

# STATE OF NEW YORK

2802

2017-2018 Regular Sessions

## IN SENATE

January 17, 2017

Introduced by Sen. BRESLIN -- 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 enacting the "automobile insurance fraud prevention act of 2017"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "automobile  
2 insurance fraud prevention act of 2017".

3 § 2. Section 5106 of the insurance law, subsection (b) as amended and  
4 subsection (d) as added by chapter 452 of the laws of 2005, is amended  
5 to read as follows:

6 § 5106. Fair claims settlement. (a) (1) Payments of first party bene-  
7 fits and additional first party benefits shall be made as the loss is  
8 incurred. Such benefits are overdue if not paid within thirty days  
9 after the claimant supplies proof of the fact and amount of loss  
10 sustained. If proof is not supplied as to the entire claim, the amount  
11 which is supported by proof is overdue if not paid within thirty days  
12 after such proof is supplied. All overdue payments shall bear interest  
13 at the rate of two percent per month. If a valid claim or portion was  
14 overdue, the claimant shall also be entitled to recover his attorney's  
15 reasonable fee, for services necessarily performed in connection with  
16 securing payment of the overdue claim, subject to limitations promulgat-  
17 ed by the superintendent in regulations.

18 (2) The failure to issue a denial of a claim within thirty days shall  
19 not preclude the insurer or self-insurer from presenting evidence to  
20 establish that (A) the services or items billed for in a claim were not  
21 provided; (B) certain portions of the charges for services in a claim  
22 exceed, by more than ten percent, the charges permissible under sched-  
23 ules prepared and established pursuant to subsections (a) and (b) of  
24 section five thousand one hundred eight of this article, or (C) the  
25 event from which the claim arose was based upon an intent to defraud an

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

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1 insurer or self-insurer. Nothing contained in this paragraph shall  
2 preclude an insurer from contesting the existence of applicable insur-  
3 ance coverage for the loss claimed.

4 (3) An insurer may deny a claim on the basis of lack of medical neces-  
5 sity not later than sixty days after the date upon which the claim  
6 became overdue. Any denial of a claim which is based upon a lack of  
7 medical necessity shall be based upon review by a licensed provider who  
8 typically diagnoses and provides treatment for the condition under  
9 review, or typically provides the health care service or treatment under  
10 review. Copies of all reports prepared by a health care provider who  
11 examines a claimant at the request of an insurer or reviews a claim for  
12 medical benefits at the request of an insurer shall be provided to the  
13 claimant, the claimant's attorney and the claimant's treating health  
14 care provider within thirty business days of such examination or review.

15 (b) [~~Every insurer shall provide a~~] (1) A claimant [~~with~~] shall have  
16 the option of submitting any dispute involving the insurer's liability  
17 to pay first party benefits, or additional first party benefits, the  
18 amount thereof or any other matter which may arise pursuant to  
19 subsection (a) of this section to arbitration pursuant to simplified  
20 procedures to be promulgated or approved by the superintendent. Such  
21 simplified procedures shall include an expedited eligibility hearing  
22 option, when required, to designate the insurer for first party benefits  
23 pursuant to subsection [~~(d)~~] (f) of this section. The expedited eligi-  
24 bility hearing option shall be a forum for eligibility disputes only,  
25 and shall not include the submission of any particular bill, payment or  
26 claim for any specific benefit for adjudication, nor shall it consider  
27 any other defense to payment.

28 [~~(e)~~] (2) The commencement of a court proceeding or the submission of  
29 a dispute to arbitration shall not preclude a claimant from electing to  
30 submit other disputes arising from the same instance of use or operation  
31 of a motor vehicle to the alternate forum. However, with the exception  
32 of a proceeding brought pursuant to article seventy-five of the civil  
33 practice law and rules, a claimant may not submit a dispute regarding  
34 the same denial to multiple forums.

35 (3) Arbitrators are required to follow and apply substantive law. An  
36 award by an arbitrator shall be binding except where vacated or modified  
37 by a master arbitrator in accordance with simplified procedures to be  
38 promulgated or approved by the superintendent, which shall offer the  
39 parties the opportunity to submit written briefs. The grounds for vacat-  
40 ing or modifying an arbitrator's award by a master arbitrator shall not  
41 be limited to those grounds for review set forth in article seventy-five  
42 of the civil practice law and rules and shall include factual, legal and  
43 procedural errors. The award of a master arbitrator shall be binding  
44 except for the grounds for review set forth in article seventy-five of  
45 the civil practice law and rules, and provided further that where the  
46 amount of such master arbitrator's award is five thousand dollars or  
47 greater, exclusive of interest and attorney's fees, the insurer or the  
48 claimant may institute a court action to adjudicate the dispute de novo.

