

3062

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sens. SEWARD, VOLKER -- read twice and ordered printed,  
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to premium rates for health insurance; to amend the insurance law and the public health law, in relation to coverage of services of participating providers; and to amend the insurance law, in relation to the fair and equitable settlement of claims for health care and payments for health services

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

1 Section 1. This act shall be known and may be cited as the "health  
2 insurance premium integrity act".

3 S 2. Subsection (e) of section 3231 of the insurance law, as added by  
4 chapter 501 of the laws of 1992, is amended to read as follows:

5 (e) (1) DEFINITIONS. FOR PURPOSES OF THIS SUBSECTION: (A) "POLICY  
6 FORM" SHALL MEAN A POLICY OR POLICIES AND ASSOCIATED RIDERS WHOSE EXPE-  
7 RIENCE HAS BEEN POOLED IN ORDER TO DETERMINE RATES FOR EACH POLICY AND  
8 EACH RIDER;

9 (B) "LOSS RATIO" SHALL MEAN THE RATIO OF DIRECT CLAIMS INCURRED FOR  
10 THE REPORTING CALENDAR YEAR TO DIRECT PREMIUMS EARNED FOR THE SAME  
11 REPORTING CALENDAR YEAR, EXPRESSED AS A PERCENTAGE;

12 (C) "DIRECT CLAIMS INCURRED" SHALL MEAN CLAIMS PAID DURING THE REPORT-  
13 ING CALENDAR YEAR PLUS THE UNPAID CLAIMS RESERVE AT THE END OF THE  
14 REPORTING CALENDAR YEAR AND CALCULATED CONSISTENT WITH SUBPARAGRAPH (C)  
15 OF PARAGRAPH THREE OF THIS SUBSECTION;

16 (D) "DIRECT PREMIUMS EARNED" SHALL MEAN PREMIUMS WRITTEN DURING THE  
17 REPORTING CALENDAR YEAR PLUS THE UNEARNED PREMIUMS AT THE BEGINNING OF  
18 THE YEAR LESS THE UNEARNED PREMIUMS AT THE END OF THE YEAR, EXCLUSIVE OF  
19 REINSURANCE ASSUMED OR CEDED; AND

20 (E) "SMALL GROUP" SHALL MEAN A GROUP POLICY THAT IS SUBJECT TO THE  
21 REQUIREMENTS OF THIS SECTION.

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

LBD07620-01-9

1 (2) An insurer desiring to increase or decrease premiums after April  
2 first, nineteen hundred ninety-three for any policy form subject to this  
3 section shall submit a rate filing or application to the superintendent.  
4 The superintendent shall determine whether the filing or application  
5 shall become effective as filed, shall become effective as modified, or  
6 shall be disapproved.

7 [(2)] (3) (A) Beginning October first, nineteen hundred ninety-four,  
8 as an alternate procedure to the requirements of paragraph [one] TWO of  
9 this subsection, an insurer desiring to increase or decrease premiums  
10 for any policy form subject to this section may instead submit a rate  
11 filing or application to the superintendent and such application or  
12 filing shall be deemed approved, provided that (i) the anticipated mini-  
13 mum loss ratio [for a policy form] shall not be less than seventy-five  
14 percent of the premium FOR AN INDIVIDUAL HEALTH INSURANCE POLICY AND NOT  
15 LESS THAN EIGHTY PERCENT OF THE PREMIUM FOR A SMALL GROUP HEALTH INSUR-  
16 ANCE POLICY, and (ii) the insurer submits, as part of such filing, a  
17 certification by a member of the American Academy of Actuaries or other  
18 individual acceptable to the superintendent that the insurer is in  
19 compliance with the provisions of this paragraph, based upon that  
20 person's examination, including a review of the appropriate records and  
21 of the actuarial assumptions and methods used by the insurer in estab-  
22 lishing premium rates for policy forms subject to this section. SUCH  
23 CERTIFICATION SHALL AFFIRM THAT THE RATE FILING OR APPLICATION SUBMITTED  
24 TO THE SUPERINTENDENT PURSUANT TO THIS SUBSECTION WAS PREPARED IN  
25 ACCORDANCE WITH GENERALLY ACCEPTED ACTUARIAL PRINCIPLES AND THIS  
26 SECTION. THE INSURER SHALL, AT THE REQUEST OF THE SUPERINTENDENT,  
27 PROVIDE ADDITIONAL UNDERLYING ACTUARIAL DOCUMENTATION TO SUPPORT THE  
28 RATE FILING OR APPLICATION. PROVIDED, HOWEVER, THE REQUEST FOR SUCH  
29 INFORMATION SHALL NOT PRECLUDE THE NEW PREMIUM RATE FROM GOING INTO  
30 EFFECT.

