STATE OF NEW YORK

3003

2019-2020 Regular Sessions

IN SENATE

January 31, 2019

Introduced by Sens. FUNKE, GALLIVAN -- 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 verification of claims made under the comprehensive motor vehicle insurance reparations act

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

Section 1. Section 5106 of the insurance law, subsection (b) as amended by chapter 452 of the laws of 2005 and subsection (d) as amended by section 8 of part AAA of chapter 59 of the laws of 2017, is amended to read as follows:

§ 5106. Fair claims settlement. (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 reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations.

(b) **The insurer is entitled to receive all items necessary to verify the claim, including medical examination and examination under oath of the injured party or any additional verification required by the insurer to establish proof of claim. The failure of the injured party to appear for a scheduled medical examination or examination under oath or to provide any other additional verification shall neither be a policy violation nor be utilized as the basis for the denial of a claim or disclaimer, provided the injured party submits to the insurer written proof offering either (1) reasonable justification for the failure to**

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

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comply; or (2) a demonstrable willingness to comply within thirty calendar days from the date of the injured party's failure to appear or other verification becomes overdue. If such written proof is not provided within a reasonable time period, the insurer may only deny that portion of the claim for which the requested medical examination, examination under oath or additional verification was required as proof of the fact and amount of loss sustained. In no event shall the failure of the injured party to appear for a scheduled medical examination or examination under oath or to provide any other additional verification serve as the basis for the denial of that portion of a claim relating to emergency medical care provided within forty-eight hours of an accident.

(c) 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 promulgated or approved by the superintendent. Such simplified procedures shall include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits pursuant to subsection [~~(d)~~] (e) 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)~~] (d) 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. 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.

[~~(d)~~] (e) (1) Except as provided in paragraph two of this subsection, where there is reasonable belief more than one insurer would be the source of first party benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, then the first insurer to whom notice of claim is given shall be responsible for payment. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section five thousand one hundred five of this article and regulations as promulgated by the superintendent, and any insurer paying first-party benefits shall be reimbursed by other insurers for their proportionate share of the costs of the claim and the allocated expenses of processing the claim, in accordance with the provisions entitled "other coverage" contained in regulation and the provisions entitled "other sources of first-party benefits" contained in regulation. If there is no such insurer and the motor vehicle accident occurs in this state, then an applicant who is a qualified person as defined in article fifty-two of this chapter shall institute the claim against the motor vehicle accident indemnification corporation.

(2) A group policy issued pursuant to section three thousand four hundred fifty-five of this chapter shall provide first party benefits

when a dispute exists as to whether a driver was using or operating a motor vehicle in connection with a transportation network company when loss, damage, injury, or death occurs. A transportation network company shall notify the insurer that issued the owner's policy of liability insurance of the dispute within ten business days of becoming aware that the dispute exists. When there is a dispute, the group insurer liable for the payment of first party benefits under a group policy shall have the right to recover the amount paid from the driver's insurer to the extent that the driver would have been liable to pay damages in an action at law.

§ 2. This act shall take effect immediately.