

6706

I N S E N A T E

March 12, 2012

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

AN ACT to amend the insurance law, in relation to providing for the use of treatment guidelines under the comprehensive motor vehicle reparations act

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

1 Section 1. Section 5108 of the insurance law is amended to read as
2 follows:
3 S 5108. Limit on charges by providers of health services. (a) The
4 charges for services specified in paragraph one of subsection (a) of
5 section five thousand one hundred two of this article and any further
6 health service charges which are incurred as a result of the injury and
7 which are in excess of basic economic loss, shall not exceed the charges
8 permissible under the schedules prepared and established by the chairman
9 of the workers' compensation board for industrial accidents, except
10 where the insurer or arbitrator determines that unusual procedures or
11 unique circumstances justify the excess charge, AND SHALL BE SUBJECT TO
12 THE TREATMENT GUIDELINES ESTABLISHED PURSUANT TO SUBSECTION (D) OF THIS
13 SECTION. AT NO TIME SHALL AN INSURER PAY ANY CHARGE THAT EXCEEDS THE
14 CHARGES PERMISSIBLE UNDER THE SCHEDULE PREPARED AND ESTABLISHED BY THE
15 CHAIR OF THE WORKERS' COMPENSATION BOARD.
16 (b) The superintendent, after consulting with the chairman of the
17 workers' compensation board and the commissioner of health, shall
18 promulgate rules and regulations implementing and coordinating the
19 provisions of this article and the workers' compensation law with
20 respect to charges for the professional health services specified in
21 paragraph one of subsection (a) of section five thousand one hundred two
22 of this article, including the establishment of schedules for all such
23 services for which schedules have not been prepared and established by
24 the chairman of the workers' compensation board, INCLUDING, BUT NOT
25 LIMITED TO, DURABLE MEDICAL EQUIPMENT OR SUPPLIES. ADDITIONALLY, THE
26 SUPERINTENDENT, AFTER CONSULTATION WITH THE WORKERS' COMPENSATION BOARD
27 AND THE COMMISSIONER OF HEALTH, SHALL PROMULGATE TREATMENT GUIDELINES

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

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1 WITH RESPECT TO TREATING COVERED PERSONS. CHARGES FOR SERVICES THAT ARE
2 NOT SPECIFICALLY SCHEDULED BY THE SUPERINTENDENT OF INSURANCE OR THE
3 CHAIRMAN OF THE WORKERS' COMPENSATION BOARD, OR ARE NOT COMPENSABLE
4 CHARGES UNDER MEDICARE ARE NOT COMPENSABLE HEALTH SERVICE CHARGES UNDER
5 SUBSECTION (A) OF SECTION FIVE THOUSAND ONE HUNDRED TWO OF THIS ARTICLE.

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

15 (D) NOTWITHSTANDING ANY OTHER PROVISION OF STATUTE, RULE OR REGULATION
16 TO THE CONTRARY, THE FOLLOWING SHALL APPLY FOR ALL INDIVIDUALS OR ENTI-
17 TIES THAT PROVIDE, TREAT, OR CHARGE FOR SERVICES SPECIFIED IN PARAGRAPH
18 ONE OF SUBSECTION (A) OF SECTION FIVE THOUSAND ONE HUNDRED TWO OF THIS
19 ARTICLE:

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

22 (2) DEVIATIONS FROM THE TREATMENT GUIDELINES MAY BE PERMITTED UNDER
23 THE FOLLOWING CONDITIONS:

24 (I) PRIOR WRITTEN OR ELECTRONIC REQUEST IS GIVEN TO THE INSURER PRIOR
25 TO COMMENCING TREATMENT. THE REQUEST SHALL CONTAIN JUSTIFICATION FOR THE
26 DEVIATION FROM THE TREATMENT GUIDELINES. THE BURDEN OF SHOWING THE
27 NECESSITY OF THE DEVIATION REMAINS SOLELY ON THE TREATING PROVIDER.
28 FAILURE TO PROVIDE THIS REQUEST SHALL RESULT IN A MAXIMUM REIMBURSEMENT
29 OF FIFTY PERCENT OF THE TREATMENT GUIDELINES.

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

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

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

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

40 S 2. Section 5106 of the insurance law is amended by adding a new
41 subsection (e) to read as follows:

42 (E) EVERY INSURER SHALL PROVIDE THE TREATING PROVIDER WITH THE OPTION
43 OF SUBMITTING A DISPUTE INVOLVING A REQUEST FOR DEVIATIONS FROM THE
44 TREATMENT GUIDELINES UNDER SUBSECTION (D) OF SECTION FIVE THOUSAND ONE
45 HUNDRED EIGHT OF THIS ARTICLE TO ARBITRATION PURSUANT TO SIMPLIFIED
46 PROCEDURES PROMULGATED OR APPROVED BY THE SUPERINTENDENT. SUCH SIMPLI-
47 FIED PROCEDURES SHALL INCLUDE ARBITRATION THROUGH A PANEL OF EXPERTS WHO
48 HAVE BEEN TRAINED OR CERTIFIED IN THE TREATMENT GUIDELINES.

49 S 3. This act shall take effect immediately and shall apply to all
50 actions and proceedings commenced on or after such date; and shall also
51 apply to any action or proceeding which was commenced prior to such
52 effective date where, as of such date, a trial of the issues has not yet
53 commenced.