

Position Paper:
**Workers'
Compensation/
No-fault**



New York State Assembly Majority

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Background

In 2013, the Workers' Compensation Board ["Board"] initiated a business process re-engineering ["BPR"] effort to reassess the workers' compensation system in New York State. The goal of this process was to determine if the workers' compensation system effectively serves the needs of injured workers and employers. The Board studied the process by which physicians bill insurers and their rate of compensation in New York State.¹ Throughout this process the Board held meetings and roundtables with a variety of stakeholders in the workers' compensation system which included worker representatives, the legal community, the New York State Department of Health, the New York State Insurance fund, and providers.² In July of 2014, the Board released a discussion document proposing a new Workers' Compensation Medical Fee Schedule, which, with the exception of Evaluation and Management Fees, had not been updated since 1996. The Board's proposal is to adopt a Resource-Based Relative Value Scale ["RBRVS"] fee schedule. This methodology, which is used by Medicare, would allow the Board to update the proposed new fee schedule on an annual basis, and would adopt most of the Medicare system's billing and ground rules.³

The proposed new fee schedule would adjust provider reimbursement rates based on the cost to the provider for providing care, taking into account modern technology, the geographical region of the practice, and the specialty area of the physician. The proposed new schedule represents a significant departure from the previous method of reimbursing providers who treat injured workers. Additionally, the proposed new fee schedule is used to determine provider reimbursement rates under the state's automobile no-fault system. Numerous questions about the

¹ Discussion Document for the New York State Proposed Workers' Compensation Medical Fee Schedule, 07-11-2014 Release Version, p. 1.

² Board oral testimony, Hearing Transcript p. 16

³ *Ibid.* FN 1.

timing of and rationale behind this proposal as well as the impact on injured workers and individuals covered under no-fault remain unanswered, including whether the proposed new fee schedule was designed to be a component of the Board's BPR process, and whether stakeholders were consulted about the proposed new fee schedule to the same extent that they were consulted about other parts of the Board's BPR initiative.

In order to answer these outstanding questions, the Assembly Standing Committees on Labor and Insurance convened a public hearing on December 19th, 2014, in Albany. At that time the committees heard testimony from the Board, various specialty providers, attorneys, worker representatives, and other stakeholders with interest in the workers' compensation and no-fault systems. The Committees received more than 1,000 pages of additional written testimony during and subsequent to the hearing. With the exception of the Board, the testimony provided were almost universally opposed to the adoption of the proposed new fee schedule. Further, those who were not opposed to the proposed new schedule posed significant unanswered questions and concerns.

Goals of the Proposed New Fee Schedule

According to the Board, one of the most important objectives of the BPR effort is to make it easier for health care providers to treat injured workers.⁴ In addition, the Board asserts that the goals of the new proposed fee schedule are to make sure fees reflect current costs of medical care taking into account technological advancements, align the schedule with Medicare, facilitate access to medical care and provide access to more primary care physicians ["PCPs"] all while maintaining cost neutrality.⁵ The new proposed fee schedule would provide billing and payment practices using the federal Medicare model for providers and payers in the New York

⁴ Board written testimony, p. 1

⁵ *Ibid* FN 2, pp. 17, 21.

State Workers' Compensation system and would be regularly updated.⁶ The Board expects partially to achieve these goals through the implementation of a new technology called the "medical portal" which would allow "for faster resolution of medical treatment issues, medical billing disputes, and medical documentation."⁷ The new tool would allow providers treating injured workers to track the diagnostic and treatment history of individual claimants, and to submit claims based on the cumulative data, from one central location. The medical portal is designed to make interactions between providers and other stakeholders in the workers' compensation system, such as insurers and the Board, quicker and more accurate. The Board also expects the portal to diminish the frictional costs for providers within the system associated with filing multiple identical forms from different providers for the same claimant.⁸

The Board premised its proposed fee changes on the assumption that the workers' compensation system requires additional providers of services, such as PCPs, who would be reimbursed at higher rates, even at the cost of losing providers of specialty services, who may have their reimbursement reduced by 40% to 50%.⁹ Several workers' advocate witnesses stated that this premise is unsupported.¹⁰ It is unclear on what evidence the Board based this assumption. Nearly all providers and injured worker advocates voiced concerns that reducing reimbursement rates for specialty provider services such as chiropractors, orthopedic surgeons, and imaging specialists would cause those providers to withdraw from both the workers' compensation and no-fault systems, resulting in a reduction in the access to quality providers and services. At the hearing, the Board stated that although they recognize that the number of participating specialty providers may decrease, their primary concern is that they bring in more

⁶ *Ibid* FN 1.

