

State of Delaware



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Department of Insurance AUTO BULLETIN NO. 10

PERSONAL INJURY PROTECTION ("PIP")

Original No. _____
Adopted December 5, 1994
Amended June 12, 1995
Amended October 15, 1998

Legal reference: Title 21 Delaware Code, Section 2118(a)(2)
Title 18 Delaware Code, Section 2304(16)

It has come to the attention of the Insurance Commissioner that a number of automobile insurers are refusing to pay Personal Injury Protection ("PIP") benefits in the amount charged by health care providers as a result of a determination that the amount charged is not "reasonable" as required by statute.

Under the applicable law, 21 Delaware Code, Section 2118(a)(2), insurers are responsible for paying the "reasonable and necessary expenses" for PIP coverage. Some insurers are refusing to pay more than a portion of the medical, hospital, or other professional medical expenses on behalf of their insureds based upon what those carriers believe are "unreasonable" fees billed.

In interpreting the relevant statute, it is the Commissioner's opinion that PIP carriers must pay all of an insured's PIP costs (less any applicable deductible) if those costs are reasonable and pertain to services that are necessarily required for the care of the insured. This does not apply when a provider of services and carrier have previously agreed on a price for a specified service.

If a medical provider has charged in "unreasonable fee" for a necessary treatment, the unreasonableness of that fee does not render the treatment "unnecessary." That portion of the fee which is not in dispute shall be paid according to relevant law. A dispute over the remaining amount of such a fee should remain a dispute between the carrier and the provider. It is expected that carriers will make good faith efforts to resolve such disputes and not expose the insured party to harassment or legal action. However, if a claim is made or legal action is filed by the provider against the insured party for the amount of the fee in dispute, the carrier must provide a defense for its insured against that claim or legal action.

Under the Delaware Unfair Practice Act, Title 18 Delaware Code, Section 2304(16), it is an unfair trade practice to attempt with such frequency as to indicate a general business practice to settle a claim for less than the insurance policy requires. The Department will vigorously enforce the rights of insured to receive the benefits to which they are contractually entitled. It will be considered a violation of 18 Delaware Code, Section 2304 if a carrier asserts that the provisions of this bulletin prohibit balance billing.