

2964

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. BARCLAY, CALHOUN, KOLB, GIGLIO, McKEVITT --
Multi-Sponsored by -- M. of A. BACALLES, BARRA, CROUCH, ERRIGO,
FINCH, McDONOUGH, MILLER, RABBITT, SAYWARD, THIELE, TOWNSEND -- read
once and referred to the Committee on Insurance

AN ACT to amend the insurance law, the penal law and the executive law,
in relation to establishing the New York automobile insurance fraud
and premium reduction act; and making an appropriation therefor

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

1 Section 1. This act shall be known and may be cited as the "New York
2 automobile insurance fraud and premium reduction act".
3 S 2. The insurance law is amended by adding a new section 5110 to read
4 as follows:
5 S 5110. CERTIFICATION OF MANAGED CARE ORGANIZATIONS. (A)(1) ANY INDI-
6 VIDUAL OR GROUP AUTHORIZED TO PROVIDE MEDICAL OR OTHER HEALTH CARE
7 SERVICES IN THIS STATE MAY, DIRECTLY OR THROUGH AN AUTHORIZED INSURER,
8 MAKE WRITTEN APPLICATION TO THE SUPERINTENDENT TO BECOME CERTIFIED TO
9 PROVIDE MANAGED CARE TO INJURED COVERED PERSONS UNDER THIS ARTICLE.
10 (2) CERTIFICATION SHALL BE VALID FOR SUCH PERIOD AND FOR SUCH SERVICE
11 AREAS AS THE SUPERINTENDENT MAY PRESCRIBE, UNLESS SOONER REVOKED,
12 SUSPENDED OR AMENDED.
13 (3) EACH APPLICATION FOR CERTIFICATION SHALL BE ACCOMPANIED BY A
14 REASONABLE FEE PRESCRIBED BY THE SUPERINTENDENT AND A PROPOSED MANAGED
15 CARE PROGRAM DETAILING ITS SIGNIFICANT FEATURES, METHODS AND PROCEDURES.
16 (B) APPLICATION FOR CERTIFICATION SHALL BE MADE IN SUCH FORM AND
17 MANNER, AND SHALL SET FORTH SUCH INFORMATION REGARDING THE PROPOSED PLAN
18 OF MANAGED CARE FOR PROVIDING MEDICAL AND OTHER HEALTH CARE SERVICES, AS
19 THE SUPERINTENDENT MAY PRESCRIBE, INCLUDING:
20 (1) THE NAMES AND CREDENTIALS OF ALL INDIVIDUALS OR ORGANIZATIONS THAT
21 WILL PROVIDE SERVICES UNDER THE MANAGED CARE PROGRAM, TOGETHER WITH
22 APPROPRIATE EVIDENCE OF COMPLIANCE WITH ANY LICENSING OR CERTIFICATION

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

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1 REQUIREMENTS FOR SUCH INDIVIDUALS OR ORGANIZATIONS TO PRACTICE IN THIS
2 STATE;

3 (2) A DESCRIPTION OF THE TIMES, PLACES AND MANNER OF PROVIDING
4 SERVICES UNDER THE MANAGED CARE PROGRAM;

5 (3) A DESCRIPTION OF THE TIMES, PLACES AND MANNER OF PROVIDING OTHER
6 RELATED OPTIONAL SERVICES THE APPLICANT MAY WISH TO PROVIDE; AND

7 (4) A DESCRIPTION AND REPRESENTATIVE COPIES OF ALL REMUNERATION AND
8 RELATED ARRANGEMENTS BETWEEN THE MANAGED CARE ORGANIZATION AND INDIVID-
9 UAL PROVIDERS OF SERVICES UNDER THE MANAGED CARE PROGRAM.

10 (C) THE SUPERINTENDENT SHALL CERTIFY AN APPLICANT, IF THE SUPERINTEN-
11 DENT FINDS THAT THE MANAGED CARE PROGRAM:

12 (1) PROVIDES MEDICAL AND OTHER HEALTH CARE SERVICES THAT MEET QUALITY,
13 CONTINUITY AND OTHER TREATMENT STANDARDS PRESCRIBED BY THE SUPERINTEN-
14 DENT OR THE COMMISSIONER OF HEALTH, IN A MANNER THAT IS TIMELY, EFFEC-
15 TIVE AND CONVENIENT FOR INJURED PERSONS;

16 (2) INCLUDES A SUFFICIENT NUMBER OF EACH CATEGORY OF PROVIDER THROUGH-
17 OUT THE PROPOSED SERVICE AREAS TO GIVE INJURED PERSONS ADEQUATE FLEXI-
18 BILITY TO CHOOSE AN AUTHORIZED PROVIDER FROM AMONG THOSE HEALTH CARE
19 PROVIDERS WHO PARTICIPATE IN THE MANAGED CARE PROGRAM;

20 (3) PROVIDES APPROPRIATE FINANCIAL INCENTIVES OR OTHER APPROACHES TO
21 REDUCE COSTS AND MINIMIZE IMPROPER UTILIZATION WITHOUT SACRIFICING QUAL-
22 ITY OF SERVICE;

