



Understanding No Fault in New York

By Daniel Flanzig and James B. Reed, Esq.

In the 1970's New York's automobile No-Fault Law was enacted to ensure that insurance companies would pay for legitimate crash related medical expenses, lost earnings and incidental costs, regardless of who was at fault in a crash. The intent behind the law was to speed up compensation without the necessity of long drawn out litigation over fault and the amounts owed and to curb and control claims related to automobile crash expenses. New York's No-Fault Insurance Law offers benefits (quick payments for expenses) and restrictions (on lawsuits for pain and suffering). New York is one of the 12 states that have a No-Fault coverage. If you are injured in a crash in New York, the No-Fault coverage you receive comes from the vehicle you drove, rode in, were hit by, or came into contact with.

No-Fault is separate and distinct claim from a bodily injury claim. Many people get this confused. If injured in a crash, a cyclist, pedestrian, driver or passenger may have the right to sue for their injury as well as their pain and suffering. This is what we call a bodily injury or BI claim. When you are a cyclist, pedestrian or passenger, it will be this same insurance company that provides and pays your No-Fault claim that will also be defending and paying a judgment or settlement for your BI claim. Although payment is made by the same insurance company, these are completely separate claims. Each has their own laws and rules and is usually handled by different adjusters and departments at the insurance company. The two claims also have different standards of proof, available compensation, and coverage.

No-Fault in New York was designed to ensure that regardless of fault; an insurance company will pay cyclists, pedestrians, drivers, and passengers up to \$50,000.00 for the legitimate economic losses. This includes ambulance and hospital expenses, doctor bills, prescription drugs and diagnostic tests, such as x-rays and MRI's as well as therapeutic services such as physical therapy. It also includes your lost wages. It does not include compensation for pain and suffering. Any additional claims can be pursued (if you qualify) by a separate lawsuit against the driver(s) and vehicle owner, or any other party who is responsible for causing the crash and your injury.

Who gets No-Fault?

New York No-Fault Law applies to any cyclist, pedestrian, passengers, or driver injured by a motor vehicle in New York. The conditions that must be met to qualify for No-Fault coverage:

- The accident occurred in New York.
- The injured party was the driver or passenger of the insured vehicle or a cyclist or pedestrian struck by or in contact with the motor vehicle.
- The vehicle must be a car, truck, bus, taxi (not a motorcycle) or other vehicle covered by New York No-Fault law.
- The vehicle is registered in New York.
- The vehicle has an insurance policy sold in New York or issued by a company licensed to do business in the State of New York.

Who doesn't get No-Fault?

- Motorcyclists
- Vespa or Scooter Riders (depending on the engine size of the scooter)
- Someone injured as a result of operating a motor vehicle while intoxicated
- And under other certain circumstances, out-of-state policies, etc. . .

How to file for No-Fault?

There are important steps to follow in order to make a no-fault claim. Although the intent of the legislation was to ease the process, this is simply not the case. Under the false premises that they are combating insurance fraud, the insurance companies have turned this process into an adversarial proceeding taking advantage of any mistake a claimant may make to deny you coverage. Whether failing to miss a filing date, a medical appointment, or by an incorrect entry on a form, a carrier can deny you your medical benefits and lost wages. Even when everything is done properly, you still may face a denial after one of THEIR doctors says you don't need treatment. In order to protect your coverage and your benefits these are the steps needed to properly file a claim.

The No-Fault Application (form NF-2): The no-fault application is normally provided from the insurance carrier of the car that struck you, you came into contact with, that you were driving or in which you were a passenger. If you were a cyclist or a pedestrian AND own your own car, you should request or send the application to your insurance company as well. You may have benefits under your policy such as excess PIP (additional no-fault coverage above \$50,000). The application can be requested by phone but it is recommended to also request it by mail, certified return receipt requested.

Time Constraints- You have **thirty (30) days** from the date of the crash to file the application. Don't put it off thinking that your injuries may get better or that your health insurance will cover injuries you suffered in the crash. Simply filing the application does not obligate you to commence a claim. Second, most health insurance do not cover a personal injury resulting from a car crash. Filing the form simply protects your rights.

Additionally, make sure that you send the form to the correct insurance company. Even if you believe the crash was not the fault of the driver, the No-Fault Application still gets sent to the insurance carrier for the car that you were struck by or was a passenger in, or was driving.

There are occasions where you may not be able to ascertain the insurance company of the car that struck you, especially if a driver of a car is particularly uncooperative and will not provide the information. Always call the police. [The police will obtain the information](#) for you and place it on the Police Report. [The police report will have a three digit code that will indentify the insurance carrier.](#)

If you still cannot find the insurance company, the new regulations do allow you to provide written proof of a "clear or reasonable" reason for missing the 30 deadline. But, the insurance companies are largely responsible for determining what is "clear or reasonable" so don't count on this provision to save you from the late filing.

