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

January 23, 2009

Introduced by M. of A. BRADLEY, BENEDETTO, CANESTRARI, CLARK, COLTON, COOK, ENGLEBRIGHT, ESPAILLAT, FIELDS, GLICK, GOTTFRIED, JAFFEE, MAISEL, MARKEY, PERRY, POWELL, J. RIVERA, SCHIMMINGER, KAVANAGH, MAGNARELLI, BRODSKY, HYER-SPENCER -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, AUBRY, BRENNAN, CAHILL, CARROZZA, CHRISTENSEN, CYMBROWITZ, DelMONTE, DESTITO, DINOWITZ, EDDINGTON, FARRELL, GALEF, GREENE, GUNTHER, JACOBS, JOHN, KOON, LIFTON, LUPARDO, McENENY, ORTIZ, PAULIN, PEOPLES, PHEFFER, REILLY, ROSENTHAL, SCARBOROUGH, SWEENEY, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to review of health plan rate increases applications 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. Paragraph 2 of subsection (e) of section 3231 of the insurance law, as added by chapter 501 of the laws of 1992, is amended to read as follows:

(2) (A) Beginning October first, nineteen hundred ninety-four, as an alternate procedure to the requirements of paragraph one of this subsection, an insurer desiring to increase or decrease premiums for any policy form subject to this section may instead submit a rate filing or application to the superintendent and such application or filing shall be deemed approved, provided that (i) the anticipated minimum loss ratio for a policy form shall not be less than [seventy-five] EIGHTY-FIVE percent of the premium FOR A SMALL GROUP HEALTH INSURANCE POLICY FORM AND NINETY PERCENT FOR AN INDIVIDUAL HEALTH INSURANCE POLICY FORM, INCLUDING MEDICARE SUPPLEMENTAL INSURANCE, (II) ANY RATE INCREASE BEING SOUGHT FOR A POLICY FORM IN A FILING OR AN APPLICATION, TOGETHER WITH ANY OTHER RATE INCREASES IMPOSED ON SUCH POLICY FORM, WOULD NOT CAUSE THE AGGREGATE RATE INCREASE FOR SUCH POLICY FORM TO EXCEED FIVE PERCENT DURING ANY TWELVE MONTH PERIOD, and [(ii)] (III) the insurer submits, as

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

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part of such filing, a certification by a member of the American Academy of Actuaries or other individual acceptable to the superintendent that the insurer is in compliance with the provisions of this paragraph, based upon that person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the insurer in establishing premium rates for policy forms subject to this section.

(B) Each calendar year, an insurer shall return, in the form of aggregate benefits for each policy form filed pursuant to the alternate procedure set forth in this paragraph at least [seventy-five] EIGHTY-FIVE percent of the aggregate premiums collected for the policy form during that calendar year FOR A SMALL GROUP HEALTH INSURANCE POLICY FORM AND NINETY PERCENT FOR AN INDIVIDUAL POLICY FORM. Insurers shall annually report, no later than May first of each year, the loss ratio calculated pursuant to this paragraph for each such policy form for the previous calendar year. In each case where the loss ratio for a policy form fails to comply with the [seventy-five] EIGHTY-FIVE percent OR NINETY PERCENT loss ratio requirement, the insurer shall issue a dividend or credit against future premiums for all policy holders with [that policy form] THOSE POLICY FORMS in an amount sufficient to assure that the aggregate benefits paid in the previous calendar year plus the amount of the dividends and credits shall equal [seventy-five] EIGHTY-FIVE percent of the aggregate premiums collected for the policy form in the previous calendar year FOR SMALL GROUP HEALTH INSURANCE POLICY FORMS, OR NINETY PERCENT FOR INDIVIDUAL HEALTH INSURANCE POLICY FORMS IN THE PREVIOUS CALENDAR YEAR. The dividend or credit shall be issued to each policy which was in effect as of December thirty-first of the applicable year and remains in effect as of the date the dividend or credit is issued. All dividends and credits must be distributed by September thirtieth of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by this paragraph shall include an insurer's calculation of the dividends and credits, as well as an explanation of the insurer's plan to issue dividends or credits. The instructions and format for calculating and reporting loss ratios and issuing dividends or credits shall be specified by the superintendent by regulation. Such regulations shall include provisions for the distribution of a dividend or credit in the event of cancellation or termination by a policy holder.

