

S. 8088

A. 11369

S E N A T E - A S S E M B L Y

June 7, 2010

IN SENATE -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the insurance law, in relation to prior approval of health insurance premium rates

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (e) of section 3231 of the insurance law, as
 2 added by chapter 501 of the laws of 1992, subparagraph (B) of paragraph
 3 2 as amended by chapter 237 of the laws of 2009, is amended to read as
 4 follows:
 5 (e) (1) (A) An insurer desiring to increase or decrease premiums
 6 [after April first, nineteen hundred ninety-three] for any policy form
 7 subject to this section shall submit a rate filing or application to the
 8 superintendent.
 9 AN INSURER SHALL SEND WRITTEN NOTICE OF THE PROPOSED RATE ADJUSTMENT,
 10 INCLUDING THE SPECIFIC CHANGE REQUESTED, TO EACH POLICY HOLDER AND
 11 CERTIFICATE HOLDER AFFECTED BY THE ADJUSTMENT ON OR BEFORE THE DATE THE
 12 RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. THE
 13 NOTICE SHALL PROMINENTLY INCLUDE MAILING AND WEBSITE ADDRESSES FOR BOTH
 14 THE INSURANCE DEPARTMENT AND THE INSURER THROUGH WHICH A PERSON MAY,
 15 WITHIN THIRTY DAYS FROM THE DATE THE RATE FILING OR APPLICATION IS
 16 SUBMITTED TO THE SUPERINTENDENT, CONTACT THE INSURANCE DEPARTMENT OR
 17 INSURER TO RECEIVE ADDITIONAL INFORMATION OR TO SUBMIT WRITTEN COMMENTS
 18 TO THE INSURANCE DEPARTMENT ON THE RATE FILING OR APPLICATION. THE
 19 SUPERINTENDENT SHALL ESTABLISH A PROCESS TO POST ON THE DEPARTMENT'S
 20 WEBSITE, IN A TIMELY MANNER, ALL RELEVANT WRITTEN COMMENTS RECEIVED
 21 PERTAINING TO RATE FILINGS OR APPLICATIONS. THE INSURER SHALL PROVIDE A
 22 COPY OF THE NOTICE TO THE SUPERINTENDENT WITH THE RATE FILING OR APPLI-
 23 CATION. THE SUPERINTENDENT SHALL IMMEDIATELY CAUSE THE NOTICE TO BE
 24 POSTED ON THE INSURANCE DEPARTMENT'S WEBSITE. The superintendent shall

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

LBD12267-01-0

1 determine whether the filing or application shall become effective as
2 filed, shall become effective as modified, or shall be disapproved. THE
3 SUPERINTENDENT MAY MODIFY OR DISAPPROVE THE RATE FILING OR APPLICATION
4 IF THE SUPERINTENDENT FINDS THAT THE PREMIUMS ARE UNREASONABLE, EXCES-
5 SIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY, AND MAY CONSIDER THE
6 FINANCIAL CONDITION OF THE INSURER WHEN APPROVING, MODIFYING OR DISAP-
7 PROVING ANY PREMIUM ADJUSTMENT. THE DETERMINATION OF THE SUPERINTENDENT
8 SHALL BE SUPPORTED BY SOUND ACTUARIAL ASSUMPTIONS AND METHODS, AND SHALL
9 BE RENDERED IN WRITING BETWEEN THIRTY AND SIXTY DAYS FROM THE DATE THE
10 RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. SHOULD
11 THE SUPERINTENDENT REQUIRE ADDITIONAL INFORMATION FROM THE INSURER IN
12 ORDER TO MAKE A DETERMINATION, THE SUPERINTENDENT SHALL REQUIRE THE
13 INSURER TO FURNISH SUCH INFORMATION, AND IN SUCH EVENT, THE SIXTY DAYS
14 SHALL BE TOLLED AND SHALL RESUME AS OF THE DATE THE INSURER FURNISHES
15 THE INFORMATION TO THE SUPERINTENDENT. IF THE SUPERINTENDENT REQUESTS
16 ADDITIONAL INFORMATION LESS THAN TEN DAYS FROM THE EXPIRATION OF THE
17 SIXTY DAYS (EXCLUSIVE OF TOLLING), THE SUPERINTENDENT MAY EXTEND THE
18 SIXTY DAY PERIOD AN ADDITIONAL TWENTY DAYS TO MAKE A DETERMINATION. THE
19 APPLICATION OR RATE FILING WILL BE DEEMED APPROVED IF A DETERMINATION IS
20 NOT RENDERED WITHIN THE TIME ALLOTTED UNDER THIS SECTION. AN INSURER
21 SHALL NOT IMPLEMENT A RATE ADJUSTMENT UNLESS THE INSURER PROVIDES AT
22 LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE PREMIUM RATE ADJUSTMENT
23 APPROVED BY THE SUPERINTENDENT TO EACH POLICY HOLDER AND CERTIFICATE
24 HOLDER AFFECTED BY THE RATE ADJUSTMENT.

