STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON THE PROPOSED AMENDMENT TO THE RULES OF PROCEDURE FOR NO-FAULT ARBITRATION

The National Arbitration Forum has filed a petition requesting the Court to amend the Rules of Procedure for No-Fault Arbitration. The petitioner requests that it be named an approved administrator for arbitrations or, in the alternative, that it be allowed to bid to be exclusive provider for a term deemed appropriate by the Court. The American Arbitration Association currently serves as the exclusive provider for no-fault arbitrations. This court will consider the proposed amendment without a hearing after soliciting and reviewing comments on the petition. A copy of the petition is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendment shall submit fourteen copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than January 10, 2003.

Dated: November 20, 2002

BY THE COURT:

OFFICE OF
APPELLATE COURTS

NOV 20 2002

FILED

Kathleen A. Blatz
Chief Justice

No. C6-74-45550
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Amendment to Rules of Procedure
for No-Fault Arbitration

PETITION OF NATIONAL ARBITRATION FORUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner National Arbitration Forum (the "Forum") respectfully petitions this Honorable Court to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules for the reasons set forth below.

1. The Forum is a leading provider of alternative dispute resolution ("ADR") services and is one of the leading providers of all ADR services throughout the United States. The Forum's world headquarters are in Roseville, Minnesota. The Forum has substantial experience in ADR in Minnesota. Principals of the Forum are Edward Anderson and Roger Haydock, both experienced Minnesota lawyers.

2. By statute, this Court has exclusive authority over the administration of arbitration proceedings required or established under the Minnesota No-Fault Act, MINN. STAT. §§ 65B.525 (2000).

3. This Court has established Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules, most recently amended by Order dated and effective September 7, 1999.

4. Under the existing rules, the American Arbitration Association ("AAA") is made the exclusive statewide administrator of no-fault arbitration. The AAA has had an exclusive monopoly on providing ADR administrative services under the No-Fault Act since the formation of the system in 1975.

5. The Forum has requested that it be allowed to compete to serve as administrator of no-fault arbitration under the rules. *See* Petition to Amend Rules of Procedure for No-Fault Arbitration transmitted to this Court's Standing Committee on July 16, 1997. True and correct copies of this petition and transmittal letter are attached as Exhibit A to this Petition. This petition was denied by the advisory committee, and the Forum has not had an opportunity to compete to provide no-fault ADR administrative services in Minnesota.

6. The Forum is uniquely qualified to provide outstanding ADR administrative services. Among its other qualifications are the following:

a) The Forum has been an approved ADR organization under Minnesota Supreme Court Rule 114 since 1994; the Forum has been selected by hundreds of judges and attorneys to administer ADR proceedings under Rule 114.

b) The Forum was selected by the Minnesota Department of Labor and Industry to be the administrator of Workers Compensation arbitration under MINN. STAT. § 176.191.

c) The Forum has been selected by the Office of the Minnesota Attorney General to administer arbitration of settlement issues in litigated cases.

d) The Forum has been selected by the Internet Corporation for Assigned Names and Numbers ("ICANN") to administer international arbitration of Internet domain name disputes, including those in Minnesota.

e) Forum neutrals have been appointed as Special Masters in federal court cases in the District of Minnesota.

f) The Forum has administered thousands of arbitrations and mediation proceedings in Minnesota under these programs and the contracts of the parties.

g) Nationally, the Forum has been selected to be the neutral administrator of arbitration services in over half a billion contracts, with arbitrations provided by a national panel of experienced lawyers and former judges, including former state supreme court, intermediate appellate court, and trial court judges.

h) Nationally, the Forum provides mediation services to parties by a national panel of experienced lawyers and former judges, including former federal circuit and district court judges who are members of FedNet.

6. The Forum continues to believe it can provide higher quality administrative services to the no-fault program, at a lower cost to the participants, than the current administrator. The Forum requests that it be allowed to be an alternative provider of services or, if the Court determines that an exclusive provider should be named, that the Forum be allowed to compete to be the exclusive provider on terms that will benefit the parties to no-fault arbitrations.

7. The Forum is in fact capable of administering arbitration under the Minnesota No-Fault Act in a modern, fair, and efficient manner. Its procedures have been recognized by many courts as models of fairness. For example, in *Green Tree Financial Corp. v. Randolph*, 531 U.S. 79 (2000), the Court cited the Forum arbitration code and stated: "[O]ther national arbitration organizations (Example: The National Arbitration Forum) have developed similar models for fair cost and fee allocation." 531 U.S. at 95 (Ginsburg, J., concurring in part and dissenting in part). Similarly, the Third Circuit observed the NAF Code provides for "the full range of remedies available under" controlling law, *Johnson v. West Suburban Bank*, 225 F.3d 366, 375 n.2 (3d Cir. 2000), and that "the [NAF] clause did not create an arbitration procedure that favors one party over another." *Id.* at 378 n.5.

8. The ability of the Forum to deliver ADR services efficiently (and at a cost lower than the AAA) has also been recognized by the courts. In a recent decision, the Eleventh Circuit stated: "Under the National Arbitration Forum *Code of Procedure*, "statutory remedies are not proscribed and there is no evidence that the fees and costs of the NAF will approach those of the American Arbitration Association in *Paladino*," where the Eleventh Circuit had found the AAA's fees excessive. *Baron v. Best Buy*, 260 F.3d 625 (11th Cir. 2001) (unpublished table decision) (citing *Paladino v. Avnet Computer Techs., Inc.*, 134 F.3d 1054, 1062 (11th Cir. 1998)). *See also Marsh v. First USA Bank*, 103 F. Supp. 2d 909, 925 (N.D. Tex. 2000) ("NAF boasts an impressive assembly of qualified arbitrators."); *Vera v. First USA Bank*, No. Civ. A. 00-89-GMS, 2001 WL 640979, at *1 (D. Del. Apr. 19, 2001) ("[T]he NAF is a model for fair cost and fee allocation.").

9. The Forum submits that it is not in the public interest to allow a single entity to maintain a virtual monopoly over administration of the no-fault arbitration process mandated by the Minnesota No-Fault Act. The Forum requests that the rules be amended to allow litigants a choice among approved administrators. This process would encourage competition and allow no-fault litigants a choice of providers. In the alternative, and only if the Court determines that the use of a single provider is necessary or desirable, then the Forum requests that it be allowed to bid to be the exclusive provider for a term deemed appropriate by the Court. Although not binding on this Court or in this situation, the Legislature has in many contexts required either competitive bidding or periodic review and reassignment of contracts to proved services under government auspices. For example, MINN. STAT. § 16C.03 requires the executive to use competitive bidding, unless there is a determination that an alternative method would determine "best value." Similarly, MINN. STAT. § 16C.09 limits service contracts to two years, with extensions up to a total of five years. These expressions of public policy should also guide the administration of the No-Fault arbitration system.

Based upon the foregoing, Petitioner National Arbitration Forum respectfully requests this Court to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules to allow The National Arbitration Forum, based in Roseville, Minnesota, to be an approved administrator for arbitrations under the Minnesota Arbitration. In the alternative, and only if the Court determines that the use of a single provider is necessary or desirable, then the Forum requests that it be allowed to bid to be exclusive provider for a term deemed appropriate by the Court.

Dated: September 20, 2002.

