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

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I N A S S E M B L Y

November 24, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Carrozza) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to medical malpractice insurance premium discounts for physicians and hospitals for utilization of certain electronic health record technology; 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:

Section 1. Section 1325 of the insurance law is REPEALED and a new section 1325 is added to read as follows:

S 1325. EXEMPTION. FOR THE PURPOSES OF EXEMPTING CERTAIN INSURANCE COMPANIES FROM THE PROVISIONS OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS ARTICLE, THE SUPERINTENDENT SHALL EXEMPT THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN THOSE STOCK AND NON-STOCK INSURANCE COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (B) OF SUCH SECTION APPLIES.

S 2. The insurance law is amended by adding a new section 1326 to read as follows:

S 1326. STATUTORY ASSOCIATION MEMBERSHIP; OBLIGATIONS. FOR THOSE STOCK AND NON-STOCK COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS ARTICLE APPLIES, NO LIABILITIES ARISING FROM AN ASSOCIATION AUTHORIZED PURSUANT TO SUBPARAGRAPH (D) OF PARAGRAPH TWO OF SUBSECTION (C) OF SECTION FIVE THOUSAND FIVE HUNDRED TWO OF THIS CHAPTER SHALL BE DUE AND OWING FROM SUCH COMPANIES UNLESS AND UNTIL SUCH LIABILITIES CAN ONLY BE SATISFIED, AFTER CONSIDERATION OF ALL RESOURCES OF THE ASSOCIATION, INCLUDING BUT NOT LIMITED TO CURRENT PREMIUM INCOME, BY A CONTRIBUTION FROM SUCH COMPANIES AND THE COMPANIES ARE NOTIFIED OF SAME BY SUCH ASSOCIATION OR THE SUPERINTENDENT NOT LESS THAN THREE HUNDRED SIXTY-FIVE DAYS PRIOR TO THE DATE UPON WHICH SUCH OBLIGATION SHALL BE DUE AND OWING, AND SHALL ONLY RELATE TO LIABILITIES THAT ARE ACTUALLY DUE AND OWING BY THE ASSOCIATION IN THAT YEAR IN WHICH CONTRIBUTION IS TO BE MADE. SUCH LIABILITIES SHALL NOT BE AGGREGATED FOR ANY OTHER YEAR EXCEPT THAT IN WHICH CONTRIBUTION IS DUE AND OWING OR PREVIOUS YEARS IN WHICH

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

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OBLIGATIONS FOR CONTRIBUTIONS HAVE NOT BEEN SATISFIED; FURTHER, SUCH LIABILITIES SHALL NOT INCLUDE ANY CONTINGENT LIABILITIES OF THE ASSOCIATION. COMPANIES, UPON NOTICE OF SUCH OBLIGATION SHALL HAVE THE RIGHT TO DEMAND AN AUDIT OF THE ASSOCIATION AND ITS REQUEST FOR COVERAGE OF SUCH LIABILITIES BY SUCH CONTRIBUTIONS; PROVIDED, HOWEVER, THAT COMPANIES SHALL MAINTAIN AT ALL TIMES A RESERVE OF NOT LESS THAN TEN PERCENT OF ALL SUCH AGGREGATE LIABILITIES OF THE ASSOCIATION, AS SUCH AGGREGATE LIABILITIES ARE REPORTED BY THE ASSOCIATION CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

S 3. Subsection (c) of section 2343 of the insurance law, as amended by section 27 of part B of chapter 58 of the laws of 2008, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to [June thirtieth] DECEMBER THIRTY-FIRST, two thousand [eleven] FIFTEEN.

S 4. Section 2343 of the insurance law is amended by adding a new subsection (f) to read as follows:

(F)(1) THE SUPERINTENDENT SHALL, BY REGULATION, PROVIDE FOR A REDUCTION IN THE RATES OF MEDICAL MALPRACTICE INSURANCE PREMIUMS APPLICABLE TO PHYSICIANS, HOSPITALS AND NURSING FACILITIES THAT MEANINGFULLY USE CERTIFIED ELECTRONIC HEALTH RECORD TECHNOLOGY PURSUANT TO THE PROVISIONS OF THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUB. L. 111-5. IN PRESCRIBING SUCH REGULATION, THE SUPERINTENDENT MAY CONSULT WITH THE COMMISSIONER OF HEALTH. THE REDUCTION DETERMINED BY THE SUPERINTENDENT SHALL BE PROPORTIONATELY RELATED TO THE ACTUARIALLY CALCULABLE DECREASE IN LOSSES AS A RESULT OF THE MEANINGFUL USE OF THE CERTIFIED ELECTRONIC HEALTH RECORD TECHNOLOGY.

(2) THE SUPERINTENDENT IS AUTHORIZED TO CONDUCT A PILOT PROGRAM TO EVALUATE THE POTENTIAL DECREASE IN LOSSES EXPERIENCED AS A RESULT OF THE MEANINGFUL USE OF SUCH CERTIFIED ELECTRONIC HEALTH RECORD TECHNOLOGY TO DETERMINE THE EXTENT OF ITS BENEFIT AS A RISK MITIGATION ACTIVITY. IN THE DETERMINATION OF THE REDUCTION PROVIDED FOR IN THIS SUBSECTION, THE SUPERINTENDENT SHALL CONSULT WITH THE COMMISSIONER OF HEALTH AND MEDICAL MALPRACTICE INSURERS AUTHORIZED TO DO BUSINESS IN THIS STATE.

S 5. This act shall take effect immediately, provided, however, that section four of this act shall take effect on the one hundred twentieth day after it shall have become a law.