31 (B) Each calendar year, an insurer shall return, in the form of aggre-  
32 gate benefits for each policy form filed pursuant to the alternate  
33 procedure set forth in this paragraph at least seventy-five percent of  
34 the aggregate premiums collected for the INDIVIDUAL HEALTH INSURANCE  
35 policy form during that calendar year, OR EIGHTY PERCENT OF THE AGGRE-  
36 GATE PREMIUMS COLLECTED FOR A SMALL GROUP HEALTH INSURANCE POLICY FORM  
37 DURING THAT CALENDAR YEAR. IF AN INSURER HAS POOLED THE EXPERIENCE OF  
38 POLICIES AND/OR RIDERS TO DETERMINE THE PREMIUM RATES, IN ACCORDANCE  
39 WITH APPLICABLE LAW, THE INSURER SHALL CALCULATE THE LOSS RATIOS IN  
40 ACCORDANCE WITH THE MANNER IN WHICH IT ESTABLISHED THE PREMIUM RATES.  
41 Insurers shall annually report, no later than [May] AUGUST first of each  
42 year, the loss ratio calculated pursuant to this paragraph for each such  
43 policy form for the previous calendar year. In each case where the loss  
44 ratio for a policy form fails to comply with the seventy-five percent  
45 loss ratio requirement FOR AN INDIVIDUAL HEALTH INSURANCE POLICY, OR THE  
46 EIGHTY PERCENT MINIMUM LOSS RATIO REQUIREMENT FOR A SMALL GROUP HEALTH  
47 INSURANCE POLICY, AS SET FORTH IN THIS PARAGRAPH, the insurer shall  
48 issue a dividend or credit against future premiums for all policy hold-  
49 ers with that policy form in an amount sufficient to assure that the  
50 aggregate benefits paid in the previous calendar year plus the amount of  
51 the dividends and credits shall equal seventy-five percent of the aggre-  
52 gate premiums collected for [the] AN INDIVIDUAL HEALTH INSURANCE policy  
53 form AND EIGHTY PERCENT OF THE AGGREGATE PREMIUM COLLECTED FOR A SMALL  
54 GROUP HEALTH INSURANCE POLICY FORM in the previous calendar year. The  
55 dividend or credit shall be issued to each policy which was in effect as  
56 of December thirty-first of the applicable year [and remains in effect

1 as of the date the dividend or credit is issued]. All dividends and  
2 credits must be distributed by September thirtieth of the year following  
3 the calendar year in which the loss ratio requirements were not satis-  
4 fied. AN INSURER SHALL MAKE A REASONABLE EFFORT TO IDENTIFY THE CURRENT  
5 ADDRESS OF THOSE POLICY HOLDERS WHO ARE NO LONGER POLICY HOLDERS WHEN  
6 THE DIVIDEND OR CREDIT IS ISSUED. The annual report required by this  
7 paragraph shall include an insurer's calculation of the dividends and  
8 credits, as well as an explanation of the insurer's plan to issue divi-  
9 dends or credits. The instructions and format for calculating and  
10 reporting loss ratios and issuing dividends or credits shall be speci-  
11 fied by the superintendent by regulation. Such regulations shall  
12 include provisions for the distribution of a dividend or credit in the  
13 event of cancellation or termination by a policy holder.

14 (C) DIRECT CLAIMS INCURRED FOR USE IN TESTING LOSS RATIO COMPLIANCE  
15 UNDER THIS PARAGRAPH SHALL BE CALCULATED AS FOLLOWS: (I) THE CLAIMS PAID  
16 DURING THE REPORTING CALENDAR YEAR; PLUS (II) CAPITATION PAYMENTS PAID  
17 FOR SERVICES TO BE RENDERED DURING THE REPORTING CALENDAR YEAR; PLUS  
18 (III) THE UNPAID CLAIM RESERVE AT THE END OF THE REPORTING CALENDAR YEAR  
19 WHICH SHALL BE CALCULATED AS THE SUM OF CLAIMS PAID FROM JANUARY FIRST  
20 THROUGH JUNE FIRST OF THE YEAR FOLLOWING THE REPORTING CALENDAR YEAR ON  
21 CLAIMS INCURRED IN THE REPORTING CALENDAR YEAR OR PRIOR YEARS, PLUS THE  
22 UNPAID CLAIMS RESERVE AS OF JUNE FIRST OF THE YEAR FOLLOWING THE REPORT-  
23 ING CALENDAR YEAR ON CLAIMS INCURRED IN THE REPORTING CALENDAR YEAR OR  
24 PRIOR YEARS DETERMINED FROM CLAIMS PAYMENTS THROUGH JUNE FIRST OF THE  
25 YEAR FOLLOWING THE REPORTING CALENDAR YEAR; MINUS (IV) THE UNPAID CLAIM  
26 RESERVE AT THE BEGINNING OF THE REPORTING CALENDAR YEAR WHICH SHALL BE  
27 CALCULATED AS THE SUM OF THE CLAIMS PAID FROM JANUARY FIRST THROUGH JUNE  
28 FIRST OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED PRIOR TO THE  
29 REPORTING CALENDAR YEAR, PLUS THE UNPAID CLAIMS RESERVE AS OF JUNE FIRST  
30 OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED PRIOR TO THE REPORTING  
31 CALENDAR YEAR DETERMINED FROM CLAIM PAYMENTS THROUGH JUNE FIRST OF THE  
32 REPORTING YEAR; PLUS OR MINUS (V) THE EFFECTS FOR THE REPORTING YEAR OF  
33 THE MARKET STABILIZATION POOLS; MINUS (VI) THE EFFECTS FOR THE REPORTING  
34 YEAR OF THE STOP-LOSS POOLS. NOTHING IN THIS SECTION SHALL BE CONSTRUED  
35 TO PROHIBIT THE SUPERINTENDENT FROM REVIEWING CLAIMS DATA BEYOND JUNE  
36 FIRST.