25 (B) THE EXPECTED MINIMUM LOSS RATIO FOR A POLICY FORM SUBJECT TO THIS
26 SECTION, FOR WHICH A RATE FILING OR APPLICATION IS MADE PURSUANT TO THIS
27 PARAGRAPH, OTHER THAN A MEDICARE SUPPLEMENTAL INSURANCE POLICY, OR, WITH
28 THE APPROVAL OF THE SUPERINTENDENT, AN AGGREGATION OF POLICY FORMS THAT
29 ARE COMBINED INTO ONE COMMUNITY RATING EXPERIENCE POOL AND RATED
30 CONSISTENT WITH COMMUNITY RATING REQUIREMENTS, SHALL NOT BE LESS THAN
31 EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICATION, THE
32 SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED MINIMUM LOSS
33 RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE MODIFICATION TO
34 BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF THE SUPERINTENDENT
35 DETERMINES THAT A MODIFICATION IS NECESSARY TO MAINTAIN INSURER SOLVEN-
36 CY. NO LATER THAN JUNE THIRTIETH OF EACH YEAR, EVERY INSURER SUBJECT TO
37 THIS SUBPARAGRAPH SHALL ANNUALLY REPORT THE ACTUAL LOSS RATIO FOR THE
38 PREVIOUS CALENDAR YEAR IN A FORMAT ACCEPTABLE TO THE SUPERINTENDENT. IF
39 AN EXPECTED LOSS RATIO IS NOT MET, THE SUPERINTENDENT MAY DIRECT THE
40 INSURER TO TAKE CORRECTIVE ACTION, WHICH MAY INCLUDE THE SUBMISSION OF A
41 RATE FILING TO REDUCE FUTURE PREMIUMS, OR TO ISSUE DIVIDENDS, PREMIUM
42 REFUNDS OR CREDITS, OR ANY COMBINATION OF THESE.

43 (2) (A) [Beginning October first, nineteen hundred ninety-four] UNTIL
44 SEPTEMBER THIRTIETH, TWO THOUSAND TEN, as an alternate procedure to the
45 requirements of paragraph one of this subsection, an insurer desiring to
46 increase or decrease premiums for any policy form subject to this
47 section may instead submit a rate filing or application to the super-
48 intendent and such application or filing shall be deemed approved,
49 provided that: (i) the anticipated minimum loss ratio for a policy form
50 shall not be less than [seventy-five] EIGHTY-TWO percent of the premi-
51 um[,]; and (ii) the insurer submits, as part of such filing, a certif-
52 ication by a member of the American Academy of Actuaries or other indi-
53 vidual acceptable to the superintendent that the insurer is in
54 compliance with the provisions of this paragraph, based upon that
55 person's examination, including a review of the appropriate records and
56 of the actuarial assumptions and methods used by the insurer in estab-

lishing premium rates for policy forms subject to this section. AN INSURER SHALL NOT UTILIZE THE ALTERNATE PROCEDURE PURSUANT TO THIS PARAGRAPH TO IMPLEMENT A CHANGE IN RATES TO BE EFFECTIVE ON OR AFTER OCTOBER FIRST, TWO THOUSAND TEN.

(B) Each calendar year, an insurer shall return, in the form of aggregate benefits for each policy form filed pursuant to the alternate procedure set forth in this paragraph at least [seventy-five] EIGHTY-TWO percent of the aggregate premiums collected for the policy form during that calendar year. Insurers shall annually report, no later than [May first] JUNE THIRTIETH of each year, the loss ratio calculated pursuant to this paragraph for each such policy form for the previous calendar year. In each case where the loss ratio for a policy form fails to comply with the [seventy-five] EIGHTY-TWO percent loss ratio requirement, the insurer shall issue a dividend or credit against future premiums for all policy holders with that policy form in an amount sufficient to assure that the aggregate benefits paid in the previous calendar year plus the amount of the dividends and credits shall equal [seventy-five] EIGHTY-TWO percent of the aggregate premiums collected for the policy form in the previous calendar year. The dividend or credit shall be issued to each policy holder who had a policy which was in effect at any time during the applicable year. The dividend or credit shall be prorated based on the direct premiums earned for the applicable year among all policy holders eligible to receive such dividend or credit. An insurer shall make a reasonable effort to identify the current address of, and issue dividends or credits to, former policy holders entitled to the dividend or credit. An insurer shall, with respect to dividends or credits to which former policy holders that the insurer is unable to identify after a reasonable effort would otherwise be entitled, have the option, as deemed acceptable by the superintendent, of prospectively adjusting premium rates by the amount of such dividends or credits, issuing the amount of such dividends or credits to existing policy holders, depositing the amount of such dividends or credits in the fund established pursuant to section four thousand three hundred twenty-two-a of this chapter, or utilizing any other method which offsets the amount of such dividends or credits. All dividends and credits must be distributed by September thirtieth of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by this paragraph shall include an insurer's calculation of the dividends and credits, as well as an explanation of the insurer's plan to issue dividends or credits. The instructions and format for calculating and reporting loss ratios and issuing dividends or credits shall be specified by the superintendent by regulation. Such regulations shall include provisions for the distribution of a dividend or credit in the event of cancellation or termination by a policy holder.