49 [~~(d)~~] (c) With respect to an action for serious personal injury pursu-  
50 ant to section five thousand one hundred four of this article, the award  
51 of an arbitrator or master arbitrator rendered in a proceeding brought  
52 pursuant to this article, other than an award pertaining to the issue of  
53 the existence of insurance coverage, shall not constitute collateral  
54 estoppel of the issues arbitrated.

55 (d) With respect to an arbitration or an action commenced in a court  
56 of competent jurisdiction initiated to obtain payment of an overdue

1 claim for the payment of medical benefits prima facie entitlement to  
2 benefits shall be established by filing a verification by the claimant  
3 with the arbitration demand or complaint, setting forth that:

4 (1) the claimant was licensed to render the services or the items  
5 provided at the time they were provided;

6 (2) the services were rendered or items supplied by the claimant;

7 (3) the services or items were medically necessary, or, for services  
8 or supplies provided pursuant to prescription, that such were properly  
9 supported by a prescription;

10 (4) the claimant received an assignment of benefits from the injured  
11 party or the guardian or parent of the injured party; and

12 (5) the claimant authorized the particular attorney or law firm to  
13 commence the suit.

14 (e) With respect to an action commenced in a court of competent juris-  
15 isdiction to obtain benefits pursuant to this article:

16 (1) A rebuttable presumption of admissibility attaches to claims  
17 forms, denial of claims forms, verification requests and responses ther-  
18 eto, when such are accompanied by an affidavit establishing that such  
19 forms are business records pursuant to rule forty-five hundred eighteen  
20 of the civil practice law and rules.

21 (2) A rebuttable evidentiary presumption shall attach to such docu-  
22 ments referenced in paragraph one of this subsection that such are  
23 valid.

24 (3) A rebuttable evidentiary presumption shall attach to such docu-  
25 ments referenced in paragraph one of this subsection that such were  
26 mailed to the address contained thereon, on the date contained thereon.

27 (4) A rebuttable evidentiary presumption shall attach to proofs of  
28 payment that such payments were made by the insurer and received by the  
29 plaintiff.

30 (5) In matters where the insurer's denial is based upon an alleged  
31 lack of medical necessity, a rebuttable presumption of admissibility  
32 attaches to medical reports of the claimant's treating providers.

33 (6) Nothing contained in this subsection shall preclude a party from  
34 offering evidence at trial to rebut any presumption in this subsection,  
35 nor to preclude an insurer from offering evidence at trial on any meri-  
36 torious, non-precluded defense to payment of the benefits.

37 (7) The deposition of any person may be used by any party without the  
38 necessity of showing unavailability or special circumstances, subject to  
39 the right of any party to move pursuant to section thirty-one hundred  
40 three of the civil practice law and rules to prevent abuse, provided  
41 that the party against whom the evidence is offered had been afforded an  
42 opportunity to participate and question the witness at the deposition.

43 (f) Where there is reasonable belief more than one insurer would be  
44 the source of first party benefits, the insurers may agree among them-  
45 selves, if there is a valid basis therefor, that one of them will accept  
46 and pay the claim initially. If there is no such agreement, then the  
47 first insurer to whom notice of claim is given shall be responsible for  
48 payment. Any such dispute shall be resolved in accordance with the arbi-  
49 tration procedures established pursuant to section five thousand one  
50 hundred five of this article and regulation as promulgated by the super-  
51 intendent, and any insurer paying first-party benefits shall be reim-  
52 bursed by other insurers for their proportionate share of the costs of  
53 the claim and the allocated expenses of processing the claim, in accord-  
54 ance with the provisions entitled "other coverage" contained in regu-  
55 lation and the provisions entitled "other sources of first-party bene-  
56 fits" contained in regulation. If there is no such insurer and the motor

1 vehicle accident occurs in this state, then an applicant who is a quali-  
2 fied person as defined in article fifty-two of this chapter shall insti-  
3 tute the claim against motor vehicle accident indemnification corpo-  
4 ration.