23 (4) PROVIDES ADEQUATE METHODS OF PEER REVIEW, UTILIZATION REVIEW, AND
24 DISPUTE RESOLUTION, INCLUDING WHERE APPLICABLE, ACCESS TO THE EXTERNAL
25 APPEAL PROCESS AS PROVIDED IN ARTICLE FORTY-NINE OF THIS CHAPTER, IN
26 ORDER TO: (A) PREVENT INAPPROPRIATE OR EXCESSIVE TREATMENT; (B) AVOID
27 CONFLICTS OF INTEREST; (C) EXCLUDE FROM PARTICIPATION IN THE PROGRAM
28 THOSE PROVIDERS WHO VIOLATE REASONABLE TREATMENT STANDARDS; AND (D)
29 PROVIDE FOR THE RESOLUTION OF MEDICAL DISPUTES;

30 (5) PROVIDES A TIMELY AND ACCURATE METHOD OF REPORTING TO THE SUPER-
31 INTENDENT OR THE COMMISSIONER OF HEALTH AS APPROPRIATE, NECESSARY INFOR-
32 MATION REGARDING MEDICAL AND HEALTH CARE SERVICE COST AND UTILIZATION TO
33 MONITOR THE EFFECTIVENESS OF THE MANAGED CARE PROGRAM;

34 (6) PROVIDES A MECHANISM FOR AN INJURED PERSON TO OBTAIN TREATMENT
35 OUTSIDE OF THE MANAGED CARE PROGRAM IF THE SERVICES ARE NOT AVAILABLE OR
36 ACCESSIBLE WITHIN THE PROGRAM;

37 (7) PROVIDES FOR A REASONABLE AND APPROPRIATE COORDINATION WITH ANOTH-
38 ER HEALTH CARE PROVIDER WHERE THE INJURED PERSON HAS BEEN RECEIVING
39 TREATMENT FROM ANOTHER HEALTH CARE PROVIDER FOR A PREVIOUSLY EXISTING
40 CONDITION OR INJURY WHICH HAS BEEN AGGRAVATED BY THE MOTOR VEHICLE ACCI-
41 DENT;

42 (8) PROVIDES FOR A MECHANISM FOR NOTIFICATION ABOUT AND TRANSITION
43 FROM EMERGENCY CARE; AND

44 (9) COMPLIES WITH ANY OTHER REQUIREMENT THE SUPERINTENDENT DETERMINES
45 IS NECESSARY TO PROVIDE QUALITY MEDICAL AND OTHER HEALTH CARE SERVICES
46 TO INJURED PERSONS.

47 (D) THE SUPERINTENDENT MAY CERTIFY A HEALTH MAINTENANCE ORGANIZATION
48 ISSUED A CERTIFICATE OF AUTHORITY UNDER ARTICLE FORTY-FOUR OF THE PUBLIC
49 HEALTH LAW OR LICENSED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER, IF IT
50 MEETS THE REQUIREMENTS OF THIS SECTION. THE SUPERINTENDENT MAY ALSO
51 CERTIFY AN ACCIDENT AND HEALTH INSURER, INCLUDING A CORPORATION ORGAN-
52 IZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER, WHICH HAS A PARTICIPAT-
53 ING OR PREFERRED NETWORK OF PROVIDERS IF SUCH INSURER MEETS THE REQUIRE-
54 MENTS OF THIS SECTION. TO THE EXTENT A MANAGED CARE ORGANIZATION HAS
55 BEEN REVIEWED, APPROVED OR CERTIFIED BY ANOTHER STATE AGENCY AS TO
56 ACCESSIBILITY, QUALITY OR CONTINUITY OF CARE OR FOR ANY OF THE OTHER

MATTERS WITHIN THE SUPERINTENDENT'S REVIEW, THE SUPERINTENDENT SHALL CONSIDER THE REVIEW, APPROVAL OR CERTIFICATION OF ANOTHER STATE AGENCY SO AS NOT TO DUPLICATE THOSE REVIEWS, APPROVALS OR CERTIFICATIONS. HOWEVER, NOTHING IN THIS SUBSECTION SHALL BE DEEMED TO LIMIT THE SUPERINTENDENT'S AUTHORITY TO IMPOSE AND REVIEW ADDITIONAL REQUIREMENTS OR STANDARDS ABOVE AND BEYOND THOSE IMPOSED BY ANOTHER STATE AGENCY TO THE EXTENT THOSE REQUIREMENTS OR STANDARDS ARE NECESSARY OR APPROPRIATE FOR IMPLEMENTATION OF THIS SECTION.

(E) THE SUPERINTENDENT SHALL REFUSE TO CERTIFY, OR MAY REVOKE, OR SUSPEND OR AMEND THE CERTIFICATION OF, ANY MANAGED CARE ORGANIZATION, IF THE SUPERINTENDENT FINDS THAT:

(1) THE MANAGED CARE PROGRAM FOR PROVIDING SERVICES FAILS TO MEET THE REQUIREMENTS OF THIS SECTION; OR

(2) SERVICE UNDER THE MANAGED CARE PROGRAM IS NOT BEING PROVIDED IN ACCORDANCE WITH ITS TERMS AS DESCRIBED IN THE APPLICATION FOR CERTIFICATION.