(3) ALL POLICY FORMS SUBJECT TO THIS SUBSECTION, OTHER THAN MEDICARE SUPPLEMENTAL INSURANCE POLICY FORMS, ISSUED OR IN EFFECT DURING CALENDAR YEAR TWO THOUSAND TEN SHALL BE SUBJECT TO A MINIMUM LOSS RATIO REQUIREMENT OF EIGHTY-TWO PERCENT. INSURERS MAY USE THE ALTERNATE FILING PROCEDURE SET FORTH IN PARAGRAPH TWO OF THIS SUBSECTION TO ADJUST PREMIUM RATES IN ORDER TO MEET THE REQUIRED MINIMUM LOSS RATIO FOR CALENDAR YEAR TWO THOUSAND TEN. THE RATE FILING OR APPLICATION SHALL BE SUBMITTED NO LATER THAN SEPTEMBER THIRTIETH, TWO THOUSAND TEN.

S 2. Section 4308 of the insurance law, subsection (b) as amended and subsections (d), (e) and (f) as added by chapter 501 of the laws of 1992, paragraph 3 of subsection (c) as amended by chapter 520 of the laws of 1999, subsections (g), (h), (i) and (j) as added by chapter 504

1 of the laws of 1995 and paragraph 2 of subsection (h) as amended by
2 chapter 237 of the laws of 2009, is amended to read as follows:

3 S 4308. Supervision of superintendent[; public hearings]. (a) No
4 corporation subject to the provisions of this article shall enter into
5 any contract unless and until it shall have filed with the superinten-
6 dent a copy of the contract or certificate and of all applications,
7 riders and endorsements for use in connection with the issuance or
8 renewal thereof, to be formally approved by him as conforming to the
9 applicable provisions of this article and not inconsistent with any
10 other provision of law applicable thereto. The superintendent shall,
11 within a reasonable time after the filing of any such form, notify the
12 corporation filing the same either of his approval or of his disapproval
13 of such form.

14 (b) No corporation subject to the provisions of this article shall
15 enter into any contract unless and until it shall have filed with the
16 superintendent a schedule of the premiums or, if appropriate, rating
17 formula from which premiums are determined, to be paid under the
18 contracts and shall have obtained the superintendent's approval thereof.
19 The superintendent may refuse such approval if he finds that such premi-
20 ums, or the premiums derived from the rating formula, are excessive,
21 inadequate or unfairly discriminatory, provided, however, the super-
22 intendent may also consider the financial condition of such corporation
23 in approving or disapproving any premium or rating formula. ANY ADJUST-
24 MENTS TO AN APPROVED SCHEDULE OF PREMIUMS OR TO THE APPROVED RATING
25 FORMULA FOR NON-COMMUNITY RATED CONTRACTS SHALL ALSO BE SUBJECT TO THE
26 APPROVAL OF THE SUPERINTENDENT PROVIDED, HOWEVER, SUCH ADJUSTMENTS SHALL
27 NOT BE SUBJECT TO THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.
28 Any premium or formula approved by the superintendent shall make
29 provision for such increase as may be necessary to meet the requirements
30 of a plan approved by the superintendent in the manner prescribed in
31 section four thousand three hundred ten of this article for restoration
32 of the statutory reserve fund required by such section. Notwithstanding
33 any other provision of law, the superintendent, as part of the rate
34 increase approval process, may defer, reduce or reject a rate increase
35 if, in the judgment of the superintendent, the salary increases for
36 senior level management executives employed at corporations subject to
37 the provisions of this article are excessive or unwarranted given the
38 financial condition or overall performance of such corporation. The
39 superintendent is authorized to promulgate rules and regulations which
40 the superintendent deems necessary to carry out such deferral, reduction
41 or rejection.

42 (c) (1) [Except for an application pursuant to subsection (f) of
43 section four thousand three hundred four of this article, no] AN
44 increase or decrease in premiums with respect to [individual] COMMUNITY
45 RATED contracts [issued pursuant to the provisions of such section]
46 shall NOT be approved by the superintendent unless it is in compliance
47 with the provisions of this subsection as well as other applicable
48 provisions of law.

49 (2) [Prior to any such filing or application by or on behalf of a
50 corporation for an increase or decrease in premiums for such contracts,
51 such corporation, when directed by the superintendent, shall conduct a
52 public hearing with respect to the terms of such filing or application.
53 Notice of such hearing shall be published on three successive days in at
54 least two newspapers having general circulation within the territory or
55 district wherein such corporation seeking approval of the filing is
56 authorized to do business. The date specified for the hearing shall be

1 not less than ten nor more than thirty days from the date of the first
2 publication of the hearing. The notice of hearing shall state the
3 purpose thereof, the time when and the place where the public hearing
4 will be held. The public hearing shall be held at a time and location
5 deemed by the superintendent to be most convenient to the greatest
6 number of persons affected by such filing. At such hearing any person
7 may be heard in favor of, or against, the terms of the filing or appli-
8 cation.

