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

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:

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

(e) (1) (A) An insurer desiring to increase or decrease premiums [after April first, nineteen hundred ninety-three] for any policy form subject to this section shall submit a rate filing or application to the superintendent.

AN INSURER SHALL SEND WRITTEN NOTICE OF THE PROPOSED RATE ADJUSTMENT, INCLUDING THE SPECIFIC CHANGE REQUESTED, TO EACH POLICY HOLDER AND CERTIFICATE HOLDER AFFECTED BY THE ADJUSTMENT ON OR BEFORE THE DATE THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. THE NOTICE SHALL PROMINENTLY INCLUDE MAILING AND WEBSITE ADDRESSES FOR BOTH THE INSURANCE DEPARTMENT AND THE INSURER THROUGH WHICH A PERSON MAY, WITHIN THIRTY DAYS FROM THE DATE THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT, CONTACT THE INSURANCE DEPARTMENT OR INSURER TO RECEIVE ADDITIONAL INFORMATION OR TO SUBMIT WRITTEN COMMENTS TO THE INSURANCE DEPARTMENT ON THE RATE FILING OR APPLICATION. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS TO POST ON THE DEPARTMENT'S WEBSITE, IN A TIMELY MANNER, ALL RELEVANT WRITTEN COMMENTS RECEIVED PERTAINING TO RATE FILINGS OR APPLICATIONS. THE INSURER SHALL PROVIDE A COPY OF THE NOTICE TO THE SUPERINTENDENT WITH THE RATE FILING OR APPLICATION. THE SUPERINTENDENT SHALL IMMEDIATELY CAUSE THE NOTICE TO BE 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

determine whether the filing or application shall become effective as filed, shall become effective as modified, or shall be disapproved. THE SUPERINTENDENT MAY MODIFY OR DISAPPROVE THE RATE FILING OR APPLICATION IF THE SUPERINTENDENT FINDS THAT THE PREMIUMS ARE UNREASONABLE, EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY, AND MAY CONSIDER THE FINANCIAL CONDITION OF THE INSURER WHEN APPROVING, MODIFYING OR DISAPPROVING ANY PREMIUM ADJUSTMENT. THE DETERMINATION OF THE SUPERINTENDENT SHALL BE SUPPORTED BY SOUND ACTUARIAL ASSUMPTIONS AND METHODS, AND SHALL BE RENDERED IN WRITING BETWEEN THIRTY AND SIXTY DAYS FROM THE DATE THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. SHOULD THE SUPERINTENDENT REQUIRE ADDITIONAL INFORMATION FROM THE INSURER IN ORDER TO MAKE A DETERMINATION, THE SUPERINTENDENT SHALL REQUIRE THE INSURER TO FURNISH SUCH INFORMATION, AND IN SUCH EVENT, THE SIXTY DAYS SHALL BE TOLLED AND SHALL RESUME AS OF THE DATE THE INSURER FURNISHES THE INFORMATION TO THE SUPERINTENDENT. IF THE SUPERINTENDENT REQUESTS ADDITIONAL INFORMATION LESS THAN TEN DAYS FROM THE EXPIRATION OF THE SIXTY DAYS (EXCLUSIVE OF TOLLING), THE SUPERINTENDENT MAY EXTEND THE SIXTY DAY PERIOD AN ADDITIONAL TWENTY DAYS TO MAKE A DETERMINATION. THE APPLICATION OR RATE FILING WILL BE DEEMED APPROVED IF A DETERMINATION IS NOT RENDERED WITHIN THE TIME ALLOTTED UNDER THIS SECTION. AN INSURER SHALL NOT IMPLEMENT A RATE ADJUSTMENT UNLESS THE INSURER PROVIDES AT LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE PREMIUM RATE ADJUSTMENT APPROVED BY THE SUPERINTENDENT TO EACH POLICY HOLDER AND CERTIFICATE HOLDER AFFECTED BY THE RATE ADJUSTMENT.

