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

648

2009-2010 Regular Sessions

I N S E N A T E

January 12, 2009

Introduced by Sens. LARKIN, SEWARD, LEIBELL, MAZIARZ, 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 the rating of individual and small group health insurance policies and contracts and several stop loss funds; and to repeal the closing paragraph of subsection (c) of section 3233 of the insurance law relating to convening the technical advisory committee periodically to evaluate the impact of the standardized direct payment enrollee contracts offered pursuant to sections 4321 and 4322 of such law on the individual health insurance market

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 3231 of the insurance law, subsection (a) as amended by chapter 661 of the laws of 1997 and subsection (b) as amended by chapter 557 of the laws of 2002, are amended to read as follows:

(a) No individual health insurance policy and no group health insurance policy covering [between two and] A GROUP OF fifty OR FEWER employees or members of the group exclusive of spouses and dependents, hereinafter referred to as a small group, providing hospital and/or medical benefits, including medicare supplemental insurance, shall be issued in this state unless such policy is community rated and, notwithstanding any other provisions of law, the underwriting of such policy involves no more than the imposition of a pre-existing condition limitation as permitted by this article. Any individual, and dependents of such individual, and any small group, including all employees or group members and dependents of employees or members, applying for individual health insurance coverage, including medicare supplemental coverage, or small group health insurance coverage, including medicare supplemental insurance, must be accepted at all times throughout the year for any hospital

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

LBD03019-02-9

and/or medical coverage offered by the insurer to individuals or small groups in this state. Once accepted for coverage, an individual or small group cannot be terminated by the insurer due to claims experience. Termination of an individual or small group shall be based only on one or more of the reasons set forth in subsection (g) of section three thousand two hundred sixteen or subsection (p) of section three thousand two hundred twenty-one of this article. Group hospital and/or medical coverage, including medicare supplemental insurance, obtained through an out-of-state trust covering a group of fifty or fewer employees or participating persons who are residents of this state must be community rated regardless of the situs of delivery of the policy. Notwithstanding any other provisions of law, the underwriting of such policy may involve no more than the imposition of a pre-existing condition limitation as permitted by this article, and once accepted for coverage, an individual or small group cannot be terminated due to claims experience. Termination of an individual or small group shall be based only on one or more of the reasons set forth in subsection (p) of section three thousand two hundred twenty-one of this article. For the purposes of this section, "community rated" means a rating methodology in which the premium for all persons covered by a policy or contract form is the same based on the experience of the entire pool of risks covered by that policy or contract form without regard to age, sex, health status or occupation.

(b) Nothing herein shall prohibit the use of premium rate structures to establish different premium rates for individuals as opposed to family units [or separate community rates for individuals as opposed to small groups. If an insurer is required to issue a contract to individual proprietors pursuant to subsection (i) of this section, such policy shall be subject to subsection (a) of this section].

S 2. Subsections (a) and (b) of section 4317 of the insurance law, subsection (a) as amended by chapter 661 of the laws of 1997 and subsection (b) as amended by chapter 557 of the laws of 2002, are amended to read as follows:

(a) No individual health insurance contract and no group health insurance contract covering [between two and] A GROUP OF fifty OR FEWER employees or members of the group exclusive of spouses and dependents, including contracts for which the premiums are paid by a remitting agent for a group, hereinafter referred to as a small group, providing hospital and/or medical benefits, including Medicare supplemental insurance, shall be issued in this state unless such contract is community rated and, notwithstanding any other provisions of law, the underwriting of such contract involves no more than the imposition of a pre-existing condition limitation as permitted by this article. Any individual, and dependents of such individual, and any small group, including all employees or group members and dependents of employees or members, applying for individual or small group health insurance coverage must be accepted at all times throughout the year for any hospital and/or medical coverage, including Medicare supplemental insurance, offered by the corporation to individuals or small groups in this state. Once accepted for coverage, an individual or small group cannot be terminated by the insurer due to claims experience. Termination of coverage for individuals or small groups may be based only on one or more of the reasons set forth in subsection (c) of section four thousand three hundred four or subsection (j) of section four thousand three hundred five of this article. For the purposes of this section, "community rated" means a rating methodology in which the premium for all persons

covered by a policy or contract form is the same, based on the experience of the entire pool of risks covered by that policy or contract form without regard to age, sex, health status or occupation.

(b) Nothing herein shall prohibit the use of premium rate structures to establish different premium rates for individuals as opposed to family units [or separate community rates for individuals as opposed to small groups. If a corporation is required to issue a contract to individual proprietors pursuant to subsection (f) of this section, such contract shall be subject to the requirements of subsection (a) of this section].

