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I N   S E N A T E

June 18, 2012

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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 payments to durable medical equipment providers

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

1     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 2 1997, is amended to read as follows:  
3  
4     (2) (A) Any such policy shall[, at the option of the insured, also] 5 provide supplementary uninsured/underinsured motorists insurance for 6 bodily injury[, in an amount up to] IN THE SAME AMOUNT AS the bodily 7 injury liability insurance limits of coverage provided under such AUTO- 8 MOBILE INSURANCE policy[, subject to a maximum of two hundred fifty 9 thousand dollars because of bodily injury to or death of one person in 10 any one accident and, subject to such limit for one person, up to five 11 hundred thousand dollars because of bodily injury to or death of two or 12 more persons in any one accident, or a combined single limit policy of 13 five hundred thousand dollars because of bodily injury to or death of 14 one or more persons in any one accident. Provided however, an insurer 15 issuing such policy, in lieu of offering to the insured the coverages 16 stated above, may provide supplementary uninsured/underinsured motorists 17 insurance for bodily injury, in an amount up to the bodily injury 18 liability insurance limits of coverage provided under such policy, 19 subject to a maximum of one hundred thousand dollars because of bodily 20 injury to or death of one person in any one accident and, subject to 21 such limit for one person, up to three hundred thousand dollars because 22 of bodily injury to or death of two or more persons in any one accident, 23 or a combined single limit policy of three hundred thousand dollars 24 because of bodily injury to or death of one or more persons in any one 25 accident, if such insurer also makes available a personal umbrella policy with liability coverage limits up to at least five hundred thousand 26 dollars which also provides coverage for supplementary 27

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

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

30 (B) [In addition to the notice provided, upon issuance of a policy of  
31 motor vehicle liability insurance pursuant to regulations promulgated by  
32 the superintendent, insurers shall notify insureds, in writing, of the  
33 availability of supplementary uninsured/underinsured motorists coverage.  
34 Such notification shall contain an explanation of supplementary  
35 uninsured/underinsured motorists coverage and the amounts in which it  
36 can be purchased. Subsequently, a notification of availability shall be  
37 provided at least once a year and may be simplified pursuant to regu-  
38 lations promulgated by the superintendent, but must include a concise  
39 statement that supplementary uninsured/underinsured motorists coverage  
40 is available, an explanation of such coverage, and the coverage limits  
41 that can be purchased from the insurer.] IF THE REJECTION OR SELECTION  
42 OF LOWER SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE IS IN  
43 WRITTEN OR ELECTRONIC FORM, THAT REJECTION OR SELECTION SHALL BE MADE ON  
44 A FORM PROVIDED TO THE INSURED AT THE TIME THE POLICY IS SOLD, PURCHASED  
45 AND/OR NEGOTIATED THAT SHALL FULLY ADVISE THE INSURED OF THE NATURE OF  
46 THE COVERAGE AND SHALL STATE THAT THE COVERAGE IS EQUAL TO BODILY INJURY  
47 LIABILITY LIMITS UNLESS LOWER LIMITS ARE REQUESTED OR THE COVERAGE IS  
48 REJECTED. WHERE SUCH SELECTION OR REJECTION IS MADE VERBALLY, A MEMORI-  
49 ALIZATION IN WRITING OR ELECTRONIC SIGNATURE MAY BE RECEIVED BY THE  
50 INSURER SUBSEQUENT TO THE SALE, PURCHASE AND/OR NEGOTIATION OF THE POLI-  
51 CY. THE FORM SHALL BE IN 12-POINT BOLD TYPE AND SHALL STATE: "SUPPLE-  
52 MENTARY UNINSURED/UNDERINSURED MOTORISTS COVERAGE (SUM COVERAGE)  
53 PROTECTS AGAINST THE POSSIBILITY OF AN ACCIDENT INVOLVING ANOTHER MOTOR  
54 VEHICLE WHOSE OWNER OR OPERATOR WAS NEGLIGENT AND WHO MAY HAVE NO INSUR-  
55 ANCE WHATSOEVER; OR EVEN IF INSURED, IS ONLY INSURED FOR THIRD-PARTY  
56 BODILY INJURY AT RELATIVELY LOW LIABILITY LIMITS, IN COMPARISON TO THE

