

4688

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. MORELLE, LANCMAN, CYMBROWITZ, PERRY, KOON, ALESSI, GALEF, STIRPE, SCHIMEL, CHRISTENSEN, MAISEL, DelMONTE, EDDINGTON, GREENE, CUSICK, SEMINERIO, LUPARDO, GABRYSZAK, TITONE, PHEFFER -- Multi-Sponsored by -- M. of A. BENJAMIN, BING, MAGNARELLI, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to premium rates for health insurance; to amend the insurance law and the public health law, in relation to coverage of services of participating providers; and to amend the insurance law, in relation to the fair and equitable settlement of claims for health care and payments for health services

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

1 Section 1. This act shall be known and may be cited as the "health  
2 insurance premium integrity act".  
3 S 2. Subsection (e) of section 3231 of the insurance law, as added by  
4 chapter 501 of the laws of 1992, is amended to read as follows:  
5 (e) (1) DEFINITIONS. FOR PURPOSES OF THIS SUBSECTION: (A) "POLICY  
6 FORM" SHALL MEAN A POLICY OR POLICIES AND ASSOCIATED RIDERS WHOSE EXPE-  
7 RIENCE HAS BEEN POOLED IN ORDER TO DETERMINE RATES FOR EACH POLICY AND  
8 EACH RIDER;  
9 (B) "LOSS RATIO" SHALL MEAN THE RATIO OF DIRECT CLAIMS INCURRED FOR  
10 THE REPORTING CALENDAR YEAR TO DIRECT PREMIUMS EARNED FOR THE SAME  
11 REPORTING CALENDAR YEAR, EXPRESSED AS A PERCENTAGE;  
12 (C) "DIRECT CLAIMS INCURRED" SHALL MEAN CLAIMS PAID DURING THE REPORT-  
13 ING CALENDAR YEAR PLUS THE UNPAID CLAIMS RESERVE AT THE END OF THE  
14 REPORTING CALENDAR YEAR AND CALCULATED CONSISTENT WITH SUBPARAGRAPH (C)  
15 OF PARAGRAPH THREE OF THIS SUBSECTION;  
16 (D) "DIRECT PREMIUMS EARNED" SHALL MEAN PREMIUMS WRITTEN DURING THE  
17 REPORTING CALENDAR YEAR PLUS THE UNEARNED PREMIUMS AT THE BEGINNING OF  
18 THE YEAR LESS THE UNEARNED PREMIUMS AT THE END OF THE YEAR, EXCLUSIVE OF  
19 REINSURANCE ASSUMED OR CEDED; AND

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

LBD07620-01-9

1 (E) "SMALL GROUP" SHALL MEAN A GROUP POLICY THAT IS SUBJECT TO THE  
2 REQUIREMENTS OF THIS SECTION.

3 (2) An insurer desiring to increase or decrease premiums after April  
4 first, nineteen hundred ninety-three for any policy form subject to this  
5 section shall submit a rate filing or application to the superintendent.  
6 The superintendent shall determine whether the filing or application  
7 shall become effective as filed, shall become effective as modified, or  
8 shall be disapproved.

9 [(2)] (3) (A) Beginning October first, nineteen hundred ninety-four,  
10 as an alternate procedure to the requirements of paragraph [one] TWO of  
11 this subsection, an insurer desiring to increase or decrease premiums  
12 for any policy form subject to this section may instead submit a rate  
13 filing or application to the superintendent and such application or  
14 filing shall be deemed approved, provided that (i) the anticipated mini-  
15 mum loss ratio [for a policy form] shall not be less than seventy-five  
16 percent of the premium FOR AN INDIVIDUAL HEALTH INSURANCE POLICY AND NOT  
17 LESS THAN EIGHTY PERCENT OF THE PREMIUM FOR A SMALL GROUP HEALTH INSUR-  
18 ANCE POLICY, and (ii) the insurer submits, as part of such filing, a  
19 certification by a member of the American Academy of Actuaries or other  
20 individual acceptable to the superintendent that the insurer is in  
21 compliance with the provisions of this paragraph, based upon that  
22 person's examination, including a review of the appropriate records and  
23 of the actuarial assumptions and methods used by the insurer in estab-  
24 lishing premium rates for policy forms subject to this section. SUCH  
25 CERTIFICATION SHALL AFFIRM THAT THE RATE FILING OR APPLICATION SUBMITTED  
26 TO THE SUPERINTENDENT PURSUANT TO THIS SUBSECTION WAS PREPARED IN  
27 ACCORDANCE WITH GENERALLY ACCEPTED ACTUARIAL PRINCIPLES AND THIS  
28 SECTION. THE INSURER SHALL, AT THE REQUEST OF THE SUPERINTENDENT,  
29 PROVIDE ADDITIONAL UNDERLYING ACTUARIAL DOCUMENTATION TO SUPPORT THE  
30 RATE FILING OR APPLICATION. PROVIDED, HOWEVER, THE REQUEST FOR SUCH  
31 INFORMATION SHALL NOT PRECLUDE THE NEW PREMIUM RATE FROM GOING INTO  
32 EFFECT.