Respectfully submitted,

MASLON EDELMAN BORMAN & BRAND, LLP

By _____
David F. Herr (#44441)
Michael C. McCarthy (#230406)
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4140
(612) 672-8200

ATTORNEYS FOR PETITIONER
NATIONAL ARBITRATION FORUM

Hauer, Fargione, Love
Landy & McEllistrem, P.A.

HF
&L

Attorneys
Robert J. Hauer, Jr.
Michael Fargione
Brian J. Love*
Robin Sharpe Landy
Paul F. McEllistrem
Uyen Campbell

Of Counsel
Todd E. Gadtke
Joseph T. Herbulock
Mitchell R. Spector

*Also admitted in Wisconsin

January 7, 2003

Mr. Frederick K. Grittner
Clerk of Appellate Courts
25 Reverend Dr. Martin Luther King Blvd.
St. Paul, MN 55155

Re: Petition of National Arbitration Forum to amend the Rules of Procedure for No-Fault Arbitration

Dear Mr. Grittner:

For six (6) years, I was a member of the Supreme Court's No Fault Standing Committee. For the past 28 years, I have limited my law practice to plaintiffs' personal injury with emphasis in the automobile accident area. My firm is responsible for editing the Minnesota Motor Vehicle Accident Desk Book and I am a frequent lecturer on topics related to no fault insurance claims.

Based upon my past experiences, I feel comfortable in commenting on the Petition currently pending before the Court.

Qualifications of National Arbitration Forum.
I am familiar with the National Arbitration Forum and personally know both of its principals, Edward Anderson and Roger Haydock. The Forum is a well respected and well run organization. There is no doubt in my mind that if the Forum served as an administrator of no fault arbitrations under the rules, it would do an extremely competent job.

Proposal to allow litigants a choice of providers.
I am strongly opposed to the Forum's request that the rule be amended to allow litigants a choice among administrators. I think the no fault arbitration system is best served by having an exclusive provider. I have no objection to the Forum being allowed to bid to be the exclusive provider approved by the Court. When one hears the term "monopoly", there is a knee-jerk reaction that something is wrong. However, in the context of no fault arbitrations, I think a monopoly is appropriate.

5901 South Cedar Lake Road
Minneapolis, MN 55416

(800) 544-9575
(952) 544-5501
Fax (952) 591-0682
www.hfllaw.com

Can the Forum "provide higher quality administrative services to the no fault program"?

As I indicated earlier, there is no question in my mind that the Forum could provide high quality administrative services if given the opportunity to do so. I do not believe, however, that those services would be significantly different than those currently being provided by the American Arbitration Association. I am unaware of any significant dissatisfaction among plaintiffs and the defense bar to the way the current system is being administrated. I believe that the Forum would have to use approximately 3,500 attorneys currently qualified as "neutrals" to serve as no fault arbitrators. I do not believe that the no fault arbitration panel would be interested in handling a no fault arbitration when the fee would be capped at $300.00 per arbitration hearing.

Can the Forum lower the cost to participants.
Although I do not have the figures for 2002, I would expect that there was something in excess of 4,000 no fault arbitrations filed in Minnesota last year. The filing fee to the plaintiff is $60.00 and the filing fee to the insurer is $180.00. With a total administrative cost of $240.00, it is difficult to conceive how any other administrator selected by the Court could provide the same service to the participants at a significantly lower cost.

If the Court has any questions regarding the materials contained in this letter, I would be more than happy to appear before the Court.

Sincerely,

HAUER, FARGIONE, LOVE, LANDY & McELLISTREM, P.A.

Robert J. Hauer, Jr.

RJH/jaw

LAW OFFICES OF
JENSEN, BELL, CONVERSE & ERICKSON, P.A.
formerly Peterson, Bell, Converse & Jensen, P.A.

Robert C. Bell
Willard L. Converse
Roger A. Jensen
James C. Erickson*†
Carol A. Baldwin
Caroline Bell Beckman
Charles R. Bartholdi
Mitchell W. Converse
Shari A. Jacobus
Kari L. Lillesand*

1500 Minnesota World Trade Center
30 East Seventh Street
St. Paul, MN 55101

Telephone (651) 223-4999
Facsimile (651) 223-4987

January 7, 2003

Mr. Frederick K. Grittner
Clerk of Appellate Court
25 Martin Luther King Blvd.
St. Paul, MN 55115

Re: Petition C6-74-45550

Dear Mr. Grittner:

For twenty years or so, I have been a frequent arbiter of no-fault disputes, all of which were exclusively administered by the American Arbitration Association (AAA).

Petition C6-74-45550 is presented by National Arbitration Forums requesting authority as an approved administrator for no-fault arbitrations. As I understand it, National would compete directly with AAA.

Competition on costs and services provides a better, more efficient product, and I therefore support the petition.

Many of the no-fault disputes involve close medical questions and are important to both the policyholder and the insurer. The presence of National Arbitration Forums, competing with AAA, can only produce a more efficient product for the policyholder and the insured.

I support the granting of this petition.

Very truly yours,

JENSEN, BELL, CONVERSE & ERICKSON, P. A.

James C. Erickson

JCE/db

*Also Admitted in Wisconsin
†Civil Trial Specialist, Certified by the Civil Litigation Section of the Minnesota State Bar Association.

SCHWEBEL
GOETZ &
SIEBEN

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

January 9, 2003

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr., Boulevard
St. Paul, MN 55155

RE: The Proposed Amendment to the Rules of Procedure for No- Fault Arbitration
Court File No: C6-74-45550

Dear Mr. Grittner:

I write to comment on the above entitled proposed amendment. I understand a petition has been filed with the Supreme Court requesting the opportunity to compete to be named the No- Fault Arbitration administrator and provider in Minnesota.

I agree with that position. It is a fundamental principle that competition, particularly with governmental branches and agencies, should be open and accessible to all of those qualified to do the job. There can be no rational basis to deny that opportunity here. The greatest benefit of competition is that it forces competitors to perform and deliver results. This is a good thing and it should be encouraged and promoted, rather than avoided.

While I have no particular preference for whom should be the provider of these services I do believe that it is unfair and imprudent to remain with one provider without the opportunity for others to be given an opportunity.

Some may say it is running smoothly and therefore there is no reason to change. Ease of administration or minimizing the burden of oversight should not be the determining factor, at least not until there is something with which to compare the current administration or oversight. Until and unless such a yardstick is available, and it can only

5120 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402-2246
Minneapolis: 612-377-7777 St.Paul: 651-777-7777
Toll Free: 800-752-4265 Fax: 612-333-6311
www.schwebel.com

become available through competition, no one can measure or know how it is currently managed and administered.

I urge the Court to grant the petition and allow open competition to be the No-Fault administrator and provider.

Respectfully yours,

William R. Sieben
Direct Dial Number: (612) 344-0305
wsieben@schwebel.com

WRS/en

P.O. Box 50191 Minneapolis USA 55405-0191 www.arbitration-forum.com 800 474 2371 651 631 1105 FAX 651 631 0802

January 3, 2003

NATIONAL
ARBITRATION
FORUM®

Minnesota Supreme Court
Minnesota Judicial Center
125 Constitution Avenue
St. Paul, Minnesota 55101

RE: Petition C6-74-45550

Dear Justices of the Minnesota Supreme Court,

I am the Managing Director of the National Arbitration Forum, the Petitioner requesting the Court to amend the Rules of Procedure for No-Fault Arbitration. I submit this comment in support of the Petition in response to the Request for Comments from the Court.