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

(2) (A) [Beginning October first, nineteen hundred ninety-four] UNTIL SEPTEMBER THIRTIETH, TWO THOUSAND TEN, as an alternate procedure to the requirements of paragraph one of this subsection, an insurer desiring to increase or decrease premiums for any policy form subject to this section may instead submit a rate filing or application to the superintendent and such application or filing shall be deemed approved, provided that: (i) the anticipated minimum loss ratio for a policy form shall not be less than [seventy-five] EIGHTY-TWO percent of the premium[,]; and (ii) the insurer submits, as part of such filing, a certification by a member of the American Academy of Actuaries or other individual acceptable to the superintendent that the insurer is in compliance with the provisions of this paragraph, based upon that person's examination, including a review of the appropriate records and 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

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

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

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

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

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

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

(3) Following the public hearing held pursuant to paragraph two of this subsection, a transcript of the testimony therein shall be submitted together with a rate filing or application, to the superintendent. Upon receipt of such filing or application by or on behalf of a corporation, the superintendent shall order that a public hearing be held with respect to the terms of such filing or application. Notice of such hearing shall be published on three successive days in at least two newspapers having general circulation within the territory or district wherein such corporation seeking approval of the filing or application is authorized to do business. For a corporation writing more than three billion dollars in premiums as of December thirty-first, nineteen hundred ninety-six and whose service territory is greater than ten counties, such notice is to be published in at least one newspaper having general circulation in each county where persons in the service territory are affected by the proposed change. The date specified for the hearing shall be not less than ten nor more than thirty days from the date of the last publication of the hearing. The notice of hearing shall also state the purpose thereof, the time when and the place where the public hearing will be held. For those corporations writing more than three billion dollars in premiums as of December thirty-first, nineteen hundred ninety-six, and whose territory is greater than ten counties, the notice of hearing shall also state the changes proposed, the contracts to be affected and the time when such changes would take effect. The notice of hearing shall state, in prominent display, a toll-free telephone number of the insurance department that may be contacted to receive additional information on the subject rate application. The public hearing shall be held at a time and location deemed by the superintendent to be most convenient to the greatest number of persons affected by such filing or application. A copy of such notice of hearing shall be forwarded by the superintendent by registered or certified mail to the principal address of the corporation seeking approval of such filing or application. The hearing may be continued or adjourned from day to day within the discretion of the superintendent. At such hearing any person may be heard in favor of, or against, the terms of the filing or application. After conclusion of the public hearing the superintendent shall render a written decision determining whether the filing or application shall become effective as filed, shall become effective as modified, or shall be disapproved. If, subsequent to the hearing, but prior to the issuing of the superintendent's written decision on a rate increase request, the corporation increases its requested rate for any contract by two percent or more, a re-hearing shall be held. The time, location, and notice requirements for such re-hearing shall be determined by the superintendent.

