

2816--A

2011-2012 Regular Sessions

I N S E N A T E

February 2, 2011

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to comprehensive motor vehicle reparations

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

- 1 Section 1. Section 5102 of the insurance law is amended by adding a
2 new subsection (n) to read as follows:
3 (N) "HEALTH SERVICE PROVIDER" MEANS ANY MEDICAL PROVIDER THAT SUBMITS
4 A BILL FOR PAYMENT UNDER BENEFITS DEFINED AND PROVIDED BY THIS SECTION
5 FOR ANY OF THE FOLLOWING:
6 (1) MEDICAL, HOSPITAL (INCLUDING SERVICES RENDERED IN COMPLIANCE WITH
7 ARTICLE FORTY-ONE OF THE PUBLIC HEALTH LAW, WHETHER OR NOT SUCH SERVICES
8 ARE RENDERED DIRECTLY BY A HOSPITAL), SURGICAL, NURSING, DENTAL, AMBU-
9 LANCE, X-RAY, PRESCRIPTION DRUG AND PROSTHETIC SERVICES;
10 (2) PSYCHIATRIC, PHYSICAL THERAPY (PROVIDED THAT TREATMENT IS RENDERED
11 PURSUANT TO A REFERRAL) AND OCCUPATIONAL THERAPY AND REHABILITATION;
12 (3) ANY NONMEDICAL REMEDIAL CARE AND TREATMENT RENDERED IN ACCORDANCE
13 WITH A RELIGIOUS METHOD OF HEALING RECOGNIZED BY THE LAWS OF THIS STATE;
14 AND
15 (4) ANY OTHER PROFESSIONAL HEALTH SERVICES.
16 S 2. Subsection (a) of section 5106 of the insurance law is amended by
17 adding two new undesignated paragraphs to read as follows:
18 PAYMENT OF THE INTEREST PENALTY AND REASONABLE ATTORNEY FEES TO A
19 CLAIMANT WHEN PAYMENT OF A CLAIM IS OVERDUE SHALL BE THE EXCLUSIVE REME-
20 DY WHEN AN INSURER FAILS TO MAKE TIMELY PAYMENT. THE FAILURE OF AN
21 INSURER TO MAKE TIMELY PAYMENT OR ISSUE A DENIAL WITHIN THIRTY DAYS
22 AFTER PROOF OF CLAIM HAS BEEN SUBMITTED TO AN INSURER SHALL NOT PRECLUDE

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

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1 SUCH INSURER FROM ISSUING A DENIAL OR ASSERTING A DEFENSE AFTER THE
2 THIRTY DAY PERIOD HAS ELAPSED.

3 THE CLAIMANT HAS THE BURDEN OF PROOF TO SHOW THE EXPENSES UNDER PARA-
4 GRAPH ONE OF SUBSECTION (A) OF SECTION FIVE THOUSAND ONE HUNDRED TWO OF
5 THIS ARTICLE WERE MEDICALLY NECESSARY AND IN ACCORDANCE WITH THE APPLI-
6 CABLE FEE SCHEDULE. EVIDENCE OF MAILING A CLAIM FORM SHALL NOT BE SUFFI-
7 CIENT TO MEET THIS BURDEN.

8 S 3. Subsection (b) of section 5106 of the insurance law, as amended
9 by chapter 452 of the laws of 2005, is amended to read as follows:

10 (b) [Every insurer shall provide a claimant with the option of submit-
11 ting any dispute] ALL DISPUTES involving the insurer's liability to pay
12 first party benefits, or additional first party benefits, the amount
13 thereof or any other matter which may arise pursuant to subsection (a)
14 of this section SHALL BE SUBMITTED to arbitration pursuant to simplified
15 procedures to be promulgated or approved by the superintendent. Such
16 simplified procedures shall include an expedited eligibility hearing
17 option, when required, to designate the insurer for first party benefits
18 pursuant to subsection (d) of this section. The expedited eligibility
19 hearing option shall be a forum for eligibility disputes only, and shall
20 not include the submission of any particular bill, payment or claim for
21 any specific benefit for adjudication, nor shall it consider any other
22 defense to payment.

