

S. 8088

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S E N A T E - A S S E M B L Y

June 7, 2010

IN SENATE -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the insurance law, in relation to prior approval of health insurance premium rates

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

1     Section 1. Subsection (e) of section 3231 of the insurance law, as  
2     added by chapter 501 of the laws of 1992, subparagraph (B) of paragraph  
3     2 as amended by chapter 237 of the laws of 2009, is amended to read as  
4     follows:  
5     (e) (1) (A) An insurer desiring to increase or decrease premiums  
6     [after April first, nineteen hundred ninety-three] for any policy form  
7     subject to this section shall submit a rate filing or application to the  
8     superintendent.  
9     AN INSURER SHALL SEND WRITTEN NOTICE OF THE PROPOSED RATE ADJUSTMENT,  
10    INCLUDING THE SPECIFIC CHANGE REQUESTED, TO EACH POLICY HOLDER AND  
11    CERTIFICATE HOLDER AFFECTED BY THE ADJUSTMENT ON OR BEFORE THE DATE THE  
12    RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. THE  
13    NOTICE SHALL PROMINENTLY INCLUDE MAILING AND WEBSITE ADDRESSES FOR BOTH  
14    THE INSURANCE DEPARTMENT AND THE INSURER THROUGH WHICH A PERSON MAY,  
15    WITHIN THIRTY DAYS FROM THE DATE THE RATE FILING OR APPLICATION IS  
16    SUBMITTED TO THE SUPERINTENDENT, CONTACT THE INSURANCE DEPARTMENT OR  
17    INSURER TO RECEIVE ADDITIONAL INFORMATION OR TO SUBMIT WRITTEN COMMENTS  
18    TO THE INSURANCE DEPARTMENT ON THE RATE FILING OR APPLICATION. THE  
19    SUPERINTENDENT SHALL ESTABLISH A PROCESS TO POST ON THE DEPARTMENT'S  
20    WEBSITE, IN A TIMELY MANNER, ALL RELEVANT WRITTEN COMMENTS RECEIVED  
21    PERTAINING TO RATE FILINGS OR APPLICATIONS. THE INSURER SHALL PROVIDE A  
22    COPY OF THE NOTICE TO THE SUPERINTENDENT WITH THE RATE FILING OR APPLI-  
23    CATION. THE SUPERINTENDENT SHALL IMMEDIATELY CAUSE THE NOTICE TO BE  
24    POSTED ON THE INSURANCE DEPARTMENT'S WEBSITE. The superintendent shall

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

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1 determine whether the filing or application shall become effective as  
2 filed, shall become effective as modified, or shall be disapproved. THE  
3 SUPERINTENDENT MAY MODIFY OR DISAPPROVE THE RATE FILING OR APPLICATION  
4 IF THE SUPERINTENDENT FINDS THAT THE PREMIUMS ARE UNREASONABLE, EXCES-  
5 SIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY, AND MAY CONSIDER THE  
6 FINANCIAL CONDITION OF THE INSURER WHEN APPROVING, MODIFYING OR DISAP-  
7 PROVING ANY PREMIUM ADJUSTMENT. THE DETERMINATION OF THE SUPERINTENDENT  
8 SHALL BE SUPPORTED BY SOUND ACTUARIAL ASSUMPTIONS AND METHODS, AND SHALL  
9 BE RENDERED IN WRITING BETWEEN THIRTY AND SIXTY DAYS FROM THE DATE THE  
10 RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT. SHOULD  
11 THE SUPERINTENDENT REQUIRE ADDITIONAL INFORMATION FROM THE INSURER IN  
12 ORDER TO MAKE A DETERMINATION, THE SUPERINTENDENT SHALL REQUIRE THE  
13 INSURER TO FURNISH SUCH INFORMATION, AND IN SUCH EVENT, THE SIXTY DAYS  
14 SHALL BE TOLLED AND SHALL RESUME AS OF THE DATE THE INSURER FURNISHES  
15 THE INFORMATION TO THE SUPERINTENDENT. IF THE SUPERINTENDENT REQUESTS  
16 ADDITIONAL INFORMATION LESS THAN TEN DAYS FROM THE EXPIRATION OF THE  
17 SIXTY DAYS (EXCLUSIVE OF TOLLING), THE SUPERINTENDENT MAY EXTEND THE  
18 SIXTY DAY PERIOD AN ADDITIONAL TWENTY DAYS TO MAKE A DETERMINATION. THE  
19 APPLICATION OR RATE FILING WILL BE DEEMED APPROVED IF A DETERMINATION IS  
20 NOT RENDERED WITHIN THE TIME ALLOTTED UNDER THIS SECTION. AN INSURER  
21 SHALL NOT IMPLEMENT A RATE ADJUSTMENT UNLESS THE INSURER PROVIDES AT  
22 LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE PREMIUM RATE ADJUSTMENT  
23 APPROVED BY THE SUPERINTENDENT TO EACH POLICY HOLDER AND CERTIFICATE  
24 HOLDER AFFECTED BY THE RATE ADJUSTMENT.

