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

2962

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. BARCLAY -- Multi-Sponsored by -- M. of A. BACALLES -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to creating a health care plan and facility restructuring and security program

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

Section 1. Subsection (a) of section 1109 of the insurance law, as amended by chapter 246 of the laws of 2005, is amended to read as follows:

(a) An organization complying with the provisions of article forty-four of the public health law may operate without being licensed under this chapter and without being subject to any provisions of this chapter, except: (1) to the extent that such organization must comply with the provisions of this chapter by virtue of such article, and (2) the provisions of sections three hundred eight, three hundred thirteen, three hundred thirty-two, one thousand three hundred one, one thousand three hundred two, one thousand three hundred seven, ONE THOUSAND THREE HUNDRED NINE, two thousand one hundred three, two thousand one hundred twelve, two thousand one hundred fourteen, two thousand one hundred fifteen, two thousand one hundred seventeen, two thousand one hundred twenty-three, two thousand six hundred eight-a, two thousand six hundred twelve, three thousand two hundred twenty-four-a, four thousand three hundred eight, four thousand three hundred seventeen, four thousand three hundred eighteen, four thousand three hundred twenty, four thousand three hundred twenty-one, four thousand three hundred twenty-two [and], four thousand three hundred twenty-three AND SEVEN THOUSAND FOUR HUNDRED ONE-A of this chapter.

S 2. Section 1309 of the insurance law is amended by adding a new subsection (c) to read as follows:

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

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(C) WHEN THE SUPERINTENDENT DETERMINES THAT AN INSURER OR HEALTH PLAN ORGANIZED PURSUANT TO ARTICLE FORTY-TWO OR FORTY-THREE OF THIS CHAPTER OR CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW IS AT RISK OF INSOLVENCY AS DETERMINED PURSUANT TO SUBSECTION (A) OF THIS SECTION, THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS PURSUANT TO SECTION TWENTY-EIGHT HUNDRED FIFTEEN OF THE PUBLIC HEALTH LAW.

S 3. The insurance law is amended by adding a new section 7401-a to read as follows:

S 7401-A. SPECIAL FINANCIAL ASSISTANCE FOR INSURERS AND HEALTH PLANS. UPON A DETERMINATION BY THE SUPERINTENDENT THAT AN INSURER OR HEALTH PLAN ORGANIZED PURSUANT TO ARTICLE FORTY-TWO OR FORTY-THREE OF THIS CHAPTER, OR CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, IS INSOLVENT OR AT RISK OF INSOLVENCY AS DETERMINED PURSUANT TO SECTION ONE THOUSAND THREE HUNDRED NINE OF THIS CHAPTER, THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS FOR FUNDS AVAILABLE UNDER SECTION TWENTY-EIGHT HUNDRED FIFTEEN OF THE PUBLIC HEALTH LAW. THE PURPOSE OF SUCH AGREEMENTS SHALL BE TO FACILITATE REHABILITATION IN ACCORDANCE WITH THIS ARTICLE OR TO AVOID THE NEED FOR REHABILITATION BY FACILITATING THE INSURER'S OR HEALTH PLAN'S LONG TERM FINANCIAL VIABILITY.

S 4. Section 2815 of the public health law, as added by chapter 639 of the laws of 1996, subdivision 3-a as added by chapter 1 of the laws of 1999, is amended to read as follows:

S 2815. Health [facility restructuring] CARE PLAN AND FACILITY RESTRUCTURING AND SECURITY program. 1. Definitions. As used in this section, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

(a) "Agency" shall mean the New York state housing finance agency created by article three of the private housing finance law.

(b) "Authority" shall mean the dormitory authority of the state of New York created by title four of article eight of the public authorities law which has succeeded to the powers, functions and duties of the medical care facilities finance agency pursuant to chapter eighty-three of the laws of nineteen hundred ninety-five.

(c) "Participating general hospital" shall mean a not-for-profit general hospital, organized under the laws of this state, which has been approved for participation in this program by the commissioner.