The Forum has been providing ADR services, in Minnesota and otherwise, since its founding in 1986. We provide ADR services to any party seeking resolution of their dispute. The headquarters are located in Roseville, Minnesota, from which we administer our services globally. The Forum's panel of qualified neutrals consists of over 900 experienced ADR practitioners, of which over 400 are former or retired judges, as well as the members of FedNet, a group of twenty retired United States District Court and Appeals Court Judges.

The Forum administers tens of thousands of arbitration cases each year. Services are provided in 17 countries, as well as every state. The Forum is one of the two major providers of global arbitration services for ICANN, the international administrator of Internet domain names. The Forum was selected to provide dispute resolution services that underlie the AICPA "WebTrust" seal program, as well as similar programs in Canada and Great Britain. Forum arbitration services in the United States have been favorably reviewed by a large number of courts. Justice Ginsburg of the United States Supreme Court referred to the Forum (and the incumbent provider) as models of arbitration administration.

The Forum has filed this petition for a number of reasons. First and foremost, we believe that the Forum is best situated to provide these services to Minnesota litigants efficiently and economically. The Forum has the most modern and efficient administrative system in the profession. This is reflected in the lower costs that the Forum charges for almost all administrative services, across a wide variety of dispute resolution. Also, as set forth in our petition, we believe Minnesota public policy, as embodied in M.S. §§16C.03 and 16C.09, supports such an amendment. The clear intent and policy of the state is to assure that those

who offer to provide services under state government have an equal opportunity to do so. This is not to benefit service providers, but to assure that taxpayers and users of such services receive the best for their expenditure.

The Forum contacted the incumbent, prior to filing this petition, in an attempt to craft a means by which, the organizations, working together, could maximize service to Minnesota litigants. We were unable to resolve the matter cooperatively.

The Forum believes it can provide these Minnesota services better and more economically. The National Arbitration Forum is administered locally. Among our senior staff, we know many of the No-fault arbitrators and most of the counsel for No-fault litigants, personally.

The Forum has been able to grow in a highly competitive environment because we have made a commitment to the best in administrative systems. From design, to personnel, to computer hardware and software, the Forum has the best.

We believe that we have the present ability to maximize service to Minnesota No-fault litigants.

Thank you for your consideration of this matter.

Respectfully,

Edward C. Anderson, Esq.
Managing Director

ECA:mkm

WILLIAM MITCHELL
COLLEGE OF LAW

875 SUMMIT AVENUE
ST. PAUL, MINNESOTA 55105-3076
TELEPHONE: 651.227.9171
FACSIMILE: 651.290.6414
WWW.WMITCHELL.EDU

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King Blvd.
St. Paul MN 55155

Re: Petition of National Arbitration Forum for
Revision of No-Fault Rules
Petition No. C6-74-45550

January 7, 2003

Dear Justices of the Minnesota Supreme Court,

I submit this letter in strong support of the Forum's Petition to have this Court amend the No-Fault rules regarding the administration of arbitrations. Several important reasons support a change in the current rules.

First, a rule adopting a fair and accessible application process comports with Minnesota law and the goals of our great State. It seems to me to be required by both the letter and spirit of Minnesota law to allow a fair and open process for providing a state created and sponsored benefit. I do not know of any legitimate reason why one organization could claim that it alone can provide state services and deny other organizations an opportunity to apply.

Second, the current rules provide AAA with a monopoly, for which there is no longer any justification. There are a number of arbitration organizations that can provide arbitration services in compliance with the no-fault statute and regulations. There is no longer any reason why AAA should continue to be a monopolist in this area.

Third, a reasonable competitive bidding process will save the parties in arbitration money and time. The current system, in my opinion, can be administered less expensively and more efficiently. The supervision of the No-Fault Supreme Court Committee can assure that the statute and rules are properly followed.

By way of disclosure, I am a Director of the National Arbitration Forum and was involved in previous efforts to have the rule changed. I believed then, and I believe now,

that this Court should open up the process to other arbitration providers, including the Forum. I previously presented petitions on behalf of the National Arbitration Forum to the No-Fault Advisory Committee, which declined to make any change. It is now appropriate for this Court to make the change presently proposed by the Forum.

Thank you for your consideration of this critically important legal and social issue.

Respectfully,

Roger S. Haydock
Professor of Law

JOHN W. BORG
ATTORNEY

January 7, 2003

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr., Boulevard
St. Paul, MN 55155

Re: Proposed Amendment to the Rules of Procedure for No-Fault Arbitration
C6-74-45550

Dear Justices of the Minnesota Supreme Court,

I herewith submit my strong support in favor of the above- entitled petition.

I currently work part time for the National Arbitration Forum. I privately practice ADR as well. I also am a retired Minnesota State District Court Judge. Most recently I served in several vice-presidential legal positions for a fortune 100 multi-national manufacturer of implantable medical devices. In addition to having served as a neutral in countless cases I also have been a party in many cases in mediation and arbitration.

I agree with and support the petition. While I understand the Court is not bound by the statutory requirements (M.S. 16C.03 and 16C.09) imposed upon the executive branch regarding bidding and contracting, it should not be unreasonable to consider applying such statutory statements of public policy to the other branches of the government. I urge the Court on this basis alone to grant the petition to permit competition for the no-fault administrator/provider position. To do otherwise sends a mixed message to the general public about openness in government and fair and equal access to the branches of that government.

The next question is why should a change be made. In addressing that question we should also ask why not make a change. The Court may receive comments that essentially say the current system is working well enough now and that change is not necessary. It may very well be working fine now, but fine as compared to what? The current provider has exclusivity. There is nothing with which to compare the current provider. Can the job be done faster, more economically, and with better quality outcomes? No one knows because no one else has had the opportunity to try. There is nothing against which today's exclusive provider may be measured.

The current provider should, if they have not already done so, publicly disclose what tools of evaluation they have employed, what the results of the evaluations have been, what actions they have undertaken to address issues raised in their evaluations, and how they have performed against the improvement plans they should have initiated.

The absence of a groundswell for a change is not a measure of performance and should not be used as a basis to deny the petition. My dozen years in highly competitive

6612 Limerick Drive • Edina, Minnesota 55439
ph: 952.944.3759 • fax: 952.944.3864 • jwborg@aol.com

industry demonstrated the need for competition. Feeling a competitor's hot breath on the neck requires action to be better, faster, more efficient and more cost effective. Competition is one of the building blocks of America. It makes us better. There is no competition here.

The provider of this service must be user friendly. The National Arbitration Forum is based in Roseville, Minnesota and managed in Minnesota. Issues that arise can and are handled easily and efficiently here in Minnesota. I understand the current exclusive provider has an office in Minnesota but is managed from outside the state and does its billing from New York. Distance does make a difference in the satisfactory management and administration of no-fault arbitration. Resolving a billing issue will no doubt be more economical, faster and easier in Minnesota than between New York and Minnesota.

It should not be a basis to deny the petition if the current provider seems to be managing the system smoothly enough thereby requiring very little management or oversight from the courts or oversight bodies. While ease of management and oversight may be a consideration it should be secondary to open competition, openness in government, and providing the best product. The old adage, " if it ain't broken, don't fix it," should not apply in this instance.