25 (B) THE EXPECTED MINIMUM LOSS RATIO FOR A POLICY FORM SUBJECT TO THIS  
26 SECTION, FOR WHICH A RATE FILING OR APPLICATION IS MADE PURSUANT TO THIS  
27 PARAGRAPH, OTHER THAN A MEDICARE SUPPLEMENTAL INSURANCE POLICY, OR, WITH  
28 THE APPROVAL OF THE SUPERINTENDENT, AN AGGREGATION OF POLICY FORMS THAT  
29 ARE COMBINED INTO ONE COMMUNITY RATING EXPERIENCE POOL AND RATED  
30 CONSISTENT WITH COMMUNITY RATING REQUIREMENTS, SHALL NOT BE LESS THAN  
31 EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICATION, THE  
32 SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED MINIMUM LOSS  
33 RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE MODIFICATION TO  
34 BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF THE SUPERINTENDENT  
35 DETERMINES THAT A MODIFICATION IS NECESSARY TO MAINTAIN INSURER SOLVEN-  
36 CY. NO LATER THAN JUNE THIRTIETH OF EACH YEAR, EVERY INSURER SUBJECT TO  
37 THIS SUBPARAGRAPH SHALL ANNUALLY REPORT THE ACTUAL LOSS RATIO FOR THE  
38 PREVIOUS CALENDAR YEAR IN A FORMAT ACCEPTABLE TO THE SUPERINTENDENT. IF  
39 AN EXPECTED LOSS RATIO IS NOT MET, THE SUPERINTENDENT MAY DIRECT THE  
40 INSURER TO TAKE CORRECTIVE ACTION, WHICH MAY INCLUDE THE SUBMISSION OF A  
41 RATE FILING TO REDUCE FUTURE PREMIUMS, OR TO ISSUE DIVIDENDS, PREMIUM  
42 REFUNDS OR CREDITS, OR ANY COMBINATION OF THESE.

43 (2) (A) [Beginning October first, nineteen hundred ninety-four] UNTIL  
44 SEPTEMBER THIRTIETH, TWO THOUSAND TEN, as an alternate procedure to the  
45 requirements of paragraph one of this subsection, an insurer desiring to  
46 increase or decrease premiums for any policy form subject to this  
47 section may instead submit a rate filing or application to the super-  
48 intendent and such application or filing shall be deemed approved,  
49 provided that: (i) the anticipated minimum loss ratio for a policy form  
50 shall not be less than [seventy-five] EIGHTY-TWO percent of the premi-  
51 um[,]; and (ii) the insurer submits, as part of such filing, a certif-  
52 ication by a member of the American Academy of Actuaries or other indi-  
53 vidual acceptable to the superintendent that the insurer is in  
54 compliance with the provisions of this paragraph, based upon that  
55 person's examination, including a review of the appropriate records and  
56 of the actuarial assumptions and methods used by the insurer in estab-

lishing premium rates for policy forms subject to this section. AN INSURER SHALL NOT UTILIZE THE ALTERNATE PROCEDURE PURSUANT TO THIS PARAGRAPH TO IMPLEMENT A CHANGE IN RATES TO BE EFFECTIVE ON OR AFTER OCTOBER FIRST, TWO THOUSAND TEN.

(B) Each calendar year, an insurer shall return, in the form of aggregate benefits for each policy form filed pursuant to the alternate procedure set forth in this paragraph at least [seventy-five] EIGHTY-TWO percent of the aggregate premiums collected for the policy form during that calendar year. Insurers shall annually report, no later than [May first] JUNE THIRTIETH of each year, the loss ratio calculated pursuant to this paragraph for each such policy form for the previous calendar year. In each case where the loss ratio for a policy form fails to comply with the [seventy-five] EIGHTY-TWO percent loss ratio requirement, the insurer shall issue a dividend or credit against future premiums for all policy holders with that policy form in an amount sufficient to assure that the aggregate benefits paid in the previous calendar year plus the amount of the dividends and credits shall equal [seventy-five] EIGHTY-TWO percent of the aggregate premiums collected for the policy form in the previous calendar year. The dividend or credit shall be issued to each policy holder who had a policy which was in effect at any time during the applicable year. The dividend or credit shall be prorated based on the direct premiums earned for the applicable year among all policy holders eligible to receive such dividend or credit. An insurer shall make a reasonable effort to identify the current address of, and issue dividends or credits to, former policy holders entitled to the dividend or credit. An insurer shall, with respect to dividends or credits to which former policy holders that the insurer is unable to identify after a reasonable effort would otherwise be entitled, have the option, as deemed acceptable by the superintendent, of prospectively adjusting premium rates by the amount of such dividends or credits, issuing the amount of such dividends or credits to existing policy holders, depositing the amount of such dividends or credits in the fund established pursuant to section four thousand three hundred twenty-two-a of this chapter, or utilizing any other method which offsets the amount of such dividends or credits. All dividends and credits must be distributed by September thirtieth of the year following the calendar year in which the loss ratio requirements were not satisfied. The annual report required by this paragraph shall include an insurer's calculation of the dividends and credits, as well as an explanation of the insurer's plan to issue dividends or credits. The instructions and format for calculating and reporting loss ratios and issuing dividends or credits shall be specified by the superintendent by regulation. Such regulations shall include provisions for the distribution of a dividend or credit in the event of cancellation or termination by a policy holder.