1 POLICYHOLDER'S OWN LIABILITY LIMITS FOR BODILY INJURY SUSTAINED BY  
2 THIRD-PARTIES. BY PURCHASING SUM COVERAGE, THE POLICYHOLDER AND ANY  
3 INSURED UNDER THE POLICY CAN BE PROTECTED FOR BODILY INJURY TO THEM-  
4 SELVES AND RECEIVE FROM THE POLICYHOLDER'S OWN INSURER PAYMENT FOR BODI-  
5 LY INJURY SUSTAINED DUE TO THE NEGLIGENCE OF THE OTHER MOTOR VEHICLE'S  
6 OWNER OR OPERATOR. SUM COVERAGE SHALL BE EQUAL TO BODILY INJURY LIABIL-  
7 ITY LIMITS UNLESS LOWER LIMITS ARE REQUESTED OR THE COVERAGE IS  
8 REJECTED. A POLICYHOLDER IS URGED TO CONSIDER PURCHASING THE MAXIMUM SUM  
9 COVERAGE AVAILABLE." IF REJECTION OR SELECTION OF LOWER LIMITS IS MADE  
10 VERBALLY, THE INSURER OR THEIR AGENT SHALL READ THE IDENTICAL OR  
11 SUBSTANTIALLY SIMILAR LANGUAGE AS IS IN THE ABOVE REJECTION OF MATCHING  
12 LIMITS FORM AND CONFIRM THE CLIENT HAS HEARD AND UNDERSTOOD THE SAME,  
13 AND SHALL RESTATE THE ABOVE INFORMATION AS OFTEN AS IS NECESSARY UNTIL  
14 THE INSURED HAS VERBALLY CONFIRMED THAT THEY FULLY UNDERSTAND THE SAME.  
15 THE INSURER SHALL NOTIFY THE NAMED INSURED AT LEAST ANNUALLY OF HER OR  
16 HIS OPTIONS AS TO THE COVERAGE REQUIRED BY THIS PARAGRAPH PURSUANT TO  
17 REGULATIONS ISSUED BY THE SUPERINTENDENT, IF ANY, AT THE TIME OF OR  
18 WITHIN SIXTY DAYS PRIOR TO THE RENEWAL OF THE POLICY. RECEIPT OF THIS  
19 NOTICE DOES NOT CONSTITUTE AN AFFIRMATIVE WAIVER OF THE INSURED'S RIGHT  
20 TO UNINSURED MOTORIST COVERAGE WHERE THE INSURED HAS NOT SIGNED A  
21 SELECTION OR REJECTION FORM.

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

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

30 (1) HAS ENGAGED IN A PATTERN AND PRACTICE OF FRAUDULENT, EXCESSIVE OR  
31 UNLAWFUL BILLING OF INSURANCE COMPANIES FOR DURABLE MEDICAL EQUIPMENT;

32 (2) HAS ENGAGED IN A PATTERN AND PRACTICE OF BILLING INSURANCE COMPA-  
33 NIES FOR DURABLE MEDICAL EQUIPMENT WHICH WAS NOT PROVIDED;

34 (3) HAS ENGAGED IN A PATTERN AND PRACTICE OF BILLING INSURANCE COMPA-  
35 NIES FOR DURABLE MEDICAL EQUIPMENT WHICH WAS NOT NECESSARY;

36 (4) HAS COMMITTED A FRAUDULENT INSURANCE ACT AS DEFINED IN SECTION  
37 176.05 OF THE PENAL LAW;

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

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

45 (7) HAS VIOLATED ANY PROVISION OF THIS ARTICLE OR REGULATIONS PROMUL-  
46 GATED THEREUNDER.

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

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

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

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