



NO-FAULT ARBITRATOR NOTES: News From The AAA's Minnesota No-Fault Office

Welcome to the latest edition of Minnesota No-Fault Notes.

This issue contains information about No-Fault Case Law, Rule Highlights, FAQs, Website Update, 2018 Recertification, and Amended Standards of Conduct for No-Fault Arbitrators.

News & Announcements

New Scheduling System

In 2018, the AAA will launch a new electronic scheduling system! The new system will work through AAA WebFile® and Panelist eCenter. In preparation for this new system, we highly encourage you to become familiar with these online portals. The AAA has posted "How To" guides on the Minnesota No-Fault website at www.adr.org/mnnofault. For additional assistance, you may contact us at 612-332-6545.

2018 Annual Arbitrator Recertification

The annual recertification process began on November 13, 2017 and will remain open until December 31, 2017.

The recertification form was emailed to arbitrators on November 13, 2017. If you are unable to locate this email, you may also obtain a copy of the form on our website at www.adr.org/mnnofault.

IMPORTANT: If you fail to recertify by December 31, 2017, you will be removed from the Minnesota No-Fault Panel.

If you have any questions, please contact Krista Peach at 612-278-5114 or by email at KristaPeach@adr.org.

No-Fault Case Law Update

Minn. Stat. § 62Q.75, subd 3

Does an insured experience a loss that would entitle him or her to no-fault benefits, under Minn. Stat. §65B, if a health-care provider fails to submit expenses to the insurer, pursuant to Minn. Stat. § 62Q.75, subd. 3?

Western National Insurance Company vs Jon Nguyen, A17-0314 (Minn. Ct. App. September 18, 2017)

Basic economic-loss benefits, which include medical expense benefits, become payable as loss accrues. Minn. Stat. § 65B.54, subd. 1. A "loss" accrues not when the injury occurs but rather when the expenses are incurred. *Id.* An injured person "incurs medical expense as he or she receives bills for medical treatment." *Stout v. AMCO Ins. Co.*, 645 N.W.2d 108, 113 (Minn. 2002).

Nguyen argued that Minn. Stat. § 62Q.75, subd. 3, could not bar his no-fault claim because the statute only governs claims between health-care providers and health-plan companies and he is not a health-care provider.

The application of Minn. Stat. § 62Q.75, subd. 3 in a no-fault setting was one of first impression; therefore, the court concluded that in order to determine if Minn. Stat. §62Q.75, subd. 3 applies to the determination of whether an individual is entitled to no-fault benefits, it was necessary to interpret the statute. The aim of statutory interpretation is to effectuate the legislature's intent. *State Farm Mut. Auto. Ins. Co v. Lennartson*, 872 N.W.2d 524, 529 (Minn. 2015). If legislative intent is clear from the statute's unambiguous



NO-FAULT ARBITRATOR NOTES: News From The AAA's Minnesota No-Fault Office

language, the court will interpret the statute according to its plain meaning. However, if the language is ambiguous because it is susceptible to different reasonable interpretations, the court will consider other methods of construction to ascertain the legislative intent. *Id.*

The court noted that the Minnesota Health Plan Contracting Act sets forth the requirements for contracts between health-care providers and health-plan companies. Minn. Stat. §§ 62Q.732-.751 (2016). The act also includes a prompt payment statute. Minn. Stat. §60Q.75. The general purpose of the underlying prompt-payment statute is to prescribe a designated time period for health insurers to pay valid claims in order to facilitate timely payment to health-care providers. Michael Flynn, "The Check Isn't In The Mail: The Inadequacy of State Prompt Pay Statutes," 10 DePaul J. Health Care L. 397, 402 (2007).

Minn. Stat. §62Q.75 establishes a timeline for health-care providers to "submit their charges" to health-plan companies. Should a health-care provider fail to submit charges as directed by the statute, the provider or facility shall not be reimbursed for the charge and may not collect the charge from the recipient of the service or any other payer.

The court found that although the statutory chapter did not generally apply to no-fault insurers, the more specific language of Minn. Stat. § 62Q.75, subd. 3, expressly states that it applies to no-fault insurers. The court compared this with the language of Minn. Stat. §62Q.02(a) (2016), which applies only to health plans, rather than other types of insurance issued or renewed by health plan companies. Therefore, the court concluded that Minn. Stat. §62Q.75, subd. 3, applies to health-care providers seeking reimbursement from no-fault insurers.

The court agreed with Nguyen that the statute is silent about insured claimants and unambiguously provides only that "health care providers and facilities must submit their charges to a health plan company within six months." Minn. Stat. § 62Q.75, subd. 3. However, the court found that although the statute expressly sets forth requirements only for health-care providers and not an insured, a health-care provider's failure to meet these requirements does affect whether an insured experienced a loss. The statute expressly provides, "A health care provider or facility that does not make an initial submission of charges within the six-month period shall not be reimbursed for the charge and may not collect the charge from the recipient of the service or any other payer." Minn. Stat. § 62Q.75, subd. 3.

The court determined that payment of benefits for such claims as medical expense benefits are not due if the claim is not received by the reparation obligor and may not bill the insured directly. Accordingly, if the health-care provider does not follow the statutory method for submitting bills to the insurer, that claim is not due. In addition, the health-care provider cannot seek payment from the insured, if the provider fails to comply with Minn. Stat. § 62Q.75, subd. 3.

Therefore, the court concluded that since the health-care provider did not submit charges within the time period required by Minn. Stat. § 62Q.75, subd. 3, Nguyen never incurred medical expenses and thus a loss never accrued. Further, because charges presented to the arbitrator were not transmitted to Western National as required by Minn. Stat. §65B.54, subd.1, the benefits never became due. Therefore, Nguyen never suffered a loss for which he is entitled to no-fault benefits.