MVAIC - If you cannot determine the insurance company on time, you should, at a minimum, send a notice right away to the New York State Motor Vehicle Accident Indemnification Corporation (MVAIC). MVAIC is a state run agency which steps into the shoes of the insurance company where there is no insurance. If you find out the identity of the insurance company after you file with MVAIC, you can withdraw your claim. Hopefully you will not need it. MVAIC is a state agency and is full of bureaucratic paperwork and is difficult to navigate even for a seasoned attorney.

Lost Wages- Under No-Fault you can claim lost earnings and out of pocket expenses. Lost earnings require your employer sends proof of your wages on a form provided by the insurance company called a No-Fault Wage Verification Report. You may need to be on top of your boss or H.R. department to get this filled out. Under No-Fault you are entitled to receive 80% of your crash related lost earnings up to \$2000 a month. You will also require a note from your doctor that you are disabled from performing your normal job duties. Your doctor must specify the length of your disability and that it is related to the crash.

Out-of-Pocket Expenses- Save all your receipts for taxis and transportation costs, pharmacy bills and other crash related expenses. No-fault will reimburse you for travel expenses to and from your doctors or medical treatment. They will also reimburse you for medications, brace and bandages as well as up to \$25 dollars a day for other related incidentals for one year post accident.

WHAT TO EXPECT AFTER YOUR CLAIM IS FILED

After your claim is filed you should be provided with a no-fault claim number. This number, together with the name of the insurance company, the adjuster assigned, and contact information should be provided to your doctor and other health care providers for all treatment, both past and future. If you left the hospital without providing insurance information, call the hospital billing department right away and give them the information. You may have also been provided with a no-fault facility form to mail to

the hospital. Fill this out with the no-fault information and your patient number and mail in right away. In the next several weeks you may receive a bill for the ambulance, x-rays, labs, or other treatment related to the crash. The no-fault information should be provided to these facilities as well. Once you provide the information you have fulfilled your obligation and it is incumbent upon the service providers to timely submit the claims and respond the insurance companies demand for additional information.

Don't expect No-Fault to last forever. The insurance company wants you off their coverage as soon as possible. In order to do so, they are allowed to have you examined by a physician or medical specialists to determine in his or her opinion whether you need additional treatment or your treatment and no-fault benefits should be terminated. This doctor hired by the insurance company will also decide whether you are still disabled or can return to work. If you fail to appear for an exam, they can use this as grounds to terminate your benefits.

You may also be required to appear for an E.U.O. (examination under oath). This is a hearing ordered by the company where an attorney hired by the insurance company will ask you questions about the crash and your treatment. If you fail to appear they can use this as grounds to terminate your benefits.

WHAT IF YOUR CLAIM IS DENIED?

If your claim is denied and you have private health insurance, you can submit the bills to your private carrier and also direct your doctors to bill them as well. Obtain a copy of the denial as most insurance companies want proof that you have been denied by No-Fault before they assume the bills.

If you do not have any insurance and cannot afford to continue treatment, speak to your doctor concerning your continued treatment on a lien basis. These additional medical lien expenses would become part of the damages being claimed in your underlying case against the defendant.

The No-Fault carrier's denial includes instructions on how to fight or arbitrate the denial. **DO NOT ARBITRATE THE NO-FAULT DENIAL OR ALLOW YOUR DOCTOR TO DO IT FOR YOU UNTIL YOUR LAWSUIT IS RESOLVED.** An adverse finding at the arbitration can destroy your claims in the underlying lawsuit for damages.

WHY CONTACT A LAWYER?

No-Fault, although original designed to be non-adversarial has turned out to be just the opposite. The rules change regularly and the failure to comply with one element may destroy your rights to collect these benefits. Most lawyers (at least the ones you want to retain) do not charge for handling the no-fault aspect of the case while handling the underlying personal injury litigation. The right attorney also is familiar with all of the No-Fault regulations, knows all the individual nuances of the insurance companies and can easily navigate their attempts to deny your benefits.

These are some simple guidelines provided by Daniel Flanzig Esq. of NewYorkBikeLawyers.com (Flanzig and Flanzig, LLP) and Jim Reed, Esq. of Zifflaw.com. We are New York Attorneys focusing in the rights and protection of cyclists across New York. Nothing on this page should be construed as legal advice nor does the use of this page or column create and attorney client relationship. The advice on this page offers a general overview of the laws in New York. Remember, every incident or claim is specific and the guidelines may not be applicable to your particular case. As always, we suggest contacting an attorney with any legal claim or issue before taking action on your own behalf.



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