Ultimately, the measure of performance should be how well the parties are served in the resolution of their claims. The no-fault arbitration system is a service provided to its users. The administrators/providers are service providers as are the oversight bodies. Service providers are obligated to do just that, deliver service, in the best way possible for those being served.

There can be no doubt that the National Arbitration Forum is up to the task. Their history and track record speaks for itself. Their neutrals panel includes many retired Minnesota State Court Judges as well as a group of 20 retired United States Appeals and District Court Judges. The credentials are beyond question. The National Arbitration Forum can do the job. The National Arbitration Forum should be allowed to fairly and openly compete for the job.

I urge you to grant the petition and appoint the National Arbitration Forum as the exclusive provider and thereby begin to establish a baseline for the evaluation of performance. In the alternative, I urge you to permit competitive bidding for the privilege of providing this service.

Respectfully,

John W. Borg

Law Offices
WILLIAM STARR
208 Grain Exchange Building
400 South Fourth Street
Minneapolis, Minnesota 55415-1400
(612) 339-3911
—
FAX (612) 341-0048

William Starr
Attorney at Law

Legal Assistants
Marjorie J. Cain
Elinor K. Deemer

January 9, 2003

MR FREDERICK K GRITTNER
SUPREME COURT ADMINISTRATOR/
CLERK OF APPELLATE COURTS
305 MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVE
ST PAUL MN 55155-6102

Re: American Arbitration Association and Minnesota No Fault

Dear Mr. Grittner:

The Court has asked for comments concerning the appropriateness of the American Arbitration Association being the exclusive arbitrator of no fault disputes. In response to that request, I want to relate an anecdotal story.

In 1998 I was the binding arbitrator in a case involving a client of Michael Tewksbury and the Allstate Insurance Company. During the arbitration, it became apparent that Mr. Tewksbury was presenting a claim that involved triple dipping amongst a chiropractor, M.D. and a physical therapist. I denied the claim but before doing that, I told Mr. Tewksbury what I thought of his claim, and when asked if I thought his client was lying, I told him the onus of lying was on him and not the client. Mr. Tewksbury filed a complaint with the standing committee and after a hearing before Judge Simonett, I was suspended from the panel of arbitrators.

Fast forwarding to the year 2002, the rest of the story is that Mr. Tewksbury was appointed as the arbitrator on a claim that I brought on behalf of a client in front of the American Arbitration Association, there being no disclosure on his part that he had filed a complaint against me in 1998. I have requested sanctions against Mr. Tewksbury, and I am told that my complaint will be investigated, but I am also told that Mr. Tewksbury is the chairman of the standing committee.

I am writing simply to let you know that if the binding arbitration required by the statute is to be awarded to a sole provider, then there should be open bidding, if for no other reason than people don't get too absorbed in their own righteousness. By copy of this letter, I am advising Mr. Tewksbury accordingly.

Yours very truly,

William Starr

WS:ed

cc: Michael D. Tewksbury, Esq.
American Arbitration Association

STATE OF MINNESOTA
IN SUPREME COURT
File No. C6-74-45550

In the Matter of the Proposed Amendments to the Rules of Procedure for No-Fault Arbitration

The American Arbitration Association's Memorandum in Opposition to the Proposed Amendments

Joseph C. Tauriello
Vice President for Insurance Programs
Kathryn Stifter
Director of Insurance Center
200 South 6th Street
Suite 700
Minneapolis, MN 55402-1092
(612) 332-6545

On behalf of the American Arbitration Association

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INTRODUCTION

The American Arbitration Association (AAA) respectfully submits this memorandum, pursuant to an order of the Minnesota Supreme Court dated November 20, 2002.

Founded in 1926, the AAA's status as a public service, not-for-profit organization makes us uniquely qualified to continue to provide the high level of service that parties have become accustomed to receiving from this organization. Some of the AAA's many resources available to the Minnesota user community include an experienced AAA-trained local panel of neutrals, a local case administrative office that has served Minnesota for over thirty-seven (37) years and time-tested administrative and procedural rules that ensure efficiency and further our commitment to the integrity and neutrality in our dispute resolution process.

Additional resources include a dedicated management team and local staff uniquely experienced in handling high volume caseloads. A national leader in providing ADR services, the AAA is currently responsible for the administration of the nation's largest no-fault arbitration program. The AAA provides the financial strength, stability, and commitment to reinvest capital to facilitate the continued improvement in our processes.

These resources and their intended benefits, together with our shared process knowledge, allow us to continue providing proficient case management services.

DISCUSSION

I. The interests of the citizens of Minnesota are best served by the continued oversight of the no-fault arbitration program by the Supreme Court through the Standing Committee.

The express purpose of the Minnesota no-fault arbitration program is to promote the orderly and efficient administration of justice. To further this purpose, this Court adopted one set of administrative rules to be applied to all no-fault arbitrations. The day-to-day administration of the program was assigned to the AAA under the continuing supervision of the Standing Committee. Fundamental fairness requires parties to be treated similarly and consistently under similar circumstances. This goal is achieved not only by using one set of administrative rules, but also by using one administrative agency and one panel of neutrals who apply these rules. In the day-to-day administration of disputes there are often issues that must be resolved in a consistent and predictable fashion. Such issues include: reviewing new filings for completeness, panel selection, resolving locale disputes, addressing discovery disputes, handling rescheduling requests, and providing consistent communication to the parties in a consistent format.

Quarterly meetings are held by the Standing Committee to address various program issues. In that role, the Standing Committee has considered and rejected previous requests by the National Arbitration Forum (NAF) to be designated as the day-to-day administrator of the no-fault program. Specifically, on March 14, 1997, NAF petitioned the no-fault Standing Committee to be designated as an administrative organization for the no-fault arbitration program. Representatives of NAF were invited by the Committee Chair to appear before the Standing Committee and make an oral presentation. A presentation was made on April 18, 1997.

Following the Committee's special meeting, the Chair sent Mr. Haydock a letter dated June 18, 1997, advising that "[t]he Committee appreciated receiving your proposal, which prompted a review of the no-fault arbitration program and the role of the AAA. The Committee felt (unanimously) it was not feasible to divide up the administrative duties and that AAA should continue to handle these duties." (A copy of the letter is attached as exhibit "A.")

On July 16, 1997, NAF sent the Standing Committee another petition requesting that the Committee solicit competitive proposals for the administration duties and select one organization from the applicants. The Chair again invited a representative of NAF to appear at the next meeting of the Standing Committee. (A copy of the letter is attached as exhibit "B.") The Committee deliberated and the motion carried to respectfully decline the petition. Accordingly, the Standing Committee had reviewed previous requests from NAF and determined that the AAA should continue to serve as the day-to-day administrator.

It is our belief that the people of Minnesota would be best served if the Standing Committee were to formalize the oversight system that is already in place, and establish approval standards as a basis for any future competitive bids. The periodic review of any program is essential to ensure continued growth and continued success. The AAA does this internally on a continuing basis and would welcome an objective external review.

II. The administration of no-fault arbitrations by one dispute resolution organization promotes consistency, predictability, fairness, and efficiency in the process.

The appointment of more than one agency to administer a high volume no-fault caseload would hinder the current effective and efficient case administration and would create confusion for the public. Multiple administrative agencies would provide the unwelcome opportunity for differences in interpretation of administrative rules and Standing Committee policies, as well as for the implementation of different internal policies and administrative practices. Multiple appointments would hinder the ability to continue to deliver the high quality services that the citizens of Minnesota have come to expect. When inevitable difficulties would arise, the Standing Committee would have the difficult task of intervening to resolve differences among multiple agencies.