37 (D) (I) ANY INSURER THAT VIOLATES THE PROVISIONS OF THIS SECTION  
38 INCLUDING, BUT NOT LIMITED TO, ANY FAILURE TO PROVIDE A DIVIDEND OR  
39 CREDIT TO SUBSCRIBERS AS REQUIRED BY SUBPARAGRAPH (B) OF THIS PARAGRAPH,  
40 SHALL BE SUBJECT TO THE MAXIMUM PENALTIES PROVIDED IN THIS CHAPTER.

41 (II) IN ADDITION TO THE PENALTIES OTHERWISE IMPOSED PURSUANT TO THIS  
42 CHAPTER, WHERE AN INSURER ELECTING TO ADJUST PREMIUMS PURSUANT TO THE  
43 ALTERNATE PROCEDURE SET FORTH IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, IS  
44 DETERMINED BY THE SUPERINTENDENT TO HAVE, IN A MANNER IN VIOLATION OF  
45 THE PROVISIONS OF THIS SECTION, MATERIALLY MISREPRESENTED THE LOSS  
46 RATIOS REQUIRED BY SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH IN TWO  
47 CONSECUTIVE FILINGS, AND IF, AT ANY TIME DURING A THREE YEAR PERIOD IN  
48 WHICH SUCH MATERIAL VIOLATIONS OCCURRED, THE INSURER FAILED TO PROVIDE A  
49 DIVIDEND OR CREDIT AS REQUIRED BY SUBPARAGRAPH (B) OF THIS PARAGRAPH,  
50 SUCH INSURER SHALL BE PRESUMED TO BE SUBSTANTIALLY NONCOMPLIANT WITH THE  
51 REQUIREMENTS OF THIS PARAGRAPH AND THE SUPERINTENDENT SHALL, AFTER A  
52 NOTICE AND A HEARING, HAVE THE AUTHORITY TO PROHIBIT SAID INSURER FROM  
53 ADJUSTING PREMIUMS PURSUANT TO THE ALTERNATE PROCEDURE FOR THE AFFECTED  
54 POLICY FORMS FOR A PERIOD OF UP TO THREE YEARS, COMMENCING WITH THE  
55 SUPERINTENDENT'S NOTICE OF SUCH DETERMINATION. THIS PROHIBITION SHALL BE

1 IN ADDITION TO ANY OTHER PENALTIES THAT THE SUPERINTENDENT MAY IMPOSE  
2 PURSUANT TO THIS CHAPTER.

3 (E) THE ALTERNATE PROCEDURE SET FORTH IN THIS PARAGRAPH SHALL NOT BE  
4 AVAILABLE TO ADJUST NEWLY-APPROVED PREMIUM RATES OR RATES RECENTLY  
5 ADJUSTED THROUGH THE PRIOR APPROVAL PROCESS UNTIL THE EARLIER OF (I) THE  
6 DEVELOPMENT OF SUFFICIENT ACTUAL CLAIMS EXPERIENCE TO JUSTIFY THE  
7 REQUESTED ADJUSTMENT, AS CERTIFIED BY A MEMBER OF THE AMERICAN ACADEMY  
8 OF ACTUARIES OR OTHER INDIVIDUAL ACCEPTABLE TO THE SUPERINTENDENT, OR  
9 (II) TWELVE MONTHS FROM THE PRIOR APPROVAL. PROVIDED HOWEVER, NOTHING IN  
10 THIS SUBPARAGRAPH SHALL BE CONSTRUED TO PROHIBIT AN INSURER FROM UTILIZ-  
11 ING THE ALTERNATE PROCEDURE TO ADJUST RATES ON A POLICY WHERE THE RATES  
12 FOR A RIDER TO THAT POLICY HAVE NOT BEEN IN EFFECT FOR TWELVE MONTHS.

13 S 3. Subsections (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j)  
14 of section 4308 of the insurance law are relettered subsections (b),  
15 (c), (d), (e), (f), (g), (h), (i), (j) and (k) and a new subsection (a)  
16 is added to read as follows:

17 (A) DEFINITIONS. FOR PURPOSES OF THIS SECTION:

18 (1) "CONTRACT FORM" SHALL MEAN A CONTRACT OR CONTRACTS AND ASSOCIATED  
19 RIDERS WHOSE EXPERIENCE HAS BEEN POOLED IN ORDER TO DETERMINE RATES FOR  
20 EACH CONTRACT AND EACH RIDER;

21 (2) "LOSS RATIO" SHALL MEAN THE RATIO OF DIRECT CLAIMS INCURRED FOR  
22 THE REPORTING CALENDAR YEAR TO DIRECT PREMIUMS EARNED FOR THE SAME  
23 REPORTING CALENDAR YEAR, EXPRESSED AS A PERCENTAGE;

