STATE OF NEW YORK

557

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the executive law, in relation to public auto insurance claims

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

Section 1. Subsections (a), (b) and (c) of section 5106 of the insurance law, subsection (b) as amended by chapter 452 of the laws of 2005, are amended to read as follows:

(a) Payments of first party benefits and additional first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied. All overdue payments shall bear interest at the rate of two percent per month. If a valid claim or portion was overdue, the claimant shall also be entitled to recover [~~his attorney's~~] **a** reasonable **attorney** fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations.

(b) **Every claimant shall have the option of designating the name and address to which the insurer will be required to send duplicate copies of all requests for information and examinations.**

(c)(1) Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration pursuant to simplified procedures to be promul-

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

LBD03150-01-9

gated or approved by the superintendent. Such simplified procedures shall:

(i) permit a claimant to group disputes arising from the same occurrence with a single insurer based on common questions of law and fact;

(ii) permit either the claimant or the insurer, at their own expense, to record or transcribe all proceedings related to the arbitration demand;

(iii) include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits pursuant to subsection (d) of this section. The expedited eligibility hearing option shall be a forum for eligibility disputes only, and shall not include the submission of any particular bill, payment or claim for any specific benefit for adjudication, nor shall it consider any other defense to payment. [~~(c)~~] The expedited eligibility hearing option shall also be available to promptly adjudicate all disputes related to document requests and examinations under oath of a claimant health service provider regarding the provider's ineligibility for reimbursement due to the alleged failure to meet any applicable New York state or local licensing requirement necessary to perform such service in New York, or meet any applicable licensing requirement necessary to perform such service in any other state where such service is performed. The timely filing of the request for expedited eligibility hearing shall toll the time to comply until the time set forth in the arbitrator's decision.

(2) The commencement of a court proceeding or the submission of a dispute to arbitration shall not preclude a claimant from electing to submit other disputes arising from the same occurrence to the alternate forum. Arbitrators are required to follow and apply substantive law. An award by an arbitrator shall be binding except where vacated or modified by a master arbitrator in accordance with simplified procedures to be promulgated or approved by the superintendent. The grounds for vacating or modifying an arbitrator's award by a master arbitrator shall not be limited to those grounds for review set forth in article seventy-five of the civil practice law and rules and shall include factual, legal and procedural errors. The award of a master arbitrator shall be binding except for the grounds for review set forth in article seventy-five of the civil practice law and rules[~~, and provided further that where the amount of such master arbitrator's award is five thousand dollars or greater, exclusive of interest and attorney's fees, the insurer or the claimant may institute a court action to adjudicate the dispute de novo~~].

(3) With respect to an action for serious personal injury permissible under section five thousand one hundred four of this article, the award or decision of an arbitrator or master arbitrator rendered pursuant to a no-fault proceeding shall not constitute a collateral estoppel of the issues arbitrated, but such an award or decision may be admissible as relevant evidence by a party to an action.

§ 2. Section 5102 of the insurance law is amended by adding a new subsection (n) to read as follows:

(n) "Provider of health services" for purposes of this article, means an individual or entity who or that renders or has rendered health services, or who provides for remuneration an opinion to an insurer or an entity contracted by an insurer regarding either (i) whether a health service was medically necessary, or (ii) based upon an examination of the claimant, the need for any health service.

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

§ 5109. Unauthorized providers of health services. (a) The superintendent, in consultation with the commissioner of health and the commissioner of education, shall by regulation, promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services [~~as specified in paragraph one of subsection (a) of section five thousand one hundred two of~~] under this article upon findings reached after investigation pursuant to this section. Such regulations shall ensure the same or greater due process provisions, including notice and opportunity to be heard, as those afforded physicians investigated under article two of the workers' compensation law and shall include provision for notice to all providers of health services of the provisions of this section and regulations promulgated thereunder at least ninety days in advance of the effective date of such regulations. As used in this section, "health services" means services, supplies, therapies, or other treatments as specified in subparagraph (i), (ii), or (iv) of paragraph one of subsection (a) of section five thousand one hundred two of this article or an opinion rendered to an insurer or an entity contracted by an insurer regarding either (i) whether such services, supplies, therapies, or treatments were medically necessary, or (ii) based upon an examination of the claimant, the need for any such service, supply, therapy, or treatment.

