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

4576

2011-2012 Regular Sessions

I N S E N A T E

April 12, 2011

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligation law, in relation to the limitation of non-statutory reimbursement and subrogation

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

Section 1. Section 5-335 of the general obligations law, as added by section 8 of part F of chapter 494 of the laws of 2009, is amended to read as follows:

S 5-335. Limitation of non-statutory reimbursement and subrogation claims in personal injury and wrongful death actions. (a) When a plaintiff settles with, OR OBTAINS JUDGMENT AGAINST, one or more defendants in an action for personal injuries, medical, dental, or podiatric malpractice, or wrongful death, it shall be conclusively presumed that the settlement OR JUDGEMENT does not include any compensation for the cost of health care services, loss of earnings or other economic loss to the extent those losses or expenses have been or are obligated to be paid or reimbursed by a benefit provider, except for those payments as to which there is a statutory right of reimbursement. By entering into any such settlement OR BY SEEKING OR OBTAINING SUCH JUDGEMENT, a plaintiff shall not be deemed to have taken an action in derogation of any nonstatutory right of any benefit provider that paid or is obligated to pay those losses or expenses; nor shall a plaintiff's entry into such settlement OR RECOVERY OF SUCH JUDGEMENT constitute a violation of any contract between the plaintiff and such benefit provider.

Except where there is a statutory right of reimbursement, no party entering into such a settlement OR OBTAINING SUCH A JUDGEMENT shall be subject to a subrogation claim or claim for reimbursement by a benefit provider and a benefit provider shall have no lien or right of subrogation or reimbursement against any such [settling] party, with respect to

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

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those losses or expenses that have been or are obligated to be paid or reimbursed by said benefit provider. EXCEPT WHERE THERE IS A STATUTORY RIGHT OF REIMBURSEMENT, A BENEFIT PROVIDER SHALL NOT BE PERMITTED TO INTERVENE IN AN ACTION FOR PERSONAL INJURY, MEDICAL, DENTAL, OR PODIATRIC MALPRACTICE, OR WRONGFUL DEATH, FOR THE PURPOSE OF ASSERTING A SUBROGATION CLAIM OR CLAIM FOR REIMBURSEMENT WITH RESPECT TO SUCH LOSSES OR EXPENSES.

(b) This section shall not apply to a subrogation claim for recovery of additional first-party benefits provided pursuant to article fifty-one of the insurance law. The term "additional first-party benefits", as used in this subdivision, shall have the same meaning given it in section 65-1.3 of title 11 of the codes, rules and regulations of the state of New York as of the effective date of this statute.

S 2. This act shall take effect immediately and apply to all actions commenced and all actions pending on such date.