33 (B) Each calendar year, an insurer shall return, in the form of aggre-  
34 gate benefits for each policy form filed pursuant to the alternate  
35 procedure set forth in this paragraph at least seventy-five percent of  
36 the aggregate premiums collected for the INDIVIDUAL HEALTH INSURANCE  
37 policy form during that calendar year, OR EIGHTY PERCENT OF THE AGGRE-  
38 GATE PREMIUMS COLLECTED FOR A SMALL GROUP HEALTH INSURANCE POLICY FORM  
39 DURING THAT CALENDAR YEAR. IF AN INSURER HAS POOLED THE EXPERIENCE OF  
40 POLICIES AND/OR RIDERS TO DETERMINE THE PREMIUM RATES, IN ACCORDANCE  
41 WITH APPLICABLE LAW, THE INSURER SHALL CALCULATE THE LOSS RATIOS IN  
42 ACCORDANCE WITH THE MANNER IN WHICH IT ESTABLISHED THE PREMIUM RATES.  
43 Insurers shall annually report, no later than [May] AUGUST first of each  
44 year, the loss ratio calculated pursuant to this paragraph for each such  
45 policy form for the previous calendar year. In each case where the loss  
46 ratio for a policy form fails to comply with the seventy-five percent  
47 loss ratio requirement FOR AN INDIVIDUAL HEALTH INSURANCE POLICY, OR THE  
48 EIGHTY PERCENT MINIMUM LOSS RATIO REQUIREMENT FOR A SMALL GROUP HEALTH  
49 INSURANCE POLICY, AS SET FORTH IN THIS PARAGRAPH, the insurer shall  
50 issue a dividend or credit against future premiums for all policy hold-  
51 ers with that policy form in an amount sufficient to assure that the  
52 aggregate benefits paid in the previous calendar year plus the amount of  
53 the dividends and credits shall equal seventy-five percent of the aggre-  
54 gate premiums collected for [the] AN INDIVIDUAL HEALTH INSURANCE policy  
55 form AND EIGHTY PERCENT OF THE AGGREGATE PREMIUM COLLECTED FOR A SMALL  
56 GROUP HEALTH INSURANCE POLICY FORM in the previous calendar year. The

1 dividend or credit shall be issued to each policy which was in effect as  
2 of December thirty-first of the applicable year [and remains in effect  
3 as of the date the dividend or credit is issued]. All dividends and  
4 credits must be distributed by September thirtieth of the year following  
5 the calendar year in which the loss ratio requirements were not satis-  
6 fied. AN INSURER SHALL MAKE A REASONABLE EFFORT TO IDENTIFY THE CURRENT  
7 ADDRESS OF THOSE POLICY HOLDERS WHO ARE NO LONGER POLICY HOLDERS WHEN  
8 THE DIVIDEND OR CREDIT IS ISSUED. The annual report required by this  
9 paragraph shall include an insurer's calculation of the dividends and  
10 credits, as well as an explanation of the insurer's plan to issue divi-  
11 dends or credits. The instructions and format for calculating and  
12 reporting loss ratios and issuing dividends or credits shall be speci-  
13 fied by the superintendent by regulation. Such regulations shall  
14 include provisions for the distribution of a dividend or credit in the  
15 event of cancellation or termination by a policy holder.

16 (C) DIRECT CLAIMS INCURRED FOR USE IN TESTING LOSS RATIO COMPLIANCE  
17 UNDER THIS PARAGRAPH SHALL BE CALCULATED AS FOLLOWS: (I) THE CLAIMS PAID  
18 DURING THE REPORTING CALENDAR YEAR; PLUS (II) CAPITATION PAYMENTS PAID  
19 FOR SERVICES TO BE RENDERED DURING THE REPORTING CALENDAR YEAR; PLUS  
20 (III) THE UNPAID CLAIM RESERVE AT THE END OF THE REPORTING CALENDAR YEAR  
21 WHICH SHALL BE CALCULATED AS THE SUM OF CLAIMS PAID FROM JANUARY FIRST  
22 THROUGH JUNE FIRST OF THE YEAR FOLLOWING THE REPORTING CALENDAR YEAR ON  
23 CLAIMS INCURRED IN THE REPORTING CALENDAR YEAR OR PRIOR YEARS, PLUS THE  
24 UNPAID CLAIMS RESERVE AS OF JUNE FIRST OF THE YEAR FOLLOWING THE REPORT-  
25 ING CALENDAR YEAR ON CLAIMS INCURRED IN THE REPORTING CALENDAR YEAR OR  
26 PRIOR YEARS DETERMINED FROM CLAIMS PAYMENTS THROUGH JUNE FIRST OF THE  
27 YEAR FOLLOWING THE REPORTING CALENDAR YEAR; MINUS (IV) THE UNPAID CLAIM  
28 RESERVE AT THE BEGINNING OF THE REPORTING CALENDAR YEAR WHICH SHALL BE  
29 CALCULATED AS THE SUM OF THE CLAIMS PAID FROM JANUARY FIRST THROUGH JUNE  
30 FIRST OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED PRIOR TO THE  
31 REPORTING CALENDAR YEAR, PLUS THE UNPAID CLAIMS RESERVE AS OF JUNE FIRST  
32 OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED PRIOR TO THE REPORTING  
33 CALENDAR YEAR DETERMINED FROM CLAIM PAYMENTS THROUGH JUNE FIRST OF THE  
34 REPORTING YEAR; PLUS OR MINUS (V) THE EFFECTS FOR THE REPORTING YEAR OF  
35 THE MARKET STABILIZATION POOLS; MINUS (VI) THE EFFECTS FOR THE REPORTING  
36 YEAR OF THE STOP-LOSS POOLS. NOTHING IN THIS SECTION SHALL BE CONSTRUED  
37 TO PROHIBIT THE SUPERINTENDENT FROM REVIEWING CLAIMS DATA BEYOND JUNE  
38 FIRST.

