S T A T E O F N E W Y O R K

8246

I N S E N A T E

June 17, 2010

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to medical proof in no-fault actions, and provides for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new section 5110 to read as follows:

S 5110. MEDICAL PROOF IN NO-FAULT ACTIONS. 1. A PARTY WHO INITIATES AN ACTION FOR MONEY, EXCLUSIVE OF INTEREST AND COSTS AND ATTORNEY FEES, WHICH SEEKS REIMBURSEMENT FOR MEDICAL TREATMENT, TESTING, OR SUPPLIES PURSUANT TO SECTION FIVE THOUSAND ONE HUNDRED SIX OF THIS ARTICLE, SHALL AT TRIAL, SUBMIT THE SWORN STATEMENT OF THE LICENSED MEDICAL PROFESSIONAL THAT RENDERED, PRESCRIBED OR ORDERED THE MEDICAL TREATMENT ON THE ISSUE OR ISSUES OF MEDICAL NECESSITY OR A SWORN STATEMENT FROM A REPRESENTATIVE THAT CLAIMED SERVICES HAD BEEN BILLED IN ACCORDANCE WITH THE WORKERS COMPENSATION FEE SCHEDULE PURSUANT TO SECTION FIVE THOUSAND ONE HUNDRED EIGHT OF THIS ARTICLE.

2. THE LICENSED MEDICAL PROFESSIONAL SHALL AFFIRM THAT NO-FAULT BENEFITS WERE DULY ASSIGNED TO THE PLAINTIFF, THE CLAIMED TREATMENT, TESTING OR SUPPLIES WERE RENDERED, PRESCRIBED OR ORDERED BY THE PLAINTIFF, MEDICALLY NECESSARY TO TREAT ACCIDENT RELATED INJURIES AND SHALL INCLUDE THE MATERIAL FACTS AND DOCUMENTS UPON WHICH THE OPINION OF MEDICAL NECESSITY WAS BASED; OR, THE REPRESENTATIVE SHALL INCLUDE THE RELEVANT SECTIONS OF THE FEE SCHEDULE AND THE MATERIAL FACTS AND DOCUMENTS THAT SUPPORT THE CLAIMED SERVICES WERE BILLED IN ACCORDANCE WITH THE FEE SCHEDULE. SUBMISSION OF SUCH SWORN STATEMENT SHALL NOT CREATE A PRESUMPTION OF MEDICAL NECESSITY OR PROVIDE GREATER DEFERENCE TO THE TREATING MEDICAL PROFESSIONAL OR ADHERENCE TO THE FEE SCHEDULE.

3. A PARTY OPPOSING SUCH ACTION MAY SUBMIT A SWORN STATEMENT ON THE ISSUE OR ISSUES OF MEDICAL NECESSITY OR THAT THE CLAIMED SERVICES WERE NOT BILLED IN ACCORDANCE WITH THE WORKERS COMPENSATION FEE SCHEDULE PURSUANT TO SECTION FIVE THOUSAND ONE HUNDRED EIGHT OF THIS ARTICLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SUCH STATEMENT SHALL INCLUDE THE MATERIAL FACTS AND/OR DOCUMENTS UPON WHICH SUCH STATEMENT IS BASED.

4. A COPY OF THE SWORN STATEMENT OR STATEMENTS SHALL BE FURNISHED TO ALL PARTIES NO LATER THAN THE TIME THAT THE STATEMENT IS SUBMITTED TO THE COURT. THE SWORN STATEMENT SHALL BE ACCEPTED BY THE COURT IN LIEU OF TESTIMONY UNLESS, AFTER SUBMISSION OF THE SWORN STATEMENT, THE COURT DETERMINES THAT IT WISHES TO HEAR TESTIMONY WHEREIN THE COURT SHALL THEN DIRECT THAT ALL PARTIES SUBMITTING A SWORN STATEMENT SHALL HAVE THAT PERSON APPEAR AND TESTIFY IN PERSON.

S 2. This act shall take effect immediately and shall:

1. apply to all actions and proceedings commenced on or after such date;

2. apply to any action or proceeding which was commenced prior to such effective date where, as of such date, either: (a) a trial of the issues has not yet commenced, or (b) the parties have not yet entered into a stipulation of settlement; and

3. expire and be deemed repealed December 31, 2016.