(b) [~~The commissioner of health and the commissioner of education shall provide a list of the names of all providers of health services who the commissioner of health and the commissioner of education shall deem, after reasonable investigation, not authorized to demand or request any payment for medical services in connection with any claim under this article because such provider of health services~~] The superintendent, in consultation with the commissioner of health and the commissioner of education, may prohibit a provider of health services from demanding or requesting payment for health services rendered under this article, for a period specified by the superintendent, if the superintendent determines that the provider of health services:

(1) has admitted to or been found guilty of professional or other misconduct or incompetency in connection with [~~medical~~] health services rendered under this article; or

(2) has exceeded the limits of his or her professional competence in rendering medical care under this article, as determined by the appropriate supervising or licensing agency, or has knowingly made a false statement or representation as to a material fact in any medical report made, or document submitted, in connection with any claim under this article; or

(3) solicited, or has employed another to solicit for [~~himself or herself~~] the provider of health services or for another, professional treatment, examination or care of an injured person in connection with any claim under this article; or

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

(5) has engaged in [~~patterns~~] a pattern of billing for health services which were not provided;

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

(7) knowingly utilized licensed persons to render health services beyond the authorized scope of the person's license;

(8) directly or indirectly unlawfully ceded ownership or control of a business entity authorized to provide professional health services in this state, including a professional service corporation, professional limited liability company, or registered limited liability partnership, to a person not licensed to render the health services which the entity is legally authorized to provide, except where the unlicensed person's ownership or control is otherwise permitted by law;

(9) has engaged in a pattern of recommending against reimbursement when such recommendation is not supported by clearly established standards in the professional community;

(10) has submitted an examination report that contains material factual misrepresentations or professional conclusions that are not supported by clearly established standards in the professional community;

(11) consistently delivered unnecessary health services without reasonable medical justification as determined by the superintendent in consultation with the department of health and the state education department taking into consideration the overall health of the patient and issues of palliative care; or

(12) has violated any provision of this article or regulations promulgated thereunder.

(c) Providers of health services shall refrain from subsequently treating for remuneration, as a private patient, any person seeking medical treatment under this article if such provider pursuant to this section has been prohibited from demanding or requesting any payment for [~~medical~~] health services under this article. An injured claimant so treated or examined may raise this as a defense in any action by such provider for payment for treatment rendered at any time after such provider has been prohibited from demanding or requesting payment for [~~medical~~] health services in connection with any claim under this article. Providers of health services who have been prohibited from demanding or requesting any payment for health services under this article shall also refrain from subsequently providing for remuneration an opinion to an insurer or an entity contracted by an insurer regarding either (i) whether a health service was medically necessary, or (ii) based upon an examination of the claimant, the need for any health service.

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

(e) Nothing in this section shall be construed as limiting in any respect the powers and duties of the commissioner of health, commissioner 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 pursuant to subsection (b) of this section shall not be binding upon the

commissioner of health or commissioner of education in a professional discipline proceeding relating to the same conduct but may be admitted as evidence.

§ 4. Paragraph 1 of subsection (a) of section 308 of the insurance law, as amended by chapter 499 of the laws of 2009, is amended to read as follows:

(1) The superintendent may also address to any health maintenance organization, life settlement provider, life settlement intermediary or its officers, any provider of health services who demands or requests payment for health services rendered under article fifty-one of this chapter, or any authorized insurer or rate service organization, or officers thereof, any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as the superintendent shall designate, and affirmed by them as true under the penalties of perjury.

§ 5. Section 337 of the insurance law, as amended by section 64 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 337. Annual consumer guide on automobile insurance. (a) The superintendent shall issue and update, as necessary, a consumer guide on private passenger automobile insurance that shall contain comprehensive information written in plain language in a clear and understandable format, including the following:

(1) an annual ranking of automobile insurers: (A) including an analysis of private passenger insurers in the state which provides, in detail, a ranking of such insurers from best to worst based on each insurer's record of consumer complaints during the preceding calendar year, using criteria available to the department, adjusted for volume of insurance written; and (B) taking into consideration the corresponding total of claims improperly denied in whole or in part, consumer complaints found to be valid in whole or in part, and any other pertinent data which would permit the department to objectively determine an insurer's performance; and (C) the superintendent may note, to the extent relevant, actions taken by the department against an insurer for violating any law or regulation;