39 (D) (I) ANY INSURER THAT VIOLATES THE PROVISIONS OF THIS SECTION  
40 INCLUDING, BUT NOT LIMITED TO, ANY FAILURE TO PROVIDE A DIVIDEND OR  
41 CREDIT TO SUBSCRIBERS AS REQUIRED BY SUBPARAGRAPH (B) OF THIS PARAGRAPH,  
42 SHALL BE SUBJECT TO THE MAXIMUM PENALTIES PROVIDED IN THIS CHAPTER.

43 (II) IN ADDITION TO THE PENALTIES OTHERWISE IMPOSED PURSUANT TO THIS  
44 CHAPTER, WHERE AN INSURER ELECTING TO ADJUST PREMIUMS PURSUANT TO THE  
45 ALTERNATE PROCEDURE SET FORTH IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, IS  
46 DETERMINED BY THE SUPERINTENDENT TO HAVE, IN A MANNER IN VIOLATION OF  
47 THE PROVISIONS OF THIS SECTION, MATERIALLY MISREPRESENTED THE LOSS  
48 RATIOS REQUIRED BY SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH IN TWO  
49 CONSECUTIVE FILINGS, AND IF, AT ANY TIME DURING A THREE YEAR PERIOD IN  
50 WHICH SUCH MATERIAL VIOLATIONS OCCURRED, THE INSURER FAILED TO PROVIDE A  
51 DIVIDEND OR CREDIT AS REQUIRED BY SUBPARAGRAPH (B) OF THIS PARAGRAPH,  
52 SUCH INSURER SHALL BE PRESUMED TO BE SUBSTANTIALLY NONCOMPLIANT WITH THE  
53 REQUIREMENTS OF THIS PARAGRAPH AND THE SUPERINTENDENT SHALL, AFTER A  
54 NOTICE AND A HEARING, HAVE THE AUTHORITY TO PROHIBIT SAID INSURER FROM  
55 ADJUSTING PREMIUMS PURSUANT TO THE ALTERNATE PROCEDURE FOR THE AFFECTED  
56 POLICY FORMS FOR A PERIOD OF UP TO THREE YEARS, COMMENCING WITH THE

1 SUPERINTENDENT'S NOTICE OF SUCH DETERMINATION. THIS PROHIBITION SHALL BE  
2 IN ADDITION TO ANY OTHER PENALTIES THAT THE SUPERINTENDENT MAY IMPOSE  
3 PURSUANT TO THIS CHAPTER.

4 (E) THE ALTERNATE PROCEDURE SET FORTH IN THIS PARAGRAPH SHALL NOT BE  
5 AVAILABLE TO ADJUST NEWLY-APPROVED PREMIUM RATES OR RATES RECENTLY  
6 ADJUSTED THROUGH THE PRIOR APPROVAL PROCESS UNTIL THE EARLIER OF (I) THE  
7 DEVELOPMENT OF SUFFICIENT ACTUAL CLAIMS EXPERIENCE TO JUSTIFY THE  
8 REQUESTED ADJUSTMENT, AS CERTIFIED BY A MEMBER OF THE AMERICAN ACADEMY  
9 OF ACTUARIES OR OTHER INDIVIDUAL ACCEPTABLE TO THE SUPERINTENDENT, OR  
10 (II) TWELVE MONTHS FROM THE PRIOR APPROVAL. PROVIDED HOWEVER, NOTHING IN  
11 THIS SUBPARAGRAPH SHALL BE CONSTRUED TO PROHIBIT AN INSURER FROM UTILIZ-  
12 ING THE ALTERNATE PROCEDURE TO ADJUST RATES ON A POLICY WHERE THE RATES  
13 FOR A RIDER TO THAT POLICY HAVE NOT BEEN IN EFFECT FOR TWELVE MONTHS.

14 S 3. Subsections (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j)  
15 of section 4308 of the insurance law are relettered subsections (b),  
16 (c), (d), (e), (f), (g), (h), (i), (j) and (k) and a new subsection (a)  
17 is added to read as follows:

18 (A) DEFINITIONS. FOR PURPOSES OF THIS SECTION:

19 (1) "CONTRACT FORM" SHALL MEAN A CONTRACT OR CONTRACTS AND ASSOCIATED  
20 RIDERS WHOSE EXPERIENCE HAS BEEN POOLED IN ORDER TO DETERMINE RATES FOR  
21 EACH CONTRACT AND EACH RIDER;

22 (2) "LOSS RATIO" SHALL MEAN THE RATIO OF DIRECT CLAIMS INCURRED FOR  
23 THE REPORTING CALENDAR YEAR TO DIRECT PREMIUMS EARNED FOR THE SAME  
24 REPORTING CALENDAR YEAR, EXPRESSED AS A PERCENTAGE;