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

ADJUSTMENT ON OR BEFORE THE DATE THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. THE NOTICE SHALL PROMINENTLY INCLUDE MAILING AND WEBSITE ADDRESSES FOR BOTH THE INSURANCE DEPARTMENT AND THE CORPORATION THROUGH WHICH A PERSON MAY, WITHIN THIRTY DAYS FROM THE DATE THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT, CONTACT THE INSURANCE DEPARTMENT OR CORPORATION TO RECEIVE ADDITIONAL INFORMATION OR TO SUBMIT WRITTEN COMMENTS TO THE INSURANCE DEPARTMENT ON THE RATE FILING OR APPLICATION. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS TO POST ON THE DEPARTMENT'S WEBSITE, IN A TIMELY MANNER, ALL RELEVANT WRITTEN COMMENTS RECEIVED PERTAINING TO RATE FILINGS OR APPLICATIONS. THE CORPORATION SHALL PROVIDE A COPY OF THE NOTICE TO THE SUPERINTENDENT WITH THE RATE FILING OR APPLICATION. THE SUPERINTENDENT SHALL IMMEDIATELY CAUSE THE NOTICE TO BE POSTED ON THE INSURANCE DEPARTMENT'S WEBSITE. THE SUPERINTENDENT SHALL DETERMINE WHETHER THE FILING OR APPLICATION SHALL BECOME EFFECTIVE AS FILED, SHALL BECOME EFFECTIVE AS MODIFIED, OR SHALL BE DISAPPROVED. THE SUPERINTENDENT MAY MODIFY OR DISAPPROVE THE RATE FILING OR APPLICATION IF THE SUPERINTENDENT FINDS THAT THE PREMIUMS ARE UNREASONABLE, EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY, AND MAY CONSIDER THE FINANCIAL CONDITION OF THE CORPORATION IN APPROVING, MODIFYING OR DISAPPROVING ANY PREMIUM ADJUSTMENT. THE DETERMINATION OF THE SUPERINTENDENT SHALL BE SUPPORTED BY SOUND ACTUARIAL ASSUMPTIONS AND METHODS, AND SHALL BE RENDERED IN WRITING BETWEEN THIRTY AND SIXTY DAYS FROM THE DATE THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. SHOULD THE SUPERINTENDENT REQUIRE ADDITIONAL INFORMATION FROM THE CORPORATION IN ORDER TO MAKE A DETERMINATION, THE SUPERINTENDENT SHALL REQUIRE THE CORPORATION TO FURNISH SUCH INFORMATION, AND IN SUCH EVENT, THE SIXTY DAYS SHALL BE TOLLED AND SHALL RESUME AS OF THE DATE THE CORPORATION FURNISHES THE INFORMATION TO THE SUPERINTENDENT. IF THE SUPERINTENDENT REQUESTS ADDITIONAL INFORMATION LESS THAN TEN DAYS FROM THE EXPIRATION OF THE SIXTY DAYS (EXCLUSIVE OF TOLLING), THE SUPERINTENDENT MAY EXTEND THE SIXTY DAY PERIOD AN ADDITIONAL TWENTY DAYS, TO MAKE A DETERMINATION. THE APPLICATION OR RATE FILING WILL BE DEEMED APPROVED IF A DETERMINATION IS NOT RENDERED WITHIN THE TIME ALLOTTED UNDER THIS SECTION. A CORPORATION SHALL NOT IMPLEMENT A RATE ADJUSTMENT UNLESS THE CORPORATION PROVIDES AT LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE PREMIUM RATE ADJUSTMENT APPROVED BY THE SUPERINTENDENT TO EACH CONTRACT HOLDER AND SUBSCRIBER AFFECTED BY THE RATE ADJUSTMENT.

(3)(A) THE EXPECTED MINIMUM LOSS RATIO FOR A CONTRACT FORM SUBJECT TO THIS SUBSECTION FOR WHICH A RATE FILING OR APPLICATION IS MADE PURSUANT TO THIS PARAGRAPH, OTHER THAN A MEDICARE SUPPLEMENTAL INSURANCE CONTRACT, OR, WITH THE APPROVAL OF THE SUPERINTENDENT, AN AGGREGATION OF CONTRACT FORMS THAT ARE COMBINED INTO ONE COMMUNITY RATING EXPERIENCE POOL AND RATED CONSISTENT WITH COMMUNITY RATING REQUIREMENTS, SHALL NOT BE LESS THAN EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICATION, THE SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED MINIMUM LOSS RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE MODIFICATION TO BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF THE SUPERINTENDENT DETERMINES THAT A MODIFICATION IS NECESSARY TO MAINTAIN INSURER SOLVENCY. NO LATER THAN JUNE THIRTIETH OF EACH YEAR, EVERY CORPORATION SUBJECT TO THIS SUBPARAGRAPH SHALL ANNUALLY REPORT THE ACTUAL LOSS RATIO FOR THE PREVIOUS CALENDAR YEAR IN A FORMAT ACCEPTABLE TO THE SUPERINTENDENT. IF AN EXPECTED LOSS RATIO IS NOT MET, THE SUPERINTENDENT MAY DIRECT THE CORPORATION TO TAKE CORRECTIVE ACTION, WHICH MAY INCLUDE THE SUBMISSION OF A RATE FILING TO REDUCE FUTURE PREMIUMS,