⁷ *Ibid* FN 4.

⁸ *Ibid*.

⁹ Medical Society of the State of New York (MSSNY) oral testimony, Hearing Transcript p.131.

¹⁰ NYS AFL-CIO written testimony, p. 3; New York State Workers' Compensation Alliance written testimony, p. 3; Professional Employees Federation oral testimony, Hearing Transcript, p. 94.

PCPs because that is where the workers' compensation system is currently lacking adequate coverage.¹¹

The Board has proposed to use the same RBRVS fee schedule currently used by Medicare, which bases payments on the costs of providing service. These costs would be composed of three components: a physician's specialty, practice expense and malpractice expense whose combined valuation represents a relative value unit (RVU). Those components are multiplied by a geographic cost factor that varies according to the location of the billing physician.¹² Finally, these costs would then be multiplied by New York State-specific conversion factors to arrive at the payment amount for individual providers.¹³ It should be noted that the Medicare rates were developed on a regional basis, rather than with New York-specific conditions, factors, processes and costs in mind.

The proposed new fee schedule was designed to cut reimbursement rates in half for many specialists and diagnostic test facilities while increasing reimbursement rates for PCPs. The Board has asserted that advances in medical technology since the last update to the fee schedule has made specialty treatments less costly.¹⁴ The Board has also stated that "a central premise" of the proposed new schedule "was that the final product would be cost neutral. In other words, we needed to realign the overall medical expenditures within the workers' compensation system, ensuring that the total amount spent on medical care was the same in total."¹⁵ However, there are several problems with this method of reimbursement. First, it is unclear whether the proposed new fee schedule would reflect cost-savings resulting from the proposed medical portal, which has yet to be created and implemented, and if so, how the Board evaluated projected savings

¹¹ *Ibid.* FN 2, pp. 21 -- 22.

¹² *Ibid.*, p. 15.

¹³ *Ibid.*

¹⁴ *Ibid.* FN 4, p. 2.

¹⁵ *Ibid.*

based on the portal. Second, the Board has not demonstrated how the changes to the fee schedule would in any way positively impact injured workers, drivers and others injured in auto accidents, or their providers. Especially considering that the proposed new schedule was designed to be cost neutral, there appears to be no constructive purpose to the changes. Third, when the medical portal is created it will only be available to providers treating injured workers under the workers' compensation system, not providers treating those covered under no-fault. One of the benefits of the medical portal is that it would facilitate the resolution of issues concerning requests for treatment authorizations, requests for variances from Medical Treatment Guidelines, and optional prior approvals. None of this would be available to providers treating individuals covered under the no-fault system.¹⁶ Yet both categories of providers would have their fees adjusted according to the proposed new schedule. Fourth, it is difficult to see how changing a reimbursement schedule which has been unchanged for 19 years, and grafting it onto a federal model with New York State-specific conversion factors, is likely to make the reimbursement process simpler, quicker, or more efficient. Lastly, this proposed new fee schedule would essentially relinquish control over both of New York State's Workers Compensation fee schedule and New York State's no-fault fee schedule to a federal agency who, when creating such fees, did not and will not take into consideration the needs of New York's injured workers, the needs to those injured in automobile accidents as well as the providers who treat them.

Access to Quality Care and Return to Work

One of the most important aspects of any workers' compensation system is the ease of access to quality care. Historically, the workers' compensation system represents an agreement between workers and employers. In exchange for surrendering the right to sue an employer on the basis of negligence for a workplace injury, an employee is guaranteed to receive a portion of

¹⁶ New York State Trial Lawyers Association (NYSTLA) oral testimony, Hearing Transcript p. 139.

their wage and the full cost of medical treatment for injuries resulting from a workplace injury, including rehabilitation.¹⁷ An injured worker must have access to quality health care providers in order to receive the full benefit of this historical agreement and to return to work as soon as possible.

