

4644

2011-2012 Regular Sessions

I N S E N A T E

April 14, 2011

Introduced by Sen. HANNON -- 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 prompt settlement of claims for health care and payments for health care services

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

1 Section 1. Subsections (a), (b) and (c) of section 3224-a of the
2 insurance law, as amended by chapter 237 of the laws of 2009, are
3 amended to read as follows:
4 (a) Except in a case where the obligation of an insurer or an organ-
5 ization or corporation licensed or certified pursuant to article forty-
6 three or forty-seven of this chapter or article forty-four of the public
7 health law to pay a claim submitted by a policyholder or person covered
8 under such policy ("covered person") or make a payment to a health care
9 provider is not reasonably clear, or when there is a reasonable basis
10 supported by specific information available for review by the super-
11 intendent that such claim or bill for health care services rendered was
12 submitted fraudulently, such insurer or organization or corporation
13 shall pay the claim to a policyholder or covered person or make a
14 payment to a health care provider within thirty days of receipt of a
15 claim or bill for services rendered that is transmitted via the internet
16 or electronic mail, or [forty-five] THIRTY days of receipt of a claim or
17 bill for services rendered that is submitted by other means, such as
18 paper or facsimile.
19 (b) In a case where the obligation of an insurer or an organization or
20 corporation licensed or certified pursuant to article forty-three or
21 forty-seven of this chapter or article forty-four of the public health
22 law to pay a claim or make a payment for health care services rendered
23 is not reasonably clear due to a good faith dispute regarding the eligi-
24 bility of a person for coverage, the liability of another insurer or
25 corporation or organization for all or part of the claim, the amount of

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

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1 the claim, the benefits covered under a contract or agreement, or the
2 manner in which services were accessed or provided, an insurer or organ-
3 ization or corporation shall pay any undisputed portion of the claim in
4 accordance with this subsection and notify the policyholder, covered
5 person or health care provider in writing within [thirty] FIFTEEN calen-
6 dar days of the receipt of the claim:

7 (1) that it is not obligated to pay the claim or make the medical
8 payment, stating the specific reasons why it is not liable; or

9 (2) to request all additional information needed to determine liabil-
10 ity to pay the claim or make the health care payment AND TO RECEIVE SUCH
11 INFORMATION IN SUCH A MANNER THAT WILL ACCOMMODATE THE ELECTRONIC
12 SUBMISSION AND TRACKING OF SUCH REQUESTED ADDITIONAL INFORMATION.

13 Upon receipt of the information requested in paragraph two of this
14 subsection or an appeal of a claim or bill for health care services
15 denied pursuant to paragraph one of this subsection, an insurer or
16 organization or corporation licensed or certified pursuant to article
17 forty-three or forty-seven of this chapter or article forty-four of the
18 public health law shall comply with subsection (a) of this section OR IF
19 THE CLAIM IS DENIED, THE PROVIDER SHALL COMPLY WITH PARAGRAPH THREE OF
20 THIS SUBSECTION.

21 (3) IN CASES WHERE A PROVIDER HAS SUBMITTED ADDITIONAL INFORMATION AND
22 THE INSURER, AFTER RECEIVING SUCH ADDITIONAL INFORMATION, DETERMINES
23 THAT IT WILL DENY THE CLAIM, THE PROVIDER SHALL BE NOTIFIED OF SUCH
24 DENIAL IN WRITING WITHIN FIFTEEN CALENDAR DAYS OF SUCH DENIAL.

25 (c) (1) Except as provided in paragraph two of this subsection, each
26 claim or bill for health care services processed in violation of this
27 section shall constitute a separate violation. In addition to the penal-
28 ties provided IN ARTICLE TWENTY-FOUR OF THIS CHAPTER OR ELSEWHERE in
29 this chapter, any insurer or organization or corporation that fails to
30 adhere to the standards contained in this section shall be obligated to
31 pay to the health care provider or person submitting the claim, in full
32 settlement of the claim or bill for health care services, the amount of
33 the claim or health care payment plus interest on the amount of such
34 claim or health care payment of the greater of the rate equal to the
35 rate set by the commissioner of taxation and finance for corporate taxes
36 pursuant to paragraph one of subsection (e) of section one thousand
37 ninety-six of the tax law or twelve percent per annum, to be computed
38 from the date the claim or health care payment was required to be made.
39 When the amount of interest due on such a claim is less [then] THAN two
40 dollars, [and] AN insurer or organization or corporation shall not be
41 required to pay interest on such claim.

42 (2) Where a violation of this section is determined by the superinten-
43 dent as a result of the superintendent's own investigation, examination,
44 audit or inquiry, an insurer or organization or corporation licensed or
45 certified pursuant to article forty-three or forty-seven of this chapter
46 or article forty-four of the public health law shall not be subject to a
47 civil penalty prescribed in paragraph one of this subsection, if the
48 superintendent determines that the insurer or organization or corpo-
49 ration has otherwise processed at least ninety-eight percent of the
50 claims submitted in a calendar year in compliance with this section;
51 provided, however, nothing in this paragraph shall limit, preclude or
52 exempt an insurer or organization or corporation from payment of a claim
53 and payment of interest pursuant to this section. This paragraph shall
54 not apply to violations of this section determined by the superintendent
55 resulting from individual complaints submitted to the superintendent by
56 health care providers or policyholders.