23 S 4. The insurance law is amended by adding a new section 5110 to read
24 as follows:

25 S 5110. ASSIGNMENT OF BENEFITS TO HEALTH SERVICE PROVIDERS. (A) A
26 "COVERED PERSON" HAS THE RIGHT TO ASSIGN CLAIMS FOR MEDICAL EXPENSES
27 UNDER THIS ARTICLE TO A "HEALTH SERVICE PROVIDER", AND SUCH ASSIGNMENT
28 SHALL AFFORD THE HEALTH SERVICE PROVIDER AS THE ASSIGNEE, THE RIGHTS,
29 PRIVILEGES, AND REMEDIES FOR PAYMENT TO WHICH A COVERED PERSON IS ENTI-
30 TLED TO UNDER THIS ARTICLE. HOWEVER, SUCH ASSIGNMENT IS VALID ONLY WHERE
31 COVERAGE AND COMPLIANCE WITH POLICY TERMS BY THE COVERED PERSON ARE NOT
32 IN DISPUTE.

33 (B) THE COVERED PERSON SHALL HAVE THE SOLE RIGHT TO CONTEST ANY ISSUES
34 INVOLVING COVERAGE OR COMPLIANCE WITH POLICY TERMS BY THE COVERED
35 PERSON.

36 (C) THE HEALTH SERVICE PROVIDER SHALL HAVE A LIEN AGAINST ANY RECOVERY
37 BY THE COVERED PERSON FOR SERVICES PROVIDED.

38 (D) THE HEALTH SERVICE PROVIDER SHALL NOT PURSUE PAYMENT FOR THE COST
39 OF SERVICES ARISING OUT OF THE INJURIES THE COVERED PERSON SUSTAINED DUE
40 TO A MOTOR VEHICLE ACCIDENT UNLESS THERE IS A DETERMINATION THAT COVER-
41 AGE DOES NOT EXIST.

42 S 5. Section 5109 of the insurance law, as added by chapter 423 of the
43 laws of 2005, is amended to read as follows:

44 S 5109. Unauthorized providers of health services. (a) [The super-
45 intendent, in consultation with the commissioner of health and the
46 commissioner of education, shall by regulation, promulgate standards and
47 procedures for investigating and suspending or removing the authori-
48 zation for providers of health services to demand or request payment for
49 health services as specified in paragraph one of subsection (a) of
50 section five thousand one hundred two of this article upon findings
51 reached after investigation pursuant to this section. Such regulations
52 shall ensure the same or greater due process provisions, including
53 notice and opportunity to be heard, as those afforded physicians inves-
54 tigated under article two of the workers' compensation law and shall
55 include provision for notice to all providers of health services of the
56 provisions of this section and regulations promulgated thereunder at

1 least ninety days in advance of the effective date of such regulations]
2 AS USED IN THIS SECTION, "HEALTH SERVICES" MEANS SERVICES, SUPPLIES,
3 THERAPIES OR OTHER TREATMENTS SPECIFIED IN SUBPARAGRAPH (I), (II) OR
4 (IV) OF PARAGRAPH ONE OF SUBSECTION (A) OF SECTION FIVE THOUSAND ONE
5 HUNDRED TWO OF THIS ARTICLE.

6 (b) [The commissioner of health and the commissioner of education
7 shall provide a list of the names of all providers of health services
8 who the commissioner of health and the commissioner of education shall
9 deem, after reasonable investigation, not authorized to demand or
10 request any payment for medical services in connection with any claim
11 under this article because such] THE SUPERINTENDENT MAY PROHIBIT A
12 provider of health services FROM DEMANDING OR REQUESTING PAYMENT FOR
13 HEALTH SERVICES RENDERED UNDER THIS ARTICLE, FOR A PERIOD NOT EXCEEDING
14 THREE YEARS, IF THE SUPERINTENDENT DETERMINES, AFTER NOTICE AND A HEAR-
15 ING, THAT THE PROVIDER OF HEALTH SERVICES:

16 (1) has ADMITTED TO, OR been FOUND guilty of, professional [or other]
17 misconduct [or incompetency], AS DEFINED IN THE EDUCATION LAW, in
18 connection with [medical] HEALTH services rendered under this article;
19 or

20 (2) [has exceeded the limits of his or her professional competence in
21 rendering medical care under this article or has knowingly made a false
22 statement or representation as to a material fact in any medical report
23 made in connection with any claim under this article; or

24 (3)] solicited, or [has] employed another PERSON to solicit for
25 [himself or herself] THE PROVIDER OF HEALTH SERVICES or [for] another
26 PERSON OR ENTITY, professional treatment, examination or care of [an
27 injured] A person in connection with any claim under this article; or

28 [(4)] (3) has refused to appear before, or [to] answer ANY QUESTION
29 upon request of, the [commissioner of health, the] superintendent[,] or
30 any duly authorized officer of [the] THIS state, [any legal question,]
31 or REFUSED to produce any relevant information concerning [his or her]
32 THE conduct OF THE PROVIDER OF HEALTH SERVICES in connection with
33 [rendering medical] HEALTH services RENDERED under this article; or

