

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
THIRTY-SIXTH AMENDMENT TO 11 NYCRR 68
(INSURANCE REGULATION 83)**

CHARGES FOR PROFESSIONAL HEALTH SERVICES

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2601, 5221, and Article 51 of the Insurance Law, do hereby promulgate the following Thirty-Sixth Amendment to Part 68 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 83), to take effect upon of the filing of the Notice of Emergency Adoption with the Secretary of State, to read as follows:

(NEW MATTER IS UNDERSCORED; MATTER IN BRACKETS IS DELETED)

Section 68.1(b)(1) is amended to read as follows:

(b)(1) The charges for services specified in Insurance Law section 5102(a)(1) and any further health service charges that are incurred as a result of the injury and that are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents that are in effect for purposes of no-fault at the time the charges are incurred. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply to no-fault, e.g., requirements that provide for authorization to perform surgical procedures. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules that refer to workers' compensation claim forms, pre-authorization approval, time limitations within which health services must be performed, enhanced reimbursement for providers of certain designated services, durable medical equipment being provided by a New York State Medicaid-enrolled supplier, and dispute resolution guidelines do not apply, unless specified in this Part.

A new Part E of Appendix 17-C is added to read as follows:

Part E. Durable medical equipment fee schedule.

(a) This Part shall apply to durable medical equipment not listed in the Official New York Workers' Compensation Durable Medical Equipment Fee Schedule¹ and to durable medical equipment listed in the Official New York Workers' Compensation Durable Medical Equipment Fee Schedule for which no fee has been assigned because the durable medical equipment requires prior authorization.

¹ The Official New York Workers' Compensation Durable Medical Equipment Fee Schedule ("Fee Schedule"), published by the New York State Workers Compensation Board, is hereby incorporated by reference in this Part. The Fee Schedule is readily available without charge at the following internet address: <http://www.wcb.ny.gov/content/main/hcpp/MedFeeSchedules/DME/dme-fee-schedule-2022-04-04.pdf>. The Fee Schedule is also available from the New York State Department of Financial Services, One State Street, New York, NY 10004.

(b) The maximum permissible purchase charge or the total accumulated rental charge for such durable medical equipment shall be the lesser of the:

(1) acquisition cost (i.e., line-item cost from a manufacturer or wholesaler net of any rebates, discounts, or other valuable considerations, mailing, shipping, handling, insurance costs or any sales tax) to the provider plus 50%; or

(2) usual and customary price charged by durable medical equipment providers to the general public.

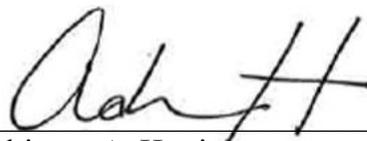
**Statement of the Reasons for the Emergency Measure
Thirty-Sixth Amendment to 11 NYCRR 68 (Insurance Regulation 83)**

In June 2021, the Chair of the Workers' Compensation Board ("Chair") adopted, via regulation, amendments to its Official New York Workers' Compensation Durable Medical Equipment Fee Schedule ("DME fee schedule") effective April 4, 2022. The Chair's amendments update the list of DME supplies that are available; increases the reimbursement amount for those supplies; and creates a prior authorization process for certain DME supplies listed in the DME fee schedule for which no reimbursement amount is assigned and for DME supplies that are not listed in the DME fee schedule. As a result of these amendments, the Chair eliminated the lesser of acquisition cost plus 50% or usual and customary fee calculation for unlisted DME supplies. The Chair also required that all DME supplies be provided by Medicaid-enrolled DME suppliers and capped the total accumulated rental charge for DME supplies listed in the DME fee schedule to the purchase price of those supplies.

The adoption of a prior authorization process in the DME fee schedule for certain DME supplies would not apply to reimbursement for DME supplies in the no-fault insurance system; therefore, no set prices for those DME supplies would be established for use in no-fault. The absence of a cost control measure in place for those DME supplies used in the no-fault system would result in the unwarranted depletion of patients' \$50,000 no-fault insurance benefits as a result of exorbitant prices for the purchase of DME supplies for which no price is set in the workers' compensation DME fee schedule, and unlimited rental charges that could far exceed the purchase price of those supplies.

In order to mitigate the problems to the no-fault system stemming from the Chair's recent amendments to the workers' compensation DME fee schedule, the Superintendent deems it necessary to adopt an emergency amendment to 11 NYCRR 68 (Insurance Regulation 83) to cap the purchase and total accumulated rental of DME supplies for which either no price has been established in the DME fee schedule or for supplies not listed in the DME fee schedule. Such a cap will only provide a consistent reimbursement methodology for both listed and unlisted DME supplies and safeguard against the unwarranted depletion of patients' \$50,000 no-fault insurance benefits because of unlimited rental charges.

For the reasons stated above, emergency action is necessary for the preservation of the general welfare.



Adrienne A. Harris
Superintendent of Financial Services

Dated: April 4, 2022



Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the foregoing is the Thirty-Sixth Amendment to Part 68 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 83), entitled “Charges for Professional Health Services,” signed by me on April 4, 2022, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2601, 5221, and Article 51 of the Insurance Law, to take effect upon the filing of the Notice of Emergency Adoption with the Secretary of State.

Pursuant to Section 202(6) of the State Administrative Procedure Act, the Thirty-Sixth Amendment to 11 NYCRR 68 (Insurance Regulation 83) is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

Adrienne A. Harris
Superintendent of Financial Services

Date: April 4, 2022