

1588

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sen. LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to requiring the insurance department to hold public hearings prior to approving the merger of certain health insurers

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

- 1 Section 1. The insurance law is amended by adding a new section 3240
2 to read as follows:
3 S 3240. MERGER OF HEALTH INSURERS. THE MERGER OF (A) TWO OR MORE
4 INSURERS PROVIDING INDIVIDUAL AND/OR GROUP ACCIDENT AND HEALTH INSURANCE
5 COVERAGE; OR (B) ANY NUMBER OF INSURERS PROVIDING INDIVIDUAL AND/OR
6 GROUP ACCIDENT AND HEALTH INSURANCE COVERAGE, AND ANY CORPORATION OPER-
7 ATING PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER AND/OR ANY HEALTH
8 MAINTENANCE ORGANIZATION OPERATING PURSUANT TO ARTICLE FORTY-FOUR OF THE
9 PUBLIC HEALTH LAW, SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE SEVEN-
10 TY-ONE OF THIS CHAPTER.
11 S 2. The insurance law is amended by adding a new section 4328 to read
12 as follows:
13 S 4328. MERGER OF CORPORATIONS. THE MERGER OF (A) TWO OR MORE CORPO-
14 RATIONS OPERATING PURSUANT TO THIS ARTICLE; OR (B) ANY NUMBER OF CORPO-
15 RATIONS OPERATING PURSUANT TO THIS ARTICLE, AND ANY INSURER PROVIDING
16 INDIVIDUAL AND/OR GROUP ACCIDENT AND HEALTH INSURANCE COVERAGE PURSUANT
17 TO ARTICLE THIRTY-TWO OF THIS CHAPTER AND/OR ANY HEALTH MAINTENANCE
18 ORGANIZATION OPERATING PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC
19 HEALTH LAW, SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE SEVENTY-ONE
20 OF THIS CHAPTER.
21 S 3. The insurance law is amended by adding a new section 7104-a to
22 read as follows:
23 S 7104-A. REVIEW AND APPROVAL OF MERGERS OF CERTAIN HEALTH INSURERS.
24 (A) FOR THE PURPOSES OF THIS SECTION, "HEALTH INSURER" SHALL MEAN ANY

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

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(1) INSURER PROVIDING INDIVIDUAL AND/OR GROUP ACCIDENT AND HEALTH INSURANCE COVERAGE PURSUANT TO ARTICLE THIRTY-TWO OF THIS CHAPTER, (2) ANY CORPORATION OPERATING PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, OR (3) ANY HEALTH MAINTENANCE ORGANIZATION OPERATING PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW.

(B) THE PROVISIONS OF THIS SECTION SHALL ONLY APPLY TO THE MERGERS OF HEALTH INSURERS IN WHICH:

(1) EACH OF THE TWO HEALTH INSURERS SEEKING TO MERGE HAVE AN AGGREGATE GROSS PREMIUM VALUE IN EXCESS OF TWO HUNDRED MILLION DOLLARS; OR

(2) ONE OF THE HEALTH INSURERS SEEKING TO MERGE HAS A GROSS PREMIUM VALUE IN EXCESS OF THREE HUNDRED FIFTY MILLION DOLLARS, AND THE OTHER HEALTH INSURER HAS A GROSS PREMIUM VALUE IN EXCESS OF ONE HUNDRED MILLION DOLLARS.

(C) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, AFTER THE ADOPTION AND SUBMISSION TO THE SUPERINTENDENT OF AN AGREEMENT OF MERGER BY HEALTH INSURERS, THE DEPARTMENT SHALL HOLD PUBLIC HEARINGS ON SUCH MERGER BEFORE THE SUPERINTENDENT SHALL BE AUTHORIZED TO APPROVE OR DENY SUCH AGREEMENT. ALL SUCH PUBLIC HEARINGS SHALL BE CONDUCTED BY THE DEPARTMENT IN ALL AREAS OF THE STATE AFFECTED BY THE PROPOSED MERGER. EACH HEARING REQUIRED BY THIS SUBSECTION SHALL BE HELD WITHIN NINETY DAYS OF THE SUBMISSION OF THE AGREEMENT OF MERGER TO THE SUPERINTENDENT. THE SUPERINTENDENT SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR PUBLIC NOTICE OF SUCH HEARINGS AND THE CONDUCT OF SUCH HEARINGS.

(D) UPON COMPLETION OF ALL PUBLIC HEARINGS THE FINDINGS AND RECOMMENDATIONS OF THE HEARINGS SHALL BE SUBMITTED TO THE SUPERINTENDENT FOR HIS OR HER CONSIDERATION. WITHIN ONE HUNDRED TWENTY DAYS OF THE COMPLETION OF PUBLIC HEARINGS THE SUPERINTENDENT SHALL EITHER APPROVE OR REJECT AN AGREEMENT OF MERGER PURSUANT TO SECTION SEVEN THOUSAND ONE HUNDRED FIVE OF THIS ARTICLE BASED ON:

(1) WOULD THE MERGER INORDINATELY AFFECT PATIENT'S ACCESS TO HEALTH CARE SERVICES;

(2) WOULD THE MERGER INORDINATELY AFFECT A HEALTH CARE PROVIDER'S ABILITY TO NEGOTIATE WITH THE MERGED HEALTH INSURER BECAUSE SUCH INSURER HAS A MONOPOLY OR NEAR MONOPOLY ON THE AFFECTED MARKET;

(3) WHETHER THE MERGER ADDRESSES OR INCLUDES PREMIUMS RATE INCREASE PROTECTIONS FOR INSURED OR SUBSCRIBERS, AND RATE PROTECTION FOR HEALTH CARE PROVIDERS;

(4) WHETHER THE MERGED HEALTH INSURER HAS A MONOPOLY OR INORDINATE MARKET SHARE IN A SIZABLE AREA OF THE STATE; AND

(5) WHETHER THE MERGER ENSURES THAT IT DOES NOT DESTABILIZE THE HEALTH INSURANCE MARKET.

S 4. The public health law is amended by adding a new section 4415 to read as follows:

S 4415. MERGER OF HEALTH MAINTENANCE ORGANIZATIONS. THE MERGER OF (A) TWO OR MORE HEALTH MAINTENANCE ORGANIZATIONS; OR (B) ANY NUMBER OF HEALTH MAINTENANCE ORGANIZATIONS, AND ANY INSURER PROVIDING INDIVIDUAL AND/OR GROUP ACCIDENT AND HEALTH INSURANCE COVERAGE PURSUANT TO ARTICLE THIRTY-TWO OF THE INSURANCE LAW AND/OR ANY CORPORATION OPERATING PURSUANT TO ARTICLE FORTY-THREE OF THE INSURANCE LAW, SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE SEVENTY-ONE OF THE INSURANCE LAW.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. Provided, that any rules and regulations necessary to implement the provisions of this act on its effective date are authorized to be promulgated on or before such date.