(2) an annual ranking of voluntary claim payment rates of automobile insurers, including: (A) an analysis of private passenger insurers in the state which provides, in detail, a ranking of such insurers from best to worst based on each insurer's record of voluntary claim payment rates for each payment request during the preceding calendar year, adjusted for volume of insurance written; and (B) a reporting to the public of the corresponding total number of claims paid, the total number of claims denied in whole, and the total number of claims denied in part, and any other pertinent data which would permit the public to objectively determine an insurer's performance;

(3) an annual ranking of paper peer review and insurer medical examination professionals used to evaluate claims made to automobile insurers including: an analysis of the number of times that the paper peer reviewer and insurer medical examination professional recommended full claim payment, partial claim denial, and full claim denial of claims submitted and requests for payment submitted to the paper peer reviewer and insurer medical examination professional during the preceding calendar year;

(4) a list of makes and models of automobiles that generally do not meet underwriting guidelines of automobile insurers or in regard to which consumers can expect to pay higher premiums as a result of an automobile's style, model type or other distinguishing features, except that specific insurers shall not be identified for purposes of such list;

[~~(3)~~] (5) an explanation of all types of automobile insurance required by law and available as optional coverage, including policyholders' rights under these types of coverage and when making claims;

[~~(4)~~] (6) an explanation of and information on the automobile insurance plan established pursuant to article fifty-three of this chapter, including how motorists in such plan should proceed in attempting to obtain insurance in the voluntary market;

[~~(5)~~] (7) recommendations as to how best to shop for and compare prices, service and quality of automobile insurance coverage;

[~~(6)~~] (8) an explanation of prohibited discriminatory practices applying to insurance companies, agents and brokers; and

[~~(7)~~] (9) a department toll free consumer hot-line through which consumers may initiate complaints, and request general information, about automobile insurance.

(b) The requirements set forth in subsection (a) of this section may be satisfied by separate or supplemental publications and updates.

(c) The superintendent shall post the consumer guide on automobile insurance on the department's website.

§ 6. The executive law is amended by adding a new article 44-A to read as follows:

ARTICLE 44-A

OFFICE OF PUBLIC AUTO INSURANCE CONSUMER ADVOCATE

Section 945. Office of public auto insurance consumer advocate.
946. Public auto insurance consumer advocate.
947. Powers and duties.

§ 945. Office of public auto insurance consumer advocate. There is hereby created in the executive department an independent office of public auto insurance consumer advocate (hereinafter referred to as "office") to represent the interests of non-commercial automobile insurance consumers in the state.

§ 946. Public auto insurance consumer advocate. 1. The governor shall appoint a public auto insurance consumer advocate (hereinafter referred to as "advocate") who shall serve as the executive director of the office of public auto insurance consumer advocate and shall receive an annual salary to be fixed by the governor within the amount available therefor by appropriation.

2. (a) To be eligible to serve as advocate, a person must be a resident of the state. The advocate shall be a person who has demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the public and who possesses the knowledge and experience necessary to practice effectively in insurance proceedings.

(b) A person shall not be eligible for appointment as advocate if such person or the person's spouse:

(i) is employed by or participates in the management of a business entity or other organization regulated by the department of financial services or receiving funds from the department;

(ii) owns or controls, directly or indirectly, more than ten percent interest in a business entity or other organization regulated by the department of financial services or receiving funds from the department of financial services or the office; or

(iii) uses or receives a substantial amount of tangible goods, services or funds from the department of financial services or the office, other than compensation or reimbursement authorized by law for the department of financial services or office membership, attendance or expenses.

3. The advocate shall serve for a term of two years.

4. It shall be a ground for removal from office if the advocate:

(a) does not have at the time of appointment the qualifications required by this section;

(b) does not maintain during service as advocate the qualifications required by this section;

(c) violates a prohibition established by this section; or

(d) cannot discharge the advocate's duties for a substantial part of the term for which the advocate is appointed because of illness or disability.

5. The validity of an action of the office shall not be affected by the fact that it is taken when a ground for removal of the advocate exists.

6. (a) A person shall not serve as the advocate or act as the general counsel for the office of advocate if the person is required to register as a lobbyist pursuant to article one-A of the legislative law.

