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

9243

2009-2010 Regular Sessions

I N A S S E M B L Y

November 9, 2009

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to providing enhanced consumer protections in the event of an insurer's discontinuance of coverage

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

Section 1. Short title. This act shall be known and may be cited as "Ian's law".

S 2. Paragraph 3 of subsection (p) of section 3221 of the insurance law, as added by chapter 661 of the laws of 1997, is amended to read as follows:

(3)(A) In any case in which an insurer decides to discontinue offering a particular class of group or blanket policy of hospital, surgical or medical expense insurance offered in the small or large group market, the policy of such class may be discontinued by the insurer in accordance with this chapter in such market only if:

(i) the insurer REQUESTS THAT THE SUPERINTENDENT APPROVE SUCH DISCONTINUANCE, IN SUCH FORM AS DESIGNATED BY THE SUPERINTENDENT, AND RECEIVES SUCH APPROVAL; PROVIDED THAT:

(I) THE SUPERINTENDENT SHALL, NO SOONER THAN SIXTY DAYS AFTER RECEIPT OF SUCH REQUEST, GRANT SUCH APPROVAL ONLY IF HE OR SHE DETERMINES THAT THE DISCONTINUANCE OF THE COVERAGE OF THIS CLASS IN SUCH MARKET BY THE INSURER IS NEITHER WITH THE INTENT NOR AS A PRETEXT TO DISCONTINUING THE COVERAGE OF ANY POLICYHOLDER OR ANY INSURED DUE TO THE CLAIMS EXPERIENCE OR ANY HEALTH STATUS-RELATED FACTOR RELATING TO ANY POLICYHOLDER OR INSURED COVERED BY ANY SUCH POLICY; AND

(II) THE SUPERINTENDENT SHALL MAKE SUCH DETERMINATION ONLY AFTER EXAMINING AND TAKING INTO CONSIDERATION THE CLAIM HISTORIES AND PREMIUM RATES FOR EACH POLICY IN THE CLASS, THE HISTORICAL PROFITS AND LOSSES FOR THE CLASS OF POLICIES, COMMENTS FROM POLICYHOLDERS OR OTHERS SUBMIT-

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

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TED TO THE SUPERINTENDENT WITHIN THIRTY DAYS AFTER RECEIPT OF ANY SUCH REQUEST, AND ANY OTHER INFORMATION OR ANALYSIS THE SUPERINTENDENT DEMANDS OR DEEMS RELEVANT;

(II) THE INSURER, NO LATER THAN THE DATE ANY SUCH REQUEST TO THE SUPERINTENDENT IS MADE, PROVIDES WRITTEN NOTICE TO EACH POLICYHOLDER PROVIDED COVERAGE OF THIS CLASS IN SUCH MARKET (AND TO ALL PARTICIPANTS AND BENEFICIARIES COVERED UNDER SUCH COVERAGE) OF SUCH REQUEST, ALONG WITH NOTICE OF THE EARLIEST POSSIBLE DATE THAT THE SUPERINTENDENT MIGHT APPROVE SUCH REQUEST, THE EARLIEST POSSIBLE DATE THAT SUCH COVERAGE COULD BE DISCONTINUED, AND A STATEMENT WRITTEN IN PLAIN ENGLISH OF THE OBLIGATIONS OF THE INSURER AND THE RIGHTS OF POLICYHOLDERS PURSUANT TO THIS SUBPARAGRAPH AND SUBPARAGRAPHS (A-1) AND (D) OF THIS PARAGRAPH;

(III) THE INSURER, UPON APPROVAL BY THE SUPERINTENDENT OF ANY SUCH REQUEST:

(I) provides written notice to each policyholder provided coverage of this class in such market (and to all participants and beneficiaries covered under such coverage) of such discontinuance at least ninety days prior to the date of discontinuance of such coverage;

[(ii) the insurer] (II) offers to each policyholder provided coverage of this class in such market, the option to purchase all (or, in the case of the large group market, any) other hospital, surgical and medical expense coverage currently being offered by the insurer to a group in such market; and

[(iii)] (III) in exercising the option to discontinue coverage of this class and in offering the option of coverage under [item (ii)] SUBITEM (II) of this [subparagraph] ITEM, the insurer acts uniformly without regard to the claims experience of those policyholders or any health status-related factor relating to any insureds covered or new insureds who may become eligible for such coverage.