Numerous witnesses at the December fee schedule hearing testified that the proposed new schedule as proposed could result in significant delays in accessing appropriate treatment for injured workers. The New York State Public Employees Federation [“PEF”] repeated a concern voiced by many providers and worker advocates: that doctors and specialists may quit the workers’ compensation system as a result of the fee reductions, resulting in fewer options for providing the care necessary for workers to return to work.¹⁸ PEF cited a white paper which stated that “the medical fee schedule and the Board’s administrative processes create a set of disincentives for specialists and high-quality physicians to participate in the system.”¹⁹ The authors of the white paper recommend exactly the opposite approach to that proposed by the Board: that “reimbursement rates for specialists should be increased and the bureaucratic burden reduced.”²⁰ If the proposed new fee schedule results in an exodus of specialty providers from the workers’ compensation system, injured workers will not be able to return to work in a timely manner. The fundamental agreement which underpins the system will be violated. The lack of access may be even more insidious in low-income areas that already have few specialty providers.²¹

¹⁷ Pitts and Weiss, New York Workers’ Compensation Handbook, Matthew Bender and Company, Inc., Danvers, Massachusetts, 2008, §1.03.

¹⁸ PEF written testimony, p. 2

¹⁹ Grey, Robert E. *Workers’ Compensation in New York State: State of the System 2014*. Rep. N.p.: n.p., n.d. Web. <<http://www.nyworkerscompensationalliance.org/STATE%20OF%20THE%20SYSTEM%202014%20-%20Release.pdf>>., pg. 7.

²⁰ *Ibid.* FN 18.

²¹ NYSTLA written testimony, p. 3.

While the proposed new fee schedule would increase reimbursement rates for PCPs, the fees for specialty providers would reflect decreases of over fifty percent.²² The Board has proposed these decreases despite New York’s reimbursement rates being on average some of the lowest in the nation.²³ Several surveys illustrate the danger of the proposed decrease. Three-quarters of certain specialists have indicated that they will leave the workers’ compensation system if the decrease is implemented.²⁴ Many specialists believe they will simply be unable to afford to continue in the workers’ compensation system if the proposed new fee schedule is effectuated.²⁵

The Board suggested that, although there may be fewer specialists as a result of the proposed new fee schedule, it will likely result in more PCPs participating in the system. But an increase in PCPs does not remedy a scarcity of specialists. PCPs are neither equipped nor licensed to provide specialty care, and if the proposed new schedule results in a dearth of specialty providers, PCPs will have no providers to refer injured workers to.²⁶ This may even lead to PCPs also withdrawing from the workers’ compensation and no-fault systems as a result of having no specialty providers to treat their patients.²⁷

The experience of other states should trigger concern over the proposed shift to a Medicare-based fee schedule for workers’ compensation and no-fault providers.²⁸ In every state that has implemented an RBRVS fee schedule, an “immediate and long standing” decrease in access and quality of care has occurred.²⁹ Texas and Hawaii both experienced a mass exodus of

²² New York State Society of Orthopaedic Surgeons (NYSSOS) written testimony, p. 5.

²³ PEF written testimony, p. 3; MSSNY written testimony, p. 6.

²⁴ See Letter of Opposition to Workers’ Compensation Board Subject No. 046-710 Proposal for a new Workers’ Compensation Medical Fee Schedule, The Driscoll Group; MSSNY written testimony, pg. 4.

²⁵ PEF written testimony, p. 2; MSSNY written testimony, pp. 3 – 4; NYSSOS written testimony, p. 6.

²⁶ *Ibid.* FN 21.

²⁷ *Ibid.*

²⁸ AFL-CIO written testimony, pp. 2 – 3; MEDTronic written testimony, p. 1

²⁹ *Ibid.* FN 22.

specialists in their workers' compensation systems after adopting Medicare's fee schedule. In Texas alone, 77% of orthopedists³⁰ and 75% of neurologists³¹ limited their Workers' compensation patients after an RBRVS system was implemented. In Hawaii and West Virginia, only 25% of orthopedists participated in those states workers' compensation systems after a large decrease in fees.³²

The dramatic drop in the number of specialists participating in the workers' compensation system seen in other states has already been experienced in New York. When the Board implemented the new C-4 medical reporting forms, numerous physicians dropped out of the program in response. The physicians believed the fees they were receiving were not adequate to reimburse them for the administrative burden they were enduring.³³

It is also important to note that the providers that are most likely to stay in the workers' compensation system if the proposed new fee schedule is implemented are the *least* qualified.³⁴ This means that not only is there a possibility that injured workers may have trouble getting access to a specialist but once they do get access, they are more likely to have a less qualified, less experienced specialist.

It is important to note the impact that access to care may have on workers' ability to return to work. Fewer specialists will trigger longer wait times during the rehabilitation process, which will not only delay a workers' return to work but possibly exacerbate injuries. It may also lead to more expensive surgeries or greater use of narcotic painkillers.³⁵ In addition, the increased time that a claimant spends out of work in the process of convalescence will trigger

³⁰ MSSNY written testimony, p. 7

³¹ *Ibid.* FN 21 (note this decrease occurred within one year of implementation of the RBRVS system).