(b) A person serving as the advocate shall not, for a period of two years after the date the person ceases to be an advocate, represent any person in a proceeding before the superintendent of financial services or the department of financial services or receive compensation for services rendered on behalf of any person regarding a case before the department of financial services.

(c) A person shall not serve as the advocate or be an employee of the office if the person is an officer, employee or paid consultant of a trade association in the field of insurance.

(d) A person who is the spouse of an officer, manager or paid consultant of a trade association in the field of insurance shall not serve as the advocate and may not be an office employee.

(e) For the purposes of this section, a trade association is a nonprofit, cooperative and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

§ 947. Powers and duties. 1. The advocate, as executive director of the office, shall be charged with the responsibility of administering, enforcing and carrying out the provisions of this article, including preparation of a budget for the office, employing all necessary professional, technical and other employees to carry out provisions of this article, approval of expenditures for professional services, travel, per diem and other actual and necessary expenses incurred in administering the office. The compensation of employees of the office shall be fixed by the advocate within the appropriation provided therefor.

2. By March first of each year, the office shall file with the governor, temporary president of the senate and speaker of the assembly a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year.

3. All money paid to the office under this article shall be deposited in the state treasury.

4. The office may assess the impact of insurer practices and proposed and in-force insurance rates, rules and regulations on noncommercial automobile insurance consumers in the state; in its own name, advocate

on behalf of positions that are most advantageous to a substantial number of insurance consumers as determined by the advocate; and do all things necessary and proper for these purposes, including engaging attorneys, and experts in actuarial science, economics, accounting, or any other discipline which may be appropriate.

5. The advocate:

(a) may disseminate materials and information to consumers regarding consumers rights, the department of financial services' role in regulating insurance, relevant laws, rules, and regulations, and what avenues are available for consumers to pursue their rights;

(b) may coordinate with other groups, agencies, or advocates in studying current market trends or other relevant issues;

(c) may hold regular forums to educate consumers about motor vehicle insurance related matters and the regulatory process, opportunities to lower premium costs, and other matters affecting consumers;

(d) may recommend legislation to the legislature that, in the judgment of the advocate, would affect positively the interests of noncommercial motor vehicle insurance consumers;

(e) may testify on behalf of consumers at public hearings conducted by the department of financial services or other entities;

(f) may represent the interests of consumers of the state before the department of financial services;

(g) may advise consumers in pursuing their rights under any relevant law, rule, or regulation;

(h) may assist consumers in filing a complaint with the department of financial services or other entities;

(i) may initiate or intervene as, or otherwise appear in any judicial proceeding involving or arising out of any action taken by an administrative agency in a proceeding in which the advocate previously appeared under the authority granted by this article;

(j) may appear or intervene before the superintendent of financial services or department of financial services as a party or otherwise on behalf of insurance consumers as a class in matters involving insurer practices and proposed and in-force rates, rules and regulations affecting noncommercial automobile insurance;

(k) is entitled to access any records of the department of financial services that are available to any party in a proceeding before the superintendent of financial services or department of financial services under the authority granted by this article;

(l) is entitled to obtain discovery of any non-privileged matter that is relevant to the subject matter involved in a proceeding or submission before the superintendent of financial services or department of financial services where the advocate is a party to that action, as authorized by this article; and

(m) may appear or intervene as a party or otherwise on behalf of noncommercial motor vehicle insurance consumers as a class in all proceedings and actions related to motor vehicle insurance in which the advocate determines that such consumers need representation, except that the advocate shall not intervene in any enforcement or parens patriae proceeding brought by the attorney general; and

(n) may conduct any inquiry, hearing, investigation, survey or study which the advocate deems necessary to effectively carry out the provisions of this article.

6. (a) The office shall prepare information of public interest describing the functions of the office. The office shall make the infor-

mation available to the public, lawmakers and appropriate state agencies.

(b) The office shall prepare and maintain a written plan that describes how each person who does not speak English can be provided reasonable access to the office's programs.

(c) The office shall prepare and distribute public education materials for consumers, legislators and regulators.

(d) The office may participate in trade associations.

7. The office shall be subject to articles six and six-A of the public officers law; provided, however, that documents, records, files, reports or other information concerning confidential matters of the office, as defined and described in regulations promulgated by the office, are specifically exempted from disclosure pursuant to section eighty-seven of the public officers law.

§ 7. This act shall take effect immediately.