34 [(5)] (4) has engaged in [patterns] A PATTERN of billing for [services
35 which were not provided]:

36 (I) HEALTH SERVICES ALLEGED TO HAVE BEEN RENDERED UNDER THIS ARTICLE,
37 WHEN THE HEALTH SERVICES WERE NOT RENDERED; OR

38 (II) UNNECESSARY HEALTH SERVICES; OR

39 (5) UTILIZED UNLICENSED PERSONS TO RENDER HEALTH SERVICES UNDER THIS
40 ARTICLE, WHEN ONLY A PERSON LICENSED IN THIS STATE MAY RENDER THE HEALTH
41 SERVICES; OR

42 (6) UTILIZED LICENSED PERSONS TO RENDER HEALTH SERVICES, WHEN RENDER-
43 ING THE HEALTH SERVICES IS BEYOND THE AUTHORIZED SCOPE OF THE PERSON'S
44 LICENSE; OR

45 (7) CEDED OWNERSHIP, OPERATION OR CONTROL OF A BUSINESS ENTITY AUTHOR-
46 IZED TO PROVIDE PROFESSIONAL HEALTH SERVICES IN THIS STATE, INCLUDING
47 BUT NOT LIMITED TO A PROFESSIONAL SERVICE CORPORATION, LIMITED LIABILITY
48 COMPANY OR REGISTERED LIMITED LIABILITY PARTNERSHIP, TO A PERSON NOT
49 LICENSED TO RENDER THE HEALTH SERVICES FOR WHICH THE ENTITY IS LEGALLY
50 AUTHORIZED TO PROVIDE, EXCEPT WHERE THE UNLICENSED PERSON'S OWNERSHIP,
51 OPERATION OR CONTROL IS OTHERWISE PERMITTED BY LAW; OR

52 (8) COMMITTED A FRAUDULENT INSURANCE ACT AS DEFINED IN SECTION 176.05
53 OF THE PENAL LAW; OR

54 (9) HAS BEEN CONVICTED OF A CRIME INVOLVING FRAUDULENT OR DISHONEST
55 PRACTICES; OR

1 (10) VIOLATED ANY PROVISION OF THIS ARTICLE OR REGULATIONS PROMULGATED
2 THEREUNDER.

3 (c) [Providers] A PROVIDER of health services shall [refrain from
4 subsequently treating for remuneration, as a private patient, any person
5 seeking medical treatment] NOT DEMAND OR REQUEST PAYMENT FOR HEALTH
6 SERVICES under this article [if such provider pursuant to this section
7 has been prohibited from demanding or requesting any payment for medical
8 services under this article. An injured claimant so treated or examined
9 may raise this as] THAT ARE RENDERED DURING THE TERM OF THE PROHIBITION
10 ORDERED BY THE SUPERINTENDENT PURSUANT TO SUBSECTION (B) OF THIS
11 SECTION. THE PROHIBITION ORDERED BY THE SUPERINTENDENT MAY BE a defense
12 in any action by [such] THE provider OF HEALTH SERVICES for payment for
13 [treatment rendered at any time after such provider has been prohibited
14 from demanding or requesting payment for medical services in connection
15 with any claim under this article] SUCH HEALTH SERVICES.

16 (d) The [commissioner of health and the commissioner of education]
17 SUPERINTENDENT shall maintain [and regularly update] a database contain-
18 ing a list of providers of health services prohibited by this section
19 from demanding or requesting any payment for health services [connected
20 to a claim] RENDERED under this article and shall make [such] THE infor-
21 mation available to the public [by means of a website and by a toll free
22 number].

23 (e) THE SUPERINTENDENT MAY LEVY A CIVIL PENALTY NOT EXCEEDING FIFTY
24 THOUSAND DOLLARS ON ANY PROVIDER OF HEALTH SERVICES THAT THE SUPERINTEN-
25 DENT PROHIBITS FROM DEMANDING OR REQUESTING A PAYMENT FOR HEALTH
26 SERVICES PURSUANT TO SUBSECTION (B) OF THIS SECTION. ANY CIVIL PENALTY
27 IMPOSED FOR A FRAUDULENT INSURANCE ACT, AS DEFINED IN SECTION 176.05 OF
28 THE PENAL LAW, SHALL BE LEVIED PURSUANT TO ARTICLE FOUR OF THIS CHAPTER.

