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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:

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

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

12 (2) THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PLACEMENT OF
13 HEALTH INSURANCE COVERAGE BY AN INSURANCE BROKER UNDER CONTRACTS OR
14 AGREEMENTS ISSUED OR ENTERED INTO PURSUANT TO THIS ARTICLE AND ARTICLES
15 FORTY-TWO, FORTY-THREE AND FORTY-SEVEN OF THIS CHAPTER AND ARTICLE
16 FORTY-FOUR OF THE PUBLIC HEALTH LAW, INSIDE OR OUTSIDE THE NEW YORK
17 HEALTH BENEFIT EXCHANGE ESTABLISHED UNDER GOVERNOR'S EXECUTIVE ORDER NO.
18 42 (2012) TO IMPLEMENT APPLICABLE PROVISIONS OF THE FEDERAL PATIENT
19 PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148 (42 USC S 18001
20 ET SEQ. (2010)).

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

23 S 3224-D. STANDARDS FOR PROMPT, FAIR AND EQUITABLE PAYMENTS OF INSUR-
24 ANCE COMMISSIONS OR OTHER COMPENSATION ARRANGEMENTS. NOTWITHSTANDING ANY
25 OTHER PROVISIONS OF THIS CHAPTER OR ANY OTHER GENERAL OR SPECIAL LAW TO
26 THE CONTRARY, THIS SECTION IS INTENDED TO PROVIDE FOR PROMPT, FAIR AND
27 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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1 ARRANGEMENTS TO HEALTH INSURANCE PRODUCERS FOR PLACEMENT OF HEALTH
2 INSURANCE COVERAGE UNDER CONTRACTS OR AGREEMENTS ISSUED OR ENTERED INTO
3 PURSUANT TO THIS ARTICLE AND ARTICLES FORTY-TWO, FORTY-THREE AND FORTY-
4 SEVEN OF THIS CHAPTER AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW,
5 WHICH SHALL ADHERE TO THE FOLLOWING STANDARDS:

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

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

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

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

42 (E) FOR PURPOSES OF THIS SECTION:

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

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

49 S 3. This act shall take effect immediately.