In addition to the day-to-day administrative difficulties that would be created by utilizing multiple agencies, it would be difficult, if not impossible, to produce and maintain accurate statistical reporting and necessary arbitrator data from separate statistical sources. Providing an accurate database requires constant maintenance and would be significantly complicated by adding the additional requirement of attempting to reconcile multiple databases. In addition to creating a process that would be less accurate and more cumbersome, all work would need to be duplicated by each administrative agency and shared on a central database. In order to effectively report statistical data to the Court and to the Standing Committee each year, the agencies would have to collate data from their individual sources, or the Standing Committee itself would need to decipher and organize the statistical data submitted by the agencies. The AAA has committed to a detailed central database that captures essential statistical information and is capable of generating detailed reports that contribute to effective administration of this caseload.

Furthermore, effectively managing the limited availability of arbitrators would become significantly complicated by utilizing multiple administrative agencies and would likely lead to panel and party inconvenience. Currently our case management team is responsible for scheduling over 5,000 cases per year. Taking into account postponement and rescheduling requests, internal calendar coordination is a difficult task. One agency is capable of this coordination, but additional efforts would be required on the part of the arbitrators and parties to coordinate hearings being scheduled by multiple organizations. The current pool of arbitrators available to the parties could be significantly depleted if the scheduling process became burdensome in trying to coordinate among multiple administrative agencies.

Moreover, if parties were able to choose an agency on a case-by-case basis, there would likely be disagreement on which agency to use, creating further confusion and delay. This would add complexities to a process that was intended to be simple and efficient.

The continued utilization of one administrative agency provides the most efficient, effective, and consistent administrative process.

III. The American Arbitration Association, as a not-for-profit organization with thirty-seven (37) years of experience administering Minnesota arbitrations, continues to benefit the citizens of Minnesota.

The American Arbitration Association is a progressive organization dedicated to the development and widespread use of prompt, effective, and economical methods of dispute resolution. As a not-for-profit organization, our mission is one of service and education.

Our commitment to providing exceptional neutrals, proficient case management, dedicated personnel, advanced education and training, and innovative process knowledge helps to ensure that we continue to meet the conflict management and dispute resolution needs of the citizens of Minnesota now and in the future.

The American Arbitration Association's detailed approach to managing the Minnesota no-fault arbitration program, a program that we have administered for twenty-eight (28) years, will continue to draw on existing capabilities that include:

- A management team that is among the most knowledgeable and talented in the dispute resolution field, experienced in processing fair, efficient, and effective dispute resolution claims, including high volume caseloads;
- The requisite foundation and infrastructure in Minnesota, and throughout the nation, to handle the processing of high volume insurance-related caseloads;
- Financial strength, including the liquidity and capital resources needed to support the necessary infrastructure;
- The technology and case management software system required to support the effective and efficient processing of high volume ADR transactions, including their control and status through detailed management reporting, and
- A proven track record since the program's inception in 1975.

Additionally, tangible examples of our reinvestment into the program, directly benefiting those we serve, include:

- Development of a proprietary case management system that captures necessary program information,
- Free arbitrator training,
- AAA advancement of arbitrator fees on behalf of the program,
- Providing parties with free hearing rooms,
- The ability to waive fees for hardship cases

The administration of the Minnesota no-fault arbitration program is an important part of the Association's present and past. Our downtown Minneapolis office, which opened in June of 1965, has handled more than 55,000 no-fault disputes since the no-fault

program's inception in 1975. As administrator of the Minnesota no-fault arbitration program, as well as the ADR provider in three other state insurance-related caseloads, the Association is the nation's leading volume processor of insurance claims that utilize an alternative dispute resolution system. The AAA has administered over 360,000 insurance-related disputes since 2001.

Our long history with the Minnesota no-fault arbitration program, specifically the local legal community, together with our shared experiences administering similar automobile insurance arbitration programs in other states, makes us uniquely qualified to continue to serve as administrator of the Minnesota no-fault arbitration program.

Exhibit A

GREENE
ESPEL

ATTORNEYS & COUNSELORS

JOHN E. SIMONETT
DIRECT DIAL (612) 373-8359

June 18, 1997

Roger S. Haydock - Director
National Arbitration Forum
P.O. Box 50191
Minneapolis, MN 55405

Re: **1997 No-Fault Standing Committee**

Dear Roger:

The No-Fault Committee met at my offices last Friday, June 13, 1997. Only members attended.

The Committee appreciated receiving your proposal, which prompted a review of the no-fault arbitration program and the role of the AAA. The Committee felt (unanimously) it was not feasible to divide up the administrative duties and that AAA should continue to handle these duties.

Sincerely,

John E. Simonett

JES\em

c: Kathryn Stifter, AAA

L:\JES\AAA\HAYDOCK.LTR

Exhibit B

GREENE ESPEL

ATTORNEYS & COUNSELORS

JOHN E. SIMONETT
DIRECT DIAL NO. (612) 373-8359

August 1, 1997

Roger S. Haydock, Esq.
National Arbitration Forum
P.O. Box 50191
Minneapolis, MN 55405

Re: *AAA No-Fault*
Our File No. 1000-014

Dear Roger:

I have your letter of July 16 with the petition to amend the rules.

Our next meeting, as you know, is Friday, October 17, 1997 at 3 p.m. I will put the petition first on the agenda. You mention others who might be interested in commenting on the rule changes. While our meeting time is limited, we should — and will — try to accommodate anyone.

I'll be on vacation the first two weeks of August. Give me a call on my return.

Very truly yours,

John E. Simonett

JES/em
c: Kate Stifter

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3300 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4140
(612) 672-8200
FAX (612) 672-8397
www.maslon.com

DAVID F. HERR
Direct Dial: (612) 672-8350
Direct Fax: (612) 642-8350

david.herr@maslon.com

February 20, 2003

Mr. Frederick K. Grittner
Clerk of Appellate Courts
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
Saint Paul, MN 55155-6102

Re: Petition of National Arbitration Forum
for Amendment to Rules of Procedure for No-Fault Arbitration
File No. C6-74-45550

Dear Mr. Grittner:

The Petition of the National Arbitration Forum to amend the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules is pending before the Supreme Court. We represent the Petitioner, and want to advise the Court of a recent legal development that bears upon the matters raised in the Petition. We submit this in accordance with Rule 128.05 of the Minnesota Rules of Civil Appellate Procedure.

New York adopted an emergency rule on the New York No-Fault Arbitration Program, administered from New York by the American Arbitration Association. I enclose a copy of the rule as obtained from WestLaw. This rule reflects New York's need for legislative intervention in the no-fault arbitration process to address multiple problems of cost and timeliness under the AAA-administered no-fault arbitration system in New York. The NAF petition before this Court seeks to avoid these problems in Minnesota.

Thank you for your consideration of this matter.

Respectfully submitted,

David F. Herr

DFH:psp
Enclosure
cc: National Arbitration Association

2/5/03 STATEREGAL
2/5/03 RegAlert (Pg. Unavail. Online)
2003 WL 13032670

Wednesday, February 5, 2003

New York - Emergency Rulemakings - Insurance Department - 11 NYCRR 65.