1 S 2. Section 3224-a of the insurance law is amended by adding two new
2 subsections (i) and (j) to read as follows:

3 (I) IN ADDITION TO THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION,
4 ANY POLICYHOLDER OR HEALTH CARE PROVIDER MAY COMMENCE AN ACTION IN A
5 COURT OF COMPETENT JURISDICTION ON HIS OR HER OWN BEHALF AGAINST AN
6 INSURER FOR FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS
7 SUBSECTION. SUCH ACTION SHALL BE BROUGHT IN THE COUNTY IN WHICH THE
8 ALLEGED VIOLATION OCCURRED OR WHERE THE COMPLAINANT RESIDES. THE COURT
9 MAY IMPOSE THE CIVIL PENALTY PROVIDED FOR IN SUBSECTION (C) OF THIS
10 SECTION AND/OR THE PENALTY PROVIDED FOR IN SUBSECTION (A) OF SECTION TWO
11 THOUSAND FOUR HUNDRED SIX OF THIS CHAPTER. ANY FINAL ORDER ISSUED PURSU-
12 ANT TO THIS SUBSECTION MAY AWARD COSTS OF LITIGATION, INCLUDING REASON-
13 ABLE ATTORNEYS' FEES, TO THE PREVAILING PARTY WHENEVER THE COURT DEEMS
14 SUCH AWARD IS APPROPRIATE. IN ANY ACTION BROUGHT PURSUANT TO THIS
15 SUBSECTION, THE SUPERINTENDENT MAY INTERVENE AS A MATTER OF RIGHT.

16 (J) EVERY SIX MONTHS, INSURERS SHALL PREPARE A LIST OF CLAIMS FOR
17 WHICH THEY WILL ALWAYS REQUEST OPERATIVE NOTES AND/OR DOCUMENTATION OF
18 MEDICAL NECESSITY AND SHALL MAKE SUCH LIST AVAILABLE TO ALL PARTICIPAT-
19 ING PROVIDERS. INSURERS SHALL ACCOMMODATE THE ELECTRONIC SUBMISSION AND
20 TRACKING OF SUCH OPERATIVE NOTES AND/OR DOCUMENTATION OF MEDICAL NECES-
21 SITY AT THE TIME OF SUBMISSION OF THE INITIAL CLAIM.

22 S 3. Subsection (a) of section 2406 of the insurance law, as amended
23 by chapter 666 of the laws of 1997, is amended to read as follows:

24 (a) If the hearing was on a charge of a defined violation the super-
25 intendent shall make an order on his report and serve a copy of the
26 findings and order upon the person charged with the violation and any
27 intervenor. If the superintendent finds that the person complained of
28 has engaged in a defined violation, the order shall require the person
29 to cease and desist from engaging in such defined violation. Further-
30 more, if the superintendent finds, after notice and hearing, that the
31 person complained of has engaged in an act prohibited by section three
32 thousand two hundred twenty-four-a of this chapter, the superintendent
33 is authorized to levy a civil penalty against such person in an amount
34 up to five hundred dollars per day for each day beyond the date that a
35 bill or claim was to be processed in accordance with section three thou-
36 sand two hundred twenty-four-a of this chapter, but in no event shall
37 such penalty exceed five thousand dollars; AND FURTHERMORE, THE SUPER-
38 INTENDENT MAY REVOKE ANY LICENSE ISSUED TO AN INSURER LICENSED PURSUANT
39 TO THIS CHAPTER IF, AFTER NOTICE AND HEARING, HE OR SHE FINDS THAT SUCH
40 INSURER HAS FAILED TO COMPLY WITH ANY REQUIREMENT IMPOSED UPON IT BY THE
41 PROVISIONS OF THIS SECTION MORE THAN SIX TIMES WITHIN A CALENDAR YEAR
42 AND IF IN HIS OR HER JUDGMENT SUCH REVOCATION IS REASONABLY NECESSARY TO
43 PROTECT THE INTERESTS OF THE PEOPLE OF THIS STATE. THE SUPERINTENDENT
44 MAY IN HIS OR HER DISCRETION REINSTATE ANY SUCH LICENSE IF HE OR SHE
45 FINDS THAT A GROUND FOR SUCH REVOCATION NO LONGER EXISTS.

46 S 4. Section 3217-a of the insurance law is amended by adding a new
47 subsection (f) to read as follows:

48 (F) NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, ANY EMPLOYER IN
49 THIS STATE PROVIDING A SELF-INSURED EMPLOYEE WELFARE BENEFIT PLAN, AS
50 DEFINED IN THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS
51 AMENDED, SHALL PROVIDE INSURED'S WITH IDENTIFICATION CARDS INDICATING
52 THAT SUCH INSURED'S PLAN IS A SELF-INSURED PLAN AND SHALL INFORM PROVID-
53 ERS ON REQUEST THAT SUCH INSURED'S PLAN IS A SELF-INSURED PLAN.

54 S 5. This act shall take effect on the one hundred eightieth day after
55 it shall have become a law; provided, however, that effective immediate-
56 ly, the addition, amendment and/or repeal of any rule or regulation

1 necessary for the implementation of this act on its effective date are
2 authorized and directed to be made and completed on or before such
3 effective date.