29 (F) Nothing in this section shall be construed as limiting in any
30 respect the powers and duties of the commissioner of health, commission-
31 er of education [or], the superintendent, OR INSURER to investigate
32 instances of misconduct by a [health care] provider [and, after a hear-
33 ing and upon written notice to the provider, to temporarily prohibit a
34 provider of health services under such investigation from demanding or
35 requesting any payment for medical services under this article for up to
36 ninety days from the date of such notice] OF HEALTH SERVICES AND TAKE
37 APPROPRIATE ACTION PURSUANT TO ANY OTHER PROVISION OF LAW. A DETERMI-
38 NATION OF THE SUPERINTENDENT PURSUANT TO SUBSECTION (B) OF THIS SECTION
39 SHALL NOT BE BINDING UPON THE COMMISSIONER OF HEALTH OR THE COMMISSIONER
40 OF EDUCATION IN A PROFESSIONAL DISCIPLINARY PROCEEDING RELATING TO THE
41 SAME CONDUCT.

42 S 6. Section 5108 of the insurance law is amended to read as follows:

43 S 5108. Limit on charges by providers of health services. (a) The
44 charges for services specified in paragraph one of subsection (a) of
45 section five thousand one hundred two of this article and any further
46 health service charges which are incurred as a result of the injury and
47 which are in excess of basic economic loss, shall not exceed the charges
48 permissible under the schedules prepared and established by the chairman
49 of the workers' compensation board for industrial accidents, except
50 where the insurer or arbitrator determines that unusual procedures or
51 unique circumstances justify the excess charge, AND SHALL BE SUBJECT TO
52 THE TREATMENT GUIDELINES ESTABLISHED PURSUANT TO SUBSECTION (D) OF THIS
53 SECTION. AT NO TIME SHALL AN INSURER PAY ANY CHARGE THAT EXCEEDS THE
54 CHARGES PERMISSIBLE UNDER THE SCHEDULE PREPARED AND ESTABLISHED BY THE
55 CHAIR OF THE WORKERS' COMPENSATION BOARD.

1 (b) The superintendent, after consulting with the chairman of the
2 workers' compensation board and the commissioner of health, shall
3 promulgate rules and regulations implementing and coordinating the
4 provisions of this article and the workers' compensation law with
5 respect to charges for the professional health services specified in
6 paragraph one of subsection (a) of section five thousand one hundred two
7 of this article, including the establishment of schedules for all such
8 services for which schedules have not been prepared and established by
9 the chairman of the workers' compensation board, INCLUDING, BUT NOT
10 LIMITED, TO DURABLE MEDICAL EQUIPMENT OR SUPPLIES. ADDITIONALLY, THE
11 SUPERINTENDENT, AFTER CONSULTATION WITH THE WORKERS' COMPENSATION BOARD
12 AND THE COMMISSIONER OF HEALTH, SHALL PROMULGATE TREATMENT GUIDELINES
13 WITH THE RESPECT OF TREATING COVERED PERSONS. CHARGES FOR SERVICES THAT
14 ARE NOT SPECIFICALLY SCHEDULED BY THE SUPERINTENDENT OF INSURANCE OR THE
15 CHAIRMAN OF THE WORKERS' COMPENSATION BOARD, OR ARE NOT COMPENSABLE
16 CHARGES UNDER MEDICARE ARE NOT COMPENSABLE HEALTH SERVICE CHARGES UNDER
17 SUBSECTION (A) OF SECTION FIVE THOUSAND ONE HUNDRED TWO OF THIS ARTICLE.

18 (c) No provider of health services specified in paragraph one of
19 subsection (a) of section five thousand one hundred two of this article
20 may demand or request any payment in addition to the charges authorized
21 pursuant to this section. NO SUCH PROVIDER MAY BE REIMBURSED FOR ANY
22 SERVICES UNLESS THE PROVIDER COMPLIES WITH SUBSECTION (D) OF THIS
23 SECTION. Every insurer shall report to the commissioner of health any
24 patterns of overcharging, excessive treatment or other improper actions
25 by a health provider within thirty days after such insurer has knowledge
26 of such pattern.