Insurance Department

EMERGENCY RULE MAKING

Motor Vehicle Insurance Reparations Act

I.D. No. INS-31-02-00004-E
Filing No. 61
Filing date: Jan. 17, 2003
Effective date: Jan. 17, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 65-3.5, 65-3.11 and Appendix 13 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5221 and art. 51

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The purpose of art. 51 of the Insurance Law (commonly known as the No-Fault Law) is to provide prompt compensation to the victims of motor vehicle accidents. It is intended to provide an efficient mechanism to compensate accident victims for their economic loss without regard to fault. To further these objectives, section 5106 of that article requires the superintendent to promulgate or approve procedures for the resolution of disputes by arbitration. Over the past several years, the department has witnessed a dramatic increase in the number of arbitrations requested to resolve disputes involving the payment of No-Fault benefits. Health care providers who have treated accident victims bring over 97 percent of these disputes to arbitration. The result of this increase in arbitration filings has been a significant delay in resolving these disputes. In some instances, it may take over two years to resolve a dispute. Many of these cases are closed due to withdrawal or consent award. It is evident that

many of these disputes can be resolved without the need to schedule an arbitration and any other cases contain so little merit that they should not be brought to arbitration at all. It is necessary to establish these rules on an emergency basis in order to establish some controls that will deter applicants from filing unnecessary arbitration requests and to encourage disputes resolutions prior to the filing of arbitration request. Without these controls, arbitration filings will continue to increase and the arbitration program will continue to be unable to meet its goal to provide prompt resolution of disputes. For the reasons stated above, this rule must be promulgated on an emergency basis for the preservation of the general welfare.

Subject: Motor Vehicle Insurance Reparations Act.

Purpose: To implement art. 51 of the Insurance Law, the comprehensive Motor Vehicle Insurance Reparations Act, popularly known as the No-Fault Law.

Substance of emergency rule: Section 65-3.5(b) is amended to provide ' that additional verification provided by insurers need not be submitted on a prescribed form.

Section 65-3.5(d) is amended to delete reference to examinations under oath in order to be consistent with other provisions.

Section 65-3.5(e) is amended to delete reference to additional verification in order to be consistent with other provisions.

Section 65-3.11 (b) and (c) are relettered paragraphs (d) and (e). Section 65-3.11(b) is a new section which prescribes the use of the revised Verification of Treatment by Attending Physician or Other Provider of Service Form (NYS Form NF-3), the Verification of Hospital Treatment (NYS Form NF-4), the Hospital Facility Form (NYS Form NF-5) and the new No-Fault Assignment of Benefits Form (NYS Form NF-AOB).

Section 65-3.11(c) is a new section which permits insurers to request, in writing, the original assignment or authorization to pay benefits form to establish proof of claim in accordance with the procedures contained in subdivision (d) of this section. The insurer must maintain the original form in its claim file.

Appendix 13 contains the revised Verification of Treatment by Attending Physician or Other Provider of Service Form (NYS Form NF-3), the Verification of Hospital Treatment (NYS Form NF-4), the Hospital Facility Form (NYS Form NF-5), the revised Denial of Claim Form (NYS Form NF-10) and the new No-Fault Assignment of Benefits Form (NYS Form NF-AOB). The new and revised forms NYS Form NF-3 and NYS Form NF-AOB must be used for accidents occurring on or after March 1, 2002. The new and revised forms NYS Form NF-4 and NYS Form NF-5 must be used by insurers for accidents occurring on or after September 1, 2002. The new and revised NYS Form NF-10 shall be used by insurers for all claims denied on and after September 1, 2002.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a

notice of proposed rule making, I.D. No. INS-31-02-00004-P, Issue of July 31, 2002. The emergency rule will expire February 4, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Patricia Mann, Insurance Department, 2.5 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: pmann@ins.state.ny.us

Consolidated Regulatory Impact Statement

1. Statutory authority: Sections 201, 301 and Article 51 of the Insurance Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Article 51 implements the provisions of the Comprehensive Motor Vehicle Insurance Reparations Act.

2. Legislative objectives: Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicles Insurance Reparations Act, popularly referred to as the No-Fault Law. No-Fault insurance was introduced to rectify many problems that were inherent in the existing tort system utilized to settle claims and to provide for the prompt payment of health care expenses and loss of earnings incurred as a result of motor vehicle accidents. Recognizing that disputes would occur involving the responsibility for payment of no-fault benefits, the Legislature included in section 5106 of the Insurance Law the authority for the Superintendent of Insurance to promulgate or approve simplified arbitration procedures in order to expedite the payment of those benefits. Pursuant to that authority, the Department has implemented a financial assessment system in Regulation 68 which provides that insurers bear the operating costs of the arbitration system. Further pursuant to its statutory authority, the Department has revised the financial allocation process so that arbitrators may apportion costs to applicants in those cases where applicants have submitted frivolous claims without any factual or legal merit.

3. Needs and benefits: The arbitration process was designed to provide a mechanism for the prompt resolution of disputes. Unfortunately, the no-fault system is currently fraught with fraudulent and abusive claims, many of which wind up in the arbitration system. By cluttering up the arbitration system and delaying the resolution of genuine disputes, these claims subvert the legislative objective of providing a forum for the prompt resolution of disputes in order to assure the prompt payment of no-fault benefits to those who are entitled to them.

The American Arbitration Association (AAA), as the organization designated by the superintendent to administer the no-fault arbitration system, is faced with the responsibility for the disposition of a large inventory of cases. Currently, there is an inventory of approximately 112,914 cases. Approximately 55,241 of those cases are pending at the AAA's Conciliation Center. The remainder have been transmitted to the AAA's Insurance Center for an arbitration hearings. In the year 2000, the AAA accepted 73,352 arbitration requests. In the year 2001, the AAA accepted approximately 84,977 arbitration requests and it is anticipated that it will accept approximately 92,000 cases in 2002. Increases in the number of arbitration requests have outpaced the ability of the AAA to promptly schedule cases for arbitration. Delays of over 2

years have been reported in the scheduling of some cases. These new measures are intended to deter the filing of cases determined to be frivolous or an abuse of the no-fault arbitration process.

Approximately 60% of the cases that are scheduled for hearings before the arbitrators result in either Consent Awards, where the parties agree to resolve the dispute prior to the scheduled hearing, or a withdrawal of the arbitration request. It would appear that many of these cases could be closed in a more efficient manner. The Department has identified arbitration rules that can be improved in order to attain the goal of reducing the number of unnecessary arbitration proceedings and thereby reducing the delays in the scheduling of arbitration hearings.

Health care providers often accept an assignment of benefits from the injured person. This assignment allows that provider to seek payment directly from the no-fault insurer and, if a dispute should arise regarding that payment, the provider may initiate an arbitration proceeding or court action against the insurer. The amendment would address a number of issues involving assignment of benefits forms that are currently utilized by health care providers. The wording of many of the assignments utilized by such providers permit them to recover amounts from the patient that are not compensible under the No-Fault law. These amounts could include services that are determined to be unnecessary or excessive or billings that exceed permissible fee schedule charges. Often providers, as part of the assignment, include a lien on any tort recovery. This practice can encourage providers to engage in unnecessary diagnostic testing or treatment with the assurance that if payment is not received from the No-Fault insurer, it may be recovered directly from the patient by asserting a lien on a liability claim. The prescribed assignment forms, which are included in this amendment, limit the direct payment by insurers to providers to amounts that are compensible under the No-Fault Law. This will protect consumers from those providers who have utilized assignment forms to pursue payment or assert liens for medically unnecessary services or illegal overcharges directly from their patients.