(F) FOR PURPOSES OF THIS SECTION, THE SUPERINTENDENT MAY CONSIDER WHETHER PROVIDERS UTILIZED BY A MANAGED CARE ORGANIZATION OR OTHERWISE AUTHORIZED TO PROVIDE SERVICES UNDER THE CONTRACT ARE AUTHORIZED TO RENDER MEDICAL CARE IN ACCORDANCE WITH SECTION THIRTEEN-B OF THE WORKERS' COMPENSATION LAW.

(G) UTILIZATION REVIEW, QUALITY ASSURANCE AND PEER REVIEW ACTIVITIES PURSUANT TO THIS SECTION SHALL BE SUBJECT TO REVIEW BY THE SUPERINTENDENT AND THE COMMISSIONER OF HEALTH. FINDINGS BY THE COMMISSIONER OF HEALTH OF PROFESSIONAL MISCONDUCT, OR DISCIPLINARY ACTIONS IN RELATION THERETO, SHALL BE REPORTED TO THE APPROPRIATE LICENSING BOARDS AND THE SUPERINTENDENT.

(H) DATA GENERATED BY OR RECEIVED IN CONNECTION WITH THESE ACTIVITIES, INCLUDING WRITTEN REPORTS, NOTES OR RECORDS OF ANY SUCH ACTIVITIES OR OF THE REVIEW THEREOF, SHALL BE CONFIDENTIAL AND SHALL NOT BE DISCLOSED, EXCEPT TO THE EXTENT DETERMINED TO BE NECESSARY BY THE SUPERINTENDENT OR THE COMMISSIONER OF HEALTH. NO DATA GENERATED BY UTILIZATION REVIEW, QUALITY ASSURANCE OR PEER REVIEW ACTIVITIES PURSUANT TO THIS SECTION, OR THE REVIEW THEREOF, SHALL BE USED IN ANY ACTION, SUIT OR PROCEEDING, EXCEPT TO THE EXTENT DETERMINED TO BE NECESSARY BY THE SUPERINTENDENT OR THE COMMISSIONER.

(I) A PERSON PARTICIPATING IN UTILIZATION REVIEW, QUALITY ASSURANCE, OR PEER REVIEW ACTIVITIES PURSUANT TO THIS SECTION SHALL NOT BE EXAMINED AS TO ANY COMMUNICATION MADE IN THE COURSE OF SUCH ACTIVITIES OR THE FINDINGS THEREOF, NOR SHALL ANY SUCH PERSON BE SUBJECT TO A CIVIL ACTION FOR ACTIONS TAKEN OR STATEMENTS MADE IN GOOD FAITH.

(J) PROVIDED THAT THERE IS COMPLIANCE WITH STANDARDS GOVERNING MANAGED CARE ESTABLISHED BY THE SUPERINTENDENT, NO PERSON WHO PARTICIPATES IN FORMING ANY NETWORK, COLLECTIVELY NEGOTIATING FEES, OR OTHERWISE SOLICITS OR ENTERS INTO CONTRACTS IN A GOOD FAITH EFFORT, TO PROVIDE MEDICAL OR OTHER HEALTH CARE SERVICES ON A MANAGED CARE BASIS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, SHALL BE SUBJECT TO ANTITRUST LIABILITY REGARDING SUCH PARTICIPATION.

(K) THE PROVISIONS OF THIS SECTION SHALL NOT AFFECT THE CONFIDENTIALITY OR ADMISSION IN EVIDENCE OF A CLAIMANT'S MEDICAL TREATMENT RECORDS.

(L) THE SUPERINTENDENT, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, SHALL ADOPT SUCH RULES AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

S 3. Paragraph 1 of subsection (a) of section 5102 of the insurance law, as amended by chapter 298 of the laws of 2006, is amended to read as follows:

1 (1) All necessary expenses incurred for: (i) medical, hospital
2 (including services rendered in compliance with article forty-one of the
3 public health law, whether or not such services are rendered directly by
4 a hospital), surgical, nursing, dental, ambulance, x-ray, prescription
5 drug and prosthetic services; (ii) psychiatric, physical therapy
6 (provided that treatment is rendered pursuant to a referral) and occupa-
7 tional therapy and rehabilitation; (iii) any non-medical remedial care
8 and treatment rendered in accordance with a religious method of healing
9 recognized by the laws of this state; and (iv) any other professional
10 health services; all without limitation as to time, provided that within
11 one year after the date of the accident causing the injury it is ascer-
12 tainable that further expenses may be incurred as a result of the inju-
13 ry. For the purpose of determining basic economic loss, the expenses
14 incurred under this paragraph shall be in accordance with the limita-
15 tions of section five thousand one hundred eight of this article.
16 MEDICAL TREATMENTS, DIAGNOSTIC TESTS AND SERVICES PROVIDED BY THE POLICY
17 SHALL BE RENDERED IN ACCORDANCE WITH COMMONLY ACCEPTED PROTOCOLS AND
18 PROFESSIONAL STANDARDS AND PRACTICES WHICH ARE COMMONLY ACCEPTED AS
19 BEING BENEFICIAL FOR THE TREATMENT OF THE COVERED INJURY. PROTOCOLS AND
20 PROFESSIONAL STANDARDS AND PRACTICES WHICH ARE DEEMED TO BE COMMONLY
21 ACCEPTED PURSUANT TO THIS SECTION SHALL BE THOSE RECOGNIZED BY NATIONAL
22 STANDARD SETTING ORGANIZATIONS, NATIONAL OR STATE PROFESSIONAL ORGANIZA-
23 TIONS OF THE SAME DISCIPLINE AS THE TREATING PROVIDER OR THOSE DESIG-
24 NATED OR APPROVED BY THE SUPERINTENDENT IN CONSULTATION WITH PROFES-
25 SIONAL LICENSING BOARDS IN THE DEPARTMENT OF HEALTH AND THE DEPARTMENT
26 OF EDUCATION. THE SUPERINTENDENT, IN CONSULTATION WITH THE COMMISSIONERS
27 OF HEALTH AND EDUCATION, MAY REJECT THE USE OF PROTOCOLS, STANDARDS AND
28 PRACTICES OR LISTS OF DIAGNOSTIC TESTS SET BY ANY ORGANIZATION DEEMED
29 NOT TO HAVE STANDING OR GENERAL RECOGNITION BY THE PROVIDER COMMUNITY OR
30 APPLICABLE LICENSING BOARDS. PROTOCOLS SHALL BE DEEMED TO ESTABLISH
31 GUIDELINES AS TO STANDARD APPROPRIATE TREATMENT AND DIAGNOSTIC TESTS FOR
32 INJURIES SUSTAINED IN AUTOMOBILE ACCIDENTS, BUT THE ESTABLISHMENT OF
33 STANDARD TREATMENT PROTOCOLS OR PROTOCOLS FOR THE ADMINISTRATION OF
34 DIAGNOSTIC TESTS SHALL NOT BE INTERPRETED IN SUCH A MANNER AS TO
35 PRECLUDE VARIANCE WHEN WARRANTED BY REASON OF MEDICAL NECESSITY. THE
36 POLICY FORM MAY PROVIDE FOR PRE-CERTIFICATION OF CERTAIN PROCEDURES,
37 TREATMENTS, DIAGNOSTIC TESTS OR OTHER SERVICES OR FOR THE PURCHASE OF
38 DURABLE MEDICAL GOODS OR EQUIPMENT, EXCEPT THAT NO PRE-CERTIFICATION
39 REQUIREMENT SHALL APPLY WITHIN TEN DAYS OF THE ACCIDENT GIVING RISE TO
40 THE INJURY.

41 S 4. Subsection (d) of section 5103 of the insurance law is amended to
42 read as follows:

43 (d) Insurance policy forms for insurance to satisfy the requirements
44 of subsection (a) [hereof] OF THIS SECTION shall be subject to approval
45 pursuant to article twenty-three of this chapter. Minimum benefit stand-
46 ards for such policies and for self-insurers, and rights of subrogation,
47 examination and other such matters, shall be established by regulation
48 pursuant to section three hundred one of this chapter, PROVIDED, HOWEV-
49 ER, THAT EFFECTIVE IMMEDIATELY SUCH REGULATION SHALL BE DEEMED TO
50 INCLUDE NEW PROVISIONS APPLICABLE TO INJURIES WHICH OCCUR ON OR AFTER
51 THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE THAT
52 AMENDED THIS SUBSECTION AND ESTABLISHED THE NEW YORK AUTOMOBILE INSUR-
53 ANCE FRAUD AND PREMIUM REDUCTION ACT. SUCH REGULATION SHALL PROVIDE
54 THAT THE INITIAL FILING OF A NOTICE OF THE EXISTENCE OF A CLAIM OR
55 CLAIMS FOR FIRST PARTY BENEFITS BY A COVERED PERSON SHALL BE MADE WITHIN
56 THIRTY DAYS OF SUSTAINING AN INJURY FOR WHICH SUCH CLAIM OR CLAIMS MAY

1 BE MADE, BUT WHICH PERMIT THE FILING OF SUCH INITIAL NOTICE OF THE
2 EXISTENCE OF A CLAIM OR CLAIMS AS SOON AS REASONABLY PRACTICABLE AFTER
3 THE EXPIRATION OF SUCH THIRTY DAY PERIOD WHERE THE NATURE OF THE INJURY
4 RESULTS IN A REASONABLY JUSTIFIABLE DELAY IN FILING THE INITIAL NOTICE
5 DURING SUCH THIRTY DAY PERIOD.

