

(g) No health benefits plan shall seek repayment from or withhold payment to an insured for amounts paid to the insured in consideration of charges which were in excess of the amounts set forth in the medical fee schedules.

(h) If there is more than one group health benefits plan providing secondary coverage to an insured, these plans may coordinate their benefits with one another in accordance with N.J.A.C. 11:4-28.

Case Notes

Costs of home renovations and specialized equipment for quadriplegic insured were "allowable expenses" within meaning of regulation mandating that actual benefits payable by health benefits plan. *Bailey v. Garden State Hospitalization Plan*, 280 N.J.Super. 206, 654 A.2d 1043 (L.1994), affirmed 290 N.J.Super. 277, 675 A.2d 696.

Hospitalization insurer could be held responsible for hospital bills without regard to when they were incurred, and personal injury protection benefits could be used for specialized equipment and home modifications. *Bailey v. Garden State Hospitalization Plan*, 280 N.J.Super. 206, 654 A.2d 1043 (L.1994), affirmed 290 N.J.Super. 277, 675 A.2d 696.

"Primary carrier" is carrier first required to pay personal injury protection benefits preserving its right of contribution from other insurers also liable for such payments. *Bailey v. Garden State Hospitalization Plan*, 280 N.J.Super. 206, 654 A.2d 1043 (L.1994), affirmed 290 N.J.Super. 277, 675 A.2d 696.

11:3-37.10 Explanation of benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

1. Each procedure for which a claim has been made;
2. Eligible expense related to each procedure with an indication of whether the eligible expense is based on the medical fee schedules or is the reasonable charge as determined by the automobile insurer;
3. Actual benefits paid;
4. Any deductible or copayment applied;
5. A concise explanation why any item of expense is considered an ineligible expense, when this occurs; and
6. A statement to insureds that no health care provider may demand or request any payment from any person in excess of those permitted by N.J.A.C. 11:3-29, and that no person is liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by N.J.A.C. 11:3-29 pursuant to N.J.S.A. 39:6A-4.6.

Amended by R.1994 d.564, effective November 21, 1994 (operative January 1, 1995).

See: 25 N.J.R. 4706(a), 26 N.J.R. 4616(b).

Case Notes

Former patient failed to establish that charges reflected in bill were not usual, customary, and reasonable; hospital's witness testified that

charges were in accord with other teaching institutions in area and were approved by state insurance commission, and patient's insurance company paid its full share of all charges and did not reject any by claiming that they were not usual, customary, reasonable, and/or necessary. *Hahnemann University Hosp. v. Dudnick*, 292 N.J.Super. 11, 678 A.2d 266 (A.D.1996).

11:3-37.11 Dispute as to primacy of coverage

(a) If, subsequent to the selection of the PIP-as-secondary coverage option by the named insured, injuries are sustained by an insured eligible for health benefits plan coverage, but a dispute exists between the health benefits provider and the automobile insurer, then the health benefits provider shall provide benefit as if it were the primary coverage provider and no PIP benefits were available to the insured. In no event shall the provision of benefits be unreasonably delayed by either a health benefits provider or an automobile insurer.

(b) If the health benefits provider asserts that it is not subject to N.J.A.C. 11:3-37.3, and thus, will not act as the primary coverage provider then the automobile insurer shall assume the role of primary coverage provider, and provide its benefits in accordance with N.J.A.C. 11:3-37.8. The automobile insurer shall be entitled to recover premium reductions in accordance with N.J.A.C. 11:3-37.8(c).

11:3-37.12 Eligibility under two or more automobile policies

(a) If an insured is eligible for coverage of medical expenses under more than one automobile policy, the determination as to which automobile policy will assume coverage responsibility for that insured shall be as follows:

1. A named insured shall receive benefits for medical expenses under the terms of the automobile policy on which he or she, or his or her spouse, is identified as the named insured.
2. A family member who is a child of a named insured or the named insured's spouse shall receive benefits for medical expenses under the automobile policy of the named insured, subject to the following:
 - i. If the child is a child of more than one named insured or of more than one spouse of a named insured, the child shall receive benefits under the terms of the automobile policy of the named insured who has legal custody of that child or whose spouse has legal custody of that child.
 - ii. If the child is a child of more than one named insured or of more than one named insured's spouse, and legal custody of that child has either never been awarded, or has been awarded jointly, then the child shall receive benefits under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.
 - iii. If the child is a named insured or the spouse of a named insured, (a)1 above shall apply.

3. If neither (a)1 nor (a)2 above apply to an adult or child family member, then that family member shall receive benefits for medical expenses under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

4. If an automobile policy identifies more than one person as a named insured on the automobile policy, the birthday of the named insured whose birthday occurs earliest in the calendar year shall be considered the determinant birthday on that automobile policy.

(b) An insured shall not receive benefits for medical expenses under more than one automobile policy.

(c) If an automobile policy PIP plan provides benefits for medical expenses for an insured who is eligible for medical expense benefits under more than one automobile policy PIP plan, the automobile insurer of the paying PIP plan may seek equitable pro rata contributions from the other automobile policy PIP plan(s) for the benefits actually paid by the paying PIP plan.

Case Notes

Primary carrier must pay PIP benefits and may seek contribution from other carriers. *U.S. Fidelity & Guar. Co. v. Industrial Indem. Co.*, 264 N.J.Super. 379, 624 A.2d 1014 (A.D.1993), certification denied 134 N.J. 484, 634 A.2d 530.

Double recovery of PIP benefits is prohibited. *Martin v. Prudential Ins. Co.*, 255 N.J.Super. 524, 605 A.2d 762 (A.D.1992).

Passenger could recover PIP benefits under both driver's policy and own policy. *Martin v. Prudential Ins. Co.*, 255 N.J.Super. 524, 605 A.2d 762 (A.D.1992).

11:3-37.13 Penalties

Each automobile policy or health benefits plan subject to the terms of this subchapter which fails to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.

11:3-37.14 Severability

If any provision of this subchapter or application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SUBCHAPTER 38. TOWING AND STORAGE FEE SCHEDULE

11:3-38.1 Purpose and scope

(a) The purpose of this subchapter is to establish towing and storage fee schedules on a regional basis pursuant to N.J.S.A. 17:33B-47 for the reimbursement of towing charges and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State and to all persons who provide towing and storage services in this State for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

11:3-38.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, or delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Basic towing service” means the removal and transportation of an automobile from a highway, street or other public or private road, or a parking area, or from a storage facility, and other services normally incident thereto, but does not include recovery of an automobile from a position beyond the right-of-way or berm, or from being impaled upon any other object within the right-of-way or berm.

“Commissioner” means the Commissioner of Insurance of the State of New Jersey.

“Department” means the New Jersey Department of Insurance.

“Inside buildings” means a vehicle storage facility that is completely indoors, having one or more openings in the walls for storage and removal of vehicles and that is secured by a locking device on each opening.

“Motor vehicle accident” means an occurrence in which a private passenger automobile comes in contact with any other object for which the private passenger automobile must be towed or removed for placement in a storage facility. This includes all situations which are accidental as to the insured even if they were caused by the intentional acts of a perpetrator where the perpetrator was not the insured or not otherwise involved with the insured.

“Tow vehicle’s base of service” means the towing operator’s principal place of business where the tow vehicle is stationed when not in use.

“Outside secured” means an automobile storage facility that is not indoors and is secured by a fence, wall or other man-made barrier that is at least six feet high and is installed

with a passive alarm system or a similar on-site security measure. The facility is to be lighted at night.