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

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I N A S S E M B L Y

March 22, 2012

Introduced by M. of A. MORELLE -- read once and referred 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:

Section 1. Section 5108 of the insurance law is amended to read as follows:

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

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

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

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

(1) THE TREATING PROVIDER SHALL FOLLOW THE TREATMENT GUIDELINES ESTABLISHED BY THE SUPERINTENDENT;

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

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

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

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

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

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

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

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

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