(d) "PARTICIPATING HEALTH PLAN" SHALL MEAN HEALTH INSURERS ORGANIZED PURSUANT TO ARTICLE FORTY-TWO OR FORTY-THREE OF THE INSURANCE LAW OR CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THIS CHAPTER, WHICH HAS BEEN APPROVED FOR PARTICIPATION IN THE PROGRAM, ESTABLISHED BY THIS SECTION, BY THE SUPERINTENDENT OF INSURANCE.

(E) "Restructuring AND SECURITY pool" shall mean the health facility restructuring AND SECURITY pool authorized to be established by the authority pursuant to this section.

2. The authority shall establish the restructuring AND SECURITY pool. Funds shall be transferred by the commissioner to the authority for deposit in the restructuring AND SECURITY pool as authorized pursuant to paragraph (d) of subdivision one of section twenty-eight hundred seven-l and paragraph (b) of subdivision nineteen of section twenty-eight hundred seven-c of this article or any other provision of law. Funds in the restructuring AND SECURITY pool shall be held by the authority pursuant to this section as custodian, administered by the authority pursuant to an agreement with the commissioner AND SUPERINTENDENT OF INSURANCE and invested by the authority in accordance with the investment guidelines of the authority. All investment income shall be credited to, and any repayments of loans as hereinafter provided shall be

deposited in, the restructuring AND SECURITY pool, and spent therefrom only for the purposes set forth in this section.

3. The commissioner, THE SUPERINTENDENT OF INSURANCE, the authority and the agency shall enter into [an agreement] AGREEMENTS, subject to the approval of the director of the budget, for the purpose of administering the funds in the restructuring AND SECURITY pool in a manner that will benefit the public health by encouraging improvements in the health care delivery system in the state. A copy of such [agreement] AGREEMENTS, and any amendment thereto, shall be provided to the chair of the senate finance committee, the director of the division of budget, and the chair of the assembly ways and means committee. Such [agreement] AGREEMENTS shall include, but not be limited to, the following provisions:

(a) for the receipt, management and expenditure of funds held in the restructuring AND SECURITY pool by the authority;

(b) for the development and implementation of business plans for participating general hospitals, addressing the development of service delivery strategies, including strategies for the formation or strengthening of networks, affiliations or other business combinations, designed to provide long-term financial stability within and among participating general hospitals;

(c) for the expenditure or loan of funds by the authority from the restructuring AND SECURITY pool to reimburse the authority or the agency, where appropriate, for the costs of engaging management, legal or accounting consultants to identify, develop and implement improved strategies for one or more participating general hospitals for implementing the recommendations of such consultants, where appropriate, and for the payment of debt service on bonds, notes or other obligations issued or incurred by the authority or the agency to fund loans to one or more participating general hospitals;

(d) FOR THE EXPENDITURE OR LOAN OF FUNDS TO ASSIST PARTICIPATING GENERAL HOSPITALS TO OFFSET DEBT CREATED BY THE FAILURE OF INSOLVENT HEALTH PLANS OR HEALTH PLANS AT RISK OF INSOLVENCY, AS DETERMINED BY THE SUPERINTENDENT OF INSURANCE PURSUANT TO SUBSECTION (A) OR (C) OF SECTION ONE THOUSAND THREE HUNDRED NINE OF THE INSURANCE LAW, TO MAKE CONTRACTUAL PAYMENTS;

(E) for assurances that participating general hospitals OR PARTICIPATING HEALTH PLANS will address the recommendations of such consultants and furnish the commissioner, the authority, and where applicable, THE SUPERINTENDENT OF INSURANCE AND the agency, with such additional financial, management, legal and operational information as each may deem necessary to monitor the performance of a participating general hospital OR PARTICIPATING HEALTH PLAN; [and

(e)] (F) for the agency to obtain funds from the restructuring AND SECURITY pool to be used for the purposes set forth in this section[.]; AND