(A-1) WHERE AN INSURER DISCONTINUES A PARTICULAR CLASS OF GROUP OR BLANKET POLICY OF HOSPITAL, SURGICAL OR MEDICAL EXPENSE INSURANCE OFFERED IN THE SMALL OR LARGE GROUP MARKET, OTHER THAN WHERE THE SUPERINTENDENT AUTHORIZES SUCH DISCONTINUANCE PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, SUCH INSURER SHALL BE LIABLE TO THE FORMER HOLDER OR BENEFICIARY OF SUCH POLICY, OR TO HIS OR HER ESTATE, FOR COMPENSATORY DAMAGES ARISING FROM SUCH UNLAWFUL DISCONTINUANCE, PLUS COSTS AND REASONABLE ATTORNEYS' FEES, IN AN ACTION COMMENCED NO LATER THAN THREE YEARS AFTER THE DATE OF SUCH DISCONTINUANCE. IN ANY SUCH ACTION, THE COURT MAY GRANT SUCH INJUNCTIVE RELIEF AS THE COURT MAY DEEM PROPER. ANY DETERMINATION BY THE SUPERINTENDENT, PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, SHALL BE REVIEWABLE IN THE MANNER SPECIFIED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

(A-2) THE SUPERINTENDENT IS AUTHORIZED TO ADOPT SUCH RULES AND REGULATIONS AS HE OR SHE MAY DEEM NECESSARY TO EFFECTUATE THE PURPOSES OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, INCLUDING, BUT NOT LIMITED TO, IDENTIFYING FACTORS THAT CREATE A PRESUMPTION THAT THE DISCONTINUANCE OF THE COVERAGE OF ANY CLASS IS WITH THE INTENT OR AS A PRETEXT TO DISCONTINUING THE COVERAGE OF ANY POLICYHOLDER OR ANY INSURED DUE TO THE CLAIMS EXPERIENCE OR ANY HEALTH STATUS-RELATED FACTOR RELATING TO ANY POLICYHOLDER OR INSURED COVERED BY ANY SUCH POLICY.

(B) In any case in which an insurer elects to discontinue offering all hospital, surgical and medical expense coverage in the small group market or the large group market, or both markets, in this state, health insurance coverage may be discontinued by the insurer only if:

(i) the insurer provides written notice to the superintendent and to each policyholder (and participants and beneficiaries covered under such

coverage) of such discontinuance at least one hundred eighty days prior to the date of the discontinuance of such coverage;

(ii) all hospital, surgical and medical expense coverage issued or delivered for issuance in this state in such market (or markets) is discontinued and coverage under such policies in such market (or markets) is not renewed; and

(iii) in addition to the notice to the superintendent referred to in item (i) of this subparagraph, the insurer must provide the superintendent with a written plan to minimize potential disruption in the marketplace occasioned by its withdrawal from the market.

(C) In the case of a discontinuance under subparagraph (B) of this paragraph in a market, the insurer may not provide for the issuance of any group or blanket policy of hospital, surgical or medical expense insurance in that market in this state during the five year period beginning on the date of the discontinuance of the last health insurance policy not so renewed.

(D) THE SUPERINTENDENT SHALL, WHERE MAJOR MEDICAL INSURANCE OR INSURANCE PROVIDING MAJOR MEDICAL TYPE BENEFITS IS DISCONTINUED PURSUANT TO SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH, ORDER THAT AN EXTENDED BENEFIT SHALL BE PROVIDED DURING TOTAL DISABILITY, WITH RESPECT TO THE SICKNESS, INJURY OR PREGNANCY WHICH CAUSED THE DISABILITY, OF AT LEAST EIGHTEEN MONTHS SUBSEQUENT TO DISCONTINUANCE OF INSURANCE UNLESS SIMILAR COVERAGE IS AFFORDED FOR THE TOTAL DISABILITY UNDER ANOTHER GROUP PLAN.