6 S 5. Section 5108 of the insurance law is amended by adding a new
7 subsection (d) to read as follows:

8 (D) PROOF OF THE FACT AND COST OF A MEDICAL OR HEALTH SERVICE OR
9 TREATMENT WHICH IS NEEDED FOR A COVERED PERSON TO RECEIVE PAYMENT OR
10 REIMBURSEMENT FOR THAT PORTION OF A CLAIM OR CLAIMS ATTRIBUTABLE TO SUCH
11 SERVICE OR TREATMENT, WHETHER SUCH PROOF IS SUBMITTED TO A FIRST PARTY
12 OR ADDITIONAL FIRST PARTY BENEFITS INSURER BY THE COVERED PERSON OR
13 DIRECTLY BY A MEDICAL PROFESSIONAL OR HEALTH SERVICES PROVIDER ON BEHALF
14 OF SUCH COVERED PERSON, FOR A SERVICE RENDERED BY THE MEDICAL OR HEALTH
15 SERVICES PROVIDER TO THE COVERED PERSON SHALL BE SUBMITTED WITHIN
16 FORTY-FIVE DAYS FROM THE DATE THE SERVICE WAS RENDERED TO THE COVERED
17 PERSON. AT THE OPTION OF THE INSURER, IN ANY CASE WHERE MULTIPLE OR
18 CONTINUING MEDICAL OR HEALTH TREATMENTS OR SERVICES ARE REQUIRED, SUCH
19 TIME LIMIT MAY BE WAIVED AND THE CLAIMS OF ONE OR MORE SUCH MEDICAL OR
20 HEALTH SERVICE PROVIDERS MAY BE BUNDLED.

21 S 6. Section 5106 of the insurance law, subsection (b) as amended and
22 subsection (d) as added by chapter 452 of the laws of 2005, is amended
23 to read as follows:

24 S 5106. Fair claims settlement. (a) Payments of first party benefits
25 and additional first party benefits shall be made as the loss is
26 incurred. Such benefits are overdue if not paid within [thirty]
27 FORTY-FIVE days after the claimant supplies proof of the fact and amount
28 of loss sustained. If proof is not supplied as to the entire claim, the
29 amount which is supported by proof is overdue if not paid within [thir-
30 ty] FORTY-FIVE days after such proof is supplied. All overdue payments
31 shall bear interest at the rate of two percent per month. If a valid
32 claim or portion was overdue, the claimant shall also be entitled to
33 recover his attorney's reasonable fee, for services necessarily
34 performed in connection with securing payment of the overdue claim,
35 subject to limitations promulgated by the superintendent in regulations.
36 THE FAILURE TO ISSUE A DENIAL OF A CLAIM WITHIN THE FORTY-FIVE DAY PERI-
37 OD PROVIDED FOR IN THIS SUBSECTION SHALL NOT PRECLUDE THE INSURER FROM
38 RAISING A DEFENSE TO THE CLAIM WHERE THE INSURER HAS MADE A REPORT TO
39 THE INSURANCE FRAUDS BUREAU PURSUANT TO SECTION FOUR HUNDRED FIVE OF
40 THIS CHAPTER. AN INSURER WILL ALSO NOT BE PRECLUDED FROM ESTABLISHING
41 THAT THE CLAIMANT HAS FAILED TO MEET ITS PRIMA FACIE BURDEN OF PROOF.

42 (b) Every insurer shall [provide] NOTIFY a claimant [with the option
43 of submitting] THAT any dispute involving the insurer's liability to pay
44 first party benefits, or additional first party benefits, the amount
45 thereof or any other matter which may arise pursuant to subsection (a)
46 of this section [to] MUST BE SETTLED BY arbitration pursuant to simpli-
47 fied procedures to be promulgated or approved by the superintendent.
48 Such simplified procedures shall include an expedited eligibility hear-
49 ing option, when required, to designate the insurer for first party
50 benefits pursuant to subsection (d) of this section. The expedited
51 eligibility hearing option shall be a forum for eligibility disputes
52 only, and shall not include the submission of any particular bill,
53 payment or claim for any specific benefit for adjudication, nor shall it
54 consider any other defense to payment.

55 (c) An award by an arbitrator shall be binding except where vacated or
56 modified by a master arbitrator in accordance with simplified procedures

1 to be promulgated or approved by the superintendent. The grounds for
2 vacating or modifying an arbitrator's award by a master arbitrator shall
3 not be limited to those grounds for review set forth in article seven-
4 ty-five of the civil practice law and rules. The award of a master arbi-
5 trator shall be binding except for the grounds for review set forth in
6 article seventy-five of the civil practice law and rules[, and provided
7 further that where the amount of such master arbitrator's award is five
8 thousand dollars or greater, exclusive of interest and attorney's fees,
9 the insurer or the claimant may institute a court action to adjudicate
10 the dispute de novo].

11 (d) Where there is reasonable belief more than one insurer would be
12 the source of first party benefits, the insurers may agree among them-
13 selves, if there is a valid basis therefor, that one of them will accept
14 and pay the claim initially. If there is no such agreement, then the
15 first insurer to whom notice of claim is given shall be responsible for
16 payment. Any such dispute shall be resolved in accordance with the arbi-
17 tration procedures established pursuant to section five thousand one
18 hundred five of this article and regulation as promulgated by the super-
19 intendent, and any insurer paying first-party benefits shall be reim-
20 bursed by other insurers for their proportionate share of the costs of
21 the claim and the allocated expenses of processing the claim, in accord-
22 ance with the provisions entitled "other coverage" contained in regu-
23 lation and the provisions entitled "other sources of first-party bene-
24 fits" contained in regulation. If there is no such insurer and the motor
25 vehicle accident occurs in this state, then an applicant who is a quali-
26 fied person as defined in article fifty-two of this chapter shall insti-
27 tute the claim against motor vehicle accident indemnification corpo-
28 ration.