5 § 3. Section 5109 of the insurance law, as added by chapter 423 of the  
6 laws of 2005, is amended to read as follows:

7 § 5109. Unauthorized providers of health services. (a) The superinten-  
8 dent~~[, in consultation with the commissioner of health and the commis-~~  
9 ~~sioner of education,]~~ shall by regulation, promulgate standards and  
10 procedures for investigating and suspending or removing the authori-  
11 zation for providers of health services to demand or request payment for  
12 health services as specified in paragraph one of subsection (a) of  
13 section five thousand one hundred two of this article upon findings  
14 reached after investigation pursuant to this section. Such regulations  
15 shall ensure the same or greater due process provisions, ~~[including] and~~  
16 ~~include~~ notice and opportunity to be heard, as those afforded physicians  
17 investigated under article two of the workers' compensation law and  
18 shall include provision for notice to all providers of health services  
19 of the provisions of this section and regulations promulgated thereunder  
20 at least ninety days in advance of the effective date of such regu-  
21 lations. As used in this section, "health services" means services,  
22 supplies, therapies or other treatment as specified in subparagraph (i),  
23 (ii) or (iv) of paragraph one of subsection (a) of section five thousand  
24 one hundred two of this article.

25 (b) ~~[The commissioner of health and the commissioner of education~~  
26 ~~shall provide a list of the names of all providers of health services~~  
27 ~~who the commissioner of health and the commissioner of education shall~~  
28 ~~deem, after reasonable investigation, not authorized to demand or~~  
29 ~~request any payment for medical services in connection with any claim~~  
30 ~~under this article because such]~~ Following the hearing conducted pursu-  
31 ant to the procedures and regulation promulgated pursuant to this  
32 section, the superintendent may prohibit a provider of health services  
33 from demanding or requesting payment for health services subsequently  
34 rendered under this article, for a period not exceeding three years, if  
35 the superintendent determines, after notice and hearing, that the  
36 provider of health services:

37 (1) has admitted to, or been found guilty of, professional ~~[or other]~~  
38 misconduct ~~[or incompetency]~~, as defined in the education law, in  
39 connection with ~~[medical]~~ health services rendered under this article;  
40 or

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

45 (3) solicited, or has employed another to solicit for himself or  
46 herself or for another, professional treatment, examination or care of  
47 an injured person in connection with any claim under this article; or

48 (4) has refused to appear before, or to answer upon request of, the  
49 ~~[commissioner of health, the]~~ superintendent~~[,]~~ or any duly authorized  
50 officer of the state, any legal question, or refused to produce any  
51 relevant information concerning ~~[his or her]~~ the conduct of the provider  
52 of health services in connection with ~~[rendering medical]~~ health  
53 services rendered under this article; or

54 (5) has engaged in ~~[patterns]~~ a pattern of billing for: health  
55 services ~~[which were not provided.]~~ alleged to have been rendered under  
56 this article, when the health services were not rendered, provided that

1 this shall not be construed to apply to good faith disputes regarding  
2 the appropriateness of a particular coding to describe a health care  
3 service; or

4 (6) utilized unlicensed persons to render health services under this  
5 article, when only a person licensed in this state may render the health  
6 services; or

7 (7) utilized licensed persons to render health services under this  
8 article, when rendering the health services is beyond the authorized  
9 scope of the license of such person; or

10 (8) unlawfully ceded ownership, operation or control of a business  
11 entity authorized to provide professional health services in this state,  
12 including but not limited to a professional service corporation, profes-  
13 sional limited liability company or registered limited liability part-  
14 nership, to a person not licensed to render the health services which  
15 the entity is legally authorized to provide; or

16 (9) committed a fraudulent insurance act as defined in section 176.05  
17 of the penal law; or

18 (10) has been convicted of a crime involving fraudulent or dishonest  
19 practices; or

20 (11) has, after warning by the superintendent, engaged in a pattern of  
21 unlawfully attempting to collect payment directly from the patient or  
22 eligible person for services rendered under this article when such  
23 attempts violate the terms of an enforceable assignment of benefits.

