

1671

2015-2016 Regular Sessions

I N S E N A T E

January 13, 2015

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, solic-
5 itation 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 MAJOR MEDICAL OR ANY OTHER COMPREHENSIVE TYPE OF HEALTH INSURANCE COVER-
14 AGE BY AN INSURANCE BROKER UNDER CONTRACTS OR AGREEMENTS ISSUED OR
15 ENTERED INTO BY A HEALTH PLAN PURSUANT TO THIS ARTICLE AND ARTICLES
16 FORTY-TWO, FORTY-THREE AND FORTY-SEVEN OF THIS CHAPTER AND ARTICLE
17 FORTY-FOUR OF THE PUBLIC HEALTH LAW, INSIDE OR OUTSIDE THE NEW YORK
18 HEALTH BENEFIT EXCHANGE ESTABLISHED UNDER GOVERNOR'S EXECUTIVE ORDER NO.
19 42 (2012) TO IMPLEMENT APPLICABLE PROVISIONS OF THE FEDERAL PATIENT
20 PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148 (42 USC S 18001
21 ET SEQ. (2010)).
22 S 2. The insurance law is amended by adding a new section 3224-d to
23 read as follows:
24 S 3224-D. STANDARDS FOR PROMPT, FAIR AND EQUITABLE PAYMENTS OF INSUR-
25 ANCE COMMISSIONS OR OTHER COMPENSATION ARRANGEMENTS. NOTWITHSTANDING ANY
26 OTHER PROVISIONS OF THIS CHAPTER OR ANY OTHER GENERAL OR SPECIAL LAW TO
27 THE CONTRARY, THIS SECTION IS INTENDED TO PROVIDE FOR PROMPT, FAIR AND

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

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1 EQUITABLE PAYMENTS OF INSURANCE COMMISSIONS OR OTHER COMPENSATION
2 ARRANGEMENTS TO HEALTH INSURANCE PRODUCERS FOR PLACEMENT OF MAJOR
3 MEDICAL OR ANY OTHER COMPREHENSIVE TYPE OF HEALTH INSURANCE COVERAGE
4 UNDER CONTRACTS OR AGREEMENTS ISSUED OR ENTERED INTO BY A HEALTH PLAN
5 PURSUANT TO THIS ARTICLE AND ARTICLES FORTY-TWO, FORTY-THREE AND FORTY-
6 SEVEN OF THIS CHAPTER AND ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW,
7 WHICH SHALL ADHERE TO THE FOLLOWING STANDARDS:

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

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

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

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

46 (E) FOR PURPOSES OF THIS SECTION:

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

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

53 S 3. This act shall take effect immediately.