In some cases, assignments are signed by the injured person and then copied and passed from one provider to another. The authenticity of these assignments is questionable since it is unclear if the injured person intended to assign the No-Fault benefits to the provider. The amendment would specifically authorize the insurer to request the original assignment in order to authenticate the claim.

The amendment will eliminate the Arbitration Request form that is prescribed in the regulation. The organization designated to administer the arbitration program will be authorized to prescribe an Arbitration Request form, which will be subject to the superintendent's approval. This change will allow the organization to modify the form as necessary in order to facilitate the processing of arbitration requests, thereby improving the efficiency of the arbitration process.

The amendment will increase from 45 days to 60 days the period of time for the conciliation process to resolve disputes before transmitting a case to arbitration. This more realistic time period will enable the conciliation center to resolve more cases without the need of the more costly arbitration process. The number of required arbitrations should be reduced and the overall efficiency of the arbitration process should be improved.

The amendment will require the submission of all documents by the parties during the

conciliation phase of the arbitration process. Additional written submissions may be made only at the request or with the approval of the arbitrator. As noted, currently, approximately 60% of all arbitration requests are closed due to withdrawal or consent award after the case has been transmitted to arbitration. The disclosure of the positions during the conciliation process will facilitate the resolution of disputes during that process and should reduce the number of cases that will require assignment to an arbitrator.

In addition, insurers will now be able, subject to some limitations, to offer a higher attorney's fee to settle cases in the conciliation phase of the arbitration process. By expediting the resolution of disputes, these changes should contribute to a reduction in the number of cases included in the arbitration case inventory.

In order to expand the pool of qualified candidates for the position of No-Fault arbitrator and enable the designated organization to address the inventory, the amendment reduces the experience requirement from 10 years to 5 years. It is expected that this reduction will enable the Department to appoint qualified administrative law judges as well as others with significant experience to the position of No-Fault arbitrator. This change is necessary to secure appointment of additional qualified arbitrators in order to reduce the inventory of arbitrations that are pending disposition.

Many applicants who request arbitration in order to promptly resolve disputes with insurers are subject to delays in the resolution of those disputes because of the large arbitration case inventory. On the other hand, many applicants request arbitration more than a year after the claim is denied or becomes overdue. The amendment would accelerate the scheduling of arbitrations for those who request arbitration less than 90 days after receipt of the denial of claim or after the claim becomes overdue. This change will establish a priority for those who desire a prompt resolution of the dispute.

Currently, the cost of the arbitration process is borne almost entirely by the insurance industry and that cost is passed on to consumers. Arbitrators often make findings that the applicant for arbitration has engaged in abusive and sometimes fraudulent conduct. Yet the applicant merely loses its $40 arbitration filing fee. The amendment would permit the arbitrator to impose or apportion costs if the arbitrator concludes that the arbitration request was frivolous, without factual or legal merit or was filed for the purpose of harassing the respondent. This change should deter the filing of arbitration requests by those who engage in such behavior and contribute to a reduction in arbitration case inventory by reducing the number of those cases in the arbitration system.

In addition, the reference to examinations under oath in section 65-3.5(d) has been deleted in order to achieve consistency with other provisions of this part.

4. Costs: This rule change may impose additional costs upon applicants for no-fault benefits, attorneys, insurers and self-insurers. Health care providers must produce a new assignment of benefits forms. However, in its role as administrator of the no-fault system, the Department is aware that most health care providers and attorneys either photocopy the no-fault forms contained in the appendix of the regulation or amend existing word processing templates. Health

care providers may incur costs if they have to discard old forms which cannot be used after March 1, 2002.

Participants in the no-fault system will be required to replace old forms with a new form for health care treatment. If the forms are produced electronically, this may involve the production of a new form template.

Health care providers, attorneys and insurers may incur additional costs to produce documents that either are not necessarily produced under the current rules or which are produced later in the arbitration process. The rules for the production of documents are necessary to encourage resolution of disputes without the need of a costly arbitration proceeding.

Health care providers may incur additional costs when directed to pay arbitration costs when the claim is determined to be totally without merit. The ability to assess costs to an applicant should discourage the filing of arbitration requests that have no merit. Accordingly, the rules should result in an overall cost reduction for expenses of the arbitration program.

Any additional costs incurred by participants in the no-fault system in implementing these new procedures would be dependent upon the extent of their participation in the no-fault reparations system. In any instance, any costs associated with this should be minimal.

However, these changes should result in cost savings to insurers since more cases will be resolved in the conciliation process rather than the more costly arbitration process. With the implementation of these provisions, it is anticipated that the conciliation ratio will increase by 3% to 7% over the 20.8% conciliation ration for 2001.

Based on the current numbers of cases pending in the no-fault system, a 3% increase in cases resolved by conciliation rather than arbitration would result in savings of approximately $828,750 while a 7% increase in the conciliation ratios would generate savings of approximately $1,933,750. These savings are calculated based on the fact that, if a case is resolved through conciliation, an insurer would not be assessed the minimum $325 per case fee for arbitration.

5. Local government mandates: Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of this part. Among other things self-insurers will have to create new forms, modify templates, discard old forms and submit supporting documents at an earlier time than under the current requirements. Although they will incur some costs in complying with the new requirements, the effect of these changes should result in speedier resolution of no-fault arbitration cases.

6. Paperwork: Health care providers will be required to utilize the prescribed assignment of benefits form and, only when requested by the insurer, they will be required to submit the original assignment of benefits form.

Participants in the no-fault system will be required to replace old forms with a revised form for health care treatment. If the forms are produced electronically, this may involve the production of a new form template.

Applicants for arbitration and/or their attorneys and insurers will be required to submit written documentation of their positions early in the arbitration process. For most, this will represent additional paperwork that is not performed today. Prior to the emergency adoption of this amendment, an applicant for arbitration submitted either the Arbitration Request Form (AR-1) or insurer denial of claim form along with a medical bill to request arbitration. They prepared additional paperwork only when the arbitration was scheduled to be heard. Under the new requirements, they must file evidence and proof as to the items in dispute with the original arbitration request. Insurers must also prepare and submit proof of their entire defense prior to the case being forwarded on to arbitration to be heard before an arbitrator.

7. Duplication: None.

8. Alternatives: Additional alternatives were considered to address the increasing arbitration caseload, but were determined not to be viable at this time. A significant increase in the arbitration filing fee and a "loser pays" system, which would require the losing party to pay arbitration costs, were considered. An increase in the filing fee would affect all who file for arbitration and might discourage people from using the no-fault system for economic reasons, thereby negatively impacting on those who have legitimate disputes and chose to utilize the no-fault system. A "loser pays" approach would also affect a significant number of applicants, many of whom have legitimate disputes with their insurers. The rules that are included in this amendment represent a reasoned approach to addressing a burgeoning arbitration case inventory that compromises the goals of the arbitration program–the prompt and fair resolution of disputes.

It should also be noted that the Department has met with the Medical Society of the State of New York, the NYS Association of Orthopedic I Surgeons, the NYS Trial Lawyers Association and has received written comments from some insurers. Concerns were raised regarding the assessment of costs against claimants if an arbitrator deems the arbitration request to be frivolous; denying a claimant the right to respond to the respondent's comments without permission from the arbitrator; the language contained in the Provider of Health Benefits Form (NF-3); and the times frames instituted for expedited arbitration hearings. The Department is reviewing their expressed concerns and will amend this Part if deemed necessary.