29 S 7. Subsection (c) of section 5303 of the insurance law is amended
30 to read as follows:

31 (c) Such plan shall provide for the method of classifying risks,
32 establishing territories and making rates applicable thereto. Such
33 rates[, except with respect to rates for the minimum limits of insurance
34 required by article six or seven of the vehicle and traffic law,] shall
35 be based upon loss and expense experience of the risks insured pursuant
36 to the plan.

37 S 8. Paragraph 11 of subsection (d) of section 405 of the insurance
38 law, as added by chapter 678 of the laws of 1997, is amended to read as
39 follows:

40 (11) an assessment of law enforcement and insurance company activities
41 to detect and curtail the incidence of operating a motor vehicle without
42 proper insurance coverage as required by this chapter AND THE INCIDENCE
43 OF MISREPRESENTATION BY INSURED OF THE PRINCIPAL PLACE WHERE MOTOR
44 VEHICLES ARE GARAGED AND DRIVEN.

45 S 9. The insurance law is amended by adding a new section 405-a to
46 read as follows:

47 S 405-A. COMPENSATION FOR REPORT OF INSURANCE FRAUD TO LAW ENFORCE-
48 MENT AUTHORITIES. (A) ANY PERSON, OTHER THAN PERSONS DESCRIBED IN
49 SUBSECTION (A) OF SECTION FOUR HUNDRED FIVE OF THIS ARTICLE, WHO HAS
50 REASON TO BELIEVE THAT A FRAUDULENT INSURANCE ACT PROHIBITED PURSUANT TO
51 ARTICLE ONE HUNDRED SEVENTY-SIX OF THE PENAL LAW HAS BEEN COMMITTED OR
52 THAT AN INSURANCE TRANSACTION MAY BE FRAUDULENT, OR HAS KNOWLEDGE THAT A
53 FRAUDULENT INSURANCE TRANSACTION IS ABOUT TO TAKE PLACE, OR HAS TAKEN
54 PLACE MAY REPORT SUCH ACT OR TRANSACTION AND ANY ADDITIONAL INFORMATION
55 RELATIVE TO THE FACTUAL CIRCUMSTANCES OF THE TRANSACTION AND THE PARTIES

INVOLVED TO THE ATTORNEY GENERAL, DISTRICT ATTORNEY OR INSURANCE FRAUDS BUREAU.

(B) IF THE INSURANCE FRAUDS BUREAU RECOMMENDS TO THE ATTORNEY GENERAL OR DISTRICT ATTORNEY TO COMMENCE AN ACTION OR IF THE ATTORNEY GENERAL OR DISTRICT ATTORNEY COMMENCES AN ACTION BASED ON INFORMATION PROVIDED BY A PERSON PURSUANT TO SUBSECTION (A) OF THIS SECTION, THEN SUCH PERSON SHALL BE ENTITLED TO RECEIVE AN AWARD OF AT LEAST FIFTEEN PERCENT, BUT NOT MORE THAN TWENTY-FIVE PERCENT OF THE PROCEEDS OF THE ACTION OR SETTLEMENT OF THE CLAIM UP TO A MAXIMUM OF TWENTY-FIVE THOUSAND DOLLARS. THE ATTORNEY GENERAL OR DISTRICT ATTORNEY SHALL RECOMMEND TO THE COURT WHEN A SETTLEMENT IS ENTERED THE AMOUNT OF SUCH AWARD. THE COURT SHALL BASE SUCH AWARD DECISION ON THE EXTENT TO WHICH THE PERSON SUBSTANTIALLY CONTRIBUTED TO THE PROSECUTION OF THE ACTION.

S 10. Section 176.00 of the penal law is amended by adding three new subdivisions 6, 7 and 8 to read as follows:

6. "PROVIDER" MEANS AN ATTORNEY, A HEALTH CARE PROFESSIONAL, AN OWNER OR OPERATOR OF A HEALTH CARE PRACTICE OR FACILITY, ANY PERSON WHO CREATES THE IMPRESSION THAT HE OR SHE, OR HIS OR HER PRACTICE CAN PROVIDE LEGAL OR HEALTH CARE SERVICES, OR ANY PERSON EMPLOYED OR ACTING ON BEHALF OF ANY SUCH PERSON.

7. "PUBLIC MEDIA" MEANS TELEPHONE DIRECTORIES, PROFESSIONAL DIRECTORIES, NEWSPAPERS AND OTHER PERIODICALS, RADIO AND TELEVISION, BILLBOARDS, AND MAILED OR ELECTRONICALLY TRANSMITTED WRITTEN COMMUNICATIONS THAT DO NOT INVOLVE IN-PERSON CONTACT WITH A SPECIFIC PROSPECTIVE CLIENT, PATIENT, OR CUSTOMER.

