

4412

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- 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 standards for claims-  
made coverage purchased by psychiatrists

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

1 Section 1. Subsections (a) and (b) of section 3436 of the insurance  
2 law, subsection (a) and the opening paragraph of subsection (b) as  
3 amended by chapter 381 of the laws of 1991 and subsection (b) as added  
4 by chapter 266 of the laws of 1986, are amended to read as follows:

5 (a) Every insurer which issues or renews policies for primary levels  
6 of medical malpractice insurance covering physicians licensed to prac-  
7 tice in this state shall issue such policies on a claims-made or occur-  
8 rence basis, as prescribed by the superintendent by regulation SUBJECT  
9 TO THE LIMITATIONS SPECIFIED IN THIS SUBSECTION AND SUBSECTION (B) OF  
10 THIS SECTION; provided, further, that nothing in this section shall  
11 preclude any insurer from applying otherwise applicable underwriting  
12 standards in determining whether to issue or renew such policies.

13 (b) A claims-made policy shall contain the following provisions:

14 (1) if the insured has purchased a claims-made policy from an admitted  
15 insurer for a period of five or more consecutive years and the insured,  
16 after attaining the age of sixty-five or older, retires permanently and  
17 totally from the practice of medicine or if the insured has purchased  
18 such a policy for a period of ten or more consecutive years, and the  
19 insured, after attaining the age of fifty-five or older, retires perma-  
20 nently and totally from the practice of medicine, the insurer shall,  
21 without charging an additional premium therefor at the time of, or  
22 subsequent to, such retirement, also cover all occurrences between the  
23 inception date of the first such consecutive policy from such insurer  
24 and such retirement date which, subsequent to the termination date, are  
25 reported in accordance with statutory and policy requirements; PROVIDED,

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

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1 HOWEVER, THAT NO REGULATION OF THE SUPERINTENDENT, NOR ANY PROVISION OF  
2 THIS SECTION NOTWITHSTANDING, SHALL PRECLUDE AN INSURER, WHO ISSUES  
3 POLICIES TO PHYSICIANS PRACTICING PSYCHIATRY, FROM OFFERING SUCH  
4 INSUREDS AN EXTENDED REPORTING PERIOD THAT PROVIDES FOR A NONRENEWABLE  
5 AGGREGATE LIABILITY LIMIT EQUAL TO AT LEAST ONE HUNDRED PERCENT OF THE  
6 POLICY'S ANNUAL AGGREGATE LIABILITY LIMIT;

7 (2) if the insured dies or becomes permanently disabled and unable to  
8 practice medicine while covered by such a policy, the insurer shall,  
9 without charging an additional premium therefor at the time of, or  
10 subsequent to, such event, also cover all occurrences between the incep-  
11 tion date of the first such consecutive policy from such insurer and the  
12 death or disability of the insured; PROVIDED, HOWEVER, THAT NO REGU-  
13 LATION OF THE SUPERINTENDENT, NOR ANY PROVISION OF THIS SECTION NOTWITH-  
14 STANDING, SHALL PRECLUDE AN INSURER, WHO ISSUES POLICIES TO PHYSICIANS  
15 PRACTICING PSYCHIATRY, FROM OFFERING SUCH INSUREDS AN EXTENDED REPORTING  
16 PERIOD THAT PROVIDES FOR A NONRENEWABLE AGGREGATE LIABILITY LIMIT EQUAL  
17 TO AT LEAST ONE HUNDRED PERCENT OF THE POLICY'S ANNUAL AGGREGATE LIABIL-  
18 ITY LIMIT; and

19 (3) the insurer shall make available and shall advise the insured of  
20 the availability and cost of coverage for occurrences between the incep-  
21 tion date of the first such consecutive policy from such insurer and the  
22 termination of such policy which, subsequent to the termination date,  
23 are reported in accordance with statutory and policy requirements,  
24 pursuant to such terms and conditions as may be specified by the super-  
25 intendent by regulation. The insured shall have the option of purchasing  
26 such coverage either in a single payment, or in three annual install-  
27 ments with an additional finance charge.

28 S 2. This act shall take effect on the first of January next succeed-  
29 ing the date on which it shall have become a law and shall apply to  
30 policies issued or renewed on or after such date.