(3) ALL POLICY FORMS SUBJECT TO THIS SUBSECTION, OTHER THAN MEDICARE SUPPLEMENTAL INSURANCE POLICY FORMS, ISSUED OR IN EFFECT DURING CALENDAR YEAR TWO THOUSAND TEN SHALL BE SUBJECT TO A MINIMUM LOSS RATIO REQUIREMENT OF EIGHTY-TWO PERCENT. INSURERS MAY USE THE ALTERNATE FILING PROCEDURE SET FORTH IN PARAGRAPH TWO OF THIS SUBSECTION TO ADJUST PREMIUM RATES IN ORDER TO MEET THE REQUIRED MINIMUM LOSS RATIO FOR CALENDAR YEAR TWO THOUSAND TEN. THE RATE FILING OR APPLICATION SHALL BE SUBMITTED NO LATER THAN SEPTEMBER THIRTIETH, TWO THOUSAND TEN.

S 2. Section 4308 of the insurance law, subsection (b) as amended and subsections (d), (e) and (f) as added by chapter 501 of the laws of 1992, paragraph 3 of subsection (c) as amended by chapter 520 of the laws of 1999, subsections (g), (h), (i) and (j) as added by chapter 504

1 of the laws of 1995 and paragraph 2 of subsection (h) as amended by  
2 chapter 237 of the laws of 2009, is amended to read as follows:

3 S 4308. Supervision of superintendent[; public hearings]. (a) No  
4 corporation subject to the provisions of this article shall enter into  
5 any contract unless and until it shall have filed with the superinten-  
6 dent a copy of the contract or certificate and of all applications,  
7 riders and endorsements for use in connection with the issuance or  
8 renewal thereof, to be formally approved by him as conforming to the  
9 applicable provisions of this article and not inconsistent with any  
10 other provision of law applicable thereto. The superintendent shall,  
11 within a reasonable time after the filing of any such form, notify the  
12 corporation filing the same either of his approval or of his disapproval  
13 of such form.

14 (b) No corporation subject to the provisions of this article shall  
15 enter into any contract unless and until it shall have filed with the  
16 superintendent a schedule of the premiums or, if appropriate, rating  
17 formula from which premiums are determined, to be paid under the  
18 contracts and shall have obtained the superintendent's approval thereof.  
19 The superintendent may refuse such approval if he finds that such premi-  
20 ums, or the premiums derived from the rating formula, are excessive,  
21 inadequate or unfairly discriminatory, provided, however, the super-  
22 intendent may also consider the financial condition of such corporation  
23 in approving or disapproving any premium or rating formula. ANY ADJUST-  
24 MENTS TO AN APPROVED SCHEDULE OF PREMIUMS OR TO THE APPROVED RATING  
25 FORMULA FOR NON-COMMUNITY RATED CONTRACTS SHALL ALSO BE SUBJECT TO THE  
26 APPROVAL OF THE SUPERINTENDENT PROVIDED, HOWEVER, SUCH ADJUSTMENTS SHALL  
27 NOT BE SUBJECT TO THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.  
28 Any premium or formula approved by the superintendent shall make  
29 provision for such increase as may be necessary to meet the requirements  
30 of a plan approved by the superintendent in the manner prescribed in  
31 section four thousand three hundred ten of this article for restoration  
32 of the statutory reserve fund required by such section. Notwithstanding  
33 any other provision of law, the superintendent, as part of the rate  
34 increase approval process, may defer, reduce or reject a rate increase  
35 if, in the judgment of the superintendent, the salary increases for  
36 senior level management executives employed at corporations subject to  
37 the provisions of this article are excessive or unwarranted given the  
38 financial condition or overall performance of such corporation. The  
39 superintendent is authorized to promulgate rules and regulations which  
40 the superintendent deems necessary to carry out such deferral, reduction  
41 or rejection.

42 (c) (1) [Except for an application pursuant to subsection (f) of  
43 section four thousand three hundred four of this article, no] AN  
44 increase or decrease in premiums with respect to [individual] COMMUNITY  
45 RATED contracts [issued pursuant to the provisions of such section]  
46 shall NOT be approved by the superintendent unless it is in compliance  
47 with the provisions of this subsection as well as other applicable  
48 provisions of law.

49 (2) [Prior to any such filing or application by or on behalf of a  
50 corporation for an increase or decrease in premiums for such contracts,  
51 such corporation, when directed by the superintendent, shall conduct a  
52 public hearing with respect to the terms of such filing or application.  
53 Notice of such hearing shall be published on three successive days in at  
54 least two newspapers having general circulation within the territory or  
55 district wherein such corporation seeking approval of the filing is  
56 authorized to do business. The date specified for the hearing shall be

1 not less than ten nor more than thirty days from the date of the first  
2 publication of the hearing. The notice of hearing shall state the  
3 purpose thereof, the time when and the place where the public hearing  
4 will be held. The public hearing shall be held at a time and location  
5 deemed by the superintendent to be most convenient to the greatest  
6 number of persons affected by such filing. At such hearing any person  
7 may be heard in favor of, or against, the terms of the filing or appli-  
8 cation.

