



## NY PIP Rule Revisions

Effective February 1, 2010

*What follows are the Procedures that apply to the mandatory intercompany arbitration process pursuant to Section 65-4.11(d) of the New York State Insurance Department Regulation No. 68.*

### *(d) Procedures*

#### (1) Condition Precedent

(i) As a condition precedent to initial filing of arbitration, a party requesting reimbursement of first-party benefits from another party, as provided in section 5105 or 5221(b) of the Insurance Law, shall make such request as soon as reasonably practicable on the prescribed “Inter-Company Reimbursement Notification Form.”

(ii) Parties named on an arbitration application (NY PIP-FORM) shall only include “insurers” and “self-insurers” as those terms are defined in Article 51 of the Insurance Law; the Motor Vehicle Accident Indemnification Corporation (MVAIC); any company providing insurance pursuant to Section 5103(g) of the Insurance Law; and compensation providers as defined in Section 5102(l) of the Insurance Law. Applications naming parties other than insurers or self-insurers will be administratively closed if not amended within 30 days of notification by Arbitration Forums.

#### (2) Initiation of Arbitration

(i) The applicant shall commence an arbitration proceeding by filing a completed NY PIP-FORM and Contentions Sheet that lists all evidence that will be presented for consideration by the arbitrator(s) with Arbitration Forums and paying the applicable filing fee. Proof of damages shall include a computer printout or a ledger of benefits paid, kept in the regular course of business. The ledger must include the name of the payee, amount paid, date of service, date paid, and the total amount paid. For cases filed via AF’s Web site, AF will forward a copy of the NY-PIP FORM and Contentions Sheet, as well as any amendments, to the respondents with notification of the hearing date. For cases not filed via AF’s Web site, the applicant shall simultaneously send a copy of the NY PIP-Form and Contentions Sheet filed to a representative of each respondent being filed against. Arbitration shall be requested no later than three (3) years from the date that each claim payment is made. If any information is missing from the NY PIP-FORM, (i.e., respondent’s file number) an explanation must be provided on the Contentions Sheet.

(ii) Submission of a case to arbitration shall have the same force and effect as to insurers as if litigation has been instituted; further, if a matter within the compulsory provisions of this section is inadvertently placed in litigation, the dismissal of such litigation will be deemed as a submission to arbitration:

(a) Upon request, the party filing in litigation shall discontinue the suit; and

(b) The applicant must make the appropriate arbitration filing 60 days from the date of the dismissal or filing of discontinuance with the Court. If the Statute of Limitations has expired prior to the dismissal/discontinuance, it shall be tolled for 60 days from date of dismissal/discontinuance.

(c) If the issue of coverage is in litigation, the Statute of Limitations shall be tolled pending final determination of such the issue. The appropriate arbitration filing must be made within 60 days of the date of final determination of the issue of coverage by the Court.

(iii) Where there are claims arising from the same accident, subject to the compulsory jurisdiction of this section, a separate filing must be made for each injured party. The liability decision on the first filing will be conclusive to the same named parties.

(iv) Upon receipt of the NY PIP-FORM and Contentions Sheet, the respondent must

(a) complete its portion of the NY PIP-FORM, making any corrections to the information listed on its behalf by the applicant.

(b) complete and file its section of the NY PIP-FORM and a completed Contentions Sheet with Arbitration Forums by the Materials Due Date posted by Arbitration Forums.

(c) raise and support affirmative defenses in the *Affirmative Defense* section on the Contentions Sheet. If not asserted, the arbitrator(s) will not consider such defenses.

(d) list all evidence that will be presented for consideration by the arbitrator(s).

(e) if damages are contested, present its arguments and provide an itemization of damages being contested under the *Damages* section on the Contentions Sheet. If this section is left blank, damages will be deemed uncontested.

(f) submit a copy of the NY-PIP FORM and Contentions Sheet filed with Arbitration Forums to the applicant's local representative and any other respondent(s) by the Materials Due Date posted by Arbitration Forums. For cases answered via AF's Web site, AF will notify the filing company electronically or mail a copy to them, depending on the filing method used.

(v) If a respondent denies coverage, the respondent must check the appropriate box on the NY PIP-FORM, provide a copy of the denial of coverage letter to the party seeking coverage for the loss (i.e. alleged negligent party), and explain the reason in the Affirmative Defense section on the Contentions Sheet. If these requirements are met, then the arbitrator shall dismiss the arbitration without prejudice by upholding the affirmative defense of no jurisdiction. This shall not apply to MVAIC.

(vi) If a settlement has been reached between the parties prior to hearing, the applicant must immediately withdraw its filing online or notify Arbitration Forums to withdraw the filing and copy the respondent(s).

(vii) Any party may request a deferment. Justification for the deferment must be included in the Deferment Justification section. Per (2)(iv)(b) above, said request must be received by Arbitration Forums by the Materials Due Date posted by Arbitration Forums. If pending litigation exists and the case index number and/or proof of filing is submitted, the deferment request will be administratively granted for one-year from the date of filing subject to a challenge by another party. Any subsequent deferment request can also be challenged. If a deferment is requested for any other reason the case will proceed to hearing and the validity of the deferment request shall be determined by the arbitrator(s). If the request is upheld, the case will be deferred for one year. If the deferment is denied, the arbitrator(s) will continue to hear and determine the disputed issues. The party granted the deferment may withdraw the deferment at any time. Upon withdrawal of a deferment, the case will be rescheduled for a hearing. Any subsequent deferment requests shall be determined through this procedure. AF will charge the requesting party with a fee equal to double the filing fee for subsequent requests (no fee is incurred for an initial request).

(3) Designation of Arbitrator(s)

(i) Arbitration Forums shall designate members of local arbitration panels, which shall consist of authorized representatives on the basis of their experience and qualifications and who shall serve without compensation.