25 (3) "DIRECT CLAIMS INCURRED" SHALL MEAN CLAIMS PAID DURING THE REPORT-  
26 ING CALENDAR YEAR PLUS THE UNPAID CLAIMS RESERVE AT THE END OF THE  
27 REPORTING CALENDAR YEAR AND CALCULATED CONSISTENT WITH PARAGRAPH FOUR OF  
28 SUBSECTION (I) OF THIS SECTION;

29 (4) "DIRECT PREMIUMS EARNED" SHALL MEAN PREMIUMS WRITTEN DURING THE  
30 REPORTING CALENDAR YEAR PLUS THE UNEARNED PREMIUMS AT THE BEGINNING OF  
31 THE YEAR LESS THE UNEARNED PREMIUMS AT THE END OF THE YEAR, EXCLUSIVE OF  
32 REINSURANCE ASSUMED OR CEDED; AND

33 (5) "SMALL GROUP" SHALL MEAN A GROUP CONTRACT THAT IS SUBJECT TO THE  
34 REQUIREMENTS OF SECTION FOUR THOUSAND THREE HUNDRED SEVENTEEN OF THIS  
35 ARTICLE.

36 S 4. Paragraph 1 of subsection (h) of section 4308 of the insurance  
37 law, as added by chapter 504 of the laws of 1995 and such subsection as  
38 relettered by section three of this act, is amended to read as follows:

39 (1) Beginning January first, nineteen hundred ninety-six, as an alter-  
40 nate procedure to the requirements of subsection [(c)] (D) of this  
41 section, a corporation subject to the provisions of this article desir-  
42 ing to increase or decrease premiums for any contract subject to this  
43 section may instead submit a rate filing or application to the super-  
44 intendent and such application or filing shall be deemed approved,  
45 provided that (A) the anticipated incurred loss ratio for a contract  
46 form shall not be less than eighty-five percent for individual direct  
47 payment contracts or [seventy-five] EIGHTY percent for small group and  
48 small group remittance contracts, nor, except in the case of individual  
49 direct payment contracts with a loss ratio of greater than one hundred  
50 five percent during nineteen hundred ninety-four, shall the loss ratio  
51 for any direct payment, group or group remittance contract be more than  
52 one hundred five percent of the anticipated earned premium, and (B) the  
53 corporation submits, as part of such filing, a certification by a member  
54 of the American Academy of Actuaries or other individual acceptable to  
55 the superintendent that [that] THE corporation is in compliance with the  
56 provisions of this subsection, based upon that person's examination,

1 including a review of the appropriate records and of the actuarial  
2 assumptions and methods used by the corporation in establishing premium  
3 rates for contracts subject to this section. [For purposes of this  
4 section, a small group is any group whose contract is subject to the  
5 requirements of section forty-three hundred seventeen of this article.]  
6 SUCH CERTIFICATION SHALL AFFIRM THAT THE RATE FILING OR APPLICATION  
7 SUBMITTED TO THE SUPERINTENDENT PURSUANT TO THIS SUBSECTION WAS PREPARED  
8 IN ACCORDANCE WITH GENERALLY ACCEPTED ACTUARIAL PRINCIPLES AND THIS  
9 SECTION. THE INSURER SHALL, AT THE REQUEST OF THE SUPERINTENDENT,  
10 PROVIDE ADDITIONAL UNDERLYING ACTUARIAL DOCUMENTATION TO SUPPORT THE  
11 RATE FILING OR APPLICATION PROVIDED, HOWEVER, THE REQUEST FOR SUCH  
12 INFORMATION SHALL NOT PRECLUDE THE PREMIUM RATE FROM GOING INTO EFFECT.

13 S 5. Subsection (i) of section 4308 of the insurance law, as added by  
14 chapter 504 of the laws of 1995 and as relettered by section three of  
15 this act, is amended to read as follows:

16 (i) (1) Each calendar year, a corporation subject to the provisions of  
17 this article shall return, in the form of aggregate benefits incurred  
18 for each contract form filed pursuant to the alternate procedure set  
19 forth in subsection [(g)] (H) of this section, at least eighty-five  
20 percent for individual direct payment contracts or [seventy-five] EIGHTY  
21 percent for small group and small group remittance contracts, but,  
22 except in the case of individual direct payment contracts with a loss  
23 ratio of greater than one hundred five percent in nineteen hundred nine-  
24 ty-four, for any direct payment, group or group remittance contract, not  
25 in excess of one hundred five percent of the aggregate premiums earned  
26 for the contract form during that calendar year. IF A CORPORATION HAS  
27 POOLED THE EXPERIENCE OF CONTRACTS AND/OR RIDERS TO DETERMINE THE PREMI-  
28 UM RATES IN ACCORDANCE WITH APPLICABLE LAW, THE CORPORATION SHALL CALCU-  
29 LATE THE LOSS RATIOS IN ACCORDANCE WITH THE MANNER IN WHICH IT ESTAB-  
30 LISHED THE PREMIUM RATES. Corporations subject to the provisions of this  
31 article shall annually report, no later than [May] AUGUST first of each  
32 year, the loss ratio calculated pursuant to this subsection for each  
33 such contract form for the previous calendar year.

