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

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I N S E N A T E

June 18, 2012

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

AN ACT to amend the insurance law, in relation to limits on certain supplementary insurance; and in relation to providers of durable medical equipment

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

Section 1. Paragraph 2 of subsection (f) of section 3420 of the insurance law, as separately amended by chapters 547 and 568 of the laws of 1997, is amended to read as follows:

(2) (A) Any [such] PRIVATE PASSENGER AUTOMOBILE INSURANCE policy shall[, at the option of the insured, also] provide supplementary uninsured/underinsured motorists insurance for bodily injury[, in an amount up to] IN THE SAME AMOUNT AS the bodily injury liability insurance limits of coverage provided under [such] THE PRIVATE PASSENGER AUTOMOBILE INSURANCE policy[, subject to a maximum of two hundred fifty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to five hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, or a combined single limit policy of five hundred thousand dollars because of bodily injury to or death of one or more persons in any one accident. Provided however, an insurer issuing such policy, in lieu of offering to the insured the coverages stated above, may provide supplementary uninsured/underinsured motorists insurance for bodily injury, in an amount up to the bodily injury liability insurance limits of coverage provided under such policy, subject to a maximum of one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, or a combined single limit policy of three hundred thousand dollars because of bodily injury to or death of one or more persons in any one accident, if such insurer also makes available a personal umbrella policy with liability coverage limits up to at least five hundred thousand

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

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dollars which also provides coverage for supplementary uninsured/underinsured motorists claims]. THE COVERAGE REQUIRED UNDER THIS PARAGRAPH IS NOT APPLICABLE WHEN, OR TO THE EXTENT THAT, AN INSURED NAMED IN THE POLICY MAKES A REJECTION OF THE COVERAGE ON BEHALF OF ALL INSUREDS UNDER THE POLICY. SUCH REJECTION MAY BE MEMORIALIZED BY THE INSURER THROUGH A SIGNED WRITING, AUDIO RECORDING, ELECTRONIC SIGNATURE OR ANY OTHER MEANS EVIDENCING THE INSURED'S REJECTION OF SUCH COVERAGE. Supplementary uninsured/underinsured motorists insurance shall provide coverage, in any state or Canadian province, if the limits of liability under all bodily injury liability bonds and insurance policies of [another] ANY OTHER motor vehicle liable for damages are in a lesser amount than the bodily injury liability insurance limits of coverage provided by such policy. Upon written request by any insured covered by supplemental uninsured/underinsured motorists insurance or his duly authorized representative and upon disclosure by the insured of the insured's bodily injury and supplemental uninsured/underinsured motorists insurance coverage limits, the insurer of any other owner or operator of another motor vehicle against which a claim has been made for damages to the insured shall disclose, within forty-five days of the request, the bodily injury liability insurance limits of its coverage provided under the policy or all bodily injury liability bonds. The time of the insured to make any supplementary uninsured/underinsured motorist claim, shall be tolled during the period the insurer of any other owner or operator of another motor vehicle that may be liable for damages to the insured, fails to so disclose its coverage. As a condition precedent to the obligation of the insurer to pay under the supplementary uninsured/underinsured motorists insurance coverage, the limits of liability of [all] bodily injury liability bonds or insurance policies applicable at the time of the accident shall be exhausted by payment of judgments or settlements.

(B) [In addition to the notice provided, upon issuance of a policy of motor vehicle liability insurance pursuant to regulations promulgated by the superintendent,] AT THE TIME THE POLICY IS SOLD, PURCHASED OR NEGOTIATED insurers shall notify insureds, in [writing] WRITTEN, VERBAL OR ELECTRONIC FORMAT, of the NATURE AND availability of supplementary uninsured/underinsured motorists coverage AND SHALL STATE THAT THE COVERAGE IS EQUAL TO BODILY INJURY LIABILITY LIMITS UNLESS LOWER LIMITS ARE REQUESTED OR THE COVERAGE IS REJECTED. Such notification shall contain an explanation of supplementary uninsured/underinsured motorists coverage and the amounts in which it can be purchased. SUCH NOTICE SHALL STATE THE FOLLOWING OR INCLUDE INFORMATION SUBSTANTIALLY SIMILAR TO THE FOLLOWING:

"SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE (SUM COVERAGE) SHALL BE EQUAL TO BODILY INJURY LIABILITY LIMITS UNLESS LOWER LIMITS ARE REQUESTED OR THE COVERAGE IS REJECTED. A POLICYHOLDER SHOULD CONSIDER PURCHASING SUM COVERAGE IN ORDER TO PROTECT AGAINST THE POSSIBILITY OF AN ACCIDENT INVOLVING ANOTHER MOTOR VEHICLE WHOSE OWNER OR OPERATOR WAS NEGLIGENT AND WHO MAY HAVE NO INSURANCE WHATSOEVER; OR EVEN IF INSURED, IS ONLY INSURED FOR THIRD-PARTY BODILY INJURY AT RELATIVELY LOW LIABILITY LIMITS, IN COMPARISON TO THE POLICYHOLDER'S OWN LIABILITY LIMITS FOR BODILY INJURY SUSTAINED BY THIRD-PARTIES. BY PURCHASING SUM COVERAGE, WHICH CANNOT BE PURCHASED IN AN AMOUNT EXCEEDING THE AMOUNT OF THIRD PARTY LIABILITY COVERAGE PURCHASED, THE POLICYHOLDER AND ANY INSURED UNDER THE POLICY CAN BE PROTECTED FOR BODILY INJURY TO THEMSELVES, UP TO THE LIMIT OF THE SUM COVERAGE PURCHASED; AND RECEIVE FROM THE POLICYHOLDER'S OWN INSURANCE PAYMENT FOR BODILY INJURY SUSTAINED DUE

