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

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I N S E N A T E

May 9, 2014

Introduced by Sen. SEWARD -- 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 prompt, fair and equitable payments of insurance commissions or other compensation arrangements

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

Section 1. Subsection (d) of section 2119 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(d) (1) No insurance broker shall, in connection with the sale, solicitation or negotiation, issuance, delivery or transfer in this state of any contract of insurance made or negotiated in this state, directly or indirectly charge, or receive from, the insured or prospective insured therein any greater sum than the rate of premium fixed therefor by the insurer obligated as such therein, unless such broker has a right to compensation for services created in the manner specified in subsection (c) of this section.

(2) THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PLACEMENT OF HEALTH INSURANCE COVERAGE BY AN INSURANCE BROKER UNDER CONTRACTS OR AGREEMENTS ISSUED OR ENTERED INTO PURSUANT TO THIS ARTICLE AND ARTICLES FORTY-TWO, FORTY-THREE AND FORTY-SEVEN OF THIS CHAPTER AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, INSIDE OR OUTSIDE THE NEW YORK HEALTH BENEFIT EXCHANGE ESTABLISHED UNDER GOVERNOR'S EXECUTIVE ORDER NO. 42 (2012) TO IMPLEMENT APPLICABLE PROVISIONS OF THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148 (42 USC S 18001 ET SEQ. (2010)).

S 2. The insurance law is amended by adding a new section 3224-d to read as follows:

S 3224-D. STANDARDS FOR PROMPT, FAIR AND EQUITABLE PAYMENTS OF INSURANCE COMMISSIONS OR OTHER COMPENSATION ARRANGEMENTS. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER OR ANY OTHER GENERAL OR SPECIAL LAW TO THE CONTRARY, THIS SECTION IS INTENDED TO PROVIDE FOR PROMPT, FAIR AND EQUITABLE PAYMENTS OF INSURANCE COMMISSIONS OR OTHER COMPENSATION

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

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ARRANGEMENTS TO HEALTH INSURANCE PRODUCERS FOR PLACEMENT OF HEALTH INSURANCE COVERAGE UNDER CONTRACTS OR AGREEMENTS ISSUED OR ENTERED INTO PURSUANT TO THIS ARTICLE AND ARTICLES FORTY-TWO, FORTY-THREE AND FORTY-SEVEN OF THIS CHAPTER AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, WHICH SHALL ADHERE TO THE FOLLOWING STANDARDS:

(A) EXCEPT IN A CASE WHERE THE OBLIGATION OF A HEALTH PLAN TO PAY AN INSURANCE COMMISSION OR OTHER COMPENSATION ARRANGEMENT TO AN INSURANCE PRODUCER UPON RECEIPT OF PAYMENT OF PREMIUM OR OTHER CHARGE FOR PLACEMENT OF HEALTH INSURANCE COVERAGE IS NOT REASONABLY CLEAR, OR WHEN THERE IS A REASONABLE BASIS SUPPORTED BY SPECIFIC INFORMATION AVAILABLE FOR REVIEW BY THE SUPERINTENDENT THAT SUCH PAYMENT OF PREMIUM OR OTHER CHARGE WAS SUBMITTED FRAUDULENTLY, SUCH HEALTH PLAN SHALL PAY SUCH INSURANCE COMMISSION OR OTHER COMPENSATION ARRANGEMENT TO ANY SUCH INSURANCE PRODUCER WITHIN FORTY-FIVE DAYS OF RECEIPT OF SUCH PAYMENT OF PREMIUM OR OTHER CHARGE.

(B) EACH FAILURE TO TIMELY PAY AN INSURANCE COMMISSION OR OTHER COMPENSATION ARRANGEMENT TO AN INSURANCE PRODUCER FOR PLACEMENT OF HEALTH INSURANCE COVERAGE IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION. IN ADDITION TO THE PENALTIES PROVIDED IN THIS CHAPTER, ANY HEALTH PLAN THAT FAILS TO ADHERE TO THE STANDARDS CONTAINED IN THIS SECTION SHALL BE OBLIGATED TO PAY TO AN INSURANCE PRODUCER INTEREST ON THE AMOUNT OF SUCH INSURANCE COMMISSION OR OTHER COMPENSATION ARRANGEMENT DUE AND OWING THE GREATER OF THE RATE EQUAL TO THE RATE SET BY THE COMMISSIONER OF TAXATION AND FINANCE FOR CORPORATE TAXES PURSUANT TO PARAGRAPH ONE OF SUBSECTION (E) OF SECTION ONE THOUSAND NINETY-SIX OF THE TAX LAW OR TWELVE PERCENT PER ANNUM, TO BE COMPUTED FROM THE DATE PAYMENT WAS REQUIRED TO BE MADE. WHEN THE AMOUNT OF INTEREST DUE ON ANY SUCH PAYMENT IS LESS THAN TWO DOLLARS, A HEALTH PLAN SHALL NOT BE REQUIRED TO PAY INTEREST ON SUCH PAYMENT.

(C) THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PLACEMENT OF HEALTH INSURANCE COVERAGE UNDER CONTRACTS OR AGREEMENTS ISSUED OR ENTERED INTO PURSUANT TO THIS ARTICLE AND ARTICLES FORTY-TWO, FORTY-THREE AND FORTY-SEVEN OF THIS CHAPTER AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, INSIDE OR OUTSIDE THE NEW YORK HEALTH BENEFIT EXCHANGE ESTABLISHED UNDER GOVERNOR'S EXECUTIVE ORDER NO. 42 (2012) TO IMPLEMENT APPLICABLE PROVISIONS OF THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148 (42 USC S 18001 ET SEQ. (2010)).

(D) ANY CONTRACT OR AGREEMENT ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION BETWEEN A HEALTH PLAN AND AN INSURANCE PRODUCER THAT ATTEMPTS TO ABROGATE, ALTER OR AMEND ANY OF THE PROVISIONS OF THIS SECTION, SHALL BE VOID AS AGAINST PUBLIC POLICY.

(E) FOR PURPOSES OF THIS SECTION:

(1) "HEALTH PLAN" SHALL MEAN AN INSURER OR ORGANIZATION OR CORPORATION LICENSED OR CERTIFIED PURSUANT TO ARTICLE FORTY-THREE OR FORTY-SEVEN OF THIS CHAPTER OR ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW; AND

(2) "INSURANCE PRODUCER" SHALL MEAN AN INSURANCE AGENT, INSURANCE BROKER OR INSURANCE CONSULTANT LICENSED PURSUANT TO ARTICLE TWENTY-ONE OF THIS CHAPTER.

S 3. This act shall take effect immediately.