9. Federal standards: None.

10. Compliance schedule: The rules require insurers to provide a new claim form for claims arising from accidents that occur on and after March 1, 2002. Health care providers will be required to provide that form or a newly prescribed assignment of benefits form for those claims when they wish to be paid directly by the insurer. Arbitration rules for the submission of documents, the expedited processing of arbitration requests and the imposition of the administrative costs upon an applicant that submits an arbitration request that is determined to be without any merit take effect for all arbitration requests filed on and after March 1, 2002. The rules regarding the insurer's ability to request the original assignment, the extension of the conciliation process and the qualification of arbitrators take effect immediately.

The also requires hospitals to utilize a revised claim form for claims arising out of motor vehicle accidents which occur on or after September 1, 2002. It is expected that hospitals will be

able to comply with this requirement.

Consolidated Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on insurers who may be considered small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State and self-insurers, none of which fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are both independently owned and have under 100 employees.

Self-insurers typically have to be large enough to have the financial ability to self insure losses and the Department has never been provided information to indicate that any of the self-insurers are small businesses.

Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of this part. Among (other things, self-insurers will have to replace old forms, modify templates, discard old forms and submit supporting documents at an earlier time than under the current requirements. Although they will incur some costs in complying with the new requirements, the effect of these changes should result in speedier resolution of no-fault arbitration cases.

However, some applicants for no-fault benefits and attorneys representing claimants who submit claims for payment under the no-fault insurance system may be considered small businesses. Health care providers will be required to utilize the prescribed assignment of benefits form and, only when requested by the insurer, they will be required to submit the original assignment of benefits. Applicants for arbitration and/or their attorneys will be required to submit written documentation of their positions early in the arbitration process. For most, this will represent additional paperwork that is not performed today.

Prior to the emergency adoption of this amendment, an applicant for arbitration submitted either the Arbitration Request Form (AR-1) or insurer denial of claim form along with a medical bill to request arbitration. Under the new requirements, they must file evidence and proof as to the items in dispute with the original arbitration request. Insurers must also prepare and submit proof of their entire defense prior to the case being forwarded on to arbitration to be heard before an arbitrator.

This rule change may impose additional costs upon applicants for no-fault benefits, insurers and self-insurers. Health care providers may incur costs to produce a new assignment of benefits form. However, in its role as administrator of the no-fault system, the Department is aware that most health care providers and attorneys either photocopy the no-fault forms contained in the appendix of the regulation or amend existing word processing templates.

Applicants for no-fault benefits and attorneys may incur additional costs to produce documents that either are not necessarily produced under the current rules or which are produced later in the arbitration process.

Participants in the no-fault system will be required to replace old forms with a revised form for health care treatment. If the forms are produced electronically, this may involve the production of a new form template.

Health care providers may incur additional costs when directed to pay arbitration costs when the claim is determined to be totally without merit. However, the new assignment of benefits form provides protection for those who assign their benefits to health care providers. The rules for the production of documents are necessary to encourage resolution of disputes without the need of a costly arbitration proceeding. The ability to assess costs to an applicant should discourage the filing of arbitration requests that have no merit. Accordingly, the rules should result in an overall cost reduction for expenses of the arbitration program.

Any additional costs incurred by participants in the no-fault system in implementing these new procedures would be dependent upon the extent of their participation in the no-fault reparations system. In any instance, any costs associated with this should be minimal.

Consolidated Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers, self-insurers and applicants for no-fault benefits covered by this regulation do business in every county in this state, including rural areas as defined under Section 102(1) of the State Administrative Procedure Act. Some of the home offices of these insurers and self-insurers lie within rural areas.

2. Reporting, recordkeeping and other compliance requirements: Health care providers will be required to utilize the prescribed assignment of benefits form and, only when requested by the insurer, they will be required to submit the original assignment of benefits form. Insurers will be required to produce and distribute a new form for health care treatment and a new denial of claim form. Applicants for arbitration and/or their attorneys and insurers will be required to submit written documentation of their positions early in the arbitration process. For most, this will represent additional paperwork that is not performed today.

Prior to the emergency adoption of this amendment, an applicant for arbitration submitted either the Arbitration Request Form (AR-1) or insurer denial of claim form along with a medical bill to request arbitration. They prepared additional paperwork only when the arbitration was scheduled to be heard. Under the new requirements, they must file evidence and proof as to the items in dispute with the original arbitration request. Insurers must also prepare and submit proof of their entire defense prior to the case being forwarded on to arbitration to be heard before an arbitrator.

3. Costs: This rule change may impose additional costs upon applicants for no-fault benefits, attorneys and insurers. Health care providers may incur costs to produce a new assignment of benefits form. However, in its role as administrator of the no-fault system, the Department is aware that most health care providers and attorneys either photocopy the no-fault forms contained in the appendix of the regulation or amend existing word processing templates.

Participants in the no-fault system will be required to replace old forms with a revised form for

health care treatment. If the forms are produced electronically, this may involve the production of a new form template. Applicants for no-fault benefits, attorneys and insurers may incur additional costs to produce documents that either are not necessarily produced under the current rules or which are produced later in the arbitration process.

Health care providers may incur additional costs when directed to pay arbitration costs when the claim is determined to be totally without merit. However, the new assignment of benefits form provides protection for those who assign their benefits to health care providers. The rules for the production of documents are necessary to encourage resolution of disputes without the need of a costly arbitration proceeding. The ability to assess costs to an applicant should discourage the filing of arbitration requests that have no merit. Accordingly, the rules should result in an overall cost reduction for expenses of the arbitration program.

Any additional costs incurred by participants in the no-fault system in implementing these new procedures would be dependent upon the extent of their participation in the no-fault reparations system. In any instance, any costs associated with this should be minimal.

4. Minimizing adverse impact: The regulation applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. The regulation does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: Although this action was not contemplated at the time of the preparation of the Insurance Department's last Regulatory Agenda, the Department does not anticipate that this action will affect parties in rural areas with any greater impact than parties in other parts of the state. However, the Department has met with the Medical Society of the State of New York, the NYS Association of Orthopedic Surgeons, the NYS Trial Lawyers Association, and has received written comments from insurers. The Department is currently reviewing their expressed concerns and will amend this Part if deemed necessary.

Consolidated Job Impact Statement

This rule institutes new procedures for the no-fault arbitration process. One of the changes reduces the number of years of no-fault resolution experience from ten years to five years for an individual to qualify as a no-fault arbitrator. This change should provide more opportunity for individuals to be appointed as no-fault arbitrators.

In addition, the implementation of these new procedures should result in a decrease in the inventory of no-fault conciliation and arbitration cases. Currently there is a need for additional arbitrators and administrative support staff. One of the goals of this amendment is to stabilize the situation that is producing the need for these additional arbitrators and support staff.

Overall, the rule should not have any adverse impact on jobs and employment opportunities in this State and may, in fact, result in a limited number of increased job opportunities for qualified people.

NY Emergency Rulemakings EM Insurance Department 11 NYCRR 65 Motor Vehicle Insurance Reparations Act 20030117 FullText 20030214 20030205 REG 20033200305489.

---- INDEX REFERENCES ----

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