9 (3) Following the public hearing held pursuant to paragraph two of
10 this subsection, a transcript of the testimony therein shall be submit-
11 ted together with a rate filing or application, to the superintendent.
12 Upon receipt of such filing or application by or on behalf of a corpo-
13 ration, the superintendent shall order that a public hearing be held
14 with respect to the terms of such filing or application. Notice of such
15 hearing shall be published on three successive days in at least two
16 newspapers having general circulation within the territory or district
17 wherein such corporation seeking approval of the filing or application
18 is authorized to do business. For a corporation writing more than three
19 billion dollars in premiums as of December thirty-first, nineteen
20 hundred ninety-six and whose service territory is greater than ten coun-
21 ties, such notice is to be published in at least one newspaper having
22 general circulation in each county where persons in the service territo-
23 ry are affected by the proposed change. The date specified for the hear-
24 ing shall be not less than ten nor more than thirty days from the date
25 of the last publication of the hearing. The notice of hearing shall also
26 state the purpose thereof, the time when and the place where the public
27 hearing will be held. For those corporations writing more than three
28 billion dollars in premiums as of December thirty-first, nineteen
29 hundred ninety-six, and whose territory is greater than ten counties,
30 the notice of hearing shall also state the changes proposed, the
31 contracts to be affected and the time when such changes would take
32 effect. The notice of hearing shall state, in prominent display, a toll-
33 free telephone number of the insurance department that may be contacted
34 to receive additional information on the subject rate application. The
35 public hearing shall be held at a time and location deemed by the super-
36 intendent to be most convenient to the greatest number of persons
37 affected by such filing or application. A copy of such notice of hearing
38 shall be forwarded by the superintendent by registered or certified mail
39 to the principal address of the corporation seeking approval of such
40 filing or application. The hearing may be continued or adjourned from
41 day to day within the discretion of the superintendent. At such hearing
42 any person may be heard in favor of, or against, the terms of the filing
43 or application. After conclusion of the public hearing the superinten-
44 dent shall render a written decision determining whether the filing or
45 application shall become effective as filed, shall become effective as
46 modified, or shall be disapproved. If, subsequent to the hearing, but
47 prior to the issuing of the superintendent's written decision on a rate
48 increase request, the corporation increases its requested rate for any
49 contract by two percent or more, a re-hearing shall be held. The time,
50 location, and notice requirements for such re-hearing shall be deter-
51 mined by the superintendent.

52 (4)] A CORPORATION DESIRING TO INCREASE OR DECREASE PREMIUMS FOR ANY
53 CONTRACT SUBJECT TO THIS SUBSECTION SHALL SUBMIT A RATE FILING OR APPLI-
54 CATION TO THE SUPERINTENDENT. A CORPORATION SHALL SEND WRITTEN NOTICE
55 OF THE PROPOSED RATE ADJUSTMENT, INCLUDING THE SPECIFIC CHANGE
56 REQUESTED, TO EACH CONTRACT HOLDER AND SUBSCRIBER AFFECTED BY THE

