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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH  
SESSION

HOUSE FILE No. 1395

April 6, 2011

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The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act  
1.2 relating to insurance; no-fault auto; regulating uninsured and underinsured  
1.3 coverages, medical benefits, arbitration, and marketing practices; reducing  
1.4 automobile medical fraud; amending Minnesota Statutes 2010, sections 65B.44,  
1.5 subdivisions 1, 2; 65B.525, by adding subdivisions; 65B.54, subdivisions 4, 6,  
1.6 by adding subdivisions; 609.612, subdivision 1.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 ARTICLE 1  
1.9 NO-FAULT MEDICAL  
1.10 BENEFIT/ARBITRATION REFORMS

1.11 Section 1. Minnesota Statutes 2010, section 65B.44, subdivision 1, is amended to read:

1.12 Subdivision 1. **Inclusions.** (a) Basic economic loss benefits shall provide  
1.13 reimbursement for all loss suffered through injury arising out of the maintenance or use  
1.14 of a motor vehicle, subject to any applicable deductibles, exclusions, disqualifications,  
1.15 and other conditions, and shall provide a minimum of \$40,000 for loss arising out of the  
1.16 injury of any one person, consisting of:

- 1.17 (1) \$20,000 for medical expense loss arising out of injury to any one person; and
- 1.18 (2) a total of \$20,000 for income loss, replacement services loss, funeral expense  
1.19 loss, survivor's economic loss, and survivor's replacement services loss arising out of the  
1.20 injury to any one person.

1.21 (b) Notwithstanding any other law to the contrary, a person entitled to basic  
1.22 economic loss benefits under this chapter is entitled to the full medical expense benefits set  
1.23 forth in subdivision 2, and may not receive medical expense benefits that are in any way  
1.24 less than those provided for in subdivision 2, or that involve any preestablished limitations  
1.25 on the benefits. Medical expenses must be reasonable and must be for necessary medical

2.1 care as provided in subdivision 2. This paragraph shall not be deemed to alter the  
 2.2 obligations of an insured or the rights of a reparation obligor as set forth in section 65B.56.  
 2.3 This paragraph does not apply to medical expense loss that is subject to paragraph (d).

2.4 (c) No reparation obligor or health plan company as defined in section 62Q.01,  
 2.5 subdivision 4, may enter into or renew any contract that provides, or has the effect of  
 2.6 providing, managed care services to no-fault claimants. For the purposes of this section,  
 2.7 "managed care services" is defined as any program of medical services that uses health care  
 2.8 providers managed, owned, employed by, or under contract with a health plan company.

2.9 (d) Medical expense loss for diagnosis and treatment of a soft tissue injury is  
 2.10 covered only if provided in compliance with the codes, treatment standards, and fee  
 2.11 schedules provided in Minnesota Rules, chapter 5221. For purposes of this section, "soft  
 2.12 tissue injury" means an injury to the soft tissues, as opposed to the skeletal tissues or  
 2.13 soft organs. The term soft tissue injury specifically includes, without limitation, any  
 2.14 injury with treatment covered by the procedure codes set forth in Minnesota Rules,  
 2.15 part 5221.4060, other than such treatment delivered by a health care provider defined  
 2.16 in Minnesota Rules, part 5221.0100, subpart 11a, or by a medical facility described in  
 2.17 section 176.136, subdivision 1b, paragraphs (a) and (b).

2.18 Sec. 2. Minnesota Statutes 2010, section 65B.44, subdivision 2, is amended to read:

2.19 Subd. 2. **Medical expense benefits.** (a) Medical expense benefits shall reimburse  
 2.20 all ~~reasonable~~ usual and customary expenses incurred within seven days from the date  
 2.21 of loss for medically necessary:

2.22 (1) medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services,  
 2.23 including prosthetic devices;

2.24 (2) prescription drugs;

2.25 (3) ambulance and all other transportation expenses incurred in traveling to receive  
 2.26 other covered medical expense benefits;

2.27 (4) sign interpreting and language translation services, other than such services  
 2.28 provided by a family member of the patient, related to the receipt of medical, surgical,  
 2.29 x-ray, optical, dental, chiropractic, hospital, extended care, nursing, and rehabilitative  
 2.30 services; and

2.31 (5) hospital, extended care, and nursing services.

