



Dedicated to protecting access to quality healthcare for automobile accident victims

MEMORANDUM IN OPPOSITION A10534

A10534 (Morelle) severely restricts patients' rights to assign the payment of benefits to their health care providers by making such assignments valid only where "coverage and compliance with ...insurance policy terms by the covered person...are not in dispute." It further provides that only the covered person would be able to challenge insurance company decisions regarding compliance. Finally, it prohibits health care providers from pursuing payment unless the patient seeks and obtains a "determination" that coverage does not exist.

According to the Sponsor's Memo, this bill is predicated on the false premise that after the execution of an assignment "the patient is no longer under any obligation to cooperate with the insurer to verify that the claim is legitimate..." This is simply wrong. Even after an assignment, a patient's failure to comply with the policy conditions, (appearing for Examinations Under Oath, "EUO" and Insurer Medical Examinations "IME") relieves the insurer of the obligation to pay. As held last year by the Appellate Division, "when defendants' assignors failed to appear for the requested IMEs, plaintiff had the right to deny all claims retroactively to the date of loss."¹

Assignments are common in all types of medical claims. Yet, despite their ubiquity, insurers in other areas are not able to void what is essentially a contract between a patient and her doctor. This measure is designed solely to insulate automobile insurers from having their decisions challenged. If enacted, when an insurer incorrectly denies a claim for a so-called "policy" issue, the healthcare provider would be unable to challenge the insurer, and the patient would have hire an attorney to go after the insurance company. If the patient takes no action, the doctor could not seek payment—even if the insurer were wrong.

This provision is patently unfair, and extraordinarily anti-consumer. It will result in doctors refusing to treat accident victims, since it is impossible to know at the time of treatment whether or not an insurer is going to claim any "coverage" or "policy" defenses, and prohibits the health care provider from seeking payment unless the patient initiates a legal or arbitration proceeding to obtain a "determination" regarding such compliance.

¹ Unitrin Advantage Ins. Co. v. Bayshore Physical, 82 A.D.3d 559, 918 N.Y.S.2d 473 (1st Dept., 2011)

Nearly all patients “pay” for their healthcare treatment by giving the health care provider an “assignment”—a contract that allows the provider to submit and pursue the claim directly against the insurance company. Assignments allow patients to receive treatment without having to pay out of pocket.

This bill turns current practice on its head, by giving the insurance company the right to, after the fact, invalidate the assignment from the patient to her doctor, and immunizing the insurer from any challenge brought by the provider. If enacted, it would allow the insurer to orchestrate the dismissal of a suit or arbitration in the middle of a hearing or trial merely by claiming there is a “dispute.” The proposal is completely one-sided, patently unfair, and utterly unrelated to fighting fraud.

NYFAIR OPPOSES any proposal that would eliminate an accident victim’s right to receive treatment in exchange for an assignment of benefits. The attempt to vitiate such assignments and prevent the health care provider from seeking payment unfairly benefits the insurance company at the provider’s expense. It forces unsophisticated consumers, many of them injured and unable to work, and often without legal counsel, to do battle with insurance companies adept at delaying and denying payment. It also deprives the health care provider of the ability to challenge the insurance company’s refusal to pay benefits.

A claims adjuster that works for an insurance company, or even worse, an unregulated third party claims administration service, should not have the legal power to interfere with the accident victim’s freedom to enter into a contractual relationship with their own doctor.

Providers cannot determine in advance whether the insurer will someday claim that there was a policy violation. If enacted, this provision will discourage providers from treating accident victims unless they are paid cash in advance—something many, if not most, people injured in auto accidents cannot afford to do.