEFITS

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 5221 and Article 51 of the Insurance Law, do hereby promulgate the following Ninth Amendment to Subpart 65-3 (Insurance Regulation 68-C) of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 68-D), to take effect on July 1, 2019, to read as follows:

Section 65-3 is amended as follows:

NYS forms NF-3 and NF-AOB to Appendix 13 are repealed, and new NYS forms NF-3 and NF-AOB to Appendix 13 are added.

Subdivision 65-3.11(e) is re-lettered as 65-3.11(f), and a new subdivision 65-3.11(e) is added to read as follows:

(e)(1) Notwithstanding subdivisions (a), (b), (c), and (d) of this section, if an insurer denies a claim arising from an accident occurring on or after July 1, 2019, for health service benefits because the eligible injured person violated a condition of the policy by failing to appear for a medical examination or examination under oath at the insurer’s request, then any assignment of any benefits made by the eligible injured person to a provider of health care services (other than a hospital) shall be voidable by the insurer and shall not be enforceable against the insurer, and the insurer shall not be obligated to pay benefits directly to any provider of health care services other than a hospital. The insurer shall clearly state on the denial of claim form (NYS form NF-10) the specific policy issue upon which the denial is based. As used in this subdivision, hospital shall have the meaning ascribed by section 52.2(m) of Part 52 of this Title (Insurance Regulation 62).

(2) If, pursuant to paragraph (1) of this subdivision, an insurer voids the assignability of all rights, privileges, and remedies to a health care provider under an executed assignment of benefits form, the insurer shall send the NYS form NF-10 to the eligible injured person and a copy to the provider who submitted the claim. The insurer also shall include with the NYS form NF-10 a notice to an eligible injured person and the health care provider that the assignment is void pursuant to this subdivision, and that the eligible injured person may contest the denial as described on the NYS form NF-10.

(3) Every insurer shall maintain a list of all claims that were denied because the eligible injured person violated a condition of the policy by failing to appear for a medical examination or examination under oath at the insurer’s request and the assignment was voided because of the denial. The insurer also shall maintain a total number of the claims so denied annually. An insurer that is not a self-insurer shall maintain the lists in accordance with Part 243 of this Title (Insurance Regulation 152). Every self-insurer shall maintain the lists for
six calendar years after all elements of the claim upon which the denial is based are resolved and the file is closed.