24 (c) ~~[Providers]~~ The superintendent shall by regulation develop due  
25 process procedures to assure a health provider accused under this  
26 section has appropriate notice, an opportunity for a fair hearing and  
27 appeal prior to a determination that the health provider may not bill  
28 for services under this section. A provider of health services shall  
29 ~~[refrain from subsequently treating for remuneration, as a private~~  
30 ~~patient, any person seeking medical treatment]~~ not demand or request  
31 payment for any health services under this article [if such provider  
32 ~~pursuant to this section has been prohibited from demanding or request-~~  
33 ~~ing any payment for medical services under this article. An injured~~  
34 ~~claimant so treated or examined may raise this as]~~ that are rendered  
35 during the term of the prohibition ordered by the superintendent pursu-  
36 ant to subsection (b) of this section. The prohibition ordered by the  
37 superintendent may be a defense in any action by [such] the provider of  
38 health services for payment for [treatment] health services rendered  
39 pursuant to this article at any time after such provider has been  
40 prohibited from demanding or requesting payment for [medical] such  
41 health services in connection with any claim under this article.

42 (d) The ~~[commissioner of health and the commissioner of education]~~  
43 superintendent shall maintain and regularly update a database containing  
44 a list of providers of health services prohibited by this section from  
45 demanding or requesting any payment ~~[for health services connected to a~~  
46 ~~claim]~~ rendered under this article and shall make ~~[such] the~~ information  
47 available to the public ~~[by means of a website and by a toll free~~  
48 ~~number]~~.

49 (e) The superintendent may levy a civil penalty not exceeding fifty  
50 thousand dollars on any provider of health services that the superinten-  
51 dent prohibits from demanding or requesting payment for health services  
52 pursuant to subsection (b) of this section. Any civil penalty imposed  
53 for a fraudulent insurance act, as defined in section 176.05 of the  
54 penal law, shall be levied pursuant to article four of this chapter.

55 (f) Nothing in this section shall be construed as limiting in any  
56 respect the powers and duties of the commissioner of health, commission-



er of education or the superintendent to investigate instances of misconduct by a ~~[health care]~~ provider ~~[and, after a hearing and upon written notice to the provider, to temporarily prohibit a provider of health services under such investigation from demanding or requesting any payment for medical services under this article for up to ninety days from the date of such notice]~~ of health services and take appropriate action pursuant to any other provision of law. A determination of the superintendent pursuant to subsection (b) of this section shall not be binding upon the commissioner of health or the commissioner of education in a professional discipline proceeding relating to the same conduct.

§ 4. Subsection (d) of section 5102 of the insurance law, as amended by chapter 955 of the laws of 1984, is amended to read as follows:

(d) "Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; a complete tear or rupture of a nerve, tendon, ligament, cartilage or muscle; a tear, rupture or impingement of a nerve, tendon, ligament, cartilage or muscle which results in a significant impairment of a body organ, member, function or system; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

§ 5. Subsection (j) of section 3420 of the insurance law is amended by adding a new paragraph 4 to read as follows:

(4) The term "covered person" as used in this article shall mean any pedestrian injured through the use or operation of, or any owner, operator or occupant of, a motor vehicle which has in effect the financial security required by article six or eight of the vehicle and traffic law or which is referred to in subdivision two of section three hundred twenty-one of such law; or any other person entitled to first party benefits. For the purposes of this article, "covered person" shall also include any person injured as the result of a staged, planned or intentional accident, provided that such person is not a perpetrator of or a knowing participant in the staging or planning of the accident.

§ 6. Section 5202 of the insurance law is amended by adding a new subsection (m) to read as follows:

(m) "Covered person" means any pedestrian injured through the use or operation of, or any owner, operator or occupant of, a motor vehicle which has in effect the financial security required by article six or eight of the vehicle and traffic law or which is referred to in subdivision two of section three hundred twenty-one of such law; or any other person entitled to first party benefits. For the purposes of this article, "covered person" shall also include any person injured as the result of a staged, planned or intentional accident, provided that such person is not a perpetrator of or a knowing participant in the staging or planning of the accident.

§ 7. This act shall take effect immediately; provided that:

(a) section two of this act shall apply to benefits initiated on or after the one hundred eightieth day after this act shall have become a law; and

1 (b) sections three, five and six of this act shall take effect on the  
2 one hundred eightieth day after it shall have become a law provided that  
3 the superintendent of financial services shall immediately promulgate  
4 rules and regulations pursuant to section 5109 of the insurance law as  
5 amended by section three of this act and sections five and six of this  
6 act shall apply to all new policies and policies that are renewed or  
7 modified after such one hundred eightieth day.