1 ADJUSTMENT ON OR BEFORE THE DATE THE RATE FILING OR APPLICATION IS
2 SUBMITTED TO THE SUPERINTENDENT. THE NOTICE SHALL PROMINENTLY INCLUDE
3 MAILING AND WEBSITE ADDRESSES FOR BOTH THE INSURANCE DEPARTMENT AND THE
4 CORPORATION THROUGH WHICH A PERSON MAY, WITHIN THIRTY DAYS FROM THE DATE
5 THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT,
6 CONTACT THE INSURANCE DEPARTMENT OR CORPORATION TO RECEIVE ADDITIONAL
7 INFORMATION OR TO SUBMIT WRITTEN COMMENTS TO THE INSURANCE DEPARTMENT ON
8 THE RATE FILING OR APPLICATION. THE SUPERINTENDENT SHALL ESTABLISH A
9 PROCESS TO POST ON THE DEPARTMENT'S WEBSITE, IN A TIMELY MANNER, ALL
10 RELEVANT WRITTEN COMMENTS RECEIVED PERTAINING TO RATE FILINGS OR APPLI-
11 CATIONS. THE CORPORATION SHALL PROVIDE A COPY OF THE NOTICE TO THE
12 SUPERINTENDENT WITH THE RATE FILING OR APPLICATION. THE SUPERINTENDENT
13 SHALL IMMEDIATELY CAUSE THE NOTICE TO BE POSTED ON THE INSURANCE DEPART-
14 MENT'S WEBSITE. THE SUPERINTENDENT SHALL DETERMINE WHETHER THE FILING
15 OR APPLICATION SHALL BECOME EFFECTIVE AS FILED, SHALL BECOME EFFECTIVE
16 AS MODIFIED, OR SHALL BE DISAPPROVED. THE SUPERINTENDENT MAY MODIFY OR
17 DISAPPROVE THE RATE FILING OR APPLICATION IF THE SUPERINTENDENT FINDS
18 THAT THE PREMIUMS ARE UNREASONABLE, EXCESSIVE, INADEQUATE, OR UNFAIRLY
19 DISCRIMINATORY, AND MAY CONSIDER THE FINANCIAL CONDITION OF THE CORPO-
20 RATION IN APPROVING, MODIFYING OR DISAPPROVING ANY PREMIUM ADJUSTMENT.
21 THE DETERMINATION OF THE SUPERINTENDENT SHALL BE SUPPORTED BY SOUND
22 ACTUARIAL ASSUMPTIONS AND METHODS, AND SHALL BE RENDERED IN WRITING
23 BETWEEN THIRTY AND SIXTY DAYS FROM THE DATE THE RATE FILING OR APPLICA-
24 TION IS SUBMITTED TO THE SUPERINTENDENT. SHOULD THE SUPERINTENDENT
25 REQUIRE ADDITIONAL INFORMATION FROM THE CORPORATION IN ORDER TO MAKE A
26 DETERMINATION, THE SUPERINTENDENT SHALL REQUIRE THE CORPORATION TO
27 FURNISH SUCH INFORMATION, AND IN SUCH EVENT, THE SIXTY DAYS SHALL BE
28 TOLLED AND SHALL RESUME AS OF THE DATE THE CORPORATION FURNISHES THE
29 INFORMATION TO THE SUPERINTENDENT. IF THE SUPERINTENDENT REQUESTS ADDI-
30 TIONAL INFORMATION LESS THAN TEN DAYS FROM THE EXPIRATION OF THE SIXTY
31 DAYS (EXCLUSIVE OF TOLLING), THE SUPERINTENDENT MAY EXTEND THE SIXTY DAY
32 PERIOD AN ADDITIONAL TWENTY DAYS, TO MAKE A DETERMINATION. THE APPLICA-
33 TION OR RATE FILING WILL BE DEEMED APPROVED IF A DETERMINATION IS NOT
34 RENDERED WITHIN THE TIME ALLOTTED UNDER THIS SECTION. A CORPORATION
35 SHALL NOT IMPLEMENT A RATE ADJUSTMENT UNLESS THE CORPORATION PROVIDES AT
36 LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE PREMIUM RATE ADJUSTMENT
37 APPROVED BY THE SUPERINTENDENT TO EACH CONTRACT HOLDER AND SUBSCRIBER
38 AFFECTED BY THE RATE ADJUSTMENT.

39 (3)(A) THE EXPECTED MINIMUM LOSS RATIO FOR A CONTRACT FORM SUBJECT TO
40 THIS SUBSECTION FOR WHICH A RATE FILING OR APPLICATION IS MADE PURSUANT
41 TO THIS PARAGRAPH, OTHER THAN A MEDICARE SUPPLEMENTAL INSURANCE
42 CONTRACT, OR, WITH THE APPROVAL OF THE SUPERINTENDENT, AN AGGREGATION OF
43 CONTRACT FORMS THAT ARE COMBINED INTO ONE COMMUNITY RATING EXPERIENCE
44 POOL AND RATED CONSISTENT WITH COMMUNITY RATING REQUIREMENTS, SHALL NOT
45 BE LESS THAN EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICA-
46 TION, THE SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED
47 MINIMUM LOSS RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE
48 MODIFICATION TO BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF
49 THE SUPERINTENDENT DETERMINES THAT A MODIFICATION IS NECESSARY TO MAIN-
50 TAIN INSURER SOLVENCY. NO LATER THAN JUNE THIRTIETH OF EACH YEAR, EVERY
51 CORPORATION SUBJECT TO THIS SUBPARAGRAPH SHALL ANNUALLY REPORT THE ACTU-
52 AL LOSS RATIO FOR THE PREVIOUS CALENDAR YEAR IN A FORMAT ACCEPTABLE TO
53 THE SUPERINTENDENT. IF AN EXPECTED LOSS RATIO IS NOT MET, THE SUPER-
54 INTENDENT MAY DIRECT THE CORPORATION TO TAKE CORRECTIVE ACTION, WHICH
55 MAY INCLUDE THE SUBMISSION OF A RATE FILING TO REDUCE FUTURE PREMIUMS,

