

**BEFORE THE SUBCOMMITTEE ON STANDARDS
OF THE
NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS**

November 18, 2011

**STATEMENT OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
ON SECTION 10109 OF THE AFFORDABLE CARE ACT**

On behalf of the State Farm Mutual Automobile Insurance Company, I appreciate the opportunity to testify before the Subcommittee regarding whether the standards and operating rules of section 1173 of the Social Security Act should apply to the health care transactions of automobile insurance, workers' compensation and other programs.

State Farm® is the leading underwriter of private passenger automobile insurance in the United States. State Farm is the largest homeowner insurance carrier in the United States. State Farm is generally recognized as a leader among insurers, with 81 million policies in the United States and Canada. State Farm also meets consumers' financial needs through the State Farm Bank® products as well as mutual funds and variable products. With more than 68,000 employees and 18,000 State Farm agents, State Farm services and assists millions in meeting their insurance and financial services needs.

SUMMARY OF STATEMENT

State Farm supports uniform electronic data interchange (“EDI”) health transaction standards for all relevant parties on a national basis. However, the current standards and operating rules adopted under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), are unsuited to property and casualty insurance, including automobile insurance, and, without modification, will not create uniformity and efficiency. Inclusion of property/casualty insurance within the scope of the Administrative Simplification rules is unnecessary and inappropriate, at least at this time. The healthcare industry’s own implementation of the Administrative Simplification standards, as well as state legislative changes, will compel the property and casualty insurance industry to adhere to compatible standards in order to conduct electronic transactions. Thus, it is State Farm’s position that this Subcommittee should recommend no action at this time with respect to prescribing EDI standards applicable to property/casualty insurers. Instead, the Subcommittee should recommend that further study be undertaken over the next several years with an objective of evaluating a need to include the property/casualty insurance industry within the scope of

federal EDI regulation after the existing standards for the health industry have been fully implemented.

BENEFITS AND CHALLENGES FOR AUTOMOBILE INSURANCE UNDER ADMINISTRATIVE SIMPLIFICATION

A. *Benefits*

State Farm supports properly designed EDI standards for property/casualty insurance, including automobile insurance, which could promote efficiency, save costs, ensure better and timelier service to customers, and reduce transaction errors. Assuming they properly accommodate the needs of all potential users, such standards should facilitate a much more productive and effective system for processing of medical bills than exists today.

For State Farm in particular, the potential benefits of national uniform health data standards applied to automobile insurance include:

- Efficiency gains through the reduction in costs of manually processing vast quantities of information
- Enhancement of service to customers through more rapid, accurate settlement and payment of claims.
- Reductions in general operating costs, including for supplies, overhead, and personnel.
- Relief from the cumbersome and expensive process of conforming to different standards in different states.
- Aid in combatting insurance fraud by facilitating data checks and tracking of claims.
- Improved communications required for coordination of benefits and subrogation among insurers.

However, the Administrative Simplification standards were designed for application to the healthcare industry, and applying those standards to property/casualty insurers, and in particular automobile insurers, creates very significant challenges, as discussed below.

B. *Challenges*

To appreciate the challenges involved in attempting to harmonize EDI between the health insurance industry and the automobile insurance industry requires an informed understanding of the complexities of the automobile insurance payment process. These complexities include a number of key issues. For example, the following questions arise when an automobile accident results in medical expenditures:

Whose insurance policy applies?

In an automobile insurance claim, both the beneficiary and the type of coverage may be unknown until after the accident. Determining whether a person may receive benefits under the policy is dependent on the policy contract, applicable law, and the facts of the accident. The policy contract may define whether a person is a beneficiary, such as a named insured, relative, or passenger. State law may require the policy to extend benefits to certain classes of persons, such as pedestrians or persons whose injuries are caused by a responsible tortfeasor. State law may require that certain types of benefits be extended to persons who incur accidents within the state, such as no-fault coverage or increased liability coverage. Accident facts also determine who may be responsible for payment. The policies and laws of different states, provinces and countries may apply to a single accident.