9 (3) Following the public hearing held pursuant to paragraph two of  
10 this subsection, a transcript of the testimony therein shall be submit-  
11 ted together with a rate filing or application, to the superintendent.  
12 Upon receipt of such filing or application by or on behalf of a corpo-  
13 ration, the superintendent shall order that a public hearing be held  
14 with respect to the terms of such filing or application. Notice of such  
15 hearing shall be published on three successive days in at least two  
16 newspapers having general circulation within the territory or district  
17 wherein such corporation seeking approval of the filing or application  
18 is authorized to do business. For a corporation writing more than three  
19 billion dollars in premiums as of December thirty-first, nineteen  
20 hundred ninety-six and whose service territory is greater than ten coun-  
21 ties, such notice is to be published in at least one newspaper having  
22 general circulation in each county where persons in the service territo-  
23 ry are affected by the proposed change. The date specified for the hear-  
24 ing shall be not less than ten nor more than thirty days from the date  
25 of the last publication of the hearing. The notice of hearing shall also  
26 state the purpose thereof, the time when and the place where the public  
27 hearing will be held. For those corporations writing more than three  
28 billion dollars in premiums as of December thirty-first, nineteen  
29 hundred ninety-six, and whose territory is greater than ten counties,  
30 the notice of hearing shall also state the changes proposed, the  
31 contracts to be affected and the time when such changes would take  
32 effect. The notice of hearing shall state, in prominent display, a toll-  
33 free telephone number of the insurance department that may be contacted  
34 to receive additional information on the subject rate application. The  
35 public hearing shall be held at a time and location deemed by the super-  
36 intendent to be most convenient to the greatest number of persons  
37 affected by such filing or application. A copy of such notice of hearing  
38 shall be forwarded by the superintendent by registered or certified mail  
39 to the principal address of the corporation seeking approval of such  
40 filing or application. The hearing may be continued or adjourned from  
41 day to day within the discretion of the superintendent. At such hearing  
42 any person may be heard in favor of, or against, the terms of the filing  
43 or application. After conclusion of the public hearing the superinten-  
44 dent shall render a written decision determining whether the filing or  
45 application shall become effective as filed, shall become effective as  
46 modified, or shall be disapproved. If, subsequent to the hearing, but  
47 prior to the issuing of the superintendent's written decision on a rate  
48 increase request, the corporation increases its requested rate for any  
49 contract by two percent or more, a re-hearing shall be held. The time,  
50 location, and notice requirements for such re-hearing shall be deter-  
51 mined by the superintendent.

52 (4)] A CORPORATION DESIRING TO INCREASE OR DECREASE PREMIUMS FOR ANY  
53 CONTRACT SUBJECT TO THIS SUBSECTION SHALL SUBMIT A RATE FILING OR APPLI-  
54 CATION TO THE SUPERINTENDENT. A CORPORATION SHALL SEND WRITTEN NOTICE  
55 OF THE PROPOSED RATE ADJUSTMENT, INCLUDING THE SPECIFIC CHANGE  
56 REQUESTED, TO EACH CONTRACT HOLDER AND SUBSCRIBER AFFECTED BY THE