S 3. The closing paragraph of subsection (c) of section 3233 of the insurance law is REPEALED and two new subsections (d) and (e) are added to read as follows:

(D) (1) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR ANY OTHER PROVISION OF LAW, ON OR BEFORE OCTOBER FIRST, TWO THOUSAND ELEVEN, THE SUPERINTENDENT SHALL PROMULGATE REGULATIONS TO ENSURE AN ORDERLY IMPLEMENTATION AND ONGOING OPERATION OF THE OPEN ENROLLMENT AND COMMUNITY RATING REQUIRED BY SECTIONS THREE THOUSAND TWO HUNDRED THIRTY-ONE AND FOUR THOUSAND THREE HUNDRED SEVENTEEN OF THIS CHAPTER, AS AMENDED BY THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE THAT ADDED THIS SUBSECTION, INCLUDING PROVISIONS DESIGNED TO ENCOURAGE INSURERS TO REMAIN IN OR ENTER THE SMALL GROUP HEALTH INSURANCE MARKET. SUCH REGULATIONS SHALL APPLY TO ALL INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS SUBJECT TO COMMUNITY RATING. SUCH REGULATIONS SHALL BE DESIGNED TO PROMOTE AN INSURANCE MARKETPLACE WHERE PREMIUMS DO NOT UNDULY FLUCTUATE, INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS ARE REASONABLY PROTECTED AGAINST UNEXPECTED, SIGNIFICANT SHIFTS IN THE NUMBER OF PERSONS INSURED, AND OTHER MARKET STABILITY FEATURES DEEMED APPROPRIATE BY THE SUPERINTENDENT. SUCH REGULATIONS SHALL NOT REQUIRE ANY INSURER OR HEALTH MAINTENANCE ORGANIZATION SUBJECT TO THIS SECTION, OR ANY SUBSIDIARY OR CONTROLLED PERSON OF A HOLDING COMPANY OF SUCH INSURER OR HEALTH MAINTENANCE ORGANIZATION, TO ENTER, CONTINUE TO CONDUCT OR WITHDRAW FROM ANY LINE OF BUSINESS AS A CONDITION OF ENTERING, CONTINUING IN OR WITHDRAWING FROM ANY OTHER LINE OF BUSINESS.

(2) PRIOR TO ADOPTING SUCH REGULATIONS, THE SUPERINTENDENT SHALL CONVENE A TECHNICAL ADVISORY COMMITTEE, ON OR BEFORE FEBRUARY FIRST, TWO THOUSAND TEN, TO PROVIDE ADVICE AND RECOMMENDATIONS TO THE SUPERINTENDENT ON ISSUES INCLUDING, BUT NOT LIMITED TO, VOLUNTARY REINSURANCE, POOLING, RISK SHARING, THE ESTABLISHMENT OF A HIGH RISK OR HIGH COST MEDICAL CONDITIONS POOL, THE MODERATION OF INITIAL COMMUNITY RATES AS COMPARED TO PRIOR RATES, OR PREMIUM STABILIZATION METHODS. THE TECHNICAL ADVISORY COMMITTEE SHALL BE COMPRISED OF NINE MEMBERS, ONE OF WHOM SHALL BE THE SUPERINTENDENT OR HIS OR HER DESIGNEE. THE SUPERINTENDENT OR HIS OR HER DESIGNEE SHALL CHAIR THE COMMITTEE AND SHALL APPOINT TWO OTHER MEMBERS TO THE COMMITTEE. THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL EACH APPOINT THREE MEMBERS TO THE COMMITTEE. THE APPOINTEES SHALL BE REPRESENTATIVES OF COMMERCIAL HEALTH INSURERS, NOT-FOR-PROFIT HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS AND PURCHASERS OF INSURANCE AND SHALL BE NAMED NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN. IN ADDITION, THE SUPERINTENDENT MAY OBTAIN THE SERVICES OF AN ACTUARY WITH EXPERIENCE RELATING TO PREMIUM RATES AND MARKET STABILIZATION FOR SMALL GROUP HEALTH INSURANCE.

(3) (A) SUCH REGULATIONS MAY INCLUDE REINSURANCE OR A POOLING PROCESS INVOLVING INSURER CONTRIBUTIONS TO, OR RECEIPTS FROM, A FUND WHICH SHALL BE DESIGNED TO SHARE THE RISK OF OR EQUALIZE HIGH COST CLAIMS, CLAIMS OF HIGH COST PERSONS, COST VARIATIONS AMONG INSURERS AND HEALTH MAINTENANCE

ORGANIZATIONS BASED UPON DEMOGRAPHIC FACTORS OF THE PERSONS INSURED WHICH CORRELATE WITH SUCH COST VARIATIONS DESIGNED TO PROTECT INSURERS FROM DISPROPORTIONATE ADVERSE RISKS OF OFFERING COVERAGE TO ALL APPLICANTS; PROVIDED THAT SUCH REGULATIONS SHALL RELATE ONLY TO RISK SHARING AMONG INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS AND SHALL NOT CREATE DIFFERENCES IN COMMUNITY RATES CHARGED BY A SINGLE INSURER BECAUSE A SMALL GROUP'S COVERAGE HAS BEEN REINSURED OR POOLED, AND NEITHER THE SMALL EMPLOYER NOR THE EMPLOYEE SHALL HAVE REASON TO KNOW THAT THEIR COVERAGE HAS BEEN REINSURED OR POOLED PURSUANT TO SUCH REGULATIONS.

(B) SUCH REGULATIONS MAY SPECIFY THE AGGREGATE TOTAL CONTRIBUTIONS BY HEALTH MAINTENANCE ORGANIZATIONS AND INSURERS BASED UPON SPECIFIED MEDICAL CONDITIONS, WHICH MAY BE INCREASED BY THE AGGREGATE TOTAL AMOUNT OF SAVINGS RESULTING FROM DECREASED CONTRIBUTIONS CALCULATED PURSUANT TO REGULATIONS BASED UPON DEMOGRAPHIC FACTORS.