2.32 (b) Hospital room and board benefits may be limited, except for intensive care  
 2.33 facilities, to the regular daily semiprivate room rates customarily charged by the institution  
 2.34 in which the recipient of benefits is confined.

3.1 (c) Such benefits shall also include necessary remedial treatment and services  
3.2 recognized and permitted under the laws of this state for an injured person who relies  
3.3 upon spiritual means through prayer alone for healing in accordance with that person's  
3.4 religious beliefs.

3.5 (d) Medical expense loss includes medical expenses accrued prior to the death of a  
3.6 person notwithstanding the fact that benefits are paid or payable to the decedent's survivors.

3.7 (e) Medical expense benefits for rehabilitative services shall be subject to the  
3.8 provisions of section 65B.45.

3.9 Sec. 3. Minnesota Statutes 2010, section 65B.525, is amended by adding a subdivision  
3.10 to read:

3.11 Subd. 3. **Itemization; right to participate; full payment.** All arbitration awards  
3.12 must be itemized. A partial award of medical benefits rendered by an arbitrator under this  
3.13 section and paid by an obligor will be considered full and final payment, and the injured  
3.14 party is not liable for, nor may the provider bill the injured party for, charges that are not  
3.15 part of the award, pursuant to section 65B.54, subdivision 8. A health care provider's  
3.16 participation as a party in an arbitration proceeding is limited to any issues related to the  
3.17 treatment or charges arising out of the claim that is the subject of the arbitration. This  
3.18 subdivision does not apply to charges for health care that are not related to the accident.

3.19 Sec. 4. Minnesota Statutes 2010, section 65B.525, is amended by adding a subdivision  
3.20 to read:

3.21 Subd. 4. **Notice to providers.** The itemization of medical services claims required  
3.22 pursuant to subdivision 3 must include the names and addresses of all health care providers  
3.23 whose charges are the subject of the claims. Within ten business days after receipt of the  
3.24 itemization, the administrator of arbitration under this section must send a copy of the  
3.25 petition and itemization to each health care provider whose charges are the subject of  
3.26 claims, together with a notice of the content of subdivision 3 and of the provider's right to  
3.27 participate as a party to the proceeding. The notice must explain to the provider what steps  
3.28 the provider must take in order to participate.

3.29 Sec. 5. Minnesota Statutes 2010, section 65B.54, is amended by adding a subdivision  
3.30 to read:

3.31 Subd. 7. **Balance billing.** (a) This subdivision applies to charges for medical  
3.32 expense benefits as defined in section 65B.44, subdivision 2, to the extent that a reparation

4.1 obligor has rejected them on the basis that the health care was not medically necessary or  
 4.2 on the basis that the charges exceed the usual and customary rate.

4.3 (b) If a reparation obligor rejects, in whole or in part, a claim for health care  
 4.4 provided to the claimant by a health care provider, for reasons specified in paragraph (a),  
 4.5 the claimant is not obligated to pay the health care provider for the rejected charges.

4.6 (c) The health care provider shall not bill the claimant for those charges or otherwise  
 4.7 attempt to collect them from the claimant after they have been rejected by the insurer.

4.8 (d) A health care provider whose charges are rejected, in whole or in part, under this  
 4.9 section by a reparation obligor, is the party at interest and has standing to commence and  
 4.10 pursue a claim for payment as a claimant against the reparation obligor in an arbitration  
 4.11 proceeding under section 65B.525. In such a proceeding, the insured may be required  
 4.12 to attend the arbitration proceeding by either the reparation obligor or the health care  
 4.13 provider, subject to the conditions provided in section 65B.56, subdivision 2.

4.14 (e) A health care provider shall not require an insured to waive any provision of this  
 4.15 section, and any such attempted waiver is void and unenforceable.