1 ADJUSTMENT ON OR BEFORE THE DATE THE RATE FILING OR APPLICATION IS  
2 SUBMITTED TO THE SUPERINTENDENT. THE NOTICE SHALL PROMINENTLY INCLUDE  
3 MAILING AND WEBSITE ADDRESSES FOR BOTH THE INSURANCE DEPARTMENT AND THE  
4 CORPORATION THROUGH WHICH A PERSON MAY, WITHIN THIRTY DAYS FROM THE DATE  
5 THE RATE FILING OR APPLICATION IS SUBMITTED TO THE SUPERINTENDENT,  
6 CONTACT THE INSURANCE DEPARTMENT OR CORPORATION TO RECEIVE ADDITIONAL  
7 INFORMATION OR TO SUBMIT WRITTEN COMMENTS TO THE INSURANCE DEPARTMENT ON  
8 THE RATE FILING OR APPLICATION. THE SUPERINTENDENT SHALL ESTABLISH A  
9 PROCESS TO POST ON THE DEPARTMENT'S WEBSITE, IN A TIMELY MANNER, ALL  
10 RELEVANT WRITTEN COMMENTS RECEIVED PERTAINING TO RATE FILINGS OR APPLI-  
11 CATIONS. THE CORPORATION SHALL PROVIDE A COPY OF THE NOTICE TO THE  
12 SUPERINTENDENT WITH THE RATE FILING OR APPLICATION. THE SUPERINTENDENT  
13 SHALL IMMEDIATELY CAUSE THE NOTICE TO BE POSTED ON THE INSURANCE DEPART-  
14 MENT'S WEBSITE. THE SUPERINTENDENT SHALL DETERMINE WHETHER THE FILING  
15 OR APPLICATION SHALL BECOME EFFECTIVE AS FILED, SHALL BECOME EFFECTIVE  
16 AS MODIFIED, OR SHALL BE DISAPPROVED. THE SUPERINTENDENT MAY MODIFY OR  
17 DISAPPROVE THE RATE FILING OR APPLICATION IF THE SUPERINTENDENT FINDS  
18 THAT THE PREMIUMS ARE UNREASONABLE, EXCESSIVE, INADEQUATE, OR UNFAIRLY  
19 DISCRIMINATORY, AND MAY CONSIDER THE FINANCIAL CONDITION OF THE CORPO-  
20 RATION IN APPROVING, MODIFYING OR DISAPPROVING ANY PREMIUM ADJUSTMENT.  
21 THE DETERMINATION OF THE SUPERINTENDENT SHALL BE SUPPORTED BY SOUND  
22 ACTUARIAL ASSUMPTIONS AND METHODS, AND SHALL BE RENDERED IN WRITING  
23 BETWEEN THIRTY AND SIXTY DAYS FROM THE DATE THE RATE FILING OR APPLICA-  
24 TION IS SUBMITTED TO THE SUPERINTENDENT. SHOULD THE SUPERINTENDENT  
25 REQUIRE ADDITIONAL INFORMATION FROM THE CORPORATION IN ORDER TO MAKE A  
26 DETERMINATION, THE SUPERINTENDENT SHALL REQUIRE THE CORPORATION TO  
27 FURNISH SUCH INFORMATION, AND IN SUCH EVENT, THE SIXTY DAYS SHALL BE  
28 TOLLED AND SHALL RESUME AS OF THE DATE THE CORPORATION FURNISHES THE  
29 INFORMATION TO THE SUPERINTENDENT. IF THE SUPERINTENDENT REQUESTS ADDI-  
30 TIONAL INFORMATION LESS THAN TEN DAYS FROM THE EXPIRATION OF THE SIXTY  
31 DAYS (EXCLUSIVE OF TOLLING), THE SUPERINTENDENT MAY EXTEND THE SIXTY DAY  
32 PERIOD AN ADDITIONAL TWENTY DAYS, TO MAKE A DETERMINATION. THE APPLICA-  
33 TION OR RATE FILING WILL BE DEEMED APPROVED IF A DETERMINATION IS NOT  
34 RENDERED WITHIN THE TIME ALLOTTED UNDER THIS SECTION. A CORPORATION  
35 SHALL NOT IMPLEMENT A RATE ADJUSTMENT UNLESS THE CORPORATION PROVIDES AT  
36 LEAST SIXTY DAYS ADVANCE WRITTEN NOTICE OF THE PREMIUM RATE ADJUSTMENT  
37 APPROVED BY THE SUPERINTENDENT TO EACH CONTRACT HOLDER AND SUBSCRIBER  
38 AFFECTED BY THE RATE ADJUSTMENT.

39 (3)(A) THE EXPECTED MINIMUM LOSS RATIO FOR A CONTRACT FORM SUBJECT TO  
40 THIS SUBSECTION FOR WHICH A RATE FILING OR APPLICATION IS MADE PURSUANT  
41 TO THIS PARAGRAPH, OTHER THAN A MEDICARE SUPPLEMENTAL INSURANCE  
42 CONTRACT, OR, WITH THE APPROVAL OF THE SUPERINTENDENT, AN AGGREGATION OF  
43 CONTRACT FORMS THAT ARE COMBINED INTO ONE COMMUNITY RATING EXPERIENCE  
44 POOL AND RATED CONSISTENT WITH COMMUNITY RATING REQUIREMENTS, SHALL NOT  
45 BE LESS THAN EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICA-  
46 TION, THE SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED  
47 MINIMUM LOSS RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE  
48 MODIFICATION TO BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF  
49 THE SUPERINTENDENT DETERMINES THAT A MODIFICATION IS NECESSARY TO MAIN-  
50 TAIN INSURER SOLVENCY. NO LATER THAN JUNE THIRTIETH OF EACH YEAR, EVERY  
51 CORPORATION SUBJECT TO THIS SUBPARAGRAPH SHALL ANNUALLY REPORT THE ACTU-  
52 AL LOSS RATIO FOR THE PREVIOUS CALENDAR YEAR IN A FORMAT ACCEPTABLE TO  
53 THE SUPERINTENDENT. IF AN EXPECTED LOSS RATIO IS NOT MET, THE SUPER-  
54 INTENDENT MAY DIRECT THE CORPORATION TO TAKE CORRECTIVE ACTION, WHICH  
55 MAY INCLUDE THE SUBMISSION OF A RATE FILING TO REDUCE FUTURE PREMIUMS,

OR TO ISSUE DIVIDENDS, PREMIUM REFUNDS OR CREDITS, OR ANY COMBINATION OF THESE.