(C) SUCH REGULATIONS MAY INCLUDE A REINSURANCE OR A POOLING PROCESS INVOLVING INSURER AND HEALTH MAINTENANCE ORGANIZATION CONTRIBUTIONS TO, OR RECEIPTS FROM, A FUND WHICH SHALL BE DESIGNED TO SHARE THE RISK OF OR EQUALIZE HIGH COST CLAIMS OR THE CLAIMS OF HIGH COST PERSONS; PROVIDED THAT SUCH REGULATIONS SHALL RELATE ONLY TO RISK SHARING AMONG INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS AND SHALL NOT CREATE DIFFERENCES IN COMMUNITY RATES CHARGED BY A SINGLE INSURER OR HEALTH MAINTENANCE ORGANIZATION BECAUSE A SMALL GROUP'S COVERAGE HAS BEEN REINSURED OR POOLED, AND NEITHER THE INDIVIDUAL NOR THE SMALL EMPLOYER NOR THE EMPLOYEE SHALL HAVE REASON TO KNOW THAT THEIR COVERAGE HAS BEEN REINSURED OR POOLED PURSUANT TO SUCH REGULATIONS. SUCH REGULATIONS MAY ALSO INCLUDE OTHER MECHANISMS DESIGNED TO SHARE RISKS OR PREVENT UNDUE VARIATIONS IN INSURER AND HEALTH MAINTENANCE ORGANIZATION CLAIM COSTS WHICH ARE NOT RELATED TO EXPECTED DIFFERENCES IN INSURER AND HEALTH MAINTENANCE ORGANIZATION COSTS BASED UPON COMPETITION, INNOVATION AND EFFICIENCY OF OPERATION. THE REGULATIONS MAY SEGREGATE ANY REINSURANCE, POOLING OR OTHER PROCESS AMONG VARIOUS GEOGRAPHIC REGIONS OF THE STATE.

(D) IN ORDER TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION IN AN ORDERLY MANNER THAT HELPS TO INCREASE THE AVAILABILITY OF HEALTH INSURANCE TO ALL MEMBERS OF THE SMALL GROUP MARKET, INCLUDING THOSE PERSONS THAT ARE CURRENTLY PLACED IN THE INDIVIDUAL OR DIRECT PAY MARKET, THE TECHNICAL ADVISORY COMMITTEE SHALL MAKE RECOMMENDATIONS TO:

(I) FORMULATE, DEVELOP, AND IMPLEMENT A PROGRAM OR METHODOLOGY TO ESTABLISH A HIGH RISK OR HIGH COST MEDICAL CONDITIONS POOL AND SMALL GROUP STOP LOSS FUND TO REIMBURSE NINETY PERCENT OF ALL BONA FIDE CLAIMS ABOVE SEVENTY-FIVE THOUSAND DOLLARS PAID BY HEALTH MAINTENANCE ORGANIZATIONS AND INSURERS IN A CALENDAR YEAR FOR ANY MEMBER OR INSURED COVERED IN THE NEW SMALL GROUP MARKET ESTABLISHED PURSUANT TO THE PROVISIONS OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE THAT ADDED THIS SUBSECTION. ALL APPROVED CLAIMS PAID ON BEHALF OF MEMBERS OR INSUREDS COVERED IN THE NEW SMALL GROUP MARKET BY HEALTH MAINTENANCE ORGANIZATIONS AND INSURERS THAT ARE ABOVE THE SEVENTY-FIVE THOUSAND DOLLAR THRESHOLD SHALL BE REIMBURSABLE, AS FUNDS ARE MADE AVAILABLE, FROM THE STOP LOSS FUNDS ESTABLISHED PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SEVEN OF THIS CHAPTER, THE STOP LOSS FUNDS ESTABLISHED PURSUANT TO SECTIONS FOUR THOUSAND THREE HUNDRED TWENTY-ONE-A AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO-A OF THIS CHAPTER.

(II) COORDINATE THE ISSUANCE OF NEW SMALL GROUP POLICIES OR CONTRACTS ISSUED AND RATED PURSUANT TO THIS CHAPTER WITH CONTRACTS ISSUED PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THIS CHAPTER.

(III) DEVELOP A MECHANISM TO SHIFT ALL PERSONS COVERED BY INDIVIDUAL CONTRACTS OR POLICIES PAID ON A DIRECT PAYMENT BASIS ISSUED PURSUANT TO THIS ARTICLE AND SECTIONS FOUR THOUSAND THREE HUNDRED FOUR, FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER TO THE NEW SMALL GROUP MARKET BY JANUARY FIRST, TWO THOUSAND SEVENTEEN.