Amended Standards of Conduct for No-Fault Arbitrators

On October 16, 2017, the Minnesota Supreme Court issued an order amending the "Minnesota Rules of No-Fault Arbitration Procedure" effective January 1, 2018. The Rules now include the Standards of Conduct for No-Fault Arbitrators (Standards of Conduct) as an appendix.

The Court also amended the Standards of Conduct to include several new sections, including a section on Enforcement Procedures. These procedures outline the arbitrator conduct complaint process, investigation and possible sanctions in relation to such complaints.



NO-FAULT ARBITRATOR NOTES: News From The AAA's Minnesota No-Fault Office

In addition, the Court amended language within the Standards of Conduct, such as “should” to “shall” in order to effectuate mandatory adherence by arbitrators.

To view the order, click on [Minnesota Supreme Court Order – October 16, 2017](#).

You may also view the order on the AAA website at www.adr.org/mnnofault.

Rule Highlight

Rule 21. Order of Proceedings and Communication with Arbitrator

Amendments

“There shall be no direct communication between the arbitrator and the parties other than at the hearing, unless otherwise advised by the arbitration organization or by agreement of the parties and arbitrator.”

Under Rule 21, the AAA permits parties to send amendments directly to the arbitrator; however, parties are not permitted to send anything that includes a request for a decision by the arbitrator.

Hearing Materials

“Pre-hearing exhibits can be sent directly to the arbitrator, delivered in the same manner and at the same time to the opposing party. *Parties are encouraged to submit any pre-hearing exhibits at least 24 hours in advance of the scheduled hearing.*”

“If the exhibits are not provided to opposing counsel and the arbitrator at least 24 hours before the hearing or if the exhibits contain new information and opposing counsel has not had a reasonable amount of time to review and respond to the information, the arbitrator may hold the record open until the parties have had time to review and respond to the material or reconvene the arbitration later.”

Parties are encouraged to submit hearing materials at least 24 hours before the hearing, when possible, in order to avoid delays and allow the arbitrator sufficient time to prepare for the hearing. The AAA includes the arbitrator's preferred method of delivery for hearing materials on the Notice of Hearing. Please note that if a delivery preference is not listed on the original Notice, parties may use any method of delivery.

New Security at AAA Offices

As you know, U.S. Bank Plaza has undergone some new security measures that were implemented on October 1, 2017. Below are some helpful tips that can help to ensure a smooth visit to our office.

Visitor Form

- Arbitrators do not need to complete the Visitor Form.
- The AAA will register you as a visitor for each hearing scheduled in our office.



NO-FAULT ARBITRATOR NOTES: News From The AAA's Minnesota No-Fault Office

Barcode

- Registered visitors will receive a barcode by email. This barcode will permit the visitor to enter through a turnstile and gain access to the building. You may print the barcode or use an electronic device to scan at the turnstiles.
- If the visitor does not have the barcode at the time of the visit, he or she will need to go to the security desk and provide some form of identification in order to receive a barcode.
- You will receive an email (typically the Friday prior to the week of your hearing) with the barcode. This email will be sent from meetings@ivisitor.com, not the American Arbitration Association. You may need to check your spam/junk email. If you do not receive an email or the
- information in the email is incorrect, please contact your case administrator directly.
- The barcode will have a start time of 8:00 AM – this pass will be good for the whole day.

Again, thank you for your cooperation and patience. If you have questions please do not hesitate to contact us at 612-332-6545.

What's on the Minnesota No-Fault Webpage?

There is a wealth of information and resources available for arbitrators on the AAA's Minnesota No-Fault webpage. Below is a comprehensive list of the information and resources that are available. To view this information, please visit our website at www.adr.org/mnofault.

Rules, Policies & Forms

- Minnesota Rules of No-Fault Insurance Arbitration Procedures
- MN Statutes Chapter 65B Automobile Insurance
- Policy Statement of the Minnesota No-Fault Standing Committee

Current Newsletters

Arbitrator Information

- Minnesota No-Fault Arbitrator Application Form
- Annual Recertification Form

Arbitrator Quick Links

- Sample Orders
- Standards of Conduct for No-Fault Arbitrators
- Minnesota CLE Website

Reports

- Minnesota No-Fault Annual Statistics
- Arbitrator Survey Report
- Arbitrator Recertification Report

AAA Panelist eCenter® Guides



NO-FAULT ARBITRATOR NOTES: News From The AAA's Minnesota No-Fault Office

Arbitrator Tips

- Electronic Award mystery solved! The electronic award form, along with another copy of the Record of Hearing and Award Checklist, are automatically emailed to you after the scheduled hearing has been held. You should receive this email within 24 hours of the hearing. If you submit your Record of Hearing and/or Award Checklist before you receive this email, we will still process the award document that you provided. No need to worry!
- Yes, the Record of Hearing really is that important! Please remember to complete each section and submit to your case administrator. The information contained on this document is used to provide statistical information to the Minnesota Supreme Court. Also, this document is viewable by the parties, so please be sure to write legibly.
- Don't be a "no show"! Please keep track of your assigned cases to ensure you have scheduled hearings on your calendar. Also, you have online, 24-hour access to your cases via AAA Panelist eCenter. This includes a list of all scheduled hearings.
- Whose calendar is it? When completing your calendar form, please make sure you correctly identify yourself as the arbitrator. We realize that many of you serve as both representatives and arbitrators, but it is important that we are able to ascertain to whom each calendar belongs.

Upcoming Events

AAA Office Closings

Friday, December 22 – closes at 1:00 PM

Monday, December 25 – closed

Monday, January 1 – closed

Monday, January 15 – closed

Monday, February 19 – closed

The Minnesota AAA office wishes you a happy holiday season and we look forward to working with you in the New Year!