

10605

I N A S S E M B L Y

April 8, 2010

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to review of health plan rate increases applications and to repeal certain provisions of such law relating thereto

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

1 Section 1. Paragraph 2 of subsection (e) of section 3231 of the insurance law, as added by chapter 501 of the laws of 1992 and subparagraph 2 (B) as amended by chapter 237 of the laws of 2009, is amended to read as 3 follows: 4

5 (2) (A) Beginning October first, nineteen hundred ninety-four, as an 6 alternate procedure to the requirements of paragraph one of this 7 subsection, an insurer desiring to increase or decrease premiums for any 8 policy form subject to this section may instead submit a rate filing or 9 application to the superintendent and such application or filing shall 10 be deemed approved, provided that (i) the anticipated minimum loss ratio 11 for a policy form shall not be less than [seventy-five] EIGHTY-FIVE 12 percent of the premium FOR A SMALL GROUP HEALTH INSURANCE POLICY FORM 13 AND NINETY PERCENT FOR AN INDIVIDUAL HEALTH INSURANCE POLICY FORM, 14 INCLUDING MEDICARE SUPPLEMENTAL INSURANCE, (II) ANY RATE INCREASE BEING 15 SOUGHT FOR A POLICY FORM IN A FILING OR AN APPLICATION, TOGETHER WITH 16 ANY OTHER RATE INCREASES IMPOSED ON SUCH POLICY FORM, WOULD NOT CAUSE 17 THE AGGREGATE RATE INCREASE FOR SUCH POLICY FORM TO EXCEED FIVE PERCENT 18 DURING ANY TWELVE MONTH PERIOD, and [(ii)] (III) the insurer submits, as 19 part of such filing, a certification by a member of the American Academy 20 of Actuaries or other individual acceptable to the superintendent that 21 the insurer is in compliance with the provisions of this paragraph, 22 based upon that person's examination, including a review of the appropriate 23 records and of the actuarial assumptions and methods used by the 24 insurer in establishing premium rates for policy forms subject to this 25 section.

26 (B) Each calendar year, an insurer shall return, in the form of aggregate 27 benefits for each policy form filed pursuant to the alternate

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

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1 procedure set forth in this paragraph at least [seventy-five]
2 EIGHTY-FIVE percent of the aggregate premiums collected for the policy
3 form during that calendar year FOR A SMALL GROUP HEALTH INSURANCE POLICY
4 FORM AND NINETY PERCENT FOR AN INDIVIDUAL POLICY FORM. Insurers shall
5 annually report, no later than May first of each year, the loss ratio
6 calculated pursuant to this paragraph for each such policy form for the
7 previous calendar year. In each case where the loss ratio for a policy
8 form fails to comply with the [seventy-five] EIGHTY-FIVE percent OR
9 NINETY PERCENT loss ratio requirement, the insurer shall issue a divi-
10 dend or credit against future premiums for all policy holders with [that
11 policy form] THOSE POLICY FORMS in an amount sufficient to assure that
12 the aggregate benefits paid in the previous calendar year plus the
13 amount of the dividends and credits shall equal [seventy-five]
14 EIGHTY-FIVE percent of the aggregate premiums collected for the policy
15 form in the previous calendar year FOR SMALL GROUP HEALTH INSURANCE
16 POLICY FORMS, OR NINETY PERCENT FOR INDIVIDUAL HEALTH INSURANCE POLICY
17 FORMS IN THE PREVIOUS CALENDAR YEAR. The dividend or credit shall be
18 issued to each policy holder who had a policy which was in effect at any
19 time during the applicable year. The dividend or credit shall be
20 prorated based on the direct premiums earned for the applicable year
21 among all policy holders eligible to receive such dividend or credit. An
22 insurer shall make a reasonable effort to identify the current address
23 of, and issue dividends or credits to, former policy holders entitled to
24 the dividend or credit. An insurer shall, with respect to dividends or
25 credits to which former policy holders that the insurer is unable to
26 identify after a reasonable effort would otherwise be entitled, have the
27 option, as deemed acceptable by the superintendent, of prospectively
28 adjusting premium rates by the amount of such dividends or credits,
29 issuing the amount of such dividends or credits to existing policy hold-
30 ers, depositing the amount of such dividends or credits in the fund
31 established pursuant to section four thousand three hundred twenty-two-a
32 of this chapter, or utilizing any other method which offsets the amount
33 of such dividends or credits. All dividends and credits must be
34 distributed by September thirtieth of the year following the calendar
35 year in which the loss ratio requirements were not satisfied. The annual
36 report required by this paragraph shall include an insurer's calculation
37 of the dividends and credits, as well as an explanation of the insurer's
38 plan to issue dividends or credits. The instructions and format for
39 calculating and reporting loss ratios and issuing dividends or credits
40 shall be specified by the superintendent by regulation. Such regulations
41 shall include provisions for the distribution of a dividend or credit in
42 the event of cancellation or termination by a policy holder.