(IV) DETERMINE WHETHER OR NOT CONTRACTS ISSUED PURSUANT TO SECTIONS FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER WILL CONTINUE TO BE NEEDED AND ISSUED TO ADEQUATELY SATISFY THE INSURANCE COVERAGE REQUIREMENTS OF ALL SEGMENTS OF THIS STATE'S POPULATION. FURTHER, THE COMMITTEE SHALL MAKE RECOMMENDATIONS TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY BY JULY FIRST, TWO THOUSAND TWELVE ON THE ADVISABILITY OF REPEALING SECTIONS FOUR THOUSAND THREE HUNDRED FOUR, FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER AND PROHIBITING THE ISSUANCE OF NEW DIRECT PAY CONTRACTS OR POLICIES TO ANY MEMBERS OR INSUREDS AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN OR PERMITTING ALL INDIVIDUALS THAT HAVE INDIVIDUAL DIRECT PAY CONTRACTS OR POLICIES ISSUED PURSUANT TO THIS ARTICLE AND SECTIONS FOUR THOUSAND THREE HUNDRED FOUR, FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN TO CONTINUE TO RENEW OR RETAIN SUCH CONTRACTS OR POLICIES AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN.

(V) DEVELOP PROGRAMS OR METHODOLOGIES TO ENSURE THAT APPROPRIATE MEDICAL CARE SHALL BE PROVIDED FOR ALL PERSONS PLACED IN A HIGH RISK OR HIGH COST MEDICAL CONDITIONS POOL. SUCH PROGRAM OR METHODOLOGY SHALL ENSURE THAT SUCH PERSONS RECEIVE APPROPRIATE AND COST EFFECTIVE MEDICAL CARE AND THAT THE LEVEL AND UTILIZATION OF BENEFITS PROVIDED FOR UNDER SUCH CONTRACTS OR POLICIES ARE ADEQUATE TO ADDRESS THE SERIOUS OR CHRONIC MEDICAL CONDITIONS FACED BY SUCH PERSONS.

(E)(I) THE ADVISORY COMMITTEE SHALL BE DEEMED TO BE A PUBLIC BODY FOR THE PURPOSES SET FORTH IN THE OPEN MEETINGS LAW, AS SET FORTH IN ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW. ALL COMMITTEE MEETINGS SHALL BE CONDUCTED ONLY AFTER FOURTEEN DAYS PRIOR PUBLIC NOTICE HAS BEEN GIVEN TO THE NEWS MEDIA GENERALLY AND PUBLISHED IN THREE STATEWIDE NEWSPAPERS OF GENERAL CIRCULATION, IN SUCH TRADE, INDUSTRY OR PROFESSIONAL PUBLICATIONS AS THE ADVISORY COMMITTEE SHALL DESIGNATE, AND IN THE STATE REGISTER.

(II) THE ADVISORY COMMITTEE SHALL ISSUE A REPORT THAT CONTAINS ITS FINDINGS AND RECOMMENDATIONS AS PROVIDED FOR PURSUANT TO THIS SUBSECTION TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY BY JANUARY FIRST, TWO THOUSAND ELEVEN.

(III) THE SUPERINTENDENT IN PROMULGATING RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION AND THE SMALL GROUP STOP LOSS FUND, MUST RELY ON THE FINDINGS AND RECOMMENDATIONS CONTAINED IN THE ADVISORY COMMITTEE'S REPORT, UNLESS HE OR SHE FINDS ON THE RECORD THAT SUCH RECOMMENDATIONS WOULD DESTABILIZE THE HEALTH INSURANCE MARKET, INSTIGATE SUBSTANTIAL INCREASES IN PREMIUM RATES OR SUBJECT INSURERS AND HEALTH MAINTENANCE INSURERS TO UNACCEPTABLE LOSS RATIOS OVER THE INITIAL TWO YEAR PERIOD OF TIME.

(IV) THE SUPERINTENDENT, IN PROMULGATING RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION, SHALL CONDUCT AT LEAST THREE SEPARATE PUBLIC HEARINGS (NOTICE WHEREOF SHALL BE GIVEN AS PROVIDED IN ITEM (I) OF THIS SUBPARAGRAPH) IN DIFFERENT PARTS OF THE STATE ACCEPT PUBLIC COMMENT ON THE COMMITTEE'S REPORT AND THE PROPOSED RULEMAKING SUBMITTED BY THE SUPERINTENDENT TO THE STATE REGISTER TO

IMPLEMENT THE PROVISIONS OF THIS SUBSECTION, IN ADDITION TO MEETING THE REQUIREMENTS OF THE STATE ADMINISTRATIVE PROCEDURE ACT; PROVIDED THAT THERE NEED BE NO DUPLICATION OF PERFORMANCE IN COMPLYING WITH THE PROVISIONS OF THIS ITEM AND THOSE OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