34 (2) In each case where the loss ratio for a contract form fails to  
35 comply with the eighty-five percent minimum loss ratio requirement for  
36 individual direct payment contracts, or the [seventy-five] EIGHTY  
37 percent minimum loss ratio requirement for small group and small group  
38 remittance contracts, as set forth in paragraph one of this subsection,  
39 the corporation shall issue a dividend or credit against future premiums  
40 for all contract holders with that contract form in an amount sufficient  
41 to assure that the aggregate benefits incurred in the previous calendar  
42 year plus the amount of the dividends and credits shall equal no less  
43 than eighty-five percent for individual direct payment contracts, or  
44 [seventy-five] EIGHTY percent for small group and small group remittance  
45 contracts, of the aggregate premiums earned for the contract form in the  
46 previous calendar year. The dividend or credit shall be issued to each  
47 contract that was in effect as of December thirty-first of the applica-  
48 ble year [and remains in effect as of the date the dividend or credit is  
49 issued]. All dividends and credits must be distributed by September  
50 thirtieth of the year following the calendar year in which the loss  
51 ratio requirements were not satisfied. A CORPORATION SHALL MAKE A  
52 REASONABLE EFFORT TO IDENTIFY THE CURRENT ADDRESS OF THOSE CONTRACT  
53 HOLDERS WHO ARE NO LONGER CONTRACT HOLDERS WHEN THE DIVIDEND OR CREDIT  
54 IS ISSUED. The annual report required by paragraph one of this  
55 subsection shall include a corporation's calculation of the dividends  
56 and credits, as well as an explanation of the corporation's plan to

1 issue dividends or credits. The instructions and format for calculating  
2 and reporting loss ratios and issuing dividends or credits shall be  
3 specified by the superintendent by regulation. Such regulations shall  
4 include provisions for the distribution of a dividend or credit in the  
5 event of cancellation or termination by a contract holder or subscriber.

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

24 (4) DIRECT CLAIMS INCURRED FOR USE IN TESTING LOSS RATIO COMPLIANCE  
25 UNDER THIS SUBSECTION SHALL BE CALCULATED AS FOLLOWS: (I) THE CLAIMS  
26 PAID DURING THE REPORTING CALENDAR YEAR; PLUS (II) CAPITATION PAYMENTS  
27 PAID FOR SERVICES TO BE RENDERED DURING THE REPORTING CALENDAR YEAR;  
28 PLUS (III) THE UNPAID CLAIM RESERVE AT THE END OF THE REPORTING CALENDAR  
29 YEAR WHICH SHALL BE CALCULATED AS THE SUM OF CLAIMS PAID FROM JANUARY  
30 FIRST THROUGH JUNE FIRST OF THE YEAR FOLLOWING THE REPORTING CALENDAR  
31 YEAR ON CLAIMS INCURRED IN THE REPORTING CALENDAR YEAR OR PRIOR YEARS,  
32 PLUS THE UNPAID CLAIMS RESERVE AS OF JUNE FIRST OF THE YEAR FOLLOWING  
33 THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED IN THE REPORTING CALENDAR  
34 YEAR OR PRIOR YEARS DETERMINED FROM CLAIMS PAYMENTS THROUGH JUNE FIRST  
35 OF THE YEAR FOLLOWING THE REPORTING CALENDAR YEAR; MINUS (IV) THE UNPAID  
36 CLAIM RESERVE AT THE BEGINNING OF THE REPORTING CALENDAR YEAR WHICH  
37 SHALL BE CALCULATED AS THE SUM OF THE CLAIMS PAID FROM JANUARY FIRST  
38 THROUGH JUNE FIRST OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED  
39 PRIOR TO THE REPORTING CALENDAR YEAR, PLUS THE UNPAID CLAIMS RESERVE AS  
40 OF JUNE FIRST OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED PRIOR TO  
41 THE REPORTING CALENDAR YEAR DETERMINED FROM CLAIM PAYMENTS THROUGH JUNE  
42 FIRST OF THE REPORTING YEAR; PLUS OR MINUS (V) THE EFFECTS FOR THE  
43 REPORTING YEAR OF THE MARKET STABILIZATION POOLS; MINUS (VI) THE EFFECTS  
44 FOR THE REPORTING YEAR OF THE STOP-LOSS POOLS. NOTHING IN THIS SECTION  
45 SHALL BE CONSTRUED TO PROHIBIT THE SUPERINTENDENT FROM REVIEWING CLAIMS  
46 DATA BEYOND JUNE FIRST.

47 S 6. Section 4308 of the insurance law is amended by adding two new  
48 subsections (l) and (m) to read as follows:

49 (1) (I) ANY INSURER THAT VIOLATES THE PROVISIONS OF THIS SECTION  
50 INCLUDING, BUT NOT LIMITED TO, ANY FAILURE TO PROVIDE A DIVIDEND OR  
51 CREDIT TO SUBSCRIBERS AS REQUIRED BY SUBSECTION (I) OF THIS SECTION,  
52 SHALL BE SUBJECT TO THE MAXIMUM PENALTIES PROVIDED IN THIS CHAPTER.

