

3062

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sens. SEWARD, VOLKER -- read twice and ordered printed,
and when printed to be committed 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

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

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

LBD07620-01-9

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

7 [(2)] (3) (A) Beginning October first, nineteen hundred ninety-four,
8 as an alternate procedure to the requirements of paragraph [one] TWO of
9 this subsection, an insurer desiring to increase or decrease premiums
10 for any policy form subject to this section may instead submit a rate
11 filing or application to the superintendent and such application or
12 filing shall be deemed approved, provided that (i) the anticipated mini-
13 mum loss ratio [for a policy form] shall not be less than seventy-five
14 percent of the premium FOR AN INDIVIDUAL HEALTH INSURANCE POLICY AND NOT
15 LESS THAN EIGHTY PERCENT OF THE PREMIUM FOR A SMALL GROUP HEALTH INSUR-
16 ANCE POLICY, and (ii) the insurer submits, as part of such filing, a
17 certification by a member of the American Academy of Actuaries or other
18 individual acceptable to the superintendent that the insurer is in
19 compliance with the provisions of this paragraph, based upon that
20 person's examination, including a review of the appropriate records and
21 of the actuarial assumptions and methods used by the insurer in estab-
22 lishing premium rates for policy forms subject to this section. SUCH
23 CERTIFICATION SHALL AFFIRM THAT THE RATE FILING OR APPLICATION SUBMITTED
24 TO THE SUPERINTENDENT PURSUANT TO THIS SUBSECTION WAS PREPARED IN
25 ACCORDANCE WITH GENERALLY ACCEPTED ACTUARIAL PRINCIPLES AND THIS
26 SECTION. THE INSURER SHALL, AT THE REQUEST OF THE SUPERINTENDENT,
27 PROVIDE ADDITIONAL UNDERLYING ACTUARIAL DOCUMENTATION TO SUPPORT THE
28 RATE FILING OR APPLICATION. PROVIDED, HOWEVER, THE REQUEST FOR SUCH
29 INFORMATION SHALL NOT PRECLUDE THE NEW PREMIUM RATE FROM GOING INTO
30 EFFECT.

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

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

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

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

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

1 IN ADDITION TO ANY OTHER PENALTIES THAT THE SUPERINTENDENT MAY IMPOSE
2 PURSUANT TO THIS CHAPTER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (FF) (1) NO MANAGED CARE CONTRACT ISSUED BY A HEALTH SERVICE CORPO-
53 RATION, HOSPITAL SERVICE CORPORATION OR MEDICAL EXPENSE INDEMNITY CORPO-
54 RATION THAT PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE
55 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.