³² *Ibid.* FN 30.

³³ *Ibid.* FN 30, p. 8.

³⁴ NYSTLA, p. 3; NYSSOS written testimony, p. 8

³⁵ *Ibid.* FN 18.

increased indemnity payments, additional Independent Medical Examinations, and increased ancillary costs.³⁶ These shifts clearly will increase costs to the workers' compensations system.

Differences between Medicare and Workers' Compensation/No-Fault

Tying the workers' compensation fee schedule to the Medicare fee schedule is inappropriate due to the differences between the two systems.³⁷ Though the Board justified the proposed new fee schedule decreases for specialists by referencing advancements in technology, this fails to recognize the additional time and effort expended on workers' compensation care.³⁸ The no-fault and Workers' Compensation systems actually have more hurdles than Medicare.³⁹ Medicare reimbursement occurs almost instantly when in fact with no-fault and Workers' Compensation, doctors could wait months and sometimes years before they get paid.⁴⁰

Furthermore, provider participation does not rest solely on reimbursement rates; rather, other factors impact provider costs, including payment delays, litigation and unpaid reimbursements.⁴¹ These factors are more prevalent under the workers' compensation and no-fault systems because they are privately-paid but publicly-regulated third-party reimbursement programs, whereas Medicare is a public single-payer system. Shifting to the lower rates of the Medicare system is likely to trigger lower provider participation, and this is likely to be exacerbated by the additional administrative burdens faced by providers treating workers'

³⁶ *Ibid.* FN 10, p. 2.

³⁷ NYSTLA written testimony, p. 2; NYSSOS written testimony, p. 4

³⁸ NYSSOS written testimony, p. 4, 8 ("According to a survey conducted by the New York State Society of Orthopaedic Surgeons, Inc., participants stated that their offices spend more than *4 hours a day* on administrative time directly related to Workers Compensation patients alone." (emphasis added))

³⁹ *Ibid.* FN 10, pp 138-139.

⁴⁰ Pinnacle Orthopedic & Spine, written testimony, p. 3.

⁴¹ AFL-CIO written testimony, pg. 3; NYSTLA written testimony, pg. 2

addition, providers routinely wait three to six months to receive payments for care and this delay of reimbursement can extend as long as two years. According to MSSNY, providers estimate the administrative effort expended for reimbursement under the workers' compensation system is 2.5 to 3 times greater than that for Medicare.⁴⁵

Medicare and workers' compensation present substantial differences to providers that result from the structural differences between the two programs. Since Medicare is a single-payer system, only one party—the Centers for Medicare and Medicaid Services—is responsible for reimbursing a provider for treatment. Under the workers' compensation and no-fault systems there are hundreds of different insurers.⁴⁶ Healthcare providers must take a substantial risk if they treat an injured worker whose claim has not been fully adjudicated. Despite having provided treatment, the provider may receive no payment if the injured workers' claim is denied. That risk does not apply with respect to Medicare patients.

Workers' compensation patients are often unfamiliar with the provisions of their insurance policy, or even the name of their insurer. As a result of this, it can take considerable time and effort for providers to determine the proper insurer to bill after treating injured workers. This triggers longer wait times for workers' compensation patients when scheduling appointments. In essence, for providers, participation in the workers' compensation and no-fault systems means additional time scheduling appointments, completing administrative tasks, and seeking reimbursement, at the same time that there is a greater risk of delayed payments or in some cases no payments at all.⁴⁷

Providers treating claimants under the no-fault system face many of the administrative challenges faced by workers' compensation providers, but not Medicare providers. No-fault

⁴⁵ *Ibid.* FN 22, p. 9.

⁴⁶ Atlantic Imaging Group written testimony, pg. 1

⁴⁷ MSSNY written testimony, p. 6; NYSTLA written testimony, p. 2; NYSSOS written testimony, p. 3

claimants may inadvertently ask a provider to bill their medical insurer rather than their auto insurer for treatment, which requires subsequent follow-up between the provider and the two insurance companies. Under no-fault, disputes between auto insurers may arise, requiring arbitration and delaying payment.⁴⁸ A provider also faces a higher likelihood of non-reimbursement under no-fault if an auto insurer disputes a patient's injury, the cause of the injury, or the legitimacy of care which has already been provided but not yet reimbursed. The Medicare fee schedule, having been developed for national application, does not provide for the unique needs of New York's specific workers' compensation and no-fault programs.