24 (3) "DIRECT CLAIMS INCURRED" SHALL MEAN CLAIMS PAID DURING THE REPORT-  
25 ING CALENDAR YEAR PLUS THE UNPAID CLAIMS RESERVE AT THE END OF THE  
26 REPORTING CALENDAR YEAR AND CALCULATED CONSISTENT WITH PARAGRAPH FOUR OF  
27 SUBSECTION (I) OF THIS SECTION;

28 (4) "DIRECT PREMIUMS EARNED" SHALL MEAN PREMIUMS WRITTEN DURING THE  
29 REPORTING CALENDAR YEAR PLUS THE UNEARNED PREMIUMS AT THE BEGINNING OF  
30 THE YEAR LESS THE UNEARNED PREMIUMS AT THE END OF THE YEAR, EXCLUSIVE OF  
31 REINSURANCE ASSUMED OR CEDED; AND

32 (5) "SMALL GROUP" SHALL MEAN A GROUP CONTRACT THAT IS SUBJECT TO THE  
33 REQUIREMENTS OF SECTION FOUR THOUSAND THREE HUNDRED SEVENTEEN OF THIS  
34 ARTICLE.

35 S 4. Paragraph 1 of subsection (h) of section 4308 of the insurance  
36 law, as added by chapter 504 of the laws of 1995 and such subsection as  
37 relettered by section three of this act, is amended to read as follows:

38 (1) Beginning January first, nineteen hundred ninety-six, as an alter-  
39 nate procedure to the requirements of subsection [(c)] (D) of this  
40 section, a corporation subject to the provisions of this article desir-  
41 ing to increase or decrease premiums for any contract subject to this  
42 section may instead submit a rate filing or application to the super-  
43 intendent and such application or filing shall be deemed approved,  
44 provided that (A) the anticipated incurred loss ratio for a contract  
45 form shall not be less than eighty-five percent for individual direct  
46 payment contracts or [seventy-five] EIGHTY percent for small group and  
47 small group remittance contracts, nor, except in the case of individual  
48 direct payment contracts with a loss ratio of greater than one hundred  
49 five percent during nineteen hundred ninety-four, shall the loss ratio  
50 for any direct payment, group or group remittance contract be more than  
51 one hundred five percent of the anticipated earned premium, and (B) the  
52 corporation submits, as part of such filing, a certification by a member  
53 of the American Academy of Actuaries or other individual acceptable to  
54 the superintendent that [that] THE corporation is in compliance with the  
55 provisions of this subsection, based upon that person's examination,  
56 including a review of the appropriate records and of the actuarial

1 assumptions and methods used by the corporation in establishing premium  
2 rates for contracts subject to this section. [For purposes of this  
3 section, a small group is any group whose contract is subject to the  
4 requirements of section forty-three hundred seventeen of this article.]  
5 SUCH CERTIFICATION SHALL AFFIRM THAT THE RATE FILING OR APPLICATION  
6 SUBMITTED TO THE SUPERINTENDENT PURSUANT TO THIS SUBSECTION WAS PREPARED  
7 IN ACCORDANCE WITH GENERALLY ACCEPTED ACTUARIAL PRINCIPLES AND THIS  
8 SECTION. THE INSURER SHALL, AT THE REQUEST OF THE SUPERINTENDENT,  
9 PROVIDE ADDITIONAL UNDERLYING ACTUARIAL DOCUMENTATION TO SUPPORT THE  
10 RATE FILING OR APPLICATION PROVIDED, HOWEVER, THE REQUEST FOR SUCH  
11 INFORMATION SHALL NOT PRECLUDE THE PREMIUM RATE FROM GOING INTO EFFECT.

12 S 5. Subsection (i) of section 4308 of the insurance law, as added by  
13 chapter 504 of the laws of 1995 and as relettered by section three of  
14 this act, is amended to read as follows:

15 (i) (1) Each calendar year, a corporation subject to the provisions of  
16 this article shall return, in the form of aggregate benefits incurred  
17 for each contract form filed pursuant to the alternate procedure set  
18 forth in subsection [(g)] (H) of this section, at least eighty-five  
19 percent for individual direct payment contracts or [seventy-five] EIGHTY  
20 percent for small group and small group remittance contracts, but,  
21 except in the case of individual direct payment contracts with a loss  
22 ratio of greater than one hundred five percent in nineteen hundred nine-  
23 ty-four, for any direct payment, group or group remittance contract, not  
24 in excess of one hundred five percent of the aggregate premiums earned  
25 for the contract form during that calendar year. IF A CORPORATION HAS  
26 POOLED THE EXPERIENCE OF CONTRACTS AND/OR RIDERS TO DETERMINE THE PREMI-  
27 UM RATES IN ACCORDANCE WITH APPLICABLE LAW, THE CORPORATION SHALL CALCU-  
28 LATE THE LOSS RATIOS IN ACCORDANCE WITH THE MANNER IN WHICH IT ESTAB-  
29 LISHED THE PREMIUM RATES. Corporations subject to the provisions of this  
30 article shall annually report, no later than [May] AUGUST first of each  
31 year, the loss ratio calculated pursuant to this subsection for each  
32 such contract form for the previous calendar year.