43 S 2. Subsections (g) and (h) of section 4308 of the insurance law, as
44 added by chapter 504 of the laws of 1995 and paragraph 2 of subsection
45 (h) as amended by chapter 237 of the laws of 2009, are amended to read
46 as follows:

47 (g)(1) Beginning January first, nineteen hundred ninety-six, as an
48 alternate procedure to the requirements of subsection (c) of this
49 section, a corporation subject to the provisions of this article desir-
50 ing to increase or decrease premiums for any contract subject to this
51 section may instead submit a rate filing or application to the super-
52 intendent and such application or filing shall be deemed approved,
53 provided that (A) the anticipated incurred loss ratio for a contract
54 form shall not be less than [eighty-five] NINETY percent for individual
55 direct payment contracts or [seventy-five] EIGHTY-FIVE percent for small
56 group and small group remittance contracts, nor, except in the case of

1 individual direct payment contracts with a loss ratio of greater than
2 one hundred five percent during nineteen hundred ninety-four, shall the
3 loss ratio for any direct payment, group or group remittance contract be
4 more than one hundred five percent of the anticipated earned premium,
5 and (B) the corporation submits, as part of such filing, a certification
6 by a member of the American Academy of Actuaries or other individual
7 acceptable to the superintendent that that corporation is in compliance
8 with the provisions of this subsection, based upon that person's exam-
9 ination, including a review of the appropriate records and of the actu-
10 arial assumptions and methods used by the corporation in establishing
11 premium rates for contracts subject to this section. For purposes of
12 this section, a small group is any group whose contract is subject to
13 the requirements of section forty-three hundred seventeen of this arti-
14 cle.

15 (2) [Prior to January first, two thousand, no] NO rate [increase or]
16 decrease may be deemed approved under this subsection if that [increase
17 or] decrease, together with any other rate [increases or] decreases
18 imposed on the same contract form, would cause the aggregate rate
19 [increase or] decrease for that contract form to exceed ten percent
20 during any continuous twelve month period. NO RATE INCREASE MAY BE
21 DEEMED APPROVED UNDER THIS SUBSECTION IF THAT INCREASE, TOGETHER WITH
22 ANY OTHER RATE INCREASES IMPOSED ON THE SAME CONTRACT FORM, WOULD CAUSE
23 THE AGGREGATE RATE INCREASE FOR THAT CONTRACT FORM TO EXCEED FIVE
24 PERCENT DURING ANY CONTINUOUS TWELVE MONTH PERIOD. No rate increase may
25 be imposed unless at least thirty days advance written notice of such
26 increase has been provided to each contract holder and subscriber.

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

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

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

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

44 S 3. Subsection (i) of section 4308 of the insurance law, as added by
45 chapter 504 of the laws of 1995, is amended to read as follows:

46 (i) The alternate procedure described in subsections (g) and (h) of
47 this section shall apply to individual direct payment contracts issued
48 pursuant to sections four thousand three hundred twenty-one and four
49 thousand three hundred twenty-two of this article on and after January
50 first, nineteen hundred ninety-seven AND TO INDIVIDUAL OR GROUP POLICIES
51 OF MEDICARE SUPPLEMENTAL INSURANCE ISSUED BY A CORPORATION OR INSURER
52 ORGANIZED OR LICENSED PURSUANT TO THIS CHAPTER.

53 S 4. Subsection (j) of section 4308 of the insurance law is REPEALED.

54 S 5. This act shall take effect January 1, 2011.