Impact on the No-Fault System

Proposed changes to the workers' compensation fee schedule would also affect participants in New York's no-fault insurance system. No-fault insurance, a requirement for all drivers in the state, provides guaranteed first-party coverage for medical care and a portion of loss of earnings that result from an automobile accident, regardless of liability, up to a \$50,000 per-person, per-accident limit.⁴⁹ The Insurance Law establishes that the same fee schedule for reimbursing medical providers under the workers' compensation system applies under the no-fault system.⁵⁰ Changes to the workers' compensation provider fee schedule may potentially affect not only injured *workers'* access to quality medical care, but those injured in *auto accidents* as well, because changes apply to both systems. Additionally, some medical providers treat both patients who were injured in auto accidents as well as those who were injured in the workplace. Reductions in the proposed new fee schedule may have a multiplicative effect because a significant number of a provider's claimants may come from one of either of the systems affected by the change.

⁴⁸ §5105 of the NYS Insurance Law

⁴⁹ NYS Insurance Law §5102.

⁵⁰ NYS Insurance Law §5108(a).

In order to ensure that the welfare of those injured in auto-accidents is considered, the Insurance Law requires the Superintendent of Insurance to consult with the Chair of the Board as it amends the fee schedule. In order to ensure that the impact to the no-fault system was considered during the new fee schedule proposal process, the Assembly Committees invited the Acting Executive Director of the Board and the Superintendent of the Department of Financial Services [“DFS”] to testify about the process of consultation. Unfortunately, the Committees were unable to ask relevant questions as DFS did not send any representatives to testify at the hearing. As a result, the Insurance and Labor Committees are concerned that the proposed new fee schedule may result in unintended consequences. The Committees will continue to seek out answers to the pertinent questions to ensure that information is available to properly evaluate the proposed new fee schedule and all of its possible impacts.

Although the two systems are similar in some ways, they are not identical, and the experiences of both those injured in an auto accident and their medical providers differ compared to those who interact with the workers’ compensation system. While the Workers’ Compensation Law provides for full medical treatment including rehabilitation for injured workers, auto-accident victims are subject to a \$50,000 cap which must cover their medical as well as their wage-replacement costs. While workers cannot legally be charged for any of the cost of workers’ compensation, New York drivers pay for their no-fault coverage via their auto insurance premiums. Providers must fill out different forms and participate in different administrative and adjudicatory processes under the two systems.

Several providers highlighted the dangers of shifting to the proposed new fee schedule without considering the impact on the no-fault system. The shift is especially worrisome as it relates to the interplay between the workers’ compensation Medical Treatment Guidelines [“MTGs”] and the new proposed fee schedule. As explained by the Board, “The fee schedule and

all rules expressed within the fee schedule are subject to the general principles and recommendations contained in the MTGs.”⁵¹ These treatment guidelines were adopted by the Board in 2010 and establish the kinds of care and duration of care allowed for various compensable injuries arising out of the workers’ compensation system. “Treatment of work-related injuries or conditions should be in accordance” with the guidelines, according to the Board.⁵² Essentially, the MTGs establish what *kinds* of treatments are compensable, and the *duration* or *frequency* of care, while the fee schedule establishes the *rate* at which providers are to receive reimbursement for such compensable care.⁵³ However the MTGs only apply to work-related injuries and provide no guidance whatsoever to providers treating those injured in auto-accidents and are covered under the no-fault system. In other words, the proposed new fee schedule would apply to both the no-fault and the workers’ compensation systems, while the treatment guidelines only apply to workers’ compensation. Additionally, the Board’s proposed medical portal will not be available to no-fault providers. Thus the relative-value-based fee created by the Board may be inappropriate for no-fault providers.

Medical Treatment Guidelines, CPT Codes, and Fees

There remain numerous differences between the proposed new fee schedule and the NYS Medical Treatment Guidelines established for the workers compensation system. One concern, raised by the New York State Chiropractic Association, is whether providers will be reimbursed when a treatment is allowed by the Medical Treatment Guidelines but no fee has been established in the proposed new fee schedule. The New York State Chiropractic Association stated that the MTGs outline what the Board believes is appropriate treatment for those with back and neck injuries, which is one of the most common injuries that chiropractors treat;

⁵¹ *Ibid.* FN 1, p. 5.

⁵² *Ibid.* p. 5—6.