For example, consider a person from Ontario who, while visiting her father in New York, is involved in an accident in New York as a passenger on a motorcycle. Who pays for the medical bills for treatment she receives in the United States?

It could be her father's New York no-fault coverage if she qualifies as a New York resident relative. (An automobile insurance policy obtained in the United States is valid in both the United States and Canada.) It could be her Ontario accident benefits coverage if she owns a car. It could be an Ontario relative's accident benefits coverage or the Ontario Motor Vehicle Accident Fund. The drivers of the automobile and motorcycle may be responsible under their New York liability policies. If the New York automobile liability insurer is also a registered insurer in Ontario, the insurer itself may be responsible for payment of medical bills under Ontario's loss transfer regulation.

When does third-party coverage pay the claim?

In a liability – or third-party – claim, the person at fault for the accident usually does not pay the injured person's medical providers. Because of the adverse relationship between the parties, the tortfeasor may not have permission to directly access the injured person's bills or medical records. Instead, through the settlement process, the injured person discloses medical records and bills that the injured person has *already* paid, whether out-of-pocket or under his/her property/casualty and/or health insurance benefits. The tortfeasor pays damages to the injured person when the claim is resolved by settlement or litigation. Because liability claims are generally settled after the medical treatment is paid and the settlement is paid to the injured person directly, the liability insurer usually does not issue payment to the medical provider.

An automobile policyholder may have first-party medical or no-fault coverage. While a few jurisdictions require purchase of an extensive no-fault benefits package, most permit a policyholder to optionally purchase coverage for medical expenses for themselves and their passengers. A typical automobile policy includes medical payments coverage of \$5,000 or less for benefits incurred between 1 and 3 years after the accident.

Property damage liability coverage pays for accidental damage only to property. However, this coverage may pay for Medical equipment and supplies that are damaged in an accident that does not involve injury. An example of this could be restocking an ambulance that was damaged in accident.

When is a bill payable?

Once an insurer determines whether the person making the claim is an insured entitled to benefits or a claimant entitled to damages, then the insurer must determine whether a medical bill or a claim for damages supported by a medical bill is reasonable, necessary, and related to injury sustained in the accident. All, some, or none of a particular charge may be related to the accident. Since a claim under the policy pays only for injuries sustained in a single automobile accident, charges for treatment that a patient receives may need to be apportioned between the accident and other illnesses or accidents. Because policy language requires medical treatment to be provided, documented, and related to the accident in order to be considered for payment, a patient's treatment is rarely pre-authorized. Reasonable and necessary treatment may include alternative as well as traditional therapies.

Other issues that may need to be considered to determine whether and where coverage may be available could include statutory and contractual limitation periods and policy conditions, as well as contributing, stacking, and excess policies.¹

To deal with the complexities of automobile insurance in the context of EDI raises a further series of questions, including:

- What is a healthcare transaction? No-fault and medical expense coverages pay for medical expenses incurred because of bodily injury sustained by an insured and caused by an accident. Liability coverage pays for damages for bodily injury and property that an insured is legally liable to pay to someone else. Does a healthcare transaction include both medical expenses incurred by a person insured under the policy and damages paid to someone who is injured as a result of an insured's negligence?
- Who must comply with these healthcare transactions? Although many service providers for automobile insurance are the same hospitals and physicians that provide services for patients under health plans, others are not. These other providers may be paid for services that are not billed with standard medical forms. For example, providers of alternative treatments such as aroma therapy, energy therapy, and faith healing might submit bills for services under automobile no-fault or medical payments coverages.

¹ Contributing, stacking, and excess policies are terms used to describe the obligation and order of payment responsibility of an insurer in accidents where more than one policy's coverage applies. For example, both the driver and the vehicle owner may have liability insurance policies that apply to the same accident. A person may also have both automobile and personal liability policies that apply to the same loss.

