S T A T E O F N E W Y O R K

7534

I N S E N A T E

May 9, 2016

Introduced by Sen. SEWARD -- 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 the establishment of an administrative procedure for guidance, regulations, inquiries and examinations by the department of financial services

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

Section 1. Section 301 of the insurance law is amended to read as follows:

S 301. Regulations by superintendent. (A) The superintendent shall have the power to prescribe and from time to time withdraw or amend, in writing, regulations, not inconsistent with the provisions of this chapter:

[(a)] (1) governing the duties assigned to the members of the staff of the department;

[(b)] (2) effectuating any power, given to him under the provisions of this chapter to prescribe forms or otherwise make regulations;

[(c)] (3) interpreting the provisions of this chapter; and

[(d)] (4) governing the procedures to be followed in the practice of the department.

(B) WHEN PROPOSING ANY REGULATION, RULE OR GUIDANCE, THE SUPERINTENDENT SHALL CONSIDER AND DETERMINE WHETHER OR NOT SUCH PROPOSAL WILL CAUSE UNDUE DELETERIOUS ECONOMIC EFFECT OR HAVE AN OVERLY BURDENSOME IMPACT UPON ANY LICENSED ENTITY UPON WHICH IT IS INTENDED TO BE IMPOSED, TAKING INTO PARTICULAR ACCOUNT ANY DISPROPORTIONATE IMPACT THAT IT MAY HAVE ON A DOMESTIC LICENSED ENTITY, AND WHETHER OR NOT THE PROPOSAL WILL NEGATIVELY IMPACT THE AFFORDABILITY OR AVAILABILITY OF A PRODUCT BEING OFFERED BY THE LICENSED ENTITY. IN MAKING THAT DETERMINATION, THE SUPERINTENDENT SHOULD SET FORTH IN A WRITTEN STATEMENT THE PURPOSE OF, NECESSITY FOR AND EXPECTED BENEFITS TO BE DERIVED FROM THE PROPOSAL. SUCH STATEMENT SHALL ALSO DETAIL THE PROJECTED COSTS OF COMPLYING WITH THE PROPOSAL, WHICH SHALL INCLUDE:

(1) THE COSTS ASSOCIATED WITH IMPLEMENTING THE PROPOSAL BY THE LICENSED ENTITY, INCLUDING BUT NOT LIMITED TO HUMAN RESOURCE, TECHNOLOGY

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

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OR ADMINISTRATIVE COSTS, AND INCLUDING ANY ADDITIONAL COSTS THAT IT MIGHT IMPOSE UPON A DOMESTIC LICENSED ENTITY;

(2) WHETHER OR NOT THE PROPOSAL COULD NEGATIVELY IMPACT THE PRICING OR AVAILABILITY OF A PRODUCT BEING OFFERED BY THE LICENSED ENTITY;

(3) THE INFORMATION, INCLUDING THE SOURCE OR SOURCES OF SUCH INFORMATION, AND METHODOLOGY UPON WHICH THE COST ANALYSIS IS BASED; OR

(4) WHERE THE SUPERINTENDENT FINDS THAT IT CANNOT FULLY PROVIDE A STATEMENT OF SUCH COSTS, A STATEMENT SETTING FORTH ITS BEST ESTIMATE, WHICH SHALL INDICATE THE INFORMATION AND METHODOLOGY UPON WHICH SUCH BEST ESTIMATE IS BASED AND THE REASON OR REASONS WHY A COMPLETE COST STATEMENT CANNOT BE PROVIDED.

A COPY OF THE PROPOSED REGULATION, RULE OR GUIDANCE, ALONG WITH THE WRITTEN STATEMENT REQUIRED PURSUANT TO THIS SUBSECTION, SHALL BE MADE AVAILABLE TO THE LICENSED ENTITY UPON WHICH THE PROPOSAL WILL BE IMPOSED PRIOR TO A PROPOSED RULE OR REGULATION'S OFFICIAL PUBLICATION PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT AND PRIOR TO THE ISSUANCE OF THE GUIDANCE.

S 2. Paragraph 1 of subsection (a) of section 308 of the insurance law, as amended by chapter 499 of the laws of 2009, is amended to read as follows:

(1) The superintendent may also address to any health maintenance organization, life settlement provider, life settlement intermediary or its officers, or any authorized insurer or rate service organization, or officers thereof, any inquiry in relation to its transactions or condition or any matter connected therewith. (A) PRIOR TO IMPOSING ANY SUCH INQUIRY, THE SUPERINTENDENT SHALL CONSIDER AND DETERMINE WHETHER OR NOT THE INQUIRY WILL CAUSE UNDUE DELETERIOUS ECONOMIC EFFECT OR HAVE ON OVERLY BURDENSOME IMPACT UPON THE REGULATED PERSON INTENDED FOR RECEIPT OF THE INQUIRY. IN MAKING THAT DETERMINATION, THE SUPERINTENDENT SHOULD SET FORTH IN A WRITTEN STATEMENT THE PURPOSE OF, NECESSITY FOR AND EXPECTED BENEFITS TO BE DERIVED FROM THE INQUIRY. SUCH STATEMENT SHALL ALSO DETAIL THE PROJECTED COSTS OF RESPONDING TO THE INQUIRY WHICH SHALL INCLUDE:

(I) THE COSTS FOR PREPARING A RESPONSE TO THE INQUIRY BY THE REGULATED PERSON INTENDED FOR THE RECEIPT OF THE INQUIRY, INCLUDING BUT NOT LIMITED TO HUMAN RESOURCE, TECHNOLOGY OR ADMINISTRATIVE COSTS;

(II) THE INFORMATION, INCLUDING THE SOURCE OR SOURCES OF SUCH INFORMATION, AND METHODOLOGY UPON WHICH THE COST ANALYSIS IS BASED; OR

(III) WHERE THE SUPERINTENDENT FINDS THAT IT CANNOT FULLY PROVIDE A STATEMENT OF SUCH COSTS, A STATEMENT SETTING FORTH ITS BEST ESTIMATE, WHICH SHALL INDICATE THE INFORMATION AND METHODOLOGY UPON WHICH SUCH BEST ESTIMATE IS BASED AND THE REASON OR REASONS WHY A COMPLETE COST STATEMENT CANNOT BE PROVIDED. THE WRITTEN STATEMENT SHALL BE MADE AVAILABLE TO THE REGULATED PERSON INTENDED FOR RECEIPT OF THE INQUIRY PRIOR TO THE IMPOSITION OF THE INQUIRY.

(B) Every corporation or person so addressed shall reply in writing to such inquiry [promptly and] truthfully AND WITHIN A REASONABLE PERIOD OF TIME, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as the superintendent shall designate, and affirmed by them as true under the penalties of perjury.

S 3. Section 311 of the insurance law is amended to read as follows:

S 311. Filing of report on examination. (a) Except as hereinafter provided the superintendent may withhold from public inspection for such time as he deems proper any report on examination made pursuant to section three hundred ten of this article.

(b) (1) AN EXAMINATION SHALL BE CONSIDERED CLOSED WHEN THE REPORT ON EXAMINATION IS ADOPTED BY THE SUPERINTENDENT. Before adopting any such report and filing it for public inspection, the superintendent shall notify the insurer or other person examined of its contents [and], WHETHER ANY FINE WILL BE IMPOSED OR ANY REGULATORY ACTION WILL BE TAKEN AS A RESULT OF THE EXAMINATION AND THE AMOUNT OF ANY FINE TO BE IMPOSED OR NATURE OF ANY REGULATORY ACTION TO BE TAKEN. THE SUPERINTENDENT shall ALSO afford such insurer or other person a reasonable opportunity to obtain further details and to demand a hearing with reference to facts, conclusions or recommendations [therein] contained IN THE REPORT, OR ANY FINE TO BE IMPOSED OR REGULATORY ACTION TO TAKEN AS A RESULT OF THE EXAMINATION.

(2) If a hearing is requested within ten days after [the giving] RECEIPT of [such] THE notice REQUIRED PURSUANT TO PARAGRAPH ONE OF THIS SUBSECTION, the superintendent shall give notice and a hearing in accordance with the provisions of this article. Such hearing shall be held before the superintendent or a deputy superintendent.

(c) The report on examination, with modifications thereof, if any, shall be [accepted] ADOPTED by the superintendent and filed for public inspection within six months after WRITTEN ACCEPTANCE OF THE REPORT BY THE INSURER OR OTHER PERSON EXAMINED, OR THE final hearing thereon [and if he]. IF THE SUPERINTENDENT deems it in the public interest to do so, he OR SHE may publish any such report or any excerpt therefrom or summary thereof, in one or more newspapers in the state.

(d) In any action or proceeding in the name of the people against the insurer or other person examined, or any officer or agent thereof, such report, if adopted by the superintendent and filed for public inspection, shall be admissible in evidence and shall be presumptive evidence of the facts stated therein.

(e) NO FINE MAY BE IMPOSED ON OR REGULATORY ACTION TAKEN AGAINST AN INSURER AS A RESULT OF AN EXAMINATION UNLESS THE AMOUNT OF THE FINE OR THE NATURE OF THE REGULATORY ACTION WAS DISCLOSED IN THE NOTICE REQUIRED IN PARAGRAPH ONE OF SUBSECTION (B) OF THIS SECTION.

(F) Nothing herein contained shall preclude the superintendent from instituting any proceeding under article seventy-four of this chapter at any time or from using as proof in such proceeding any report on examination or part thereof, whether or not such report has been adopted and filed.

(G) THE SUPERINTENDENT SHALL NOT BEGIN AN EXAMINATION OF AN INSURER UNLESS AND UNTIL ALL PREVIOUS EXAMINATIONS OF THE INSURER HAVE BEEN CLOSED.

S 4. This act shall take effect immediately.