53 (II) IN ADDITION TO THE PENALTIES OTHERWISE IMPOSED PURSUANT TO THIS  
54 CHAPTER, WHERE AN INSURER ELECTING TO ADJUST PREMIUMS PURSUANT TO THE  
55 ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (H) OF THIS SECTION, IS  
56 DETERMINED BY THE SUPERINTENDENT TO HAVE, IN A MANNER IN VIOLATION OF

1 THE PROVISIONS OF THIS SECTION, MATERIALLY MISREPRESENTED THE LOSS  
2 RATIOS REQUIRED BY SUBSECTIONS (H) AND (I) OF THIS SECTION IN TWO  
3 CONSECUTIVE FILINGS, AND IF, AT ANY TIME DURING A THREE YEAR PERIOD IN  
4 WHICH SUCH MATERIAL VIOLATIONS OCCURRED, THE INSURER FAILED TO PROVIDE A  
5 DIVIDEND OR CREDIT AS REQUIRED BY SUBSECTION (I) OF THIS SECTION, SUCH  
6 INSURER SHALL BE PRESUMED TO BE SUBSTANTIALLY NONCOMPLIANT WITH THE  
7 REQUIREMENTS OF THIS PARAGRAPH AND THE SUPERINTENDENT SHALL, AFTER A  
8 NOTICE AND A HEARING, HAVE THE AUTHORITY TO PROHIBIT SAID INSURER FROM  
9 ADJUSTING PREMIUMS PURSUANT TO THE ALTERNATE PROCEDURE FOR THE AFFECTED  
10 POLICY FORMS FOR A PERIOD OF UP TO THREE YEARS, COMMENCING WITH THE  
11 SUPERINTENDENT'S NOTICE OF SUCH DETERMINATION. THIS PROHIBITION SHALL BE  
12 IN ADDITION TO ANY OTHER PENALTIES THAT THE SUPERINTENDENT MAY IMPOSE  
13 PURSUANT TO THIS CHAPTER.

14 (M) THE ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (H) OF THIS  
15 SECTION SHALL NOT BE AVAILABLE TO ADJUST NEWLY-APPROVED PREMIUM RATES OR  
16 RATES RECENTLY ADJUSTED THROUGH THE PRIOR APPROVAL PROCESS UNTIL THE  
17 EARLIER OF (I) THE DEVELOPMENT OF SUFFICIENT ACTUAL CLAIMS EXPERIENCE TO  
18 JUSTIFY THE REQUESTED ADJUSTMENT, AS CERTIFIED BY A MEMBER OF THE AMERI-  
19 CAN ACADEMY OF ACTUARIES OR OTHER INDIVIDUAL ACCEPTABLE TO THE SUPER-  
20 INTENDENT, OR (II) TWELVE MONTHS FROM THE PRIOR APPROVAL. PROVIDED  
21 HOWEVER, NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PROHIBIT AN  
22 INSURER FROM UTILIZING THE ALTERNATE PROCEDURE TO ADJUST RATES ON A  
23 POLICY WHERE THE RATES FOR A RIDER TO THAT POLICY HAVE NOT BEEN IN  
24 EFFECT FOR TWELVE MONTHS.

25 S 7. Subsection (g) of section 4308 of the insurance law, as added by  
26 chapter 501 of the laws of 1992 and as relettered by section three of  
27 this act, is amended to read as follows:

28 (g) The results of any audit conducted pursuant to subsections [(d)]  
29 (E) and [(e)] (F) of this section shall be provided to the corporation  
30 and each member of its board of directors. The superintendent shall  
31 have the authority to direct the corporation in writing to implement any  
32 recommendations resulting from the audit that the superintendent finds  
33 to be necessary and reasonable; provided, however, that the superinten-  
34 dent shall first consider any written response submitted by the corpo-  
35 ration or the board of directors prior to making such finding. Upon any  
36 application for a rate adjustment by the corporation, the superintendent  
37 shall review the corporation's compliance with the directions and recom-  
38 mendations made previously by the superintendent, as a result of the  
39 most recently completed management or financial audit and shall include  
40 such findings in any written decision concerning such application.

41 S 8. Paragraph 1 of subsection (i) and subsections (j) and (k) of  
42 section 4308 of the insurance law, as added by chapter 504 of the laws  
43 of 1995 and such subsections as relettered by section three of this act,  
44 are amended to read as follows:

45 (1) Each calendar year, a corporation subject to the provisions of  
46 this article shall return, in the form of aggregate benefits incurred  
47 for each contract form filed pursuant to the alternate procedure set  
48 forth in subsection [(g)] (H) of this section, at least eighty-five  
49 percent for individual direct payment contracts or [seventy-five] EIGHTY  
50 percent for small group and small group remittance contracts, but,  
51 except in the case of individual direct payment contracts with a loss  
52 ratio of greater than one hundred five percent in nineteen hundred nine-  
53 ty-four, for any direct payment, group or group remittance contract, not  
54 in excess of one hundred five percent of the aggregate premiums earned  
55 for the contract form during that calendar year. IF A CORPORATION HAS  
56 POOLED THE EXPERIENCE OF CONTRACTS AND/OR RIDERS TO DETERMINE THE PREMI-

1 UM RATES IN ACCORDANCE WITH APPLICABLE LAW, THE CORPORATION SHALL CALCU-  
2 LATE THE LOSS RATIOS IN ACCORDANCE WITH THE MANNER IN WHICH IT ESTAB-  
3 LISHED THE PREMIUM RATES. Corporations subject to the provisions of this  
4 article shall annually report, no later than [May] AUGUST first of each  
5 year, the loss ratio calculated pursuant to this subsection for each  
6 such contract form for the previous calendar year.