8. "RUNNER" MEANS A PERSON WHO, FOR A PECUNIARY BENEFIT, PROCURES OR ATTEMPTS TO PROCURE A CLIENT, PATIENT OR CUSTOMER AT THE DIRECTION OF, REQUEST OF OR IN COOPERATION WITH A PROVIDER WHEN SUCH PERSON KNOWS OR HAS REASON TO KNOW THAT THE PURPOSE OF SUCH PROVIDER IS TO SEEK TO FALSELY OR FRAUDULENTLY: OBTAIN BENEFITS UNDER A CONTRACT OF INSURANCE; OR ASSERT A CLAIM AGAINST AN INSURED OR AN INSURANCE CARRIER FOR PROVIDING SERVICES TO THE CLIENT, PATIENT OR CUSTOMER. SUCH TERM SHALL NOT INCLUDE A PERSON WHO PROCURES OR ATTEMPTS TO PROCURE CLIENTS, PATIENTS OR CUSTOMERS FOR A PROVIDER THROUGH PUBLIC MEDIA OR A PERSON WHO REFERS CLIENTS, PATIENTS OR CUSTOMERS AS AUTHORIZED BY LAW. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO PROHIBIT AN AGENT, BROKER OR EMPLOYEE OF A HEALTH MAINTENANCE ORGANIZATION FROM SEEKING TO SELL HEALTH MAINTENANCE ORGANIZATION COVERAGE OR HEALTH INSURANCE COVERAGE TO AN INDIVIDUAL OR GROUP.

S 11. Subdivision 1 of section 176.05 of the penal law, as amended by chapter 635 of the laws of 1996 and as designated by chapter 2 of the laws of 1998, is amended to read as follows:

1. A fraudulent insurance act is committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, self insurer, or purported insurer, or purported self insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of a POLICY INSURING AGAINST LOSSES OR LIABILITIES ARISING OUT OF THE OWNERSHIP, OPERATION, OR USE OF A MOTOR VEHICLE, A commercial insurance policy, or certificate or evidence of self insurance for commercial insurance or commercial self insurance, or a claim for payment or other benefit pursuant to an insurance policy or self insurance program for commercial or personal insurance which he OR SHE knows to: (i) contain materially false information concerning any fact material thereto; or (ii) conceal,

1 for the purpose of misleading, information concerning any fact material
2 thereto.

3 S 12. The penal law is amended by adding a new section 176.50 to read
4 as follows:

5 S 176.50 UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS.

6 A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR
7 CUSTOMERS WHEN, HE OR SHE KNOWINGLY:

8 1. ACTS AS A RUNNER; OR

9 2. USES, SOLICITS, DIRECTS, HIRES OR EMPLOYS ANOTHER PERSON TO ACT AS
10 A RUNNER.

11 UNLAWFUL PROCUREMENT OF CLIENTS, PATIENTS OR CUSTOMERS IS A CLASS E
12 FELONY.

13 S 13. Section 176.15 of the penal law, as amended by chapter 515 of
14 the laws of 1986, is amended to read as follows:

15 S 176.15 Insurance fraud in the fourth degree.

16 A person is guilty of insurance fraud in the fourth degree when he
17 commits a fraudulent insurance act and thereby wrongfully takes, obtains
18 or withholds, or attempts to wrongfully take, obtain or withhold proper-
19 ty with a value in excess of [one thousand] FIVE HUNDRED dollars.

20 Insurance fraud in the fourth degree is a class E felony.

21 S 14. Section 176.20 of the penal law, as amended by chapter 515 of
22 the laws of 1986, is amended to read as follows:

23 S 176.20 Insurance fraud in the third degree.

24 A person is guilty of insurance fraud in the third degree when he
25 commits a fraudulent insurance act and thereby wrongfully takes, obtains
26 or withholds, or attempts to wrongfully take, obtain or withhold proper-
27 ty with a value in excess of [three] ONE thousand FIVE HUNDRED dollars.

28 Insurance fraud in the third degree is a class D felony.

29 S 15. Section 176.25 of the penal law, as added by chapter 515 of the
30 laws of 1986, is amended to read as follows:

31 S 176.25 Insurance fraud in the second degree.

32 A person is guilty of insurance fraud in the second degree when he
33 commits a fraudulent insurance act and thereby wrongfully takes, obtains
34 or withholds, or attempts to wrongfully take, obtain or withhold proper-
35 ty with a value in excess of [fifty] TWENTY-FIVE thousand dollars.

36 Insurance fraud in the second degree is a class C felony.

37 S 16. Section 176.30 of the penal law, as added by chapter 515 of the
38 laws of 1986, is amended to read as follows:

39 S 176.30 Insurance fraud in the first degree.

40 A person is guilty of insurance fraud in the first degree when he
41 commits a fraudulent insurance act and thereby wrongfully takes, obtains
42 or withholds, or attempts to wrongfully take, obtain or withhold proper-
43 ty with a value in excess of [one million] FIVE HUNDRED THOUSAND
44 dollars.

