

STATE OF NEW YORK

912

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, STIRPE, HEVESI, ENGLEBRIGHT, FAHY, SEAWRIGHT, BENEDETTO, MAGNARELLI, WEPRIN, THIELE, RODRIGUEZ, PAULIN, BRAUNSTEIN, CUSICK, OTIS, COLTON, QUART, GALEF, JEAN-PIERRE, PEOPLES-STOKES, HUNTER, STECK, PERRY, ABINANTI, D. ROSENTHAL, LAVINE, L. ROSENTHAL, DICKENS -- Multi-Sponsored by -- M. of A. COOK, EPSTEIN, GLICK, LUPARDO, PICHARDO, SIMON, SOLAGES -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the state finance law, in relation to creating the health insurance guaranty fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subsection (e) of section 7402 of the insurance law is
2 amended to read as follows:

3 (e) Is found, after examination, to be in such condition that its
4 further transaction of business will be hazardous to its policyholders,
5 creditors, or the public. This shall include a health insurer, as
6 defined in article eighty-one of this chapter, that is consistently
7 unable to meet the requirements of section three thousand two hundred
8 twenty-four-a of this chapter.

9 § 2. Section 7403 of the insurance law is amended by adding a new
10 subsection (e) to read as follows:

11 (e)(1) Upon a determination by the superintendent and the rehabilita-
12 tor that funds from the New York health insurance consumer protection
13 security fund are necessary to meet the requirements of article eighty-
14 one of this chapter, the superintendent shall make available such funds
15 as are necessary, pursuant to the requirements of such article.

16 (2) The superintendent shall advance such funds as may be necessary
17 pursuant to subsection (d) of section eight thousand one hundred four of
18 this chapter. The rehabilitator and the superintendent shall establish a

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

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1 plan, if possible, for repayment of the advance, at a rate of interest
2 determined by the superintendent.

3 (3) Advances, pursuant to paragraph two of this subsection, shall, in
4 all respects except to rate of interest, be subject to the provisions of
5 section one thousand three hundred seven of this chapter, provided that
6 in the event that an insurer which has received an advance pursuant to
7 this subsection is subsequently the subject of an order of liquidation,
8 the claim of the fund for the advance and any accrued interest shall
9 have priority above claims of all nonsecured creditors, provided the
10 requirements of article eighty-one of this chapter have been met, and
11 shall be paid immediately to the fund or as soon as assets are available
12 therefor.

13 § 3. Paragraph 1 of subsection (f) of section 7405 of the insurance
14 law, as amended by chapter 33 of the laws of 2005, is amended to read as
15 follows:

16 (1) No later than one hundred eighty days after a final order of
17 liquidation with an adjudication of insolvency of an insurer by a court
18 of competent jurisdiction of this state, the liquidator may in his sole
19 discretion make application to the court for approval of a proposal to
20 disburse assets out of marshalled assets, from time to time as such
21 assets become available, to any fund established by article seventy-six
22 of this chapter, article six-A of the workers' compensation law ~~[and]~~,
23 any foreign entity performing a similar function, and any fund estab-
24 lished pursuant to article eighty-one of this chapter, provided that the
25 requirements of subsection (a) of section eight thousand one hundred
26 three of this chapter have been met, having obligations because of such
27 insolvency. If the liquidator determines that there are insufficient
28 assets to disburse, the application authorized by this subsection shall
29 be considered satisfied by a filing by the liquidator stating the
30 reasons for this determination.

31 § 4. The insurance law is amended by adding a new article 81 to read
32 as follows:

33 ARTICLE 81

34 HEALTH INSURANCE GUARANTY FUND

35 Section 8101. Purpose.

36 8102. Definitions.

37 8103. New York health insurance consumer protection security 38 fund.

39 8104. Powers of the superintendent.

40 § 8101. Purpose. The purpose of this article is to protect covered
41 individuals against the failure or inability of a health insurer to
42 perform its contractual obligations due to financial impairment or
43 insolvency. To provide this protection, the legislature hereby creates a
44 New York health insurance consumer protection security fund to serve as
45 a guaranty fund mechanism capable of insuring that the financial obli-
46 gations of health insurers to their enrollees and health care providers
47 are satisfied.

48 § 8102. Definitions. As used in this article:

49 (a) "Fund" means the New York health insurance consumer protection
50 security fund created by this article.

51 (b) "Health insurer" means any organization or entity providing
52 reimbursement for a covered expense under any individual, group or blan-
53 ket policy or contract covering the kinds of insurance described in item
54 (i) of paragraph three of subsection (a) of section one thousand one
55 hundred thirteen of this chapter and licensed under article thirty-two
56 or forty-two of this chapter, which is not a member of, or participant

1 in, or a subsidiary of a member of or participant in, the funds created
2 pursuant to articles seventy-five, seventy-six, and seventy-seven of
3 this chapter; a corporation organized under article forty-three of this
4 chapter; or an organization certified under article forty-four of the
5 public health law.

6 (c) "Contractual obligation" means any payment or reimbursement owed
7 by a health insurer for a covered benefit under a policy, contract, or
8 comprehensive health benefits plan.

9 (d) "Impaired health insurer" means a health insurer for whom the
10 superintendent has initiated a proceeding under the provisions of arti-
11 cle seventy-four of this chapter.

12 (e) "Commissioner" means the commissioner of taxation and finance.

13 § 8103. New York health insurance consumer protection security fund.

