NEW YORKERS FOR FAIR AUTOMOBILE INSURANCE REFORM • NYFAIR

*Dedicated to protecting access to quality healthcare for automobile accident victims*

April 11, 2011

S2816A and A06286 represent a complete rewrite of the No-Fault insurance system. Originally enacted to promptly compensate automobile accident victims for non-economic loss, including the payment of heath care expenses, S2816A and A06286 contort the system to make it as difficult as possible for injured persons to get quality healthcare. These proposals come at a great cost to the tens of thousands of honest New Yorkers who rely on No-Fault benefits to pay for their lost wages and healthcare. These bills:

- Eliminate preclusion of defenses that are not timely raised. If enacted as proposed, insurers will have no real incentive to promptly pay or deny claims. There appears to be little justification for abolishing preclusion in all instances; especially where a narrower targeted proposal could accomplish the aims of this portion of the legislation.
- Shift the burden of proof from the insurer to the claimant; the practical effect of which results in the presumption that all claims are illegitimate until proven otherwise.
- Deprive claimants of the ability to seek justice in a court of law by mandating the arbitration of No-Fault disputes. With no opportunity for discovery and limited appellate review, arbitration is not appropriate for every case. Arbitration, for many years the forum of choice for most claimants, fell out of favor ten years ago when arbitrators began to disregard case law, and the forum was perceived as unfair and hostile to claimants. When arbitrators altered their conduct, and ills in the arbitration system have begun to wane, claimants are once again returning to the forum. Indeed, in the first quarter of 2011, over 20,447 cases were filed in arbitration compared with 15,313 from the same quarter in 2010, and 11,165 in 2009. With this trend there is little reason to force claimants into arbitration.
- Restrict patients' rights to assign the payment of benefits to their health care providers by making such assignments valid only where "coverage and compliance with the policy terms are not in dispute." 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 adopted, when an insurer incorrectly denies a claim for a so-called "policy" issue, the healthcare

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provider would be unable to challenge the insurer, and the patient would have to pay the doctor, and then hire an attorney to go after the insurance company. This would happen even if the insurer were wrong. This provision is patently unfair, and 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.

- Vests the Superintendent of Insurance with the sole authority to implement procedures to fine and decertify providers from treating accident victims. Without providing any funding, the bill places the responsibility for policing health care providers solely in the Insurance Department, an agency charged with the regulation of financial institutions, and one with no experience regulating healthcare professionals. The bill provides no requirement as to what procedures are to be followed, sets no minimal due process protections, and allows the imposition of a $50,000 fine and a 3 year bar against treating accident victims. This penalty may be imposed for conduct as vaguely defined as one who has "Violated any provision of this article or regulations promulgated thereunder," and also includes disputes of medical necessity. An insurer that violates a provision of the law or regulations is not fined $50,000 and banned from writing polices for three years for a single infraction, yet that is the penalty for a provider. Furthermore, there is frequent disagreement amongst doctors as to the proper treatment for a particular patient. Under this proposal, ending up on the losing side of this argument could result in a $50,000 fine and a prohibition against treating accident victims.

- Grant the Insurance Department (not the Department of Health, or the Department of Education) the power to enact guidelines limiting the health care service accident victims are permitted to receive, including the right to decide which services are scheduled. Decisions regarding health care should be made by health care professionals based on the needs of the patient—not by the Insurance Department based upon the desires of the Insurance Industry.

- Allow insurers to retroactively rescind an insurance policy if a payment is missed with the first 60 days. New York's longstanding public policy prohibiting the retroactive cancellation of insurance policies is designed to provide advanced notice of the termination and to protect innocents from the financial insecurity associated with the operation of uninsured vehicles. It should not be lightly abandoned.

The no-fault system only works if sufficient numbers of quality medical providers are voluntarily willing to treat victims injured in automobile accidents with the reasonable expectation they will be fairly compensated. That system will fail if S2816A and A06286 are adopted as proposed. NYFAIR has a number of proposals that can still reduce actual fraud and abuse while preserving access to quality healthcare. We look forward to discussing our ideas with any policy maker or stakeholder.