45 Insurance fraud in the first degree is a class B felony.

46 S 17. Section 176.35 of the penal law, as added by chapter 635 of the
47 laws of 1996, is amended to read as follows:

48 S 176.35 Aggravated insurance fraud IN THE THIRD DEGREE.

49 A person is guilty of aggravated insurance fraud in the [fourth] THIRD
50 degree when he OR SHE commits [a fraudulent insurance act] THE OFFENSE
51 OF INSURANCE FRAUD IN THE FIFTH DEGREE, and has been previously
52 convicted within the preceding five years of any offense, an essential
53 element of which is the commission of a fraudulent insurance act.

54 Aggravated insurance fraud in the [fourth] THIRD degree is a class D
55 felony.

1 S 18. The penal law is amended by adding two new sections 176.40 and
2 176.45 to read as follows:

3 S 176.40 AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE.

4 A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE
5 WHEN HE OR SHE COMMITS THE OFFENSE OF INSURANCE FRAUD IN THE FOURTH
6 DEGREE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE
7 YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF
8 A FRAUDULENT INSURANCE ACT.

9 AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

10 S 176.45 AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE.

11 A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE
12 WHEN HE OR SHE COMMITS THE OFFENSE OF INSURANCE FRAUD IN THE THIRD
13 DEGREE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE
14 YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF
15 A FRAUDULENT INSURANCE ACT.

16 AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

17 S 19. Paragraph (a) of subdivision 2 of section 846-m of the executive
18 law, as amended by section 6 of part T of chapter 57 of the laws of
19 2000, is amended to read as follows:

20 (a) The moneys received by the fund shall be expended in a manner that
21 is consistent with the plan of operation, pursuant to appropriation,
22 only to reimburse costs incurred by provider agencies for pilot program
23 activities relating to the detection, prevention or reduction of motor
24 vehicle theft and motor vehicle insurance fraud, PROVIDED, HOWEVER, THAT
25 BEGINNING JANUARY FIRST, TWO THOUSAND TEN, ADDITIONAL MONIES RECEIVED BY
26 THE FUND PURSUANT TO AN APPROPRIATION MADE BY A CHAPTER OF THE LAWS OF
27 TWO THOUSAND NINE ESTABLISHING THE NEW YORK AUTOMOBILE INSURANCE FRAUD
28 AND PREMIUM REDUCTION ACT SHALL BE USED EXCLUSIVELY TO SUPPORT EFFORTS
29 UNDERTAKEN BY DISTRICT ATTORNEYS TO DETECT, IDENTIFY AND PROSECUTE FRAUD
30 PERTAINING TO ARTICLE FIFTY-ONE OF THE INSURANCE LAW.

31 S 20. No later than eighteen months after the effective date of this
32 act, the superintendent of insurance shall study, evaluate and report to
33 the governor and legislature on the impact and effect of this act on
34 private passenger automobile insurance costs, by rating territory, in
35 New York state. The superintendent of insurance shall recommend for each
36 insurer, by rating territory, a one-time premium reduction for the
37 insurance required pursuant to article 51 of the insurance law that
38 reflects the reduced cost of this type of coverage as a result of the
39 provisions enacted pursuant to this act. Notwithstanding the provisions
40 of article 23 of the insurance law, any such recommended reduction shall
41 be binding unless demonstrated by an insurer, based on sound underwrit-
42 ing and actuarial principles reasonably related to actual or anticipated
43 loss experience, that such reduction would result in underwriting losses
44 for policies issued in such rating territory.

45 S 21. The sum of three million one hundred thousand dollars
46 (\$3,100,000), or so much thereof as may be necessary, is hereby appro-
47 priated to the department of transportation out of any moneys in the
48 state treasury in the general fund to the credit of the motor vehicle
49 theft and insurance fraud prevention fund, not otherwise appropriated,
50 and made immediately available, for the purpose of carrying out the
51 provisions of paragraph (a) of subdivision 2 of section 846-m of the
52 executive law, as amended pursuant to section nineteen of this act.
53 Such moneys shall be payable on the audit and warrant of the comptroller
54 on vouchers certified or approved by the commissioner of transportation
55 in the manner prescribed by law.

1 S 22. Severability clause. If any clause, sentence, paragraph, subdi-
2 vision, section or part contained in any part of this act shall be
3 adjudged by any court of competent jurisdiction to be invalid, such
4 judgment shall not affect, impair, or invalidate the remainder thereof,
5 but shall be confined in its operation to the clause, sentence, para-
6 graph, subdivision, section or part of this act contained in any part
7 thereof directly involved in the controversy in which such judgment
8 shall have been rendered. It is hereby declared to be the intent of the
9 legislature that this act would have been enacted even if such invalid
10 provisions had not been included herein.

11 S 23. This act shall take effect on the ninetieth day after it shall
12 have become a law; provided, however, that the amendments to paragraph
13 (a) of subdivision 2 of section 846-m of the executive law made by
14 section nineteen of this act shall not affect the expiration of such
15 section and shall be deemed to expire therewith.