1 OR TO ISSUE DIVIDENDS, PREMIUM REFUNDS OR CREDITS, OR ANY COMBINATION OF
2 THESE.

3 (B) THE EXPECTED MINIMUM LOSS RATIO FOR A MEDICARE SUPPLEMENTAL INSUR-
4 ANCE CONTRACT FORM SHALL NOT BE LESS THAN EIGHTY PERCENT. NO LATER THAN
5 MAY FIRST OF EACH YEAR, EVERY CORPORATION SUBJECT TO THIS SUBPARAGRAPH
6 SHALL ANNUALLY REPORT THE ACTUAL LOSS RATIO FOR EACH CONTRACT FORM
7 SUBJECT TO THIS SECTION FOR THE PREVIOUS CALENDAR YEAR IN A FORMAT
8 ACCEPTABLE TO THE SUPERINTENDENT. IN EACH CASE WHERE THE LOSS RATIO FOR
9 THE CONTRACT FORM FAILS TO COMPLY WITH THE EIGHTY PERCENT LOSS RATIO
10 REQUIREMENT, THE CORPORATION SHALL SUBMIT A CORRECTIVE ACTION PLAN TO
11 THE SUPERINTENDENT FOR ASSURING COMPLIANCE WITH THE APPLICABLE MINIMUM
12 LOSS RATIO STANDARD. THE CORRECTIVE ACTION PLAN SHALL BE SUBMITTED TO
13 THE SUPERINTENDENT WITHIN SIXTY DAYS OF THE CORPORATION'S SUBMISSION OF
14 THE ANNUAL REPORT REQUIRED BY THIS SUBPARAGRAPH. THE CORPORATION'S PLAN
15 MAY UTILIZE PREMIUM REFUNDS OR CREDITS, SUBJECT TO THE APPROVAL OF THE
16 SUPERINTENDENT.

17 (4) In case of conflict between this subsection and any other
18 provision of law, this subsection shall prevail.

19 (d) The superintendent shall order an independent management and
20 financial audit of corporations subject to the provisions of this arti-
21 cle with a combined premium volume exceeding two billion dollars annual-
22 ly in order to develop a detailed understanding of such corporation's
23 financial status and to determine the viability of such corporation's
24 products. Such audit shall be performed by an organization upon
25 submission of a program plan in response to a request for proposal
26 approved by the superintendent in consultation with the commissioner of
27 health and the state comptroller. Such audit shall not be performed by
28 any organization that has in any way performed or furnished services of
29 any kind to the corporation within the past five years, unless it is
30 adequately demonstrated that such services would not compromise that
31 organization's performance and objectivity. The audit shall be completed
32 and a report submitted by May first, nineteen hundred ninety-three to
33 the superintendent, the commissioner of health, and the chairs of the
34 senate and assembly committees on health and insurance. The scope of the
35 audit shall include, but not be limited to, financial and competitive
36 position, corporate structure and governance, organization and manage-
37 ment, strategic direction, rate adequacy, and the regulatory and compet-
38 itive environment in the state of New York. Specifically, the audit
39 shall include, but not be limited to:

40 (i) determining the corporation's financial and market position,
41 including its reserves, trends in membership, market share, and profit-
42 ability by market segment;

43 (ii) evaluating the corporation's product offerings with respect to
44 market requirements and trends, the corporation's responses to the New
45 York health care market, and its management of medical claims costs;

46 (iii) assessing the effectiveness of the organizational and management
47 structure and performance, including, but not limited to, possible
48 improvement in the size, structure, composition and operation of the
49 board of directors, productivity improvement, information systems,
50 management development, personnel practices, mix and level of skills,
51 personnel turnover, investment practices and rate of return upon invest-
52 ment activities;

53 (iv) analyzing the corporation's strategic directions, its adequacy to
54 meet competitive, market, and existing regulatory trends, including an
55 evaluation of the use of brokers in marketing products, and the impact

1 of those strategies on the corporation's future financial performance
2 and on the health care system of New York;

3 (v) evaluating the adequacy of rates for existing products, partic-
4 ularly (but not limited to) small group, medicare supplemental, and
5 direct payment to identify areas that may need immediate remedial atten-
6 tion;

7 (vi) identifying any changes to the regulatory and legislative envi-
8 ronment that may need to be made to ensure that the corporation can
9 continue to be financially viable and competitive;

10 (vii) identifying and assessing specific transactions such as the
11 procurement of reinsurance, sale of real property and the sale of future
12 investment income to improve the financial condition of the corporation;
13 and

14 (viii) evaluating and identifying possible improvements in the corpo-
15 ration's managed care strategies, operations and claims handling.

16 (e) Notwithstanding any other provision of law, the superintendent
17 shall have the power to require independent management and financial
18 audits of corporations subject to the provisions of this article whenever
19 in the judgment of the superintendent, losses sustained by a corpo-
20 ration jeopardize its ability to provide meaningful coverage at afforda-
21 ble rates or when such audit would be necessary to protect the interests
22 of subscribers. The audit shall include, but not be limited to, an
23 investigation of the corporation's provision of benefits to senior citi-
24 zens, individual and family, and small group and small business
25 subscribers in relation to the needs of those subscribers. The audit
26 shall also include an evaluation of the efficiency of the corporation's
27 management, particularly with respect to lines of business which are
28 experiencing losses. In every case in which the superintendent chooses
29 to require an audit provided for in this subsection, the superintendent
30 shall have the authority to select the auditor. Any costs incurred as a
31 result of the operation of this subsection shall be assessed on all
32 domestic insurers in the same manner as provided for in section three
33 hundred thirty-two of this chapter.

