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

4412

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- 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 standards for claims-made coverage purchased by psychiatrists

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

Section 1. Subsections (a) and (b) of section 3436 of the insurance law, subsection (a) and the opening paragraph of subsection (b) as amended by chapter 381 of the laws of 1991 and subsection (b) as added by chapter 266 of the laws of 1986, are amended to read as follows:

(a) Every insurer which issues or renews policies for primary levels of medical malpractice insurance covering physicians licensed to practice in this state shall issue such policies on a claims-made or occurrence basis, as prescribed by the superintendent by regulation SUBJECT TO THE LIMITATIONS SPECIFIED IN THIS SUBSECTION AND SUBSECTION (B) OF THIS SECTION; provided, further, that nothing in this section shall preclude any insurer from applying otherwise applicable underwriting standards in determining whether to issue or renew such policies.

(b) A claims-made policy shall contain the following provisions:

(1) if the insured has purchased a claims-made policy from an admitted insurer for a period of five or more consecutive years and the insured, after attaining the age of sixty-five or older, retires permanently and totally from the practice of medicine or if the insured has purchased such a policy for a period of ten or more consecutive years, and the insured, after attaining the age of fifty-five or older, retires permanently and totally from the practice of medicine, the insurer shall, without charging an additional premium therefor at the time of, or subsequent to, such retirement, also cover all occurrences between the inception date of the first such consecutive policy from such insurer and such retirement date which, subsequent to the termination date, are reported in accordance with statutory and policy requirements; PROVIDED,

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

LBD02798-01-9

HOWEVER, THAT NO REGULATION OF THE SUPERINTENDENT, NOR ANY PROVISION OF THIS SECTION NOTWITHSTANDING, SHALL PRECLUDE AN INSURER, WHO ISSUES POLICIES TO PHYSICIANS PRACTICING PSYCHIATRY, FROM OFFERING SUCH INSUREDS AN EXTENDED REPORTING PERIOD THAT PROVIDES FOR A NONRENEWABLE AGGREGATE LIABILITY LIMIT EQUAL TO AT LEAST ONE HUNDRED PERCENT OF THE POLICY'S ANNUAL AGGREGATE LIABILITY LIMIT;

(2) if the insured dies or becomes permanently disabled and unable to practice medicine while covered by such a policy, the insurer shall, without charging an additional premium therefor at the time of, or subsequent to, such event, also cover all occurrences between the inception date of the first such consecutive policy from such insurer and the death or disability of the insured; PROVIDED, HOWEVER, THAT NO REGULATION OF THE SUPERINTENDENT, NOR ANY PROVISION OF THIS SECTION NOTWITHSTANDING, SHALL PRECLUDE AN INSURER, WHO ISSUES POLICIES TO PHYSICIANS PRACTICING PSYCHIATRY, FROM OFFERING SUCH INSUREDS AN EXTENDED REPORTING PERIOD THAT PROVIDES FOR A NONRENEWABLE AGGREGATE LIABILITY LIMIT EQUAL TO AT LEAST ONE HUNDRED PERCENT OF THE POLICY'S ANNUAL AGGREGATE LIABILITY LIMIT; and

(3) the insurer shall make available and shall advise the insured of the availability and cost of coverage for occurrences between the inception date of the first such consecutive policy from such insurer and the termination of such policy which, subsequent to the termination date, are reported in accordance with statutory and policy requirements, pursuant to such terms and conditions as may be specified by the superintendent by regulation. The insured shall have the option of purchasing such coverage either in a single payment, or in three annual installments with an additional finance charge.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to policies issued or renewed on or after such date.