## 4.16 ARTICLE 2

### 4.17 AGGRESSIVE HEALTH CARE PROVIDER 4.18 MARKETING PRACTICES REFORMS

4.19 Section 1. Minnesota Statutes 2010, section 65B.54, subdivision 4, is amended to read:

4.20 Subd. 4. **Recovery of benefits paid due to intentional misrepresentation.** A  
 4.21 reparation obligor may bring an action to recover benefits which are not payable, but are  
 4.22 in fact paid, because of an intentional misrepresentation of a material fact, upon which the  
 4.23 reparation obligor relies, by the claimant or by a person providing products or services  
 4.24 for which basic economic loss benefits are payable. The action may be brought only  
 4.25 against the person providing the products or services, unless the claimant has intentionally  
 4.26 misrepresented the facts or knew of the misrepresentation. A reparation obligor may  
 4.27 recover damages under this subdivision by showing that the person or clinic providing the  
 4.28 products or services engaged in a pattern and practice of intentional misrepresentation of  
 4.29 material fact or fraud. A reparation obligor may offset amounts the reparation obligor is  
 4.30 entitled to recover from the claimant under this subdivision against any basic economic  
 4.31 loss benefits otherwise due the claimant.

4.32 Sec. 2. Minnesota Statutes 2010, section 65B.54, subdivision 6, is amended to read:

4.33 Subd. 6. **Unethical practices.** (a) A licensed health care provider shall not initiate  
 4.34 direct contact, in person, over the telephone, or by other electronic means, with any person

5.1 who has suffered an injury arising out of the maintenance or use of an automobile, for the  
5.2 purpose of influencing that person to receive treatment or to purchase any good or item  
5.3 from the licensee or anyone associated with the licensee. This subdivision prohibits such  
5.4 direct contact whether initiated by the licensee individually or on behalf of the licensee by  
5.5 any employee, independent contractor, agent, or third party, including, without limitation,  
5.6 a capper, runner, or steerer, as defined in section 609.612, subdivision 1, paragraph (c).

5.7 This subdivision does not apply when an injured person voluntarily initiates contact with a  
5.8 licensee.

5.9 (b) This subdivision does not prohibit licensees, ~~or persons acting on their behalf,~~  
5.10 from mailing advertising literature directly to such persons, so long as:

5.11 (1) the word "ADVERTISEMENT" appears clearly and conspicuously at the  
5.12 beginning of the written materials;

5.13 (2) the name of the individual licensee appears clearly and conspicuously within  
5.14 the written materials;

5.15 (3) the licensee is clearly identified as a licensed health care provider within the  
5.16 written materials; and

5.17 (4) the licensee does not initiate, individually or through any employee, independent  
5.18 contractor, agent, or third party, direct contact with the person after the written materials  
5.19 are sent.

5.20 (c) If undertaken directly by the health care provider only in its own legal name,  
5.21 this subdivision does not apply to:

5.22 (1) advertising that does not involve direct contact with specific prospective patients,  
5.23 in public media such as telephone directories, professional directories, ads in newspapers  
5.24 and other periodicals, radio or television ads, Web sites, billboards, or similar media;

5.25 (2) general marketing practices such as giving lectures; participating in special  
5.26 events, trade shows, or meetings of organizations; or making presentations relative to the  
5.27 benefits of chiropractic treatment;

5.28 (3) contact with friends or relatives, or statements made in a social setting;

5.29 (4) direct contact initiated by an ambulance service licensed under chapter 144E, a  
5.30 medical response unit registered under section 144E.275, or by the emergency department  
5.31 of a hospital licensed under chapter 144, for the purpose of rendering emergency care; or

5.32 (5) a situation in which the injured person:

5.33 (i) had a prior professional relationship with the licensee;

5.34 (ii) has selected that licensee as the licensee from whom the injured person receives  
5.35 health care; or

5.36 (iii) has received treatment related to the accident from the licensee.

6.1 (d) A violation of this subdivision is grounds for the licensing authority to take  
6.2 disciplinary action against the licensee, its professional corporation, or any direct or  
6.3 indirect successor in interest of the corporation, including revocation in appropriate cases.  
6.4 In addition, charges for any services provided by a health care provider in violation of this  
6.5 subdivision are not compensable and not enforceable as a matter of law.