(E) THE PROVISIONS OF THIS ARTICLE AND SECTIONS FOUR THOUSAND THREE HUNDRED FOUR, FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER AND ALL INDIVIDUAL CONTRACTS OR POLICIES PAID ON A DIRECT PAYMENT BASIS ISSUED PURSUANT TO THIS CHAPTER SHALL REMAIN IN EFFECT ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN; PROVIDED, HOWEVER, THAT, AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, NO ADDITIONAL NEW CONTRACTS OR POLICIES MAY BE ISSUED TO INDIVIDUALS THAT DID NOT SUBSCRIBE TO SUCH CONTRACTS OR POLICIES PRIOR TO DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE. ALL INDIVIDUAL CONTRACTS OR POLICIES IN FORCE PURSUANT TO THIS ARTICLE, OR SECTIONS FOUR THOUSAND THREE HUNDRED FOUR, FOUR THOUSAND THREE HUNDRED TWENTY-ONE AND FOUR THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE SHALL CONTINUE TO BE COMMUNITY RATED WITH OTHER GROUPS OF ONE AS PROVIDED FOR BY SECTIONS THREE THOUSAND TWO HUNDRED THIRTY-ONE AND FOUR THOUSAND THREE HUNDRED SEVENTEEN OF THIS CHAPTER AS SAID SECTIONS THREE THOUSAND TWO HUNDRED THIRTY-ONE AND FOUR THOUSAND THREE HUNDRED SEVENTEEN WERE IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE THAT ADDED THIS SUBSECTION. HOLDERS OF ALL SUCH CONTRACTS OR POLICIES SHALL HAVE THE RIGHT TO RENEW AND CONTINUE THEIR CONTRACTS OR POLICIES UNDER THE SAME TERMS AND CONDITIONS UNTIL JANUARY FIRST, TWO THOUSAND SEVENTEEN.

S 4. Subparagraph (O) of paragraph 4 of subsection (j) of section 4301 of the insurance law, as added by section 8 of part A of chapter 1 of the laws of 2002, is amended to read as follows:

(O) Notwithstanding any other provision of law, the board shall direct that such proceeds of the public asset are disbursed in accordance with direction from the director of the division of the budget and transferred to the credit of the tobacco control and insurance initiatives pool, or its successor to be used for the exclusive purposes provided therein, AND TO THE STOP LOSS FUNDS ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER AND SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SEVEN OF THIS ARTICLE.

S 5. Section 4321-a of the insurance law, as added by chapter 1 of the laws of 1999, paragraph 2 of subsection (e) as amended by chapter 419 of the laws of 2000, is amended to read as follows:

S 4321-a. Fund for standardized individual enrollee direct payment contracts. (a) The superintendent shall establish a fund from which health maintenance organizations may receive reimbursement, to the extent of funds available therefor, for claims paid by such health maintenance organizations for members covered under standardized individual enrollee direct payment contracts issued pursuant to section four thousand three hundred twenty-one of this article AND FOR ALL SMALL GROUP POLICES OR CONTRACTS ISSUED AFTER JANUARY FIRST, TWO THOUSAND TWELVE. The fund established by the superintendent pursuant to this section shall be known as the direct payment stop loss fund. Commencing in calendar year two thousand, health maintenance organizations shall be eligible to receive reimbursement from the direct payment stop loss fund for ninety percent of claims paid between twenty thousand and one hundred thousand dollars in a calendar year for any member covered under a contract issued pursuant to section four thousand three hundred twenty-one of this article AND FOR ALL SMALL GROUP POLICIES OR CONTRACTS

ISSUED AFTER JANUARY FIRST, TWO THOUSAND TWELVE. For the purposes of this section, claims shall include health care claims paid by a health maintenance organization on behalf of a covered member pursuant to such standardized direct payment contracts OR A SMALL GROUP POLICY OR CONTRACT.

(b) The superintendent shall promulgate regulations setting forth procedures for the operation of the direct payment stop loss fund AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER and the distribution of monies therefrom.

(c) Claims shall be reported and funds shall be distributed on a calendar year basis. Claims shall be eligible for reimbursement only for the calendar year in which the claims are paid. Once claims paid on behalf of a member reach or exceed one hundred thousand dollars in a given calendar year, no further claims paid on behalf of such member in such calendar year shall be eligible for reimbursement.

(d) Each health maintenance organization shall submit a request for reimbursement from the stop loss fund on a form prescribed by the superintendent. Such request for reimbursement shall be submitted no later than April first following the end of the calendar year for which the reimbursement request is being made. The superintendent may require health maintenance organizations to submit such claims data in connection with the reimbursement request as he OR SHE deems necessary to enable him OR HER to distribute monies and oversee the operation of the direct payment stop loss fund AND THE SMALL GROUP STOP LOSS FUND. The superintendent may require that such data be submitted on a per member, aggregate and/or categorical basis.

(e) The superintendent shall calculate the total claims reimbursement amount for all health maintenance organizations for the calendar year for which claims are being reported.

(1) In the event that the total amount requested for reimbursement by all health maintenance organizations for a calendar year exceeds funds available for distribution for claims paid by all health maintenance organizations during that same calendar year, the superintendent shall provide for the pro-rata distribution of the available funds. Each health maintenance organization shall be eligible to receive only such proportionate amount of the available funds as the individual health maintenance organization's total eligible claims paid bears to the total eligible claims paid by all health maintenance organizations.

(2) In the event that (A) funds available for distribution for claims paid by all health maintenance organizations during a calendar year exceeds the total amount requested for reimbursement by all health maintenance organizations during that same calendar year, and (B) the total amount requested for reimbursement by all health maintenance organizations from the direct payment out-of-plan stop loss fund exceeds the amount available for distribution from such fund, then any excess funds shall be reallocated for distribution to the direct payment out-of-plan stop loss fund AND THE SMALL GROUP STOP LOSS FUND. Otherwise, such excess funds shall be carried forward and will not affect monies appropriated for the direct payment stop loss fund in the next calendar year.

(f) Upon the request of the superintendent, each health maintenance organization shall be required to furnish such data as the superintendent deems necessary to oversee the operation of the direct payment stop loss fund. Such data shall be furnished in a form prescribed by the superintendent.