TO THE NEGLIGENCE OF THE OTHER MOTOR VEHICLE'S OWNER OR OPERATOR." Subsequently, a notification of availability shall be provided at least once a year and may be simplified pursuant to regulations promulgated by the superintendent, but must include a concise statement that supplementary uninsured/underinsured motorists coverage is available, an explanation of such coverage, and the coverage limits that can be purchased from the insurer.

(C) WHEN THERE IS A DISPUTE BETWEEN AN INSURER AND INSURED OVER THE AMOUNT OF SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE AVAILABLE ON A CLAIM AND THE INSURER ULTIMATELY PROVIDES COVERAGE HIGHER THAN THE AMOUNT OF PREMIUM THE INSURER IS CHARGING FOR, AN INSURER MAY DEDUCT ANY PREMIUM DUE FROM A RE-RATING OF THE POLICY BACK TO THE POLICY ISSUE DATE AGAINST ANY BENEFITS DUE ON THE CLAIM.

S 2. The insurance law is amended by adding a new section 5109-a to read as follows:

S 5109-A. UNAUTHORIZED PROVIDERS OF DURABLE MEDICAL EQUIPMENT. (A) THE SUPERINTENDENT MAY PROHIBIT A PROVIDER OF DURABLE MEDICAL EQUIPMENT FROM DEMANDING OR REQUESTING PAYMENT UNDER THIS ARTICLE FOR DURABLE MEDICAL EQUIPMENT FOR A PERIOD TO BE DETERMINED BY THE SUPERINTENDENT IF THE SUPERINTENDENT DETERMINES, AFTER NOTICE AND A HEARING, THAT THE PROVIDER OF DURABLE MEDICAL EQUIPMENT:

(1) HAS ENGAGED IN FRAUDULENT, EXCESSIVE OR UNLAWFUL BILLING OF INSURANCE COMPANIES FOR DURABLE MEDICAL EQUIPMENT;

(2) HAS BILLED INSURANCE COMPANIES FOR DURABLE MEDICAL EQUIPMENT WHICH WAS NOT PROVIDED;

(3) HAS BILLED INSURANCE COMPANIES FOR DURABLE MEDICAL EQUIPMENT WHICH WAS NOT NECESSARY;

(4) HAS COMMITTED A FRAUDULENT INSURANCE ACT AS DEFINED IN SECTION 176.05 OF THE PENAL LAW;

(5) HAS BEEN CONVICTED OF A CRIME INVOLVING FRAUDULENT OR DISHONEST PRACTICES;

(6) HAS REFUSED TO APPEAR BEFORE, OR ANSWER ANY QUESTION UPON REQUEST OF, THE SUPERINTENDENT OR ANY DULY AUTHORIZED OFFICER OF THIS STATE OR REFUSED TO PRODUCE ANY RELEVANT INFORMATION CONCERNING THE CONDUCT OF THE PROVIDER OF DURABLE MEDICAL EQUIPMENT IN CONNECTION WITH DURABLE MEDICAL EQUIPMENT PROVIDED UNDER THIS ARTICLE; OR

(7) HAS VIOLATED ANY PROVISION OF THIS ARTICLE OR REGULATIONS PROMULGATED THEREUNDER.

(B) A PROVIDER OF DURABLE MEDICAL EQUIPMENT SHALL NOT DEMAND OR REQUEST PAYMENT UNDER THIS ARTICLE FOR DURABLE MEDICAL EQUIPMENT DURING THE TERM OF THE PROHIBITION ORDERED BY THE SUPERINTENDENT PURSUANT TO SUBSECTION (A) OF THIS SECTION.

(C) THE SUPERINTENDENT SHALL MAINTAIN A DATABASE CONTAINING A LIST OF PROVIDERS OF DURABLE MEDICAL EQUIPMENT PROHIBITED BY THIS SECTION FROM DEMANDING OR REQUESTING PAYMENT FOR DURABLE MEDICAL EQUIPMENT RENDERED UNDER THIS ARTICLE AND SHALL MAKE THE INFORMATION AVAILABLE TO THE PUBLIC.

(D) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING IN ANY RESPECT THE POWERS AND DUTIES OF ANY OTHER STATE OR FEDERAL AGENCY OR INSURERS TO INVESTIGATE INSTANCES OF MISCONDUCT BY DURABLE MEDICAL EQUIPMENT PROVIDERS AND TAKE APPROPRIATE ACTION PURSUANT TO ANY OTHER PROVISION OF LAW.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall apply to insurance policies and contracts issued, entered into or renewed on and after such date.