

2816

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THERAPIES OR OTHER TREATMENTS SPECIFIED IN SUBPARAGRAPH (I), (II) OR  
2 (IV) OF PARAGRAPH ONE OF SUBSECTION (A) OF SECTION FIVE THOUSAND ONE  
3 HUNDRED TWO OF THIS ARTICLE.

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

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

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

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

26 [(4)] (3) has refused to appear before, or [to] answer ANY QUESTION  
27 upon request of, the [commissioner of health, the] superintendent[, ] or  
28 any duly authorized officer of [the] THIS state, [any legal question,]  
29 or REFUSED to produce any relevant information concerning [his or her]  
30 THE conduct OF THE PROVIDER OF HEALTH SERVICES in connection with  
31 [rendering medical] HEALTH services RENDERED under this article; or

32 [(5)] (4) has engaged in [patterns] A PATTERN of billing for [services  
33 which were not provided]:

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

36 (II) UNNECESSARY HEALTH SERVICES; OR

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

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

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

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

52 (9) HAS BEEN CONVICTED OF A CRIME INVOLVING FRAUDULENT OR DISHONEST  
53 PRACTICES; OR

54 (10) VIOLATED ANY PROVISION OF THIS ARTICLE OR REGULATIONS PROMULGATED  
55 THEREUNDER.

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

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

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

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

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

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

54 (b) The superintendent, after consulting with the chairman of the  
55 workers' compensation board and the commissioner of health, shall  
56 promulgate rules and regulations implementing and coordinating the

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

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

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

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

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

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

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

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

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

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

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

51 (E) EVERY INSURER SHALL PROVIDE THE TREATING PROVIDER WITH THE OPTION  
52 OF SUBMITTING A DISPUTE INVOLVING A REQUEST FOR DEVIATIONS FROM THE  
53 TREATMENT GUIDELINES UNDER SUBSECTION (D) OF SECTION FIVE THOUSAND ONE  
54 HUNDRED EIGHT OF THIS ARTICLE TO ARBITRATION PURSUANT TO SIMPLIFIED  
55 PROCEDURES PROMULGATED OR APPROVED BY THE SUPERINTENDENT. SUCH SIMPLI-

1 FIED PROCEDURES SHALL INCLUDE ARBITRATION THROUGH A PANEL OF EXPERTS WHO  
2 HAVE BEEN TRAINED OR CERTIFIED IN THE TREATMENT GUIDELINES.

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

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

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