(g) The superintendent may obtain the services of an organization to administer the direct payment stop loss fund. The superintendent shall establish guidelines for the submission of proposals by organizations for the purposes of administering the fund. The superintendent shall make a determination whether to approve, disapprove or recommend modification to the proposal of an applicant to administer the fund. An organization approved to administer the fund shall submit reports to the superintendent in such form and at times as may be required by the superintendent in order to facilitate evaluation and ensure orderly operation of the fund, including, but not limited to an annual report of the affairs and operations of the fund, such report to be delivered to the superintendent and to the chairs of the senate finance committee and assembly ways and means committee. An organization approved to administer the fund shall maintain records in a form prescribed by the superintendent and which shall be available for inspection by or at the request of the superintendent. The superintendent shall determine the amount of compensation to be allocated to an approved organization as payment for fund administration. Compensation shall be payable from the direct payment stop loss fund. An organization approved to administer the fund may be removed by the superintendent and must cooperate in the orderly transition of services to another approved organization or to the superintendent.

(h) If the superintendent deems it appropriate for the proper administration of the direct payment stop loss fund, the administrator of the fund, on behalf of and with the prior approval of the superintendent, shall be authorized to purchase stop loss insurance and/or reinsurance from an insurance company licensed to write such type of insurance in this state. Such stop loss insurance and/or reinsurance may be purchased to the extent of funds available therefor within such funds which are available for purposes of the stop loss fund.

(I) AS INDIVIDUALS TRANSFER FROM THE STANDARDIZED INDIVIDUAL ENROLLEE DIRECT PAYMENT CONTRACTS TO THE SMALL GROUP MARKET, AN ACTUARIALLY APPROPRIATE AMOUNT, AS DETERMINED BY THE SUPERINTENDENT, SHALL BE TRANSFERRED FROM THE DIRECT PAYMENT STOP LOSS FUND TO THE SMALL GROUP STOP LOSS FUND.

S 6. Section 4322-a of the insurance law, as added by chapter 1 of the laws of 1999, paragraph 2 of subsection (e) as amended by chapter 419 of the laws of 2000, is amended to read as follows:

S 4322-a. Fund for standardized individual enrollee direct payment contracts which provide out-of-plan benefits. (a) The superintendent shall establish a fund from which health maintenance organizations may receive reimbursement, to the extent of funds available therefor, for claims paid by such health maintenance organizations for members covered under standardized individual enrollee direct payment contracts which provide out-of-plan benefits issued pursuant to section four thousand three hundred twenty-two of this article AND FOR ALL SMALL GROUP POLICIES OR CONTRACTS ISSUED AFTER JANUARY FIRST, TWO THOUSAND TWELVE. The fund established by the superintendent pursuant to this section shall be known as "the direct payment out-of-plan stop loss fund". Commencing in calendar year two thousand, health maintenance organizations shall be eligible to receive reimbursement from the direct payment out-of-plan stop loss fund for ninety percent of claims paid between twenty thousand and one hundred thousand dollars in a calendar year for any member covered under a contract issued pursuant to section four thousand three hundred twenty-two of this article AND FOR ALL SMALL GROUP POLICIES OR CONTRACTS ISSUED AFTER JANUARY FIRST, TWO THOUSAND TWELVE. For the

purposes of this section, claims shall include health care claims paid by a health maintenance organization on behalf of a covered member pursuant to contracts issued pursuant to section four thousand three hundred twenty-two of this article OR A SMALL GROUP POLICY OR CONTRACT.

(b) The superintendent shall promulgate regulations that set forth procedures for the operation of the direct payment out-of-plan stop loss fund AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER and the distribution of monies therefrom.

(c) Claims shall be reported and funds shall be distributed on a calendar year basis. Claims shall be eligible for reimbursement only for the calendar year in which the claims are paid. Once claims paid on behalf of a member reach or exceed one hundred thousand dollars in a given calendar year, no further claims paid on behalf of such member in that calendar year shall be eligible for reimbursement.

(d) Each health maintenance organization shall submit a request for reimbursement from the stop loss fund on a form prescribed by the superintendent. Such request for reimbursement shall be submitted no later than April first following the end of the calendar year for which the reimbursement request is being made. The superintendent may require health maintenance organizations to submit such claims data in connection with the reimbursement request as he OR SHE deems necessary to enable him OR HER to distribute monies and oversee the operation of the direct payment out-of-plan stop loss fund AND THE SMALL GROUP STOP LOSS FUND. The superintendent may require that such data be submitted on a per member, aggregate and/or categorical basis.

(e) The superintendent shall calculate the total claims reimbursement amount for all health maintenance organizations for the calendar year for which claims are being reported.

(1) In the event that the total amount requested for reimbursement by all health maintenance organizations for a calendar year exceeds funds available for distribution for claims paid by all health maintenance organizations during that same calendar year, the superintendent shall provide for the pro-rata distribution of the available funds. Each health maintenance organization shall be eligible to receive only such proportionate amount of the available funds as the individual health maintenance organization's total eligible claims bears to the total eligible claims paid by all health maintenance organizations.

