Is New York’s No-Fault Auto Insurance Crisis Returning?

November 5, 2009

I.I.I. Analysis Finds Average Cost of No-Fault Claim Has Soared 56 Percent Since 2004

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LATHAM, NEW YORK, November 5, 2009 — New York’s auto insurers saw their typical no-fault payment for the medical care of accident victims rise by 56 percent to $8,748 per claim in the second quarter of 2009. This represents a dramatic increase from late 2004, when the average no-fault payment stood at $5,615 per claim, according to an Insurance Information Institute (I.I.I.) analysis.

The insurance industry, the New York State Insurance Department [3]’s (NYSID) Frauds Bureau [4], the National Insurance Crime Bureau [5] and law enforcement agencies continue to investigate suspicious claims vigorously, according to Dr. Robert Hartwig, the I.I.I. president and an economist. Yet loopholes in the no-fault system make it particularly vulnerable to fraud and abuse by a “no-fault industry” of corrupt medical professionals, attorneys, and street-level criminals who work on their behalf.

“In less than five years, New York’s auto insurers have seen an extraordinary 56 percent increase in the average cost of no-fault claims, to a great extent the result of abuse and, sometimes, outright fraud in the system,” stated Dr. Hartwig, in remarks scheduled for delivery today to the New York Insurance Association [6]’s (NYIA) annual meeting in Latham, NY. “The costs of fraud and abuse of the state’s no-fault system ultimately are borne by New York’s honest policyholders. New York’s no-fault claim costs are now the second highest in the country and are 111 percent higher than the U.S. average of $4,152.”

State lawmakers need to make no-fault auto insurance reform a high priority when they reconvene in Albany for their 2010 session, said Ellen Melchionni, president of the NYIA. “There are external forces which drive up the cost of auto insurance in this state which can and must be contained.”

The state Insurance Department’s Frauds Bureau, in its 2008 annual report, said that no-fault fraud reports to the NYSID had increased 22 percent since 2006, after the number of these same reports fell 35 percent between 2003 and 2006, Dr. Hartwig observed. Moreover, the Frauds Bureau has significantly expanded its number of no-fault investigations, their 2008 annual report stated.

The term “no-fault” auto insurance is often used to denote any auto insurance program that allows policyholders to recover financial losses, such as medical costs and lost wages, from their own insurance company, regardless of fault. The policyholder’s no-fault benefit coverage is listed under the
personal injury protection (PIP) provision of their policy.

Dr. Hartwig said that several proposals have been advanced to combat New York?s growing no-fault crisis, including:

**Institute Medical Protocols/Utilization Reviews:** Implement medical treatment guidelines for specific auto accident-related injuries so as to reduce instances of over-treatment and/or unnecessary treatments. New York?s no-fault system is one of the few in the U.S. that allows for insurer payment of medical treatment providers while requiring neither mandatory protocols nor utilization reviews. This virtual blank check drives up system costs dramatically because the PIP payment ceiling is a very generous $50,000.

**Require Disputes Be Resolved via Arbitration:** Implement an arbitration system to eliminate trial costs for all parties while also expediting claims resolution. No-fault systems were created to avert courtroom battles. Yet, in New York, no-fault cases are clogging the judicial system?s calendar, especially in New York City. The city courts are so inundated with no-fault cases today that they are currently setting trial dates for 2011.

**Streamline the Process for Adjudicating No-Fault Claims:** Permit parties with no-fault disputes involving less than $5,000 to submit proof based on a sworn affidavit from doctors. Under today?s system, doctors must appear personally in court, time which could be better spent treating their patients.

**Implement Fair Burden of Proof Requirements:** Require that, in order to establish the plaintiff?s right to no-fault benefits, the plaintiff must produce a witness with personal knowledge of the facts alleged in the plaintiff?s complaint. Furthermore, there should be no presumption of medical necessity based on documents submitted by non-medical plaintiffs and/or witnesses who do not have personal knowledge of the facts of the case. New York?s medical treatment providers are required only to submit proof that a bill was received by the auto insurer to establish entitlement to receive amounts billed irrespective of suspicions of fraud or abuse. The burden of the auto insurers is much higher. They are required to produce in court both a witness to testify under oath that the claim was handled in accordance with regulations and a medical expert to testify on the lack of medical necessity.

**Strengthen anti-runner laws:** Runners? are those who receive a monetary benefit for facilitating a fraudulent insurance transaction, usually by acting as a go-between for dishonest policyholders and unscrupulous medical treatment providers and/or attorneys. The crime is currently a misdemeanor but, if upgraded to a felony, could provide an added deterrent.

*The I.I.I. is a nonprofit, communications organization supported by the insurance industry.*

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