⁵³ *Ibid.*

however, the chiropractic section of the Discussion Document does not list the fees for these recommended services.⁵⁴ Therefore, there are treatments that have specific frequencies and durations as far as when they should be done and how often, yet there is no billable code for chiropractors who are performing that service to use.⁵⁵ There seems to be a mismatch between the treatment that the Workers' Compensation Board determined New York's workers need in order to fully recover and return to work quickly, safely and with confidence, and what the Board has now determined should be compensable. These are the sorts of problems which are more likely to occur if the Board bases New York's no-fault and workers' compensation fee schedules on a Medicare model, which was not designed for New York's unique systems and laws.

It is also unclear how the Board will handle updating workers' compensation system specific codes, whether they will be updated at the same time as analogous codes under Medicare or not. Additionally, it is unclear how the Board will handle all Medicare updates. For instance, Medicare allows for retroactive updates to providers, both increases and decreases.⁵⁶ This means a doctor may end up *owing* the workers' compensation carrier money if a decrease is enacted and retroactively applied. It is unclear whether the Board would automatically apply any updates that may occur under the Medicare system to New York's proposed new fee schedule.⁵⁷

An additional concern with the proposed new fee schedule is the timeframe of the implementation. The July Discussion Document indicated that the proposed new fee schedule would be implemented immediately. "This makes the transition for providers who continue to participate despite reduced rates as difficult and abrupt as possible."⁵⁸

⁵⁴ New York State Chiropractic Association oral testimony, Hearing Transcript, pp. 269-270.

⁵⁵ *Ibid.*

⁵⁶ Mitchell International written testimony, pp. 1 –2

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* FN 10.

Conclusion

After listening and evaluating testimony from various providers, worker advocates, business owners, attorneys, and the Workers' Compensation Board, the greatest unanswered question is "Why?" Why has the Board decided to change fundamentally the way the provider fee schedule is calculated? The justification provided by the Board is that the schedule has not been updated in 19 years and that the current fees do not represent modern medical technology and should be adjusted to increase access to certain physicians. But the length of time between the last update to the fee schedule does not justify a change of policy as significant as substituting the formula on which reimbursements are based and abdicating control over New York's reimbursement rates to a federal agency. Nor has the Board shown how advances in technology have lowered provider's costs. For example, Robert Caruso of Atlantic Imaging Group stated that the Board assumed that imaging machines like MRIs would be used almost continuously throughout the day by imaging specialists, suggesting that modern technology would allow imaging specialists to see patients more quickly, and therefore receive a high number of payments in a given day. In practice, the machines are used only sporadically throughout the day because most of a provider's time is spent in non-technological interactions with claimants.⁵⁹ It is unclear what specific technological advancements may be used by other specialists such as chiropractors which justify a more than 60% decrease in their reimbursement rates.

Additionally, the Board stated that the proposed new fee schedule would be cost neutral. This claim was challenged by several witnesses who believe that as a result of the aforementioned concerns, such as a potential lack of quality providers, poor access to care and delays in return to work, the proposed changes would lead to increased costs to the workers'

⁵⁹ *Ibid.* FN 46, pp. 2—3.

compensation system and employers over time. Neither the Board nor any other witness has established that there are too few PCPs in the workers' compensation or no-fault systems. Why, then, should the Board increase primary care provider reimbursement rates at the expense of specialty providers, and thus injured workers and auto-accident victims? The proposed new fee schedule appears to be a solution in search of a problem, which would create additional problems. It must be borne in mind that any RBRVS reimbursement methodology generates problems for New York's providers, policyholders, injured workers and auto-accident victims. These Medicare-based rates were not developed for use in New York, are not representative of New York's workers' compensation and no-fault insurance needs, and should not be adopted even with a modifier which seeks to contort them to make them practicable here. Further, the Legislature has never adopted an RBRVS fee schedule for provider reimbursement in the private sector. Our most recent opportunity to do so would have been in the context of providing out-of-network coverage, which was a component of the 2014 Budget. As the Assembly, Senate and Governor considered various reimbursement methodologies for out-of-network health insurance coverage, Medicare or any modification of Medicare was rejected because of similar concerns that have been raised by the proposed new fee schedule. Finally, the welfare of those covered under the no-fault system has not been sufficiently considered as the proposed new fee schedule was framed, despite the explicit statutory obligation of DFS to work with the Board to establish provider fees. For these and the other reasons in this report, the Assembly Standing Committees on Labor and Insurance recommend that the proposed new fee schedule should not be adopted at this time.