(2) In the event that (A) funds available for distribution for claims paid by all health maintenance organizations during a calendar year exceeds the total amount requested for reimbursement by all health maintenance organizations during that same calendar year, and (B) the total amount requested for reimbursement by all health maintenance organizations from the direct payment stop loss fund exceeds the amount available for distribution from such fund, then any excess funds shall be reallocated for distribution to the direct payment stop loss fund AND THE SMALL GROUP STOP LOSS FUND. Otherwise, such excess funds shall be carried forward and shall not affect the monies appropriated for the direct payment out-of-plan stop loss fund in the next calendar year.

(f) Upon the request of the superintendent, each health maintenance organization shall be required to furnish such data as the superintendent deems necessary to oversee the operation of the direct payment out-of-plan stop loss fund. Such data shall be furnished in a form prescribed by the superintendent.

(g) The superintendent may obtain the services of an organization to administer the direct payment out-of-plan stop loss fund. The super-

intendent shall establish guidelines for the submission of proposals by organizations for the purposes of administering the fund. The superintendent shall make a determination whether to approve, disapprove or recommend modification to the proposal of an applicant to administer the fund. An organization approved to administer the fund shall submit reports to the superintendent in such form and at times as may be required by the superintendent in order to facilitate evaluation and ensure orderly operation of the fund, including, but not limited to, an annual report of the affairs and operations of the fund, such report to be delivered to the superintendent and to the chairs of the senate finance committee and assembly ways and means committee. An organization approved to administer the fund shall maintain records in a form prescribed by the superintendent and which shall be available for inspection by or at the request of the superintendent. The superintendent shall determine the amount of compensation to be allocated to an approved organization as payment for fund administration. Compensation shall be payable from the direct payment out-of-plan stop loss fund. An organization approved to administer the fund may be removed by the superintendent and must cooperate in the orderly transition of services to another approved organization or to the superintendent.

(h) If the superintendent deems it appropriate for the proper administration of the direct payment out-of-plan stop loss fund, the administrator of the fund, on behalf of and with the prior approval of the superintendent, shall be authorized to purchase stop loss insurance and/or reinsurance from an insurance company licensed to write such type of insurance in this state. Such stop loss insurance and/or reinsurance may be purchased to the extent of funds available therefor within such funds which are available for purposes of the stop loss fund.

(I) AS INDIVIDUALS TRANSFER FROM THE STANDARDIZED INDIVIDUAL ENROLLEE DIRECT PAYMENT CONTRACTS WHICH PROVIDE OUT-OF-PLAN BENEFITS TO THE SMALL GROUP MARKET, AN ACTUARIALLY APPROPRIATE AMOUNT, AS DETERMINED BY THE SUPERINTENDENT, SHALL BE TRANSFERRED FROM THE DIRECT PAYMENT OUT-OF-PLAN STOP LOSS FUND TO THE SMALL GROUP STOP LOSS FUND.

S 7. The section heading and subsections (a), (b), (c), (d), (e), (f), (h), (i), (q) and (r) of section 4327 of the insurance law, as added by chapter 1 of the laws of 1999, subsection (h) as amended by chapter 419 of the laws of 2000, are amended to read as follows:

Stop loss funds for standardized health insurance contracts issued to qualifying small employers and qualifying individuals AND THE SMALL GROUP MARKET. (a) The superintendent shall establish a fund from which health maintenance organizations, corporations or insurers may receive reimbursement, to the extent of funds available therefor, for claims paid by such health maintenance organizations, corporations or insurers for members covered under qualifying group health insurance contracts issued pursuant to section THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS CHAPTER AND SECTIONS FOUR THOUSAND THREE HUNDRED SEVENTEEN AND four thousand three hundred twenty-six of this article. This fund shall be known as the "small employer stop loss fund". The superintendent shall establish a separate and distinct fund from which health maintenance organizations, corporations or insurers may receive reimbursement, to the extent of funds available therefor, for claims paid by such health maintenance organizations, corporations or insurers for members covered under qualifying individual health insurance contracts issued pursuant to section four thousand three hundred twenty-six of this article. This fund shall be known as the "qualifying individual stop loss fund".

(b) Commencing on January first, two thousand one, health maintenance organizations, corporations or insurers shall be eligible to receive reimbursement for ninety percent of claims paid between thirty thousand and one hundred thousand dollars in a calendar year for any member covered under a standardized contract issued pursuant to section four thousand three hundred twenty-six of this article OR A CONTRACT OR POLICY ISSUED PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS CHAPTER OR SECTION FOUR THOUSAND THREE HUNDRED SEVENTEEN OF THIS ARTICLE, PURSUANT TO REGULATIONS PROMULGATED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER. Claims paid for members covered under qualifying group health insurance contracts shall be reimbursable from the small employer stop loss fund. Claims paid for members covered under qualifying individual health insurance contracts shall be reimbursable from the qualifying individual stop loss fund; PROVIDED, HOWEVER, THAT THE SUPERINTENDENT, IN CONSULTATION WITH THE DIRECTOR OF THE BUDGET, MAY TRANSFER AN ACTUARIALLY APPROPRIATE AMOUNT OF FUNDS FROM THE SMALL EMPLOYER STOP LOSS FUND AND THE QUALIFYING INDIVIDUAL STOP LOSS FUND TO ESTABLISH THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER. For the purposes of this section, claims shall include health care claims paid by a health maintenance organization on behalf of a covered member pursuant to such standardized contracts.