33 (2) In each case where the loss ratio for a contract form fails to  
34 comply with the eighty-five percent minimum loss ratio requirement for  
35 individual direct payment contracts, or the [seventy-five] EIGHTY  
36 percent minimum loss ratio requirement for small group and small group  
37 remittance contracts, as set forth in paragraph one of this subsection,  
38 the corporation shall issue a dividend or credit against future premiums  
39 for all contract holders with that contract form in an amount sufficient  
40 to assure that the aggregate benefits incurred in the previous calendar  
41 year plus the amount of the dividends and credits shall equal no less  
42 than eighty-five percent for individual direct payment contracts, or  
43 [seventy-five] EIGHTY percent for small group and small group remittance  
44 contracts, of the aggregate premiums earned for the contract form in the  
45 previous calendar year. The dividend or credit shall be issued to each  
46 contract that was in effect as of December thirty-first of the applica-  
47 ble year [and remains in effect as of the date the dividend or credit is  
48 issued]. All dividends and credits must be distributed by September  
49 thirtieth of the year following the calendar year in which the loss  
50 ratio requirements were not satisfied. A CORPORATION SHALL MAKE A  
51 REASONABLE EFFORT TO IDENTIFY THE CURRENT ADDRESS OF THOSE CONTRACT  
52 HOLDERS WHO ARE NO LONGER CONTRACT HOLDERS WHEN THE DIVIDEND OR CREDIT  
53 IS ISSUED. The annual report required by paragraph one of this  
54 subsection shall include a corporation's calculation of the dividends  
55 and credits, as well as an explanation of the corporation's plan to  
56 issue dividends or credits. The instructions and format for calculating

1 and reporting loss ratios and issuing dividends or credits shall be  
2 specified by the superintendent by regulation. Such regulations shall  
3 include provisions for the distribution of a dividend or credit in the  
4 event of cancellation or termination by a contract holder or subscriber.

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

23 (4) DIRECT CLAIMS INCURRED FOR USE IN TESTING LOSS RATIO COMPLIANCE  
24 UNDER THIS SUBSECTION SHALL BE CALCULATED AS FOLLOWS: (I) THE CLAIMS  
25 PAID DURING THE REPORTING CALENDAR YEAR; PLUS (II) CAPITATION PAYMENTS  
26 PAID FOR SERVICES TO BE RENDERED DURING THE REPORTING CALENDAR YEAR;  
27 PLUS (III) THE UNPAID CLAIM RESERVE AT THE END OF THE REPORTING CALENDAR  
28 YEAR WHICH SHALL BE CALCULATED AS THE SUM OF CLAIMS PAID FROM JANUARY  
29 FIRST THROUGH JUNE FIRST OF THE YEAR FOLLOWING THE REPORTING CALENDAR  
30 YEAR ON CLAIMS INCURRED IN THE REPORTING CALENDAR YEAR OR PRIOR YEARS,  
31 PLUS THE UNPAID CLAIMS RESERVE AS OF JUNE FIRST OF THE YEAR FOLLOWING  
32 THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED IN THE REPORTING CALENDAR  
33 YEAR OR PRIOR YEARS DETERMINED FROM CLAIMS PAYMENTS THROUGH JUNE FIRST  
34 OF THE YEAR FOLLOWING THE REPORTING CALENDAR YEAR; MINUS (IV) THE UNPAID  
35 CLAIM RESERVE AT THE BEGINNING OF THE REPORTING CALENDAR YEAR WHICH  
36 SHALL BE CALCULATED AS THE SUM OF THE CLAIMS PAID FROM JANUARY FIRST  
37 THROUGH JUNE FIRST OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED  
38 PRIOR TO THE REPORTING CALENDAR YEAR, PLUS THE UNPAID CLAIMS RESERVE AS  
39 OF JUNE FIRST OF THE REPORTING CALENDAR YEAR ON CLAIMS INCURRED PRIOR TO  
40 THE REPORTING CALENDAR YEAR DETERMINED FROM CLAIM PAYMENTS THROUGH JUNE  
41 FIRST OF THE REPORTING YEAR; PLUS OR MINUS (V) THE EFFECTS FOR THE  
42 REPORTING YEAR OF THE MARKET STABILIZATION POOLS; MINUS (VI) THE EFFECTS  
43 FOR THE REPORTING YEAR OF THE STOP-LOSS POOLS. NOTHING IN THIS SECTION  
44 SHALL BE CONSTRUED TO PROHIBIT THE SUPERINTENDENT FROM REVIEWING CLAIMS  
45 DATA BEYOND JUNE FIRST.

46 S 6. Section 4308 of the insurance law is amended by adding two new  
47 subsections (l) and (m) to read as follows:

48 (1) (I) ANY INSURER THAT VIOLATES THE PROVISIONS OF THIS SECTION  
49 INCLUDING, BUT NOT LIMITED TO, ANY FAILURE TO PROVIDE A DIVIDEND OR  
50 CREDIT TO SUBSCRIBERS AS REQUIRED BY SUBSECTION (I) OF THIS SECTION,  
51 SHALL BE SUBJECT TO THE MAXIMUM PENALTIES PROVIDED IN THIS CHAPTER.