14 (a) Consistent with the provisions of subdivision one of section nine-
15 ty-eight-d of the state finance law, there is hereby established a New
16 York health insurance consumer protection security fund. Such fund shall
17 be used in the payment of unpaid contractual obligations, in whole or in
18 part, by an impaired health insurer, after application of any funds
19 available from a proceeding implemented pursuant to article seventy-four
20 of this chapter.

21 (b)(1) Payment into the fund by health insurers shall be made through
22 an assessment based on the premiums received by a health insurer for
23 business in this state for the most recent calendar year for which
24 premium information is available, excluding premiums received for indi-
25 viduals under title XIX of the social security act. The superintendent
26 shall establish assessment levels sufficient to fully pay all unpaid
27 claims of an impaired health insurer, pursuant to subsections (b), (c)
28 and (d) of section eight thousand one hundred four of this article, and
29 to repay any transfers made pursuant to subdivision five of section
30 seventy-two of the state finance law.

31 (2) The superintendent may exempt, abate or defer, in whole or in
32 part, the assessment of a health insurer if the superintendent deter-
33 mines that payment of the assessment would endanger the ability of the
34 health insurer to fulfill its contractual obligations or place the
35 health insurer in an unsafe or unsound financial condition.

36 (3) In the event an assessment against a health insurer is exempted,
37 abated or deferred, in whole or in part, the amount by which that
38 assessment is exempted, abated or deferred shall be assessed against
39 other health insurers in a manner consistent with this section.

40 (c) Repayment of health insurers when funds become available from a
41 proceeding pursuant to article seventy-four of this chapter shall be
42 proportionate to the contribution from each health insurer.

43 § 8104. Powers of the superintendent. (a) For any impaired health
44 insurer, the superintendent shall direct the commissioner to make
45 payments from the New York health insurance consumer protection security
46 fund to ensure that payments to health care providers, or indemnity
47 payments to covered individuals, are made in full for services provided
48 that would not otherwise be fully reimbursed despite the proceedings
49 implemented pursuant to article seventy-four of this chapter. Services
50 provided either prior to the implementation of a proceeding under arti-
51 cle seventy-four of this chapter or after implementation of such
52 proceeding shall be eligible for reimbursement, in part or in whole,
53 from the fund. Payment in full shall be determined by the terms of the
54 health insurance contract, any contract between a health care provider
55 and the impaired health insurer and any applicable state or federal laws
56 or regulations including but not limited to part H of chapter sixty of

1 the laws of two thousand fourteen and section two thousand nineteen-a of
2 the Public Health Services Act, as amended by the Patient Protection and
3 affordable Care Act.

4 (b) The superintendent shall direct the commissioner to make payments
5 to ensure that payment in full is made to health care providers, or
6 indemnity payments to covered individuals, for services provided before
7 the implementation of proceedings pursuant to article seventy-four of
8 this chapter within thirty days of the implementation of such proceed-
9 ing.

10 (c) The superintendent shall direct the commissioner to ensure that
11 payment in full is made to health care providers, or indemnity payments
12 to covered individuals, for services provided after the implementation
13 of proceedings pursuant to article seventy-four of this chapter within
14 thirty days of receipt of a claim.

15 (d) If necessary, the superintendent shall direct the commissioner to
16 advance monies from the fund to comply with the provisions of
17 subsections (b) and (c) of this section.

18 (e) The superintendent shall notify the director of the budget of the
19 need for monies to be transferred pursuant to subdivision five of
20 section seventy-two of the state finance law to meet the requirements of
21 subsections (b), (c) and (d) of this section.

22 (f) The superintendent shall direct the commissioner to use the monies
23 of the fund to repay any transfers made pursuant to subdivision five of
24 section seventy-two of the state finance law, when such funds are paid
25 pursuant to subsection (b) of section eight thousand one hundred three
26 of this article.

27 (g) The superintendent shall ensure that the cost of assessments
28 established pursuant to subdivision (b) of section eight thousand one
29 hundred three of this article are not included in premiums by any health
30 insurer.

31 § 5. Section 72 of the state finance law is amended by adding a new
32 subdivision 5 to read as follows:

33 5. Notwithstanding any provision of law to the contrary, upon notifi-
34 cation from the superintendent of financial services of the need for
35 monies to meet the requirements of subsections (b), (c) and (d) of
36 section eight thousand one hundred four of the insurance law, the direc-
37 tor of the budget shall transfer such funds as are necessary.

38 § 6. The state finance law is amended by adding a new section 98-d to
39 read as follows:

40 § 98-d. New York health insurance consumer protection security fund.

41 1. There is hereby established in the custody of the commissioner of the
42 department of taxation and finance an account of the miscellaneous
43 special revenue fund to be known as the New York health insurance
44 consumer protection security fund account.

45 2. Notwithstanding any other law, rule or regulation to the contrary,
46 the commissioner of taxation and finance is hereby authorized and
47 directed to receive for deposit to the credit of the New York health
48 insurance consumer protection security fund account, assessments imposed
49 pursuant to article eighty-one of the insurance law and transfers from
50 the general fund pursuant to subdivision five of section seventy-two of
51 this article.

52 3. The commissioner of taxation and finance shall make payments from
53 the monies on deposit in the New York health insurance consumer
54 protection security fund account in the amounts and at the times deter-
55 mined by the superintendent of insurance.

1 § 7. This act shall take effect immediately and shall be applicable to
2 any health insurer determined by the superintendent of financial
3 services, on or after such effective date, to be insolvent within the
4 meaning of section 1309 of the insurance law.