7 (j) The alternate procedure described in subsections [(g) and] (h) AND  
8 (I) of this section shall apply to individual direct payment contracts  
9 issued pursuant to sections four thousand three hundred twenty-one and  
10 four thousand three hundred twenty-two of this article on and after  
11 January first, nineteen hundred ninety-seven.

12 (k) The eighty-five percent minimum loss ratio for individual direct  
13 payment contracts described in subsections [(g) and] (h) AND (I) of this  
14 section shall be reduced to eighty-two and one-half percent as of Janu-  
15 ary first, nineteen hundred ninety-seven and shall be further reduced to  
16 eighty percent as of January first, nineteen hundred ninety-eight and  
17 thereafter. The refund or credit requirements for failure to meet mini-  
18 mum loss ratios will continue, but at these reduced percentages.

19 S 9. Subsection (i) of section 3216 of the insurance law is amended by  
20 adding a new paragraph 26 to read as follows:

21 (26)(A) NO MANAGED CARE HEALTH INSURANCE POLICY THAT PROVIDES COVERAGE  
22 FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE THAT SERVICES OF A  
23 PARTICIPATING HOSPITAL WILL BE COVERED AS OUT-OF-NETWORK SERVICES SOLELY  
24 ON THE BASIS THAT THE ADMITTING PHYSICIAN OR TREATING PHYSICIAN IS NOT A  
25 PARTICIPATING PROVIDER.

26 (B) NO MANAGED CARE HEALTH INSURANCE POLICY THAT PROVIDES COVERAGE FOR  
27 HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE THAT SERVICES OF A  
28 PARTICIPATING PHYSICIAN WILL BE COVERED AS OUT-OF-NETWORK SERVICES SOLE-  
29 LY ON THE BASIS THAT THE SERVICES ARE RENDERED IN A NON-PARTICIPATING  
30 HOSPITAL.

31 (C) FOR PURPOSES OF THIS PARAGRAPH, A "MANAGED CARE HEALTH INSURANCE  
32 POLICY" IS A POLICY THAT REQUIRES THAT SERVICES BE PROVIDED BY A PROVID-  
33 ER PARTICIPATING IN THE INSURER'S NETWORK IN ORDER FOR THE INSURED TO  
34 RECEIVE THE MAXIMUM LEVEL OF REIMBURSEMENT UNDER THE POLICY.

35 S 10. Subsection (k) of section 3221 of the insurance law is amended  
36 by adding a new paragraph 15 to read as follows:

37 (15)(A) NO GROUP OR BLANKET MANAGED CARE HEALTH INSURANCE POLICY THAT  
38 PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE  
39 THAT SERVICES OF A PARTICIPATING HOSPITAL WILL BE COVERED AS OUT-OF-NET-  
40 WORK SERVICES SOLELY ON THE BASIS THAT THE ADMITTING PHYSICIAN OR TREAT-  
41 ING PHYSICIAN IS NOT A PARTICIPATING PROVIDER.

42 (B) NO GROUP OR BLANKET MANAGED CARE HEALTH INSURANCE POLICY THAT  
43 PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE  
44 THAT SERVICES OF A PARTICIPATING PHYSICIAN WILL BE COVERED AS  
45 OUT-OF-NETWORK SERVICES SOLELY ON THE BASIS THAT THE SERVICES ARE  
46 RENDERED IN A NON-PARTICIPATING HOSPITAL.

47 (C) FOR PURPOSES OF THIS PARAGRAPH, A "MANAGED CARE HEALTH INSURANCE  
48 POLICY" IS A POLICY THAT REQUIRES THAT SERVICES BE PROVIDED BY A PROVID-  
49 ER PARTICIPATING IN THE INSURER'S NETWORK IN ORDER FOR THE INSURED TO  
50 RECEIVE THE MAXIMUM LEVEL OF REIMBURSEMENT UNDER THE POLICY.

51 S 11. Section 4303 of the insurance law is amended by adding a new  
52 subsection (ff) to read as follows:

53 (FF) (1) NO MANAGED CARE CONTRACT ISSUED BY A HEALTH SERVICE CORPO-  
54 RATION, HOSPITAL SERVICE CORPORATION OR MEDICAL EXPENSE INDEMNITY CORPO-  
55 RATION THAT PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE  
56 SHALL PROVIDE THAT SERVICES OF A PARTICIPATING HOSPITAL WILL BE COVERED

1 AS OUT-OF-NETWORK SERVICES SOLELY ON THE BASIS THAT THE ADMITTING PHYSI-  
2 CIAN OR TREATING PHYSICIAN IS NOT A PARTICIPATING PROVIDER.

