

9036

2009-2010 Regular Sessions

I N A S S E M B L Y

June 20, 2009

Introduced by M. of A. GOTTFRIED -- (at request of the Governor) -- read
once and referred to the Committee on Insurance

AN ACT to amend chapter 266 of the laws of 1986, amending the civil
practice law and rules and other laws relating to malpractice and
professional medical conduct, in relation to the effectiveness thereof

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

1 Section 1. Section 40 of chapter 266 of the laws of 1986, amending the
2 civil practice law and rules and other laws relating to malpractice and
3 professional medical conduct, as amended by section 1 of part D of chap-
4 ter 497 of the laws of 2008, is amended to read as follows:
5 S 40. The superintendent of insurance shall establish rates for poli-
6 cies providing coverage for physicians and surgeons medical malpractice
7 for the periods commencing July 1, 1985 and ending June 30, 2011;
8 provided, however, that notwithstanding any other provision of law, the
9 superintendent shall not establish or approve any increase in rates for
10 the period commencing July 1, [2008] 2009 and ending June 30, [2009]
11 2010. The superintendent shall direct insurers to establish segregated
12 accounts for premiums, payments, reserves and investment income attrib-
13 utable to such premium periods and shall require periodic reports by the
14 insurers regarding claims and expenses attributable to such periods to
15 monitor whether such accounts will be sufficient to meet incurred claims
16 and expenses. On or after July 1, 1989, the superintendent shall impose
17 a surcharge on premiums to satisfy a projected deficiency that is
18 attributable to the premium levels established pursuant to this section
19 for such periods; provided, however, that such annual surcharge shall
20 not exceed eight percent of the established rate until July 1, 2011, at
21 which time and thereafter such surcharge shall not exceed twenty-five
22 percent of the approved adequate rate, and that such annual surcharges
23 shall continue for such period of time as shall be sufficient to satisfy
24 such deficiency. The superintendent shall not impose such surcharge

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

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1 during the period commencing July 1, [2008] 2009 and ending June 30,
2 [2009] 2010. On and after July 1, 1989, the surcharge prescribed by
3 this section shall be retained by insurers to the extent that they
4 insured physicians and surgeons during the July 1, 1985 through June 30,
5 2011 policy periods; in the event and to the extent physicians and
6 surgeons were insured by another insurer during such periods, all or a
7 pro rata share of the surcharge, as the case may be, shall be remitted
8 to such other insurer in accordance with rules and regulations to be
9 promulgated by the superintendent. Surcharges collected from physicians
10 and surgeons who were not insured during such policy periods shall be
11 apportioned among all insurers in proportion to the premium written by
12 each insurer during such policy periods; if a physician or surgeon was
13 insured by an insurer subject to rates established by the superintendent
14 during such policy periods, and at any time thereafter a hospital,
15 health maintenance organization, employer or institution is responsible
16 for responding in damages for liability arising out of such physician's
17 or surgeon's practice of medicine, such responsible entity shall also
18 remit to such prior insurer the equivalent amount that would then be
19 collected as a surcharge if the physician or surgeon had continued to
20 remain insured by such prior insurer. In the event any insurer that
21 provided coverage during such policy periods is in liquidation, the
22 property/casualty insurance security fund shall receive the portion of
23 surcharges to which the insurer in liquidation would have been entitled.
24 The surcharges authorized herein shall be deemed to be income earned for
25 the purposes of section 2303 of the insurance law. The superintendent,
26 in establishing adequate rates and in determining any projected defi-
27 ciency pursuant to the requirements of this section and the insurance
28 law, shall give substantial weight, determined in his discretion and
29 judgment, to the prospective anticipated effect of any regulations
30 promulgated and laws enacted and the public benefit of stabilizing
31 malpractice rates and minimizing rate level fluctuation during the peri-
32 od of time necessary for the development of more reliable statistical
33 experience as to the efficacy of such laws and regulations affecting
34 medical, dental or podiatric malpractice enacted or promulgated in 1985,
35 1986, by this act and at any other time. Notwithstanding any provision
36 of the insurance law, rates already established and to be established by
37 the superintendent pursuant to this section are deemed adequate if such
38 rates would be adequate when taken together with the maximum authorized
39 annual surcharges to be imposed for a reasonable period of time whether
40 or not any such annual surcharge has been actually imposed as of the
41 establishment of such rates.

42 S 2. This act shall take effect immediately.