52 (II) IN ADDITION TO THE PENALTIES OTHERWISE IMPOSED PURSUANT TO THIS  
53 CHAPTER, WHERE AN INSURER ELECTING TO ADJUST PREMIUMS PURSUANT TO THE  
54 ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (H) OF THIS SECTION, IS  
55 DETERMINED BY THE SUPERINTENDENT TO HAVE, IN A MANNER IN VIOLATION OF  
56 THE PROVISIONS OF THIS SECTION, MATERIALLY MISREPRESENTED THE LOSS

1 RATIOS REQUIRED BY SUBSECTIONS (H) AND (I) OF THIS SECTION IN TWO  
2 CONSECUTIVE FILINGS, AND IF, AT ANY TIME DURING A THREE YEAR PERIOD IN  
3 WHICH SUCH MATERIAL VIOLATIONS OCCURRED, THE INSURER FAILED TO PROVIDE A  
4 DIVIDEND OR CREDIT AS REQUIRED BY SUBSECTION (I) OF THIS SECTION, SUCH  
5 INSURER SHALL BE PRESUMED TO BE SUBSTANTIALLY NONCOMPLIANT WITH THE  
6 REQUIREMENTS OF THIS PARAGRAPH AND THE SUPERINTENDENT SHALL, AFTER A  
7 NOTICE AND A HEARING, HAVE THE AUTHORITY TO PROHIBIT SAID INSURER FROM  
8 ADJUSTING PREMIUMS PURSUANT TO THE ALTERNATE PROCEDURE FOR THE AFFECTED  
9 POLICY FORMS FOR A PERIOD OF UP TO THREE YEARS, COMMENCING WITH THE  
10 SUPERINTENDENT'S NOTICE OF SUCH DETERMINATION. THIS PROHIBITION SHALL BE  
11 IN ADDITION TO ANY OTHER PENALTIES THAT THE SUPERINTENDENT MAY IMPOSE  
12 PURSUANT TO THIS CHAPTER.

13 (M) THE ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (H) OF THIS  
14 SECTION SHALL NOT BE AVAILABLE TO ADJUST NEWLY-APPROVED PREMIUM RATES OR  
15 RATES RECENTLY ADJUSTED THROUGH THE PRIOR APPROVAL PROCESS UNTIL THE  
16 EARLIER OF (I) THE DEVELOPMENT OF SUFFICIENT ACTUAL CLAIMS EXPERIENCE TO  
17 JUSTIFY THE REQUESTED ADJUSTMENT, AS CERTIFIED BY A MEMBER OF THE AMERI-  
18 CAN ACADEMY OF ACTUARIES OR OTHER INDIVIDUAL ACCEPTABLE TO THE SUPER-  
19 INTENDENT, OR (II) TWELVE MONTHS FROM THE PRIOR APPROVAL. PROVIDED  
20 HOWEVER, NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PROHIBIT AN  
21 INSURER FROM UTILIZING THE ALTERNATE PROCEDURE TO ADJUST RATES ON A  
22 POLICY WHERE THE RATES FOR A RIDER TO THAT POLICY HAVE NOT BEEN IN  
23 EFFECT FOR TWELVE MONTHS.

24 S 7. Subsection (g) of section 4308 of the insurance law, as added by  
25 chapter 501 of the laws of 1992 and as relettered by section three of  
26 this act, is amended to read as follows:

27 (g) The results of any audit conducted pursuant to subsections [(d)]  
28 (E) and [(e)] (F) of this section shall be provided to the corporation  
29 and each member of its board of directors. The superintendent shall  
30 have the authority to direct the corporation in writing to implement any  
31 recommendations resulting from the audit that the superintendent finds  
32 to be necessary and reasonable; provided, however, that the superinten-  
33 dent shall first consider any written response submitted by the corpo-  
34 ration or the board of directors prior to making such finding. Upon any  
35 application for a rate adjustment by the corporation, the superintendent  
36 shall review the corporation's compliance with the directions and recom-  
37 mendations made previously by the superintendent, as a result of the  
38 most recently completed management or financial audit and shall include  
39 such findings in any written decision concerning such application.

40 S 8. Paragraph 1 of subsection (i) and subsections (j) and (k) of  
41 section 4308 of the insurance law, as added by chapter 504 of the laws  
42 of 1995 and such subsections as relettered by section three of this act,  
43 are amended to read as follows:

44 (1) Each calendar year, a corporation subject to the provisions of  
45 this article shall return, in the form of aggregate benefits incurred  
46 for each contract form filed pursuant to the alternate procedure set  
47 forth in subsection [(g)] (H) of this section, at least eighty-five  
48 percent for individual direct payment contracts or [seventy-five] EIGHTY  
49 percent for small group and small group remittance contracts, but,  
50 except in the case of individual direct payment contracts with a loss  
51 ratio of greater than one hundred five percent in nineteen hundred nine-  
52 ty-four, for any direct payment, group or group remittance contract, not  
53 in excess of one hundred five percent of the aggregate premiums earned  
54 for the contract form during that calendar year. IF A CORPORATION HAS  
55 POOLED THE EXPERIENCE OF CONTRACTS AND/OR RIDERS TO DETERMINE THE PREMI-  
56 UM RATES IN ACCORDANCE WITH APPLICABLE LAW, THE CORPORATION SHALL CALCU-

1 LATE THE LOSS RATIOS IN ACCORDANCE WITH THE MANNER IN WHICH IT ESTAB-  
2 LISHED THE PREMIUM RATES. Corporations subject to the provisions of this  
3 article shall annually report, no later than [May] AUGUST first of each  
4 year, the loss ratio calculated pursuant to this subsection for each  
5 such contract form for the previous calendar year.