(c) The superintendent shall promulgate regulations that set forth procedures for the operation of the small employer stop loss fund [and], the qualifying individual stop loss fund, AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER and distribution of monies therefrom.

(d) The small employer stop loss fund shall operate separately from the qualifying individual stop loss fund. Except as specified in subsection (b) of this section with respect to calendar year two thousand one, the level of stop loss coverage for the qualifying group health insurance contracts and the qualifying individual health insurance contracts need not be the same. The two stop loss funds need not be structured or operated in the same manner, except as specified in this section. The monies available for distribution from the stop loss funds may be reallocated between the small employer stop loss fund [and], the qualifying individual stop loss fund, AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER if the superintendent determines that such reallocation is warranted due to enrollment trends.

(e) Claims shall be reported and funds shall be distributed from the small employer stop loss fund [and], from the qualifying individual stop loss fund, AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER on a calendar year basis. Claims shall be eligible for reimbursement only for the calendar year in which the claims are paid. Once claims paid on behalf of a covered member reach or exceed one hundred thousand dollars in a given calendar year, no further claims paid on behalf of such member in that calendar year shall be eligible for reimbursement.

(f) Each health maintenance organization, corporation or insurer shall submit a request for reimbursement from each of the stop loss funds on forms prescribed by the superintendent. Each of the requests for reimbursement shall be submitted no later than April first following the

end of the calendar year for which the reimbursement requests are being made. The superintendent may require health maintenance organizations, corporations or insurers to submit such claims data in connection with the reimbursement requests as he OR SHE deems necessary to enable him OR HER to distribute monies and oversee the operation of the small employer and qualifying individual stop loss funds AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER. The superintendent may require that such data be submitted on a per member, aggregate and/or categorical basis. Data shall be reported separately for qualifying group health insurance contracts [and], qualifying individual health insurance contracts issued pursuant to section four thousand three hundred twenty-six of this article, AND SMALL GROUP CONTRACTS OR POLICIES ISSUED PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS CHAPTER AND SECTION FOUR THOUSAND SEVENTEEN OF THIS ARTICLE.

(h) Upon the request of the superintendent, each health maintenance organization shall be required to furnish such data as the superintendent deems necessary to oversee the operation of the small employer and qualifying individual stop loss funds AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER. Such data shall be furnished in a form prescribed by the superintendent. Each health maintenance organization, corporation or insurer shall provide the superintendent with monthly reports of the total enrollment under the qualifying group health insurance contracts and the qualifying individual health insurance contracts issued pursuant to section four thousand three hundred twenty-six of this article. The reports shall be in a form prescribed by the superintendent.

(i) The superintendent shall separately estimate the per member annual cost of total claims reimbursement from each OF THE THREE stop loss [fund for qualifying individual health insurance contracts and for qualifying group health insurance contracts] FUNDS based upon available data and appropriate actuarial assumptions. Upon request, each health maintenance organization, corporation or insurer shall furnish to the superintendent claims experience data for use in such estimations.

(q) The superintendent may obtain the services of an organization to administer the stop loss funds established by this section AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER. If the superintendent deems it appropriate, he or she may utilize a separate organization for administration of the small employer stop loss fund [and], the qualifying individual stop loss fund, AND THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER. The superintendent shall establish guidelines for the submission of proposals by organizations for the purposes of administering the funds. The superintendent shall make a determination whether to approve, disapprove or recommend modification to the proposal of an applicant to administer the funds. An organization approved to administer the funds shall submit reports to the superintendent in such form and at times as may be required by the superintendent in order to facilitate evaluation and ensure orderly operation of the funds, including, but not limited to, an annual report of the affairs and operations of the fund, such report to be delivered to the superintendent and to the chairs of the senate finance committee and the assembly ways and means committee. An organization approved to administer the funds shall maintain records in a form prescribed by the

superintendent and which shall be available for inspection by or at the request of the superintendent. The superintendent shall determine the amount of compensation to be allocated to an approved organization as payment for fund administration. Compensation shall be payable from the stop loss coverage funds. An organization approved to administer the funds may be removed by the superintendent and must cooperate in the orderly transition of services to another approved organization or to the superintendent.

(r) If the superintendent deems it appropriate for the proper administration of the small employer stop loss fund [and/or], the qualifying individual stop loss fund, OR THE SMALL GROUP STOP LOSS FUND ESTABLISHED PURSUANT TO SUBSECTION (D) OF SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER, the administrator of the fund, on behalf of and with the prior approval of the superintendent, shall be authorized to purchase stop loss insurance and/or reinsurance from an insurance company licensed to write such type of insurance in this state. Such stop loss insurance and/or reinsurance may be purchased to the extent of funds available therefor within such funds which are available for purposes of the stop loss funds established by this section.

S 8. This act shall take effect immediately; provided that sections one and two of this act shall take effect on January 1, 2012; and provided further that the superintendent of insurance is authorized and directed to promulgate rules and regulations to implement the provisions of this act, which rules and regulations must be adopted and filed with the secretary of state by October 1, 2011. This act shall apply to all policies and contracts of health insurance issued, renewed, modified, altered or amended on or after January 1, 2012.