Arbitration Forums shall designate one disinterested member of such panel to serve as an arbitrator in each case. However, an insurer may request a three-person arbitration panel in a specific case. If one or more of the controverting parties is a self-insurer that has requested a three-person panel, then the self-insurer may also request that at least one member of the panel be a disinterested representative of a self-insurer, where such representative is available to serve on the panel.

(ii) Arbitration Forums shall designate an arbitrator(s) for all hearings on a random basis.

(iii) Neither Arbitration Forums nor any designated arbitrator(s) shall be made a party to any court proceeding relating to an arbitration award unless their presence as a party is pertinent to the issues raised in the litigation. The participation of a party in an arbitration proceeding shall constitute a waiver of any claim against the arbitrator(s) and/or Arbitration Forums for any act or omission in connection with any arbitration conducted under these rules. Arbitration Forums shall transmit to the superintendent copies of any legal papers served upon them or any arbitrator, relating to any stay or appeal of an arbitration proceeding or award.

#### (4) Arbitration Proceedings

(i) For cases filed via AF's Web site, AF will immediately notify the parties of the hearing date and any subsequent changes. For parties that do not file or respond online, AF will send a Hearing Notice at least 40 days prior to the initial hearing date, unless waived, and notify them of any changes. A scheduled hearing shall proceed in the event that the respondent fails to answer after the requisite Hearing Notice has been sent. In the event either party to the hearing questions proper notice following an award issuance, Arbitration Forums shall schedule the case for a rehearing with the consent of the adverse party.

(ii) Each party shall be granted one reschedule of the hearing date if requested by the Materials Due Date posted by AF. Arbitration Forums will notify all parties of the new hearing date. Any further reschedules shall be on consent of all parties or at the discretion of the arbitrator(s). AF will charge the requesting party with a fee equal to double the filing fee for subsequent reschedules (no fee is incurred for an initial reschedule). The arbitrator(s) may grant an adjournment for cause or to request briefs of law or clarification of submitted materials. Arbitration Forums will notify all parties of the new hearing date.

(iii) An applicant or respondent may send a representative to a hearing or proceed on the written submission of evidence without a representative. If an appearance is to be made, the intent to do so shall be indicated on the original or an amended NY PIP-FORM. The failure to do so may be excused at the discretion of the arbitrator for good cause.

(iv) All documents (e.g., responses, amendments, evidentiary material) must be received by Arbitration Forums by the Materials Due Date posted by AF. A copy of any amendments filed shall be simultaneously sent to all other parties. Documents not received within this period will not be sent to the hearing.

(v) Evidence not listed that is received subsequent to filing for arbitration may be submitted for consideration at the arbitrator's discretion.

(vi) Subject to the limitations in (v) above, a representative of a party may bring his or her evidence to the hearing rather than mailing same to Arbitration Forums.

(vii) Formal rules of evidence shall not apply at hearings.

(viii) A party may present witnesses at the arbitration hearing. If a witness will be presented by a party, the intent to do so must be indicated on the original or an amended NY PIP-FORM. If a witness is present at the

hearing without the requisite prior notice, the witness may not give testimony in the absence of the consent of the other party and the arbitrator(s) approval. Insureds or witnesses may not appear without the presence of a company representative.

(ix) Representatives may not be present while the arbitrator(s) is deliberating.

#### (5) Arbitration Decisions

(i) A decision of an arbitrator, or a majority of an arbitration panel, on issues of fact or law is final and binding. However, this provision does not preclude Arbitration Forums from correcting a clerical or administrative error on the part of either Arbitration Forums or the arbitrator(s) so long as the error is brought to Arbitration Forums' attention within 30 days of receipt of the decision. Any such correction must be approved by the arbitrator(s). In the event a party to the hearing questions an arbitrator(s) failure to address an affirmative defense within an award, Arbitration Forums shall schedule the case for a rehearing with the consent of the other party or parties.

(ii) The arbitrator(s) may, upon their own initiative, render a decision in favor of a respondent without production of evidence by such respondent if the arbitrator(s) determine, following presentation of the applicant's evidence, that such applicant has not made out a prima facie case.

(iii) Decisions of the arbitrator(s) shall be promptly rendered after consideration of the case, and any evidence submitted by the parties shall be returned promptly to them upon request.

(iv) The decision(s) of the arbitrator(s) shall include a statement for the basis of the award findings, such as lack of proof, contributing negligence, apportionment of negligence or other controlling principles of law, and other relevant evidence and issues. All awards shall be issued on a form designated by Arbitration Forums.

(v) An applicant may file for basic benefits paid not included in a prior filing so long as the Statute of Limitations has not run out on any one of those benefits. If there has been a hearing and a liability decision made, the liability decision is conclusive. A decision of an arbitrator on the liability issue is conclusive only of the controversy in the claim submitted to the arbitrator by the same parties and has no legal effect on any other claim or suit arising out of the same accident or occurrence between different parties. A decision of an arbitrator on issues other than liability is not conclusive as to the same or similar issues in any other claim.

(vi) Decisions will be posted on the AF Web site promptly following the hearing; AF will provide electronic notification to the parties of a decision's publication. Electronic signature(s) of the arbitrator(s) will be used.

(vii) Payment of the award shall be made to the prevailing party within 30 calendar days from the date of receipt of the award.

(viii) If the decision concerns only the issue of priority of payment and the applicant is the prevailing party, the respondent held responsible for the first-party benefits shall promptly assume further handling of the claim. The respondent shall promptly reimburse the applicant for the amount of benefits paid to date and any allocated claims expenses paid in conjunction with the handling of the claim. The applicant will continue payments to the eligible injured person until the respondent has assumed obligation for the claim.