(B) THE EXPECTED MINIMUM LOSS RATIO FOR A MEDICARE SUPPLEMENTAL INSURANCE CONTRACT FORM SHALL NOT BE LESS THAN EIGHTY PERCENT. NO LATER THAN MAY FIRST OF EACH YEAR, EVERY CORPORATION SUBJECT TO THIS SUBPARAGRAPH SHALL ANNUALLY REPORT THE ACTUAL LOSS RATIO FOR EACH CONTRACT FORM SUBJECT TO THIS SECTION FOR THE PREVIOUS CALENDAR YEAR IN A FORMAT ACCEPTABLE TO THE SUPERINTENDENT. IN EACH CASE WHERE THE LOSS RATIO FOR THE CONTRACT FORM FAILS TO COMPLY WITH THE EIGHTY PERCENT LOSS RATIO REQUIREMENT, THE CORPORATION SHALL SUBMIT A CORRECTIVE ACTION PLAN TO THE SUPERINTENDENT FOR ASSURING COMPLIANCE WITH THE APPLICABLE MINIMUM LOSS RATIO STANDARD. THE CORRECTIVE ACTION PLAN SHALL BE SUBMITTED TO THE SUPERINTENDENT WITHIN SIXTY DAYS OF THE CORPORATION'S SUBMISSION OF THE ANNUAL REPORT REQUIRED BY THIS SUBPARAGRAPH. THE CORPORATION'S PLAN MAY UTILIZE PREMIUM REFUNDS OR CREDITS, SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT.

(4) In case of conflict between this subsection and any other provision of law, this subsection shall prevail.

(d) The superintendent shall order an independent management and financial audit of corporations subject to the provisions of this article with a combined premium volume exceeding two billion dollars annually in order to develop a detailed understanding of such corporation's financial status and to determine the viability of such corporation's products. Such audit shall be performed by an organization upon submission of a program plan in response to a request for proposal approved by the superintendent in consultation with the commissioner of health and the state comptroller. Such audit shall not be performed by any organization that has in any way performed or furnished services of any kind to the corporation within the past five years, unless it is adequately demonstrated that such services would not compromise that organization's performance and objectivity. The audit shall be completed and a report submitted by May first, nineteen hundred ninety-three to the superintendent, the commissioner of health, and the chairs of the senate and assembly committees on health and insurance. The scope of the audit shall include, but not be limited to, financial and competitive position, corporate structure and governance, organization and management, strategic direction, rate adequacy, and the regulatory and competitive environment in the state of New York. Specifically, the audit shall include, but not be limited to:

(i) determining the corporation's financial and market position, including its reserves, trends in membership, market share, and profitability by market segment;

(ii) evaluating the corporation's product offerings with respect to market requirements and trends, the corporation's responses to the New York health care market, and its management of medical claims costs;

(iii) assessing the effectiveness of the organizational and management structure and performance, including, but not limited to, possible improvement in the size, structure, composition and operation of the board of directors, productivity improvement, information systems, management development, personnel practices, mix and level of skills, personnel turnover, investment practices and rate of return upon investment activities;

(iv) analyzing the corporation's strategic directions, its adequacy to meet competitive, market, and existing regulatory trends, including an evaluation of the use of brokers in marketing products, and the impact

1 of those strategies on the corporation's future financial performance  
2 and on the health care system of New York;

3 (v) evaluating the adequacy of rates for existing products, partic-  
4 ularly (but not limited to) small group, medicare supplemental, and  
5 direct payment to identify areas that may need immediate remedial atten-  
6 tion;

7 (vi) identifying any changes to the regulatory and legislative envi-  
8 ronment that may need to be made to ensure that the corporation can  
9 continue to be financially viable and competitive;

10 (vii) identifying and assessing specific transactions such as the  
11 procurement of reinsurance, sale of real property and the sale of future  
12 investment income to improve the financial condition of the corporation;  
13 and

14 (viii) evaluating and identifying possible improvements in the corpo-  
15 ration's managed care strategies, operations and claims handling.

16 (e) Notwithstanding any other provision of law, the superintendent  
17 shall have the power to require independent management and financial  
18 audits of corporations subject to the provisions of this article whenever  
19 in the judgment of the superintendent, losses sustained by a corpo-  
20 ration jeopardize its ability to provide meaningful coverage at afforda-  
21 ble rates or when such audit would be necessary to protect the interests  
22 of subscribers. The audit shall include, but not be limited to, an  
23 investigation of the corporation's provision of benefits to senior citi-  
24 zens, individual and family, and small group and small business  
25 subscribers in relation to the needs of those subscribers. The audit  
26 shall also include an evaluation of the efficiency of the corporation's  
27 management, particularly with respect to lines of business which are  
28 experiencing losses. In every case in which the superintendent chooses  
29 to require an audit provided for in this subsection, the superintendent  
30 shall have the authority to select the auditor. Any costs incurred as a  
31 result of the operation of this subsection shall be assessed on all  
32 domestic insurers in the same manner as provided for in section three  
33 hundred thirty-two of this chapter.

