

# THE WRIGHT GROUP NY

PURPOSEFUL, EFFECTIVE ADVOCACY

*Joint Legislative Budget Hearing on Health  
February 25, 2021  
Submitted on behalf of Israel, Israel & Purdy*

## **FY 2022 Executive Budget Proposal, TED, Part JJ:**

Part JJ purports to curb perceived abuses in the No-Fault automobile insurance system in two parts. The first modifies and greatly expands the existing medical provider “Decertification” statute (Insurance Law Section 5109). The second establishes an eight-member task force to examine alternatives to the no-fault system as well as other legislative or regulatory initiatives to “reduce the cost of motor vehicle insurance”.

As attorneys representing medical providers that render critical treatment to car crash victims in the No-Fault system, we are concerned that the Executive’s proposal:

- ⇒ Stymies patient access to timely and medically necessary care;
- ⇒ Disproportionately harms low-income communities;
- ⇒ Hamstrings medical providers’ ability to treat injured car crash victims and seek appropriate reimbursement for services;
- ⇒ Imposes unfair and punitive sanctions on medical providers; and
- ⇒ Contemplates a narrow and misguided examination of the No-Fault system that presumes the cost of automobile insurance is being solely driven by No-Fault benefits.

## **Part 1 – Decertification of medical providers:**

***Historical Context:*** The Department of Financial Services (DFS) currently has the powers contemplated under the Governor’s proposal in Section 5109 to police the No-Fault system. This Section was enacted in 2005 and enabling regulations were authorized in 2012. DFS notably exercised this power in 2013, when it banned 18 doctors and other providers from billing in the No-Fault system.

***Decertification:*** Grants DFS sole power to decide whether treatment is medically necessary, and to impose retroactively a forfeiture (to the benefit of the insurance industry) of payment for all services – even if properly rendered and completely unrelated to any alleged wrongdoing.

***Position:*** *We are concerned whether DFS alone is best positioned to sit in judgment of health care providers. At minimum, agencies which professionally license providers (SED) and regulate medical care (DOH) should be consulted in such decisions.*

***Medical necessity:*** Authorizes the Superintendent to take action of unlimited duration against a provider it determines has engaged in a “pattern” of billing for “unnecessary health services.”

***Position:*** *DFS authority contemplated here is too broad, would have a chilling effect on necessary medical care and does not consider needed regulation of insurance companies that refuse to pay for victims’ medically necessary treatment. There is currently a process issues where medical necessity can be resolved.*

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***Retroactivity:*** Any sanctioned provider would be barred from treating accident victims *and* from seeking payment for services previously rendered. The Workers' Compensation system and Insurance Law Section 5109 currently prohibit sanctioned providers from rendering prospective treatment, *but* allow billing for previous services that were properly rendered and for which the provider should have been paid.

*Position: Retroactive decertification would unfairly strip providers of compensation for treatment properly rendered to car crash victims. We recommend maintaining a prospective approach.*

***Corporate practice of medicine:*** The Governor is understandably concerned about unscrupulous professionals circumventing the state's prohibition on the corporate practice of medicine. The current proposal authorizes DFS to take action against a provider who has "ceded ownership, operation or control of a business entity authorized to provide professional health services in this state."

*Position: While we support government decertification of providers who are "wrongly" controlled by laypersons, not all layperson involvement is unlawful. DOH has long recognized that it is appropriate to employ profit driven organizations such as practice management companies. We recommend clarifying DFS power to sanction be limited to wrongful or unlawful conduct.*

***Penalty provisions:*** Includes a "catch-all" clause permitting DFS to take action, including the imposition of a \$50,000 fine, against any provider that has violated Article 51 of the Insurance Law or regulations promulgated thereunder.

*Position: As written, DFS would be able to issue a \$50,000 penalty each time a provider failed to submit a claim in a timely manner or failed to use a correct form. We recommend clarifying this provision to prevent such harsh and punitive sanctions in specific instances.*

## **Part 2 – "No-Fault Task Force":**

***Composition of task force:*** Provides sole gubernatorial appointment authority of eight members – consumer representative, health insurers, trial attorneys and healthcare providers and insurers.

***Stated goal:*** To examine alternatives to the No-Fault system as well as other legislative or regulatory initiatives to reduce the cost of motor vehicle insurance.

*Position: We strongly oppose the creation of this task force as proposed. First, the proposal unfairly connects the No-Fault system to an examination of motor vehicle insurance costs with absolutely no justification. Absent from the legislative intent is any discussion or consideration of the many other factors that contribute to auto insurance premiums, most namely practices of the insurance industry. Second, it is highly unlikely that an eight-member task force, with very little direction or parameters, could adequately consider the questions at hand. Lastly, the Governor retains sole appointment authority and does not provide any deference to the Legislature on this matter.*