3 (2) NO MANAGED CARE CONTRACT ISSUED BY A HEALTH SERVICE CORPORATION,  
4 HOSPITAL SERVICE CORPORATION OR MEDICAL EXPENSE INDEMNITY CORPORATION  
5 THAT PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL  
6 PROVIDE THAT SERVICES OF A PARTICIPATING PHYSICIAN WILL BE COVERED AS  
7 OUT-OF-NETWORK SERVICES SOLELY ON THE BASIS THAT THE SERVICES ARE  
8 RENDERED IN A NON-PARTICIPATING HOSPITAL.

9 (3) FOR PURPOSES OF THIS SUBSECTION, A "MANAGED CARE CONTRACT" IS A  
10 CONTRACT THAT REQUIRES THAT SERVICES BE PROVIDED BY A PROVIDER PARTIC-  
11 IPATING IN THE CORPORATION'S NETWORK IN ORDER FOR THE SUBSCRIBER TO  
12 RECEIVE THE MAXIMUM LEVEL OF REIMBURSEMENT UNDER THE CONTRACT.

13 S 12. Subdivisions 3 and 4 of section 4406 of the public health law,  
14 subdivision 3 as renumbered by chapter 538 of the laws of 1993, are  
15 renumbered subdivisions 4 and 5 and a new subdivision 3 is added to read  
16 as follows:

17 3. (A) NO CONTRACT ISSUED PURSUANT TO THIS SECTION SHALL PROVIDE THAT  
18 SERVICES OF A PARTICIPATING HOSPITAL WILL BE COVERED AS OUT-OF-NETWORK  
19 SERVICES SOLELY ON THE BASIS THAT THE ADMITTING PHYSICIAN OR TREATING  
20 PHYSICIAN IS NOT A PARTICIPATING PROVIDER.

21 (B) NO CONTRACT ISSUED PURSUANT TO THIS SECTION SHALL PROVIDE THAT  
22 SERVICES OF A PARTICIPATING PHYSICIAN WILL BE COVERED AS OUT-OF-NETWORK  
23 SERVICES SOLELY ON THE BASIS THAT THE SERVICES ARE RENDERED IN A  
24 NON-PARTICIPATING HOSPITAL.

25 S 13. Subsection (a) of section 3224-a of the insurance law, as  
26 amended by chapter 666 of the laws of 1997, is amended to read as  
27 follows:

28 (a) Except in a case where the obligation of an insurer or an organ-  
29 ization or corporation licensed or certified pursuant to article forty-  
30 three of this chapter or article forty-four of the public health law to  
31 pay a claim submitted by a policyholder or person covered under such  
32 policy or make a payment to a health care provider is not reasonably  
33 clear, or when there is a reasonable basis supported by specific infor-  
34 mation available for review by the superintendent that such claim or  
35 bill for health care services rendered was submitted fraudulently, such  
36 insurer or organization or corporation shall pay the claim to a policy-  
37 holder or covered person or make a payment to a health care provider  
38 WITHIN TWENTY-ONE DAYS OF RECEIPT OF A CLAIM OR BILL FOR SERVICES  
39 RENDERED THAT IS SUBMITTED BY ELECTRONIC MEANS AND within forty-five  
40 days of receipt of a claim or bill for services rendered THAT IS SUBMIT-  
41 TED OTHER THAN BY ELECTRONIC MEANS, SUCH AS BY PAPER OR FACSIMILE.

42 S 14. The opening paragraph of subsection (b) of section 3224-a of the  
43 insurance law, as amended by chapter 666 of the laws of 1997, is amended  
44 to read as follows:

45 In a case where the obligation of an insurer or an organization or  
46 corporation licensed or certified pursuant to article forty-three of  
47 this chapter or article forty-four of the public health law to pay a  
48 claim or make a payment for health care services rendered is not reason-  
49 ably clear due to a good faith dispute regarding the eligibility of a  
50 person for coverage, the liability of another insurer or corporation or  
51 organization for all or part of the claim, the amount of the claim, the  
52 benefits covered under a contract or agreement, or the manner in which  
53 services were accessed or provided, an insurer or organization or corpo-  
54 ration shall pay any undisputed portion of the claim in accordance with  
55 this subsection and notify the policyholder, covered person or health  
56 care provider in writing WITHIN FOURTEEN CALENDAR DAYS OF RECEIPT OF A

1 CLAIM SUBMITTED BY ELECTRONIC MEANS AND within thirty calendar days of  
2 receipt of [the] A claim THAT IS SUBMITTED BY OTHER THAN ELECTRONIC  
3 MEANS, SUCH AS BY PAPER OR FACSIMILE:

4 S 15. This act shall take effect immediately; provided, however, that:  
5 (a) sections one through eight of this act shall take effect January  
6 1, 2010 and shall apply to premium rate changes effective on and after  
7 that date and to loss ratio reports required to be filed beginning in  
8 2011;

9 (b) sections nine through twelve of this act shall take effect January  
10 1, 2010 and shall apply to policies and contracts issued, renewed, modi-  
11 fied, altered and amended on and after such effective date, provided,  
12 further, that any policies and contracts to which sections nine through  
13 twelve of this act apply and that were approved by the superintendent of  
14 insurance shall be deemed to comply with all applicable laws and regu-  
15 lations until January 1, 2010; and

16 (c) sections thirteen and fourteen of this act shall take effect Janu-  
17 ary 1, 2010 and shall apply to claims transmitted and received on and  
18 after such date.