6 (j) The alternate procedure described in subsections [(g) and] (h) AND  
7 (I) of this section shall apply to individual direct payment contracts  
8 issued pursuant to sections four thousand three hundred twenty-one and  
9 four thousand three hundred twenty-two of this article on and after  
10 January first, nineteen hundred ninety-seven.

11 (k) The eighty-five percent minimum loss ratio for individual direct  
12 payment contracts described in subsections [(g) and] (h) AND (I) of this  
13 section shall be reduced to eighty-two and one-half percent as of Janu-  
14 ary first, nineteen hundred ninety-seven and shall be further reduced to  
15 eighty percent as of January first, nineteen hundred ninety-eight and  
16 thereafter. The refund or credit requirements for failure to meet mini-  
17 mum loss ratios will continue, but at these reduced percentages.

18 S 9. Subsection (i) of section 3216 of the insurance law is amended by  
19 adding a new paragraph 26 to read as follows:

20 (26)(A) NO MANAGED CARE HEALTH INSURANCE POLICY THAT PROVIDES COVERAGE  
21 FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE THAT SERVICES OF A  
22 PARTICIPATING HOSPITAL WILL BE COVERED AS OUT-OF-NETWORK SERVICES SOLELY  
23 ON THE BASIS THAT THE ADMITTING PHYSICIAN OR TREATING PHYSICIAN IS NOT A  
24 PARTICIPATING PROVIDER.

25 (B) NO MANAGED CARE HEALTH INSURANCE POLICY THAT PROVIDES COVERAGE FOR  
26 HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE THAT SERVICES OF A  
27 PARTICIPATING PHYSICIAN WILL BE COVERED AS OUT-OF-NETWORK SERVICES SOLE-  
28 LY ON THE BASIS THAT THE SERVICES ARE RENDERED IN A NON-PARTICIPATING  
29 HOSPITAL.

30 (C) FOR PURPOSES OF THIS PARAGRAPH, A "MANAGED CARE HEALTH INSURANCE  
31 POLICY" IS A POLICY THAT REQUIRES THAT SERVICES BE PROVIDED BY A PROVID-  
32 ER PARTICIPATING IN THE INSURER'S NETWORK IN ORDER FOR THE INSURED TO  
33 RECEIVE THE MAXIMUM LEVEL OF REIMBURSEMENT UNDER THE POLICY.

34 S 10. Subsection (k) of section 3221 of the insurance law is amended  
35 by adding a new paragraph 15 to read as follows:

36 (15)(A) NO GROUP OR BLANKET MANAGED CARE HEALTH INSURANCE POLICY THAT  
37 PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE  
38 THAT SERVICES OF A PARTICIPATING HOSPITAL WILL BE COVERED AS OUT-OF-NET-  
39 WORK SERVICES SOLELY ON THE BASIS THAT THE ADMITTING PHYSICIAN OR TREAT-  
40 ING PHYSICIAN IS NOT A PARTICIPATING PROVIDER.

41 (B) NO GROUP OR BLANKET MANAGED CARE HEALTH INSURANCE POLICY THAT  
42 PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL PROVIDE  
43 THAT SERVICES OF A PARTICIPATING PHYSICIAN WILL BE COVERED AS  
44 OUT-OF-NETWORK SERVICES SOLELY ON THE BASIS THAT THE SERVICES ARE  
45 RENDERED IN A NON-PARTICIPATING HOSPITAL.

46 (C) FOR PURPOSES OF THIS PARAGRAPH, A "MANAGED CARE HEALTH INSURANCE  
47 POLICY" IS A POLICY THAT REQUIRES THAT SERVICES BE PROVIDED BY A PROVID-  
48 ER PARTICIPATING IN THE INSURER'S NETWORK IN ORDER FOR THE INSURED TO  
49 RECEIVE THE MAXIMUM LEVEL OF REIMBURSEMENT UNDER THE POLICY.

50 S 11. Section 4303 of the insurance law is amended by adding a new  
51 subsection (ff) to read as follows:

52 (FF) (1) NO MANAGED CARE CONTRACT ISSUED BY A HEALTH SERVICE CORPO-  
53 RATION, HOSPITAL SERVICE CORPORATION OR MEDICAL EXPENSE INDEMNITY CORPO-  
54 RATION THAT PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE  
55 SHALL PROVIDE THAT SERVICES OF A PARTICIPATING HOSPITAL WILL BE COVERED

1 AS OUT-OF-NETWORK SERVICES SOLELY ON THE BASIS THAT THE ADMITTING PHYSI-  
2 CIAN OR TREATING PHYSICIAN IS NOT A PARTICIPATING PROVIDER.