27 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THE STATUTE, RULE OR REGU-
28 LATION TO THE CONTRARY, THE FOLLOWING SHALL APPLY FOR ALL INDIVIDUALS OR
29 ENTITIES THAT PROVIDE, TREAT, OR CHARGE FOR SERVICES SPECIFIED IN PARA-
30 GRAPH ONE OF SUBSECTION (A) OF SECTION FIVE THOUSAND ONE HUNDRED TWO OF
31 THIS ARTICLE:

32 (1) THE TREATING PROVIDER SHALL FOLLOW THE TREATMENT GUIDELINES ESTAB-
33 LISHED BY THE SUPERINTENDENT;

34 (2) DEVIATIONS FROM THE TREATMENT GUIDELINES MAY BE PERMITTED UNDER
35 THE FOLLOWING CONDITIONS:

36 (I) PRIOR WRITTEN OR ELECTRONIC REQUEST IS GIVEN TO THE INSURER PRIOR
37 TO COMMENCING TREATMENT. THE REQUEST SHALL CONTAIN JUSTIFICATION FOR THE
38 DEVIATION FROM THE TREATMENT GUIDELINES. THE BURDEN OF SHOWING THE
39 NECESSITY OF THE DEVIATION REMAINS SOLELY ON THE TREATING PROVIDER.
40 FAILURE TO PROVIDE THIS REQUEST SHALL RESULT IN A MAXIMUM REIMBURSEMENT
41 OF FIFTY PERCENT OF THE TREATMENT GUIDELINES.

42 (II) THE INSURER SHALL NOT BE PRECLUDED FROM EVALUATING THE DEVIATION
43 FOR PAYMENT DURING THE PENDENCY OF THE REVIEW, AND MAY UTILIZE PEER
44 REVIEW FOR EVALUATION OF THE DEVIATION.

45 (III) ANY DISPUTES SHALL BE RESOLVED THROUGH A PANEL OF EXPERTS WHO
46 HAVE BEEN TRAINED OR CERTIFIED IN THE TREATMENT GUIDELINES PURSUANT TO
47 SUBSECTION (E) OF SECTION FIVE THOUSAND ONE HUNDRED SIX OF THIS ARTICLE.

48 (3) AN INSURER MAY SCHEDULE AN INDEPENDENT MEDICAL EXAMINATION AT ANY
49 TIME DURING THE COURSE OF TREATMENT.

50 (4) SERVICES OR SUPPLIES NOT COVERED BY THE TREATMENT GUIDELINES OR
51 THE WORKERS' COMPENSATION FEE SCHEDULE SHALL NOT BE COMPENSABLE.

52 S 7. Section 5106 of the insurance law is amended by adding a new
53 subsection (e) to read as follows:

54 (E) EVERY INSURER SHALL PROVIDE THE TREATING PROVIDER WITH THE OPTION
55 OF SUBMITTING A DISPUTE INVOLVING A REQUEST FOR DEVIATIONS FROM THE
56 TREATMENT GUIDELINES UNDER SUBSECTION (D) OF SECTION FIVE THOUSAND ONE

1 HUNDRED EIGHT OF THIS ARTICLE TO ARBITRATION PURSUANT TO SIMPLIFIED
2 PROCEDURES PROMULGATED OR APPROVED BY THE SUPERINTENDENT. SUCH SIMPLI-
3 FIED PROCEDURES SHALL INCLUDE ARBITRATION THROUGH A PANEL OF EXPERTS WHO
4 HAVE BEEN TRAINED OR CERTIFIED IN THE TREATMENT GUIDELINES.

5 S 8. Subsection (b) of section 3425 of the insurance law is amended by
6 adding a new undesignated paragraph to read as follows:

7 NOTWITHSTANDING ANY RULE, LAW OR REGULATION TO THE CONTRARY, AN INSUR-
8 ER MAY RESCIND, OR RETROACTIVELY CANCEL TO THE INCEPTION OF THE POLICY,
9 COVERAGE FOR PERSONAL INJURY PROTECTION UNDER ARTICLE FIFTY-ONE OF THIS
10 CHAPTER WHERE THERE IS NONPAYMENT OF THE INITIAL PREMIUM OR INITIAL
11 INSTALLMENT WITHIN THE FIRST SIXTY DAYS, OR WHERE IT IS DISCOVERED THAT
12 THE PAYMENT PROCEEDS OR IDENTITY OF THE PURPORTED POLICYHOLDER WERE
13 STOLEN. A PERSON WHO IS INJURED DURING THIS PERIOD MAY HAVE RECOURSE
14 UNDER A PERSONAL POLICY OF INSURANCE OR TO THE MOTOR VEHICLE INDEMNIFI-
15 CATION CORPORATION PROVIDED SUCH PERSON DID NOT PARTICIPATE IN ANY FRAU-
16 DULENT ACTIVITY, INCLUDING BUT NOT LIMITED TO, A STAGED OR INTENTIONALLY
17 CAUSED ACCIDENT.

18 S 9. This act shall take effect immediately and shall apply to all
19 actions and proceedings commenced on or after such date; and shall also
20 apply to any action or proceeding which was commenced prior to such
21 effective date where, as of such date, a trial of the issues has not yet
22 commenced.