S 3. Paragraph 3 of subsection (j) of section 4305 of the insurance law, as added by chapter 661 of the laws of 1997, is amended to read as follows:

(3)(A) In any case in which a corporation decides to discontinue offering a particular class of group or blanket contract of hospital, surgical or medical expense insurance offered in the small or large group market, the contract of such class may be discontinued by the corporation in accordance with this chapter in such market only if:

(i) the corporation REQUESTS THAT THE SUPERINTENDENT APPROVE SUCH DISCONTINUANCE, IN SUCH FORM AS DESIGNATED BY THE SUPERINTENDENT, AND RECEIVES SUCH APPROVAL; PROVIDED THAT:

(I) THE SUPERINTENDENT SHALL, NO SOONER THAN SIXTY DAYS AFTER RECEIPT OF SUCH REQUEST, GRANT SUCH APPROVAL ONLY IF HE OR SHE DETERMINES THAT THE DISCONTINUANCE OF THE COVERAGE OF THIS CLASS IN SUCH MARKET BY THE INSURER IS NEITHER WITH THE INTENT NOR AS A PRETEXT TO, DISCONTINUING THE COVERAGE OF ANY CONTACT HOLDER OR ANY SUBSCRIBER DUE TO THE CLAIMS EXPERIENCE OR ANY HEALTH STATUS-RELATED FACTOR RELATING TO ANY CONTRACT HOLDER OR SUBSCRIBER COVERED BY ANY SUCH CONTRACT; AND

(II) THE SUPERINTENDENT SHALL MAKE SUCH DETERMINATION ONLY AFTER EXAMINING AND TAKING INTO CONSIDERATION THE CLAIM HISTORIES AND PREMIUM RATES FOR EACH CONTRACT IN THE CLASS, THE HISTORICAL PROFITS AND LOSSES FOR THE CLASS OF CONTRACTS, COMMENTS FROM CONTRACT HOLDERS OR OTHERS SUBMITTED TO THE SUPERINTENDENT WITHIN THIRTY DAYS AFTER RECEIPT OF ANY SUCH REQUEST, AND ANY OTHER INFORMATION OR ANALYSIS THE SUPERINTENDENT DEMANDS OR DEEMS RELEVANT;

(II) THE CORPORATION, NO LATER THAN THE DATE ANY SUCH REQUEST TO THE SUPERINTENDENT IS MADE, PROVIDES WRITTEN NOTICE TO EACH CONTRACT HOLDER PROVIDED COVERAGE OF THIS CLASS IN SUCH MARKET (AND TO ALL PARTICIPANTS AND BENEFICIARIES COVERED UNDER SUCH COVERAGE) OF SUCH REQUEST, ALONG WITH NOTICE OF THE EARLIEST POSSIBLE DATE THAT THE SUPERINTENDENT MIGHT APPROVE SUCH REQUEST, AND THE EARLIEST POSSIBLE DATE THAT SUCH COVERAGE COULD BE DISCONTINUED, AND A STATEMENT WRITTEN IN PLAIN ENGLISH OF THE OBLIGATIONS OF THE CORPORATION AND THE RIGHTS OF CONTRACT HOLDERS PURSU-

ANT TO THIS SUBPARAGRAPH AND SUBPARAGRAPHS (A-1) AND (D) OF THIS PARAGRAPH;

(III) THE CORPORATION, UPON APPROVAL BY THE SUPERINTENDENT OF ANY SUCH REQUEST:

(I) provides written notice to each contract holder provided coverage of this class in such market (and to all participants and beneficiaries covered under such coverage) of such discontinuance at least ninety days prior to the date of discontinuance of such coverage;

[(ii) the corporation] (II) offers to each contract holder provided coverage of this class in such market, the option to purchase all (or, in the case of the large group market, any) other hospital, surgical and medical expense coverage currently being offered by the corporation to a group in such market; and

[(iii)] (III) in exercising the option to discontinue coverage of this class and in offering the option of coverage under [item (ii)] SUBITEM (II) of this [subparagraph] ITEM, the corporation acts uniformly without regard to the claims experience of those contract holders or any health status-related factor relating to any subscribers covered or new subscribers who may become eligible for such coverage.