(G) FOR THE EXPENDITURE OR LOAN OF FUNDS TO ASSIST HEALTH PLANS THAT ARE INSOLVENT OR AT RISK OF INSOLVENCY, AS DETERMINED PURSUANT TO SECTION ONE THOUSAND THREE HUNDRED NINE OF THE INSURANCE LAW; PROVIDED, HOWEVER, THAT SUCH FUNDS SHALL BE USED TO FACILITATE REHABILITATION IN ACCORDANCE WITH ARTICLE SEVENTY-FOUR OF THE INSURANCE LAW OR TO AVOID REHABILITATION BY FACILITATING A HEALTH PLAN'S LONG TERM FINANCIAL VIABILITY; AND PROVIDED, FURTHER, THAT SUCH EXPENDITURES AND LOANS SHALL ONLY BE MADE TO PARTICIPATING HEALTH PLANS PURSUANT TO A PLAN AGREED TO BY THE PARTICIPATING HEALTH PLAN AND THE SUPERINTENDENT OF INSURANCE WHICH PROVIDES FOR THE LONG-TERM FINANCIAL VIABILITY OF THE PARTICIPAT-

ING HEALTH PLAN EITHER AS AN INDEPENDENT ENTITY, OR THROUGH MERGER, PURCHASE OR CONSOLIDATION.

3-a. Any participating general hospital OR PARTICIPATING HEALTH PLAN may apply for restructuring AND SECURITY pool funds to the extent such funds are derived from deposits made pursuant to paragraph (d) of subdivision one of section twenty-eight hundred seven-l of this article, provided, however, that, in reviewing such applications, the commissioner and the authority shall consider the extent to which the applicant hospital has alternative available sources of funds, including, but not limited to, funds available through affiliation agreements with other hospitals.

4. THE COMMISSIONER, THE AUTHORITY AND THE AGENCY SHALL ENTER INTO AGREEMENTS RELATING TO PARTICIPATING GENERAL HOSPITALS. THE SUPERINTENDENT OF INSURANCE AND THE AUTHORITY SHALL ENTER INTO AGREEMENTS RELATING TO PARTICIPATING INSURERS OR HEALTH PLANS ORGANIZED PURSUANT TO ARTICLE FORTY-TWO OR FORTY-THREE OF THE INSURANCE LAW OR CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THIS CHAPTER.

5. To the extent funds are available from a participating general hospital OR PARTICIPATING HEALTH PLAN therefor, expenditures from the restructuring AND SECURITY pool shall be repaid to the restructuring AND SECURITY pool from repayments received by the authority, or the agency where applicable, from a participating general hospital OR PARTICIPATING HEALTH PLAN pursuant to the terms of any financing agreement, mortgage or loan document permitting the recovery from the participating general hospital OR PARTICIPATING HEALTH PLAN of such expenditures. The authority shall record and account for all such payments, which shall be deposited in the restructuring AND SECURITY pool.

[5] 6. Loans from the restructuring AND SECURITY pool shall be made pursuant to an agreement with the participating general hospital specifying the terms thereof, including repayment terms. The authority shall record and account for all such repayments, which shall be deposited in the restructuring AND SECURITY pool. The authority shall notify the chair of the senate finance committee, the director of the division of budget, the chair of the assembly ways and means committee, five days prior to the making of a loan from the restructuring AND SECURITY pool. The authority shall also report quarterly to such chairpersons on the transactions in the pool, including but not limited to deposits to the pool, loans made from the pool, investment income, and the balance on hand as of the end of the month for each such quarter.

[6] 7. The commissioner is authorized, with the assistance and cooperation of the authority, to provide a program of technical assistance to participating general hospitals.

8. THE SUPERINTENDENT OF INSURANCE IS AUTHORIZED, WITH THE ASSISTANCE AND COOPERATION OF THE AUTHORITY, TO PROVIDE A PROGRAM OF TECHNICAL ASSISTANCE TO PARTICIPATING HEALTH PLANS.

S 5. This act shall take effect immediately; and any and all funds allocated to the health facility restructuring program as established by section 2815 of the public health law, as added by chapter 639 of the laws of 1996, are hereby transferred to and authorized for use for the purposes of the health care plan and facility restructuring and security program pursuant to section 2815 of the public health law, as amended by section four of this act.