3 (2) NO MANAGED CARE CONTRACT ISSUED BY A HEALTH SERVICE CORPORATION,  
4 HOSPITAL SERVICE CORPORATION OR MEDICAL EXPENSE INDEMNITY CORPORATION  
5 THAT PROVIDES COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL CARE SHALL  
6 PROVIDE THAT SERVICES OF A PARTICIPATING PHYSICIAN WILL BE COVERED AS  
7 OUT-OF-NETWORK SERVICES SOLELY ON THE BASIS THAT THE SERVICES ARE  
8 RENDERED IN A NON-PARTICIPATING HOSPITAL.

9 (3) FOR PURPOSES OF THIS SUBSECTION, A "MANAGED CARE CONTRACT" IS A  
10 CONTRACT THAT REQUIRES THAT SERVICES BE PROVIDED BY A PROVIDER PARTIC-  
11 IPATING IN THE CORPORATION'S NETWORK IN ORDER FOR THE SUBSCRIBER TO  
12 RECEIVE THE MAXIMUM LEVEL OF REIMBURSEMENT UNDER THE CONTRACT.

13 S 12. Subdivisions 3 and 4 of section 4406 of the public health law,  
14 subdivision 3 as renumbered by chapter 538 of the laws of 1993, are  
15 renumbered subdivisions 4 and 5 and a new subdivision 3 is added to read  
16 as follows:

17 3. (A) NO CONTRACT ISSUED PURSUANT TO THIS SECTION SHALL PROVIDE THAT  
18 SERVICES OF A PARTICIPATING HOSPITAL WILL BE COVERED AS OUT-OF-NETWORK  
19 SERVICES SOLELY ON THE BASIS THAT THE ADMITTING PHYSICIAN OR TREATING  
20 PHYSICIAN IS NOT A PARTICIPATING PROVIDER.

21 (B) NO CONTRACT ISSUED PURSUANT TO THIS SECTION SHALL PROVIDE THAT  
22 SERVICES OF A PARTICIPATING PHYSICIAN WILL BE COVERED AS OUT-OF-NETWORK  
23 SERVICES SOLELY ON THE BASIS THAT THE SERVICES ARE RENDERED IN A  
24 NON-PARTICIPATING HOSPITAL.

25 S 13. Subsection (a) of section 3224-a of the insurance law, as  
26 amended by chapter 666 of the laws of 1997, is amended to read as  
27 follows:

28 (a) Except in a case where the obligation of an insurer or an organ-  
29 ization or corporation licensed or certified pursuant to article forty-  
30 three of this chapter or article forty-four of the public health law to  
31 pay a claim submitted by a policyholder or person covered under such  
32 policy or make a payment to a health care provider is not reasonably  
33 clear, or when there is a reasonable basis supported by specific infor-  
34 mation available for review by the superintendent that such claim or  
35 bill for health care services rendered was submitted fraudulently, such  
36 insurer or organization or corporation shall pay the claim to a policy-  
37 holder or covered person or make a payment to a health care provider  
38 WITHIN TWENTY-ONE DAYS OF RECEIPT OF A CLAIM OR BILL FOR SERVICES  
39 RENDERED THAT IS SUBMITTED BY ELECTRONIC MEANS AND within forty-five  
40 days of receipt of a claim or bill for services rendered THAT IS SUBMIT-  
41 TED OTHER THAN BY ELECTRONIC MEANS, SUCH AS BY PAPER OR FACSIMILE.

42 S 14. The opening paragraph of subsection (b) of section 3224-a of the  
43 insurance law, as amended by chapter 666 of the laws of 1997, is amended  
44 to read as follows:

45 In a case where the obligation of an insurer or an organization or  
46 corporation licensed or certified pursuant to article forty-three of  
47 this chapter or article forty-four of the public health law to pay a  
48 claim or make a payment for health care services rendered is not reason-  
49 ably clear due to a good faith dispute regarding the eligibility of a  
50 person for coverage, the liability of another insurer or corporation or  
51 organization for all or part of the claim, the amount of the claim, the  
52 benefits covered under a contract or agreement, or the manner in which  
53 services were accessed or provided, an insurer or organization or corpo-  
54 ration shall pay any undisputed portion of the claim in accordance with  
55 this subsection and notify the policyholder, covered person or health  
56 care provider in writing WITHIN FOURTEEN CALENDAR DAYS OF RECEIPT OF A

1 CLAIM SUBMITTED BY ELECTRONIC MEANS AND within thirty calendar days of  
2 receipt of [the] A claim THAT IS SUBMITTED BY OTHER THAN ELECTRONIC  
3 MEANS, SUCH AS BY PAPER OR FACSIMILE:

4 S 15. This act shall take effect immediately; provided, however, that:

5 (a) sections one through eight of this act shall take effect January  
6 1, 2010 and shall apply to premium rate changes effective on and after  
7 that date and to loss ratio reports required to be filed beginning in  
8 2011;

9 (b) sections nine through twelve of this act shall take effect January  
10 1, 2010 and shall apply to policies and contracts issued, renewed, modi-  
11 fied, altered and amended on and after such effective date, provided,  
12 further, that any policies and contracts to which sections nine through  
13 twelve of this act apply and that were approved by the superintendent of  
14 insurance shall be deemed to comply with all applicable laws and regu-  
15 lations until January 1, 2010; and

16 (c) sections thirteen and fourteen of this act shall take effect Janu-  
17 ary 1, 2010 and shall apply to claims transmitted and received on and  
18 after such date.