(A-1) WHERE A CORPORATION DISCONTINUES A PARTICULAR CLASS OF GROUP OR BLANKET CONTRACT OF HOSPITAL, SURGICAL OR MEDICAL EXPENSE INSURANCE OFFERED IN THE SMALL OR LARGE GROUP MARKET, OTHER THAN WHERE THE SUPERINTENDENT AUTHORIZES SUCH DISCONTINUANCE PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, SUCH CORPORATION SHALL BE LIABLE TO THE FORMER HOLDER OR BENEFICIARY OF SUCH CONTRACT, OR TO HIS OR HER ESTATE, FOR COMPENSATORY DAMAGES ARISING FROM SUCH UNLAWFUL DISCONTINUANCE, PLUS COSTS AND REASONABLE ATTORNEYS' FEES, IN AN ACTION COMMENCED NO LATER THAN THREE YEARS AFTER THE DATE OF SUCH DISCONTINUANCE. IN ANY SUCH ACTION, THE COURT MAY GRANT SUCH INJUNCTIVE RELIEF AS THE COURT MAY DEEM PROPER. ANY DETERMINATION BY THE SUPERINTENDENT, PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, SHALL BE REVIEWABLE IN THE MANNER SPECIFIED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

(A-2) THE SUPERINTENDENT IS AUTHORIZED TO ADOPT SUCH RULES AND REGULATIONS AS IS NECESSARY TO EFFECTUATE THE PURPOSES OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, INCLUDING, BUT NOT LIMITED TO, IDENTIFYING FACTORS THAT CREATE A PRESUMPTION THAT THE DISCONTINUANCE OF THE COVERAGE OF ANY CLASS IS WITH THE INTENT OR AS A PRETEXT TO DISCONTINUING THE COVERAGE OF ANY CONTRACT HOLDER OR ANY SUBSCRIBER DUE TO THE CLAIMS EXPERIENCE OR ANY HEALTH STATUS-RELATED FACTOR RELATING TO ANY CONTRACT HOLDER OR SUBSCRIBER COVERED BY ANY SUCH CONTRACT.

(B) In any case in which a corporation elects to discontinue offering all hospital, surgical and medical expense coverage in the small group market or the large group market, or both markets, in this state, health insurance coverage may be discontinued by the corporation only if:

(i) the corporation provides written notice to the superintendent and to each contract holder (and participants and beneficiaries covered under such coverage) of such discontinuance at least one hundred eighty days prior to the date of the discontinuance of such coverage;

(ii) all hospital, surgical and medical expense coverage issued or delivered for issuance in this state in such market or markets is discontinued and coverage under such contracts in such market or markets is not renewed; and

(iii) in addition to the notice to the superintendent referred to in item (i) of this subparagraph, the corporation must provide the superintendent with a written plan to minimize potential disruption in the marketplace occasioned by its withdrawal from the market.

(C) In the case of a discontinuance under subparagraph (B) of this paragraph in a market, the corporation may not provide for the issuance of any group or blanket contract of hospital, surgical or medical expense insurance in that market in this state during the five-year period beginning on the date of the discontinuance of the last health insurance contract not so renewed.

(D) THE SUPERINTENDENT SHALL, WHERE MAJOR MEDICAL INSURANCE OR INSURANCE PROVIDING MAJOR MEDICAL TYPE BENEFITS IS DISCONTINUED PURSUANT TO SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH, ORDER THAT AN EXTENDED BENEFIT SHALL BE PROVIDED DURING TOTAL DISABILITY, WITH RESPECT TO THE SICKNESS, INJURY OR PREGNANCY WHICH CAUSED THE DISABILITY, OF AT LEAST EIGHTEEN MONTHS SUBSEQUENT TO DISCONTINUANCE OF INSURANCE UNLESS SIMILAR COVERAGE IS AFFORDED FOR THE TOTAL DISABILITY UNDER ANOTHER GROUP PLAN.

S 4. This act shall take effect immediately.