34 (f) The results of any audit conducted pursuant to subsections (d) and
35 (e) of this section shall be provided to the corporation and each member
36 of its board of directors. The superintendent shall have the authority
37 to direct the corporation in writing to implement any recommendations
38 resulting from the audit that the superintendent finds to be necessary
39 and reasonable; provided, however, that the superintendent shall first
40 consider any written response submitted by the corporation or the board
41 of directors prior to making such finding. Upon any application for a
42 rate adjustment by the corporation, the superintendent shall review the
43 corporation's compliance with the directions and recommendations made
44 previously by the superintendent, as a result of the most recently
45 completed management or financial audit and shall include such findings
46 in any written decision concerning such application.

47 (g)(1) [Beginning January first, nineteen hundred ninety-six] UNTIL
48 SEPTEMBER THIRTIETH, TWO THOUSAND TEN, as an alternate procedure to the
49 requirements of subsection (c) of this section, a corporation subject to
50 the provisions of this article desiring to increase or decrease premiums
51 for any contract subject to this section may instead submit a rate
52 filing or application to the superintendent and such application or
53 filing shall be deemed approved, provided that (A) the anticipated
54 incurred loss ratio for a contract form shall not be less than [eighty-
55 five] EIGHTY-TWO percent for individual direct payment contracts or
56 [seventy-five] EIGHTY-TWO percent for small group and small group remit-

1 tance contracts, nor, except in the case of individual direct payment
2 contracts with a loss ratio of greater than one hundred five percent
3 during nineteen hundred ninety-four, shall the loss ratio for any direct
4 payment, group or group remittance contract be more than one hundred
5 five percent of the anticipated earned premium, and (B) the corporation
6 submits, as part of such filing, a certification by a member of the
7 American Academy of Actuaries or other individual acceptable to the
8 superintendent that that corporation is in compliance with the
9 provisions of this subsection, based upon that person's examination,
10 including a review of the appropriate records and of the actuarial
11 assumptions and methods used by the corporation in establishing premium
12 rates for contracts subject to this section. A CORPORATION SHALL NOT
13 UTILIZE THE ALTERNATE PROCEDURE PURSUANT TO THIS SUBSECTION TO IMPLEMENT
14 A CHANGE IN RATES TO BE EFFECTIVE ON OR AFTER OCTOBER FIRST, TWO THOU-
15 SAND TEN. For purposes of this section, a small group is any group whose
16 contract is subject to the requirements of section forty-three hundred
17 seventeen of this article.

18 (2) Prior to January first, two thousand, no rate increase or decrease
19 may be deemed approved under this subsection if that increase or
20 decrease, together with any other rate increases or decreases imposed on
21 the same contract form, would cause the aggregate rate increase or
22 decrease for that contract form to exceed ten percent during any contin-
23 uous twelve month period. No rate increase may be imposed PURSUANT TO
24 THIS SUBSECTION unless at least thirty days advance written notice of
25 such increase has been provided to each contract holder and subscriber.

26 (h)(1) Each calendar year, a corporation subject to the provisions of
27 this article shall return, in the form of aggregate benefits incurred
28 for each contract form filed pursuant to the alternate procedure set
29 forth in subsection (g) of this section, at least [eighty-five] EIGHTY-
30 TWO percent for individual direct payment contracts or [seventy-five]
31 EIGHTY-TWO percent for small group and small group remittance contracts,
32 but, except in the case of individual direct payment contracts with a
33 loss ratio of greater than one hundred five percent in nineteen hundred
34 ninety-four, for any direct payment, group or group remittance contract,
35 not in excess of one hundred five percent of the aggregate premiums
36 earned for the contract form during that calendar year. Corporations
37 subject to the provisions of this article shall annually report, no
38 later than [May first] JUNE THIRTIETH of each year, the loss ratio
39 calculated pursuant to this subsection for each such contract form for
40 the previous calendar year.

41 (2) In each case where the loss ratio for a contract form fails to
42 comply with the [eighty-five] EIGHTY-TWO percent minimum loss ratio
43 requirement for individual direct payment contracts, or the [seventy-
44 five] EIGHTY-TWO percent minimum loss ratio requirement for small group
45 and small group remittance contracts, as set forth in paragraph one of
46 this subsection, the corporation shall issue a dividend or credit
47 against future premiums for all contract holders with that contract form
48 in an amount sufficient to assure that the aggregate benefits incurred
49 in the previous calendar year plus the amount of the dividends and cred-
50 its shall equal no less than [eighty-five] EIGHTY-TWO percent for indi-
51 vidual direct payment contracts, or [seventy-five] EIGHTY-TWO percent
52 for small group and small group remittance contracts, of the aggregate
53 premiums earned for the contract form in the previous calendar year. The
54 dividend or credit shall be issued to each contract holder or subscriber
55 who had a contract that was in effect at any time during the applicable
56 year. The dividend or credit shall be prorated based on the direct