S 2. Subsections (g) and (h) of section 4308 of the insurance law, as added by chapter 504 of the laws of 1995, are amended to read as follows:

(g)(1) Beginning January first, nineteen hundred ninety-six, as an alternate procedure to the requirements of subsection (c) of this section, a corporation subject to the provisions of this article desiring to increase or decrease premiums for any contract subject to this section may instead submit a rate filing or application to the superintendent and such application or filing shall be deemed approved, provided that (A) the anticipated incurred loss ratio for a contract form shall not be less than [eighty-five] NINETY percent for individual direct payment contracts or [seventy-five] EIGHTY-FIVE percent for small group and small group remittance contracts, nor, except in the case of individual direct payment contracts with a loss ratio of greater than one hundred five percent during nineteen hundred ninety-four, shall the loss ratio for any direct payment, group or group remittance contract be more than one hundred five percent of the anticipated earned premium, and (B) the corporation submits, as part of such filing, a certification

by a member of the American Academy of Actuaries or other individual acceptable to the superintendent that that corporation is in compliance with the provisions of this subsection, based upon that person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the corporation in establishing premium rates for contracts subject to this section. For purposes of this section, a small group is any group whose contract is subject to the requirements of section forty-three hundred seventeen of this article.

(2) [Prior to January first, two thousand, no] NO rate [increase or] decrease may be deemed approved under this subsection if that [increase or] decrease, together with any other rate [increases or] decreases imposed on the same contract form, would cause the aggregate rate [increase or] decrease for that contract form to exceed ten percent during any continuous twelve month period. NO RATE INCREASE MAY BE DEEMED APPROVED UNDER THIS SUBSECTION IF THAT INCREASE, TOGETHER WITH ANY OTHER RATE INCREASES IMPOSED ON THE SAME CONTRACT FORM, WOULD CAUSE THE AGGREGATE RATE INCREASE FOR THAT CONTRACT FORM TO EXCEED FIVE PERCENT DURING ANY CONTINUOUS TWELVE MONTH PERIOD. No rate increase may be imposed unless at least thirty days advance written notice of such increase has been provided to each contract holder and subscriber.

(h)(1) Each calendar year, a corporation subject to the provisions of this article shall return, in the form of aggregate benefits incurred for each contract form filed pursuant to the alternate procedure set forth in subsection (g) of this section, at least [eighty-five] NINETY percent for individual direct payment contracts or [seventy-five] EIGHTY-FIVE percent for small group and small group remittance contracts, but, except in the case of individual direct payment contracts with a loss ratio of greater than one hundred five percent in nineteen hundred ninety-four, for any direct payment, group or group remittance contract, not in excess of one hundred five percent of the aggregate premiums earned for the contract form during that calendar year. Corporations subject to the provisions of this article shall annually report, no later than May first of each year, the loss ratio calculated pursuant to this subsection for each such contract form for the previous calendar year.

(2) In each case where the loss ratio for a contract form fails to comply with the [eighty-five] NINETY percent minimum loss ratio requirement for individual direct payment contracts, or the [seventy-five] EIGHTY-FIVE percent minimum loss ratio requirement for small group and small group remittance contracts, as set forth in paragraph one of this subsection, the corporation shall issue a dividend or credit against future premiums for all contract holders with that contract form in an amount sufficient to assure that the aggregate benefits incurred in the previous calendar year plus the amount of the dividends and credits shall equal no less than [eighty-five] NINETY percent for individual direct payment contracts, or [seventy-five] EIGHTY-FIVE percent for small group and small group remittance contracts, of the aggregate premiums earned for the contract form in the previous calendar year. The dividend or credit shall be issued to each contract that was in effect as of December thirty-first of the applicable year and remains in effect as of the date the dividend or credit is issued. All dividends and credits must be distributed by September thirtieth of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by paragraph one of this subsection shall include a corporation's calculation of the dividends and credits, as

well as an explanation of the corporation's plan to issue dividends or credits. The instructions and format for calculating and reporting loss ratios and issuing dividends or credits shall be specified by the superintendent by regulation. Such regulations shall include provisions for the distribution of a dividend or credit in the event of cancellation or termination by a contract holder or subscriber.

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

S 3. Subsection (i) of section 4308 of the insurance law, as added by chapter 504 of the laws of 1995, is amended to read as follows:

(i) The alternate procedure described in subsections (g) and (h) of this section shall apply to individual direct payment contracts issued pursuant to sections four thousand three hundred twenty-one and four thousand three hundred twenty-two of this article on and after January first, nineteen hundred ninety-seven AND TO INDIVIDUAL OR GROUP POLICIES OF MEDICARE SUPPLEMENTAL INSURANCE ISSUED BY A CORPORATION OR INSURER ORGANIZED OR LICENSED PURSUANT TO THIS CHAPTER.

S 4. Subsection (j) of section 4308 of the insurance law is REPEALED.

S 5. This act shall take effect January 1, 2010.