34 (f) The results of any audit conducted pursuant to subsections (d) and  
35 (e) of this section shall be provided to the corporation and each member  
36 of its board of directors. The superintendent shall have the authority  
37 to direct the corporation in writing to implement any recommendations  
38 resulting from the audit that the superintendent finds to be necessary  
39 and reasonable; provided, however, that the superintendent shall first  
40 consider any written response submitted by the corporation or the board  
41 of directors prior to making such finding. Upon any application for a  
42 rate adjustment by the corporation, the superintendent shall review the  
43 corporation's compliance with the directions and recommendations made  
44 previously by the superintendent, as a result of the most recently  
45 completed management or financial audit and shall include such findings  
46 in any written decision concerning such application.

47 (g)(1) [Beginning January first, nineteen hundred ninety-six] UNTIL  
48 SEPTEMBER THIRTIETH, TWO THOUSAND TEN, as an alternate procedure to the  
49 requirements of subsection (c) of this section, a corporation subject to  
50 the provisions of this article desiring to increase or decrease premiums  
51 for any contract subject to this section may instead submit a rate  
52 filing or application to the superintendent and such application or  
53 filing shall be deemed approved, provided that (A) the anticipated  
54 incurred loss ratio for a contract form shall not be less than [eighty-  
55 five] EIGHTY-TWO percent for individual direct payment contracts or  
56 [seventy-five] EIGHTY-TWO percent for small group and small group remit-



1 tance contracts, nor, except in the case of individual direct payment  
2 contracts with a loss ratio of greater than one hundred five percent  
3 during nineteen hundred ninety-four, shall the loss ratio for any direct  
4 payment, group or group remittance contract be more than one hundred  
5 five percent of the anticipated earned premium, and (B) the corporation  
6 submits, as part of such filing, a certification by a member of the  
7 American Academy of Actuaries or other individual acceptable to the  
8 superintendent that that corporation is in compliance with the  
9 provisions of this subsection, based upon that person's examination,  
10 including a review of the appropriate records and of the actuarial  
11 assumptions and methods used by the corporation in establishing premium  
12 rates for contracts subject to this section. A CORPORATION SHALL NOT  
13 UTILIZE THE ALTERNATE PROCEDURE PURSUANT TO THIS SUBSECTION TO IMPLEMENT  
14 A CHANGE IN RATES TO BE EFFECTIVE ON OR AFTER OCTOBER FIRST, TWO THOU-  
15 SAND TEN. For purposes of this section, a small group is any group whose  
16 contract is subject to the requirements of section forty-three hundred  
17 seventeen of this article.

18 (2) Prior to January first, two thousand, no rate increase or decrease  
19 may be deemed approved under this subsection if that increase or  
20 decrease, together with any other rate increases or decreases imposed on  
21 the same contract form, would cause the aggregate rate increase or  
22 decrease for that contract form to exceed ten percent during any contin-  
23 uous twelve month period. No rate increase may be imposed PURSUANT TO  
24 THIS SUBSECTION unless at least thirty days advance written notice of  
25 such increase has been provided to each contract holder and subscriber.

26 (h)(1) Each calendar year, a corporation subject to the provisions of  
27 this article shall return, in the form of aggregate benefits incurred  
28 for each contract form filed pursuant to the alternate procedure set  
29 forth in subsection (g) of this section, at least [eighty-five] EIGHTY-  
30 TWO percent for individual direct payment contracts or [seventy-five]  
31 EIGHTY-TWO percent for small group and small group remittance contracts,  
32 but, except in the case of individual direct payment contracts with a  
33 loss ratio of greater than one hundred five percent in nineteen hundred  
34 ninety-four, for any direct payment, group or group remittance contract,  
35 not in excess of one hundred five percent of the aggregate premiums  
36 earned for the contract form during that calendar year. Corporations  
37 subject to the provisions of this article shall annually report, no  
38 later than [May first] JUNE THIRTIETH of each year, the loss ratio  
39 calculated pursuant to this subsection for each such contract form for  
40 the previous calendar year.

41 (2) In each case where the loss ratio for a contract form fails to  
42 comply with the [eighty-five] EIGHTY-TWO percent minimum loss ratio  
43 requirement for individual direct payment contracts, or the [seventy-  
44 five] EIGHTY-TWO percent minimum loss ratio requirement for small group  
45 and small group remittance contracts, as set forth in paragraph one of  
46 this subsection, the corporation shall issue a dividend or credit  
47 against future premiums for all contract holders with that contract form  
48 in an amount sufficient to assure that the aggregate benefits incurred  
49 in the previous calendar year plus the amount of the dividends and cred-  
50 its shall equal no less than [eighty-five] EIGHTY-TWO percent for indi-  
51 vidual direct payment contracts, or [seventy-five] EIGHTY-TWO percent  
52 for small group and small group remittance contracts, of the aggregate  
53 premiums earned for the contract form in the previous calendar year. The  
54 dividend or credit shall be issued to each contract holder or subscriber  
55 who had a contract that was in effect at any time during the applicable  
56 year. The dividend or credit shall be prorated based on the direct