- What types of coverage would be subject to the Administrative Simplification standards? While benefits for no-fault and medical expense coverages include payment of medical bills to injured persons or their healthcare providers, damages paid under liability coverage are generally not paid to the provider. However occasionally a liability insurer could advance or reimburse payment for some medical bills or could reimburse for damaged medical items. These payments may be made to the injured person, or where the person is not injured, the owner of the item, or they could be paid to the injured person's attorney, the provider, the court, a trust or another entity.
- Would applying the Administrative Simplification EDI standards to automobile insurance subject the auto insurance industry to all those standards, and even possibly to other Administrative Simplification rules? Some transactions, such as enrollment in a health plan, premium payments, referral certification and authorization do not apply to automobile insurance and have no equivalent for automobile claims. Other requirements, such as electronic funds transfers, security, and privacy rules duplicate requirements the industry is already subject to under other state and federal laws.² Subjecting automobile insurers to the Administrative Simplification rules in addition to existing applicable standards would not only be inefficient, but would require the insurer to adhere to a higher standard of compliance than HIPAA covered entities. If automobile insurers were designated as HIPAA covered entities for purposes of EDI, that designation could inappropriately subject the insurers to other unrelated state and federal laws that apply to HIPAA covered entities.³
- How could harmonized transaction codes be adapted for property/casualty insurance? Because automobile, workers' compensation and other policies are defined by state law, current transactions, adjustment, and reason codes do not conform to state insurance requirements. If states are not permitted to submit or modify codes consistent with their laws, then there will be no efficiencies gained through application of the Administrative Simplification standards to automobile insurance. The electronic transactions will have to be created in addition to existing paper explanations needed to meet state requirements. Conversely, if states are able to modify the standards for their requirements, the Administrative Simplification rules would only create baseline standards upon which states may build. Providers and insurers would then be faced with multiple state and federal coding and compliance requirements for each line of insurance.

RECOMMENDED COURSE OF ACTION

² See, e.g. 15 U.S.C. § 6801. Protection of nonpublic personal information, or 15 U.S.C. § 1693. Congressional findings and declaration of purpose.

³ See, e.g. V.T.C.A., Health & Safety Code § 181.206. Audits of Covered Entities, or 42 U.S.C.A. § 17921. Definitions

State Farm supports the concept of uniform EDI health transaction standards for all relevant parties on a national basis. However, as we stated before this Subcommittee in 1996, “State Farm urges HHS to design its standards for application by property/casualty insurers as well as health insurers, in order that the standards may be used to facilitate all medical insurance transactions. It simply makes no sense to prescribe health data standards with the objective of achieving widespread efficiency and yet to exclude a major portion of the health care payer population from consideration as potential users of the standards. Although HIPAA does not refer to property/casualty insurers as “health plans,” as a practical matter, property/casualty insurers will inevitably be compelled to use HIPAA standards in order to conduct electronic transactions with providers and other users...”⁴

State Farm believes that, since the current standards and operating rules of HIPAA Administrative Simplification are not designed for property/casualty insurers such as automobile insurers, application of the standards will not create uniformity and efficiency for the industry. They will instead subject the industry to implementation of expensive EDI requirements at both the state and federal levels without obviating the need to comply with existing state paper requirements. Because the industry is already subject to similar requirements under other state and federal law, mandating compliance with the Administrative Simplification standards in addition to the industry’s existing obligations will subject property/casualty insurers to higher compliance standards than HIPAA covered entities.

Our recommendation is for the federal government to monitor the issue but take no regulatory action at this time. The healthcare industry’s implementation of the Administrative Simplification standards, coupled with evolving state legislative requirements, will inevitably compel the property and casualty industry to adhere to compatible EDI standards in order to conduct electronic transactions. We believe that because this market evolution is moving faster than can be conceptualized by regulation, the federal government should postpone a decision about EDI standards for property/casualty insurers until the existing standards for the health industry have been fully implemented. At that time, it will be more clear whether the existing standards are workable in general or require modification; and it will be possible to make more informed decisions about federal mandates for particular EDI standards for casualty insurers.

⁴ State Farm’s prior testimony is available at <http://www.ncvhs.hhs.gov/970122t6.htm>.