6.6 Sec. 3. Minnesota Statutes 2010, section 65B.54, is amended by adding a subdivision  
6.7 to read:

6.8 Subd. 8. **Media-generated referrals.** (a) No health care provider shall pay, offer, or  
6.9 provide any compensation, fee, or anything of value to an individual, firm, corporation,  
6.10 or other legal entity for referring a person identified by use of the public media, such as  
6.11 telephone directories, professional directories, advertisements in newspapers and other  
6.12 periodicals, radio or television advertisements, Web sites, billboards, or similar media,  
6.13 for purposes of influencing or referring that person to receive treatment or purchase any  
6.14 good or item from the health care provider or anyone associated with the health care  
6.15 provider for any injury arising out of the maintenance or use of an automobile. Charges  
6.16 for any services provided by a health care provider in violation of this subdivision are not  
6.17 compensable and not enforceable as a matter of law. The prohibition in this subdivision  
6.18 does not apply to any advertisement or other contact permitted by subdivision 6. For  
6.19 purposes of this subdivision, "anything of value" includes agreements or understandings  
6.20 to refer patients by and between a health care provider, another health care provider, a  
6.21 lawyer, or any other third party.

6.22 (b) An affiliate of a health care provider shall not advertise by use of the public media,  
6.23 such as telephone directories, professional directories, advertisements in newspapers and  
6.24 other periodicals, radio or television advertisements, Web sites, billboards, or similar  
6.25 media, as part of a scheme to refer persons injured by use of an automobile to a third party  
6.26 intending that such persons shall subsequently be referred to the health care provider.

6.27 Sec. 4. Minnesota Statutes 2010, section 65B.54, is amended by adding a subdivision  
6.28 to read:

6.29 Subd. 9. **Inducements.** No health care provider shall offer, pay, advertise, give, or  
6.30 provide any gift, prize, bonus, fee, or anything of value whatsoever, directly or indirectly,  
6.31 that is not a service, item, or good deemed a professional treatment under the standards of  
6.32 practice for the applicable health care provider, to any person who has suffered an injury  
6.33 arising out of the maintenance or use of an automobile, for the purpose of inducing or  
6.34 influencing that person to receive treatment or to purchase any good or item from the

7.1 health care provider or anyone associated with the health care provider. Charges for  
 7.2 any services provided by a health care provider in violation of this subdivision are not  
 7.3 compensable and not enforceable as a matter of law.

7.4 Sec. 5. Minnesota Statutes 2010, section 65B.54, is amended by adding a subdivision  
 7.5 to read:

7.6 Subd. 10. **Dividing fees.** It is unlawful for a health care provider to:

7.7 (1) divide fees received for payment of medical expense benefits under section  
 7.8 65B.44, subdivision 2, with;

7.9 (2) promise to pay a part of another health care provider's fee to; or

7.10 (3) pay a commission to,

7.11 any health care provider or other person who calls the health care provider in consultation  
 7.12 or who sends patients to the health care provider for treatment. Nothing in this subdivision  
 7.13 prevents licensed chiropractors from forming a bona fide partnership for the practice of  
 7.14 chiropractic, nor to the actual employment by a licensed chiropractor of another licensed  
 7.15 chiropractor. Charges for any services provided by a health care provider in violation of  
 7.16 this subdivision are not compensable and not enforceable as a matter of law.

7.17 Sec. 6. Minnesota Statutes 2010, section 609.612, subdivision 1, is amended to read:

7.18 Subdivision 1. **Definitions.** (a) As used in this section, the following terms have  
 7.19 the meanings given.

7.20 (b) "Public media" means telephone directories, professional directories, newspapers  
 7.21 and other periodicals, radio and television, billboards, and mailed or electronically  
 7.22 transmitted written communications that do not involve in-person contact with a specific  
 7.23 prospective patient or client.

7.24 (c) "Runner," "capper," or "steerer" means a person who ~~for a pecuniary~~  
 7.25 ~~gain~~ procures patients or clients or solicits prospective patients through telephonic  
 7.26 communication, written communication, or in-person contact at the direction of, or in  
 7.27 cooperation with, a health care provider when the person knows or has reason to know  
 7.28 that the provider's purpose is to fraudulently perform or obtain services or benefits under  
 7.29 or relating to a contract of motor vehicle insurance. The term "runner," "capper," or  
 7.30 "steerer" does not include a person licensed health care provider who directly procures  
 7.31 clients through public media such as newspaper, radio, or television advertisements only  
 7.32 using its own legal name.

7.33 Sec. 7. **TITLE.**

8.1 This act may be cited as the "Reduce Auto Medical Fraud Act."