1 premiums earned for the applicable year among all contract holders or  
2 subscribers eligible to receive such dividend or credit. A corporation  
3 shall make a reasonable effort to identify the current address of, and  
4 issue dividends or credits to, former contract holders or subscribers  
5 entitled to the dividend or credit. A corporation shall, with respect to  
6 dividends or credits to which former contract holders that the corpo-  
7 ration is unable to identify after a reasonable effort would otherwise  
8 be entitled, have the option, as deemed acceptable by the superinten-  
9 dent, of prospectively adjusting premium rates by the amount of such  
10 dividends or credits, issuing the amount of such dividends or credits to  
11 existing contract holders, depositing the amount of such dividends or  
12 credits in the fund established pursuant to section four thousand three  
13 hundred twenty-two-a of this article, or utilizing any other method  
14 which offsets the amount of such dividends or credits. All dividends and  
15 credits must be distributed by September thirtieth of the year following  
16 the calendar year in which the loss ratio requirements were not satis-  
17 fied. The annual report required by paragraph one of this subsection  
18 shall include a corporation's calculation of the dividends and credits,  
19 as well as an explanation of the corporation's plan to issue dividends  
20 or credits. The instructions and format for calculating and reporting  
21 loss ratios and issuing dividends or credits shall be specified by the  
22 superintendent by regulation. Such regulations shall include provisions  
23 for the distribution of a dividend or credit in the event of cancella-  
24 tion or termination by a contract holder or subscriber.

25 (3) In each case where the loss ratio for a contract form fails to  
26 comply with the one hundred five percent maximum loss ratio requirement  
27 of paragraph one of this subsection, the corporation shall institute a  
28 premium rate increase in an amount sufficient to assure that the aggre-  
29 gate benefits incurred in the previous calendar year shall equal no more  
30 than one hundred five percent of the sum of the aggregate premiums  
31 earned for the contract form in the previous calendar year and the  
32 aggregate premium rate increase. The rate increase shall be applied to  
33 each contract that was in effect as of December thirty-first of the  
34 applicable year and remains in effect as of the date the rate increase  
35 is imposed. All rate increases must be imposed by September thirtieth of  
36 the year following the calendar year in which the loss ratio require-  
37 ments were not satisfied. The annual report required by paragraph one of  
38 this subsection shall include a corporation's calculation of the premium  
39 rate increase, as well as an explanation of the corporation's plan to  
40 implement the rate increase. The instructions and format for calculating  
41 and reporting loss ratios and implementing rate increases shall be spec-  
42 ified by the superintendent by regulation.

43 (i) The alternate procedure described in subsections (g) and (h) of  
44 this section shall apply to individual direct payment contracts issued  
45 pursuant to sections four thousand three hundred twenty-one and four  
46 thousand three hundred twenty-two of this article on and after January  
47 first, nineteen hundred ninety-seven. SUCH ALTERNATE PROCEDURE SHALL NOT  
48 BE UTILIZED TO IMPLEMENT A CHANGE IN RATES TO BE EFFECTIVE ON OR AFTER  
49 OCTOBER FIRST, TWO THOUSAND TEN.

50 (j) [The eighty-five percent minimum loss ratio for individual direct  
51 payment contracts described in subsections (g) and (h) of this section  
52 shall be reduced to eighty-two and one-half percent as of January first,  
53 nineteen hundred ninety-seven and shall be further reduced to eighty  
54 percent as of January first, nineteen hundred ninety-eight and thereaft-  
55 er. The refund or credit requirements for failure to meet minimum loss  
56 ratios will continue, but at these reduced percentages.] ALL COMMUNITY

1 RATED CONTRACTS, OTHER THAN MEDICARE SUPPLEMENTAL INSURANCE CONTRACTS,  
2 ISSUED OR IN EFFECT DURING CALENDAR YEAR TWO THOUSAND TEN SHALL BE  
3 SUBJECT TO A MINIMUM LOSS RATIO REQUIREMENT OF EIGHTY-TWO PERCENT.  
4 CORPORATIONS MAY USE THE ALTERNATE PROCEDURE SET FORTH IN SUBSECTION (G)  
5 OF THIS SECTION TO ADJUST PREMIUM RATES IN ORDER TO MEET THE REQUIRED  
6 MINIMUM LOSS RATIO FOR CALENDAR YEAR TWO THOUSAND TEN. THE RATE FILING  
7 OR APPLICATION SHALL BE SUBMITTED NO LATER THAN SEPTEMBER THIRTIETH, TWO  
8 THOUSAND TEN.

9 S 3. If any clause, sentence, paragraph, section or part of this act  
10 shall be adjudged by any court of competent jurisdiction to be invalid,  
11 the judgment shall not affect, impair or invalidate the remainder there-  
12 of, but shall be confined in its operation to the clause, sentence,  
13 paragraph, section or part thereof directly involved in the controversy  
14 in which such judgment shall have been rendered.

15 S 4. This act shall take effect immediately.