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

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

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

(d) The superintendent shall order an independent management and financial audit of corporations subject to the provisions of this article with a combined premium volume exceeding two billion dollars annually in order to develop a detailed understanding of such corporation's financial status and to determine the viability of such corporation's products. Such audit shall be performed by an organization upon submission of a program plan in response to a request for proposal approved by the superintendent in consultation with the commissioner of health and the state comptroller. Such audit shall not be performed by any organization that has in any way performed or furnished services of any kind to the corporation within the past five years, unless it is adequately demonstrated that such services would not compromise that organization's performance and objectivity. The audit shall be completed and a report submitted by May first, nineteen hundred ninety-three to the superintendent, the commissioner of health, and the chairs of the senate and assembly committees on health and insurance. The scope of the audit shall include, but not be limited to, financial and competitive position, corporate structure and governance, organization and management, strategic direction, rate adequacy, and the regulatory and competitive environment in the state of New York. Specifically, the audit shall include, but not be limited to:

(i) determining the corporation's financial and market position, including its reserves, trends in membership, market share, and profitability by market segment;

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

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

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

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

(v) evaluating the adequacy of rates for existing products, particularly (but not limited to) small group, medicare supplemental, and direct payment to identify areas that may need immediate remedial attention;

(vi) identifying any changes to the regulatory and legislative environment that may need to be made to ensure that the corporation can continue to be financially viable and competitive;

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

(viii) evaluating and identifying possible improvements in the corporation's managed care strategies, operations and claims handling.

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

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

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

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

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

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

(2) In each case where the loss ratio for a contract form fails to comply with the [eighty-five] EIGHTY-TWO percent minimum loss ratio requirement for individual direct payment contracts, or the [seventy-five] EIGHTY-TWO percent minimum loss ratio requirement for small group and small group remittance contracts, as set forth in paragraph one of this subsection, the corporation shall issue a dividend or credit against future premiums for all contract holders with that contract form in an amount sufficient to assure that the aggregate benefits incurred in the previous calendar year plus the amount of the dividends and credits shall equal no less than [eighty-five] EIGHTY-TWO percent for individual direct payment contracts, or [seventy-five] EIGHTY-TWO percent for small group and small group remittance contracts, of the aggregate premiums earned for the contract form in the previous calendar year. The dividend or credit shall be issued to each contract holder or subscriber who had a contract that 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 contract holders or subscribers eligible to receive such dividend or credit. A corporation shall make a reasonable effort to identify the current address of, and issue dividends or credits to, former contract holders or subscribers entitled to the dividend or credit. A corporation shall, with respect to dividends or credits to which former contract holders that the corporation 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 contract 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 article, 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 paragraph one of this subsection shall include a corporation's calculation of the dividends and credits, as well as an explanation of the corporation'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 contract holder or subscriber.

(3) In each case where the loss ratio for a contract form fails to comply with the one hundred five percent maximum loss ratio requirement of paragraph one of this subsection, the corporation shall institute a premium rate increase in an amount sufficient to assure that the aggregate benefits incurred in the previous calendar year shall equal no more than one hundred five percent of the sum of the aggregate premiums earned for the contract form in the previous calendar year and the aggregate premium rate increase. The rate increase shall be applied to each contract that was in effect as of December thirty-first of the applicable year and remains in effect as of the date the rate increase is imposed. All rate increases must be imposed by September thirtieth of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by paragraph one of this subsection shall include a corporation's calculation of the premium rate increase, as well as an explanation of the corporation's plan to implement the rate increase. The instructions and format for calculating and reporting loss ratios and implementing rate increases shall be specified by the superintendent by regulation.

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

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

RATED CONTRACTS, OTHER THAN MEDICARE SUPPLEMENTAL INSURANCE CONTRACTS, ISSUED OR IN EFFECT DURING CALENDAR YEAR TWO THOUSAND TEN SHALL BE SUBJECT TO A MINIMUM LOSS RATIO REQUIREMENT OF EIGHTY-TWO PERCENT. CORPORATIONS MAY USE THE ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (G) OF THIS SECTION 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 3. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 4. This act shall take effect immediately.