1 premiums earned for the applicable year among all contract holders or
2 subscribers eligible to receive such dividend or credit. A corporation
3 shall make a reasonable effort to identify the current address of, and
4 issue dividends or credits to, former contract holders or subscribers
5 entitled to the dividend or credit. A corporation shall, with respect to
6 dividends or credits to which former contract holders that the corpo-
7 ration is unable to identify after a reasonable effort would otherwise
8 be entitled, have the option, as deemed acceptable by the superinten-
9 dent, of prospectively adjusting premium rates by the amount of such
10 dividends or credits, issuing the amount of such dividends or credits to
11 existing contract holders, depositing the amount of such dividends or
12 credits in the fund established pursuant to section four thousand three
13 hundred twenty-two-a of this article, or utilizing any other method
14 which offsets the amount of such dividends or credits. All dividends and
15 credits must be distributed by September thirtieth of the year following
16 the calendar year in which the loss ratio requirements were not satis-
17 fied. The annual report required by paragraph one of this subsection
18 shall include a corporation's calculation of the dividends and credits,
19 as well as an explanation of the corporation's plan to issue dividends
20 or credits. The instructions and format for calculating and reporting
21 loss ratios and issuing dividends or credits shall be specified by the
22 superintendent by regulation. Such regulations shall include provisions
23 for the distribution of a dividend or credit in the event of cancella-
24 tion or termination by a contract holder or subscriber.

25 (3) In each case where the loss ratio for a contract form fails to
26 comply with the one hundred five percent maximum loss ratio requirement
27 of paragraph one of this subsection, the corporation shall institute a
28 premium rate increase in an amount sufficient to assure that the aggre-
29 gate benefits incurred in the previous calendar year shall equal no more
30 than one hundred five percent of the sum of the aggregate premiums
31 earned for the contract form in the previous calendar year and the
32 aggregate premium rate increase. The rate increase shall be applied to
33 each contract that was in effect as of December thirty-first of the
34 applicable year and remains in effect as of the date the rate increase
35 is imposed. All rate increases must be imposed by September thirtieth of
36 the year following the calendar year in which the loss ratio require-
37 ments were not satisfied. The annual report required by paragraph one of
38 this subsection shall include a corporation's calculation of the premium
39 rate increase, as well as an explanation of the corporation's plan to
40 implement the rate increase. The instructions and format for calculating
41 and reporting loss ratios and implementing rate increases shall be spec-
42 ified by the superintendent by regulation.

43 (i) The alternate procedure described in subsections (g) and (h) of
44 this section shall apply to individual direct payment contracts issued
45 pursuant to sections four thousand three hundred twenty-one and four
46 thousand three hundred twenty-two of this article on and after January
47 first, nineteen hundred ninety-seven. SUCH ALTERNATE PROCEDURE SHALL NOT
48 BE UTILIZED TO IMPLEMENT A CHANGE IN RATES TO BE EFFECTIVE ON OR AFTER
49 OCTOBER FIRST, TWO THOUSAND TEN.

50 (j) [The eighty-five percent minimum loss ratio for individual direct
51 payment contracts described in subsections (g) and (h) of this section
52 shall be reduced to eighty-two and one-half percent as of January first,
53 nineteen hundred ninety-seven and shall be further reduced to eighty
54 percent as of January first, nineteen hundred ninety-eight and thereaft-
55 er. The refund or credit requirements for failure to meet minimum loss
56 ratios will continue, but at these reduced percentages.] ALL COMMUNITY

1 RATED CONTRACTS, OTHER THAN MEDICARE SUPPLEMENTAL INSURANCE CONTRACTS,
2 ISSUED OR IN EFFECT DURING CALENDAR YEAR TWO THOUSAND TEN SHALL BE
3 SUBJECT TO A MINIMUM LOSS RATIO REQUIREMENT OF EIGHTY-TWO PERCENT.
4 CORPORATIONS MAY USE THE ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (G)
5 OF THIS SECTION TO ADJUST PREMIUM RATES IN ORDER TO MEET THE REQUIRED
6 MINIMUM LOSS RATIO FOR CALENDAR YEAR TWO THOUSAND TEN. THE RATE FILING
7 OR APPLICATION SHALL BE SUBMITTED NO LATER THAN SEPTEMBER THIRTIETH, TWO
8 THOUSAND TEN.

9 S 3. If any clause, sentence, paragraph, section or part of this act
10 shall be adjudged by any court of competent jurisdiction to be invalid,
11 the judgment shall not affect, impair or invalidate the remainder there-
12 of, but shall be confined in its operation to the clause, sentence,
13 paragraph, section or part thereof directly involved in the controversy
14 in which such judgment shall have been rendered.

15 S 4. This act shall take effect immediately.