

4540--A

2015-2016 Regular Sessions

I N S E N A T E

March 26, 2015

Introduced by Sens. SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to rating of individual and small group health insurance policies; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subsections (d) and (e) of section 3231 of the insurance
2 law, subsection (d) as amended by section 1 of part A of chapter 494 of
3 the laws of 2009, subsection (e) as amended by chapter 107 of the laws
4 of 2010, subparagraph (A) of paragraph 1 of subdivision (e) as further
5 amended by section 104 of part A of chapter 62 of the laws of 2011 and
6 subparagraph (B) of paragraph 1 of subsection (e) as amended by section
7 61 of part D of chapter 56 of the laws of 2013, are amended to read as
8 follows:
9 (d) (1) Notwithstanding any other provision of this chapter to the
10 contrary, no NEW OR INITIAL policy form subject to this section shall be
11 issued or delivered, nor any insurance contract entered into, unless and
12 until the insurer has filed with the superintendent a schedule of premi-
13 ums, not to exceed twelve months in duration, to be paid under the poli-
14 cy forms and obtained the superintendent's approval thereof. The super-
15 intendent may refuse such approval if he or she finds that such premiums
16 are excessive, inadequate, or unfairly discriminatory. The superinten-
17 dent may consider the financial condition of such insurer in approving
18 or disapproving any premium. In determining whether to approve the sche-
19 dule of premiums filed, the superintendent shall, subject to the
20 provisions of section three thousand two hundred thirty-three of this
21 article, consider the prior experience of the insurer's community pool

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

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1 and the insurer's projections relating to claim costs, utilization and
2 administrative expenses and shall not adjust the insurer's rates based
3 upon the rates approved for other insurers.

4 (2) An insurer shall provide specific claims experience to a municipal
5 corporation, as defined in subsection (f) of section four thousand seven
6 hundred two of this chapter, covered by the insurer under a community
7 rated policy when the municipal corporation requests its claims experi-
8 ence for purposes of forming or joining a municipal cooperative health
9 benefit plan certified pursuant to article forty-seven of this chapter.
10 Notwithstanding the forgoing provisions, no insurer shall be required to
11 provide more than three years' claims experience to a municipal corpo-
12 ration making this request.

13 (e) (1) (A) An insurer desiring to increase or decrease premiums for
14 any PREVIOUSLY APPROVED policy form subject to this section shall submit
15 a rate filing [or application] to the superintendent[.

16 An insurer shall send written notice of the proposed rate adjustment,
17 including the specific change requested, to each policy holder and
18 certificate holder affected by the adjustment on or before the date the
19 rate filing or application is submitted to the superintendent. The
20 notice shall prominently include mailing and website addresses for both
21 the department of financial services and the insurer through which a
22 person may, within thirty days from the date the rate filing or applica-
23 tion is submitted to the superintendent, contact the department of
24 financial services or insurer to receive additional information or to
25 submit written comments to the department of financial services on the
26 rate filing or application. The superintendent shall establish a process
27 to post on the department's website, in a timely manner, all relevant
28 written comments received pertaining to rate filings or applications.
29 The insurer shall provide a copy of the notice to the superintendent
30 with the rate filing or application. The superintendent shall immediate-
31 ly cause the notice to be posted on the department of financial
32 services' website. The superintendent shall determine whether the filing
33 or application shall become effective as filed, shall become effective
34 as modified, or shall be disapproved. The superintendent may modify or
35 disapprove the rate filing or application if the superintendent finds
36 that the premiums are unreasonable, excessive, inadequate, or unfairly
37 discriminatory, and may consider the financial condition of the insurer
38 when approving, modifying or disapproving any premium adjustment. The
39 determination of the superintendent shall be supported by sound actuari-
40 al assumptions and methods, and shall be rendered in writing between
41 thirty and sixty days from the date the rate filing or application is
42 submitted to the superintendent. Should the superintendent require addi-
43 tional information from the insurer in order to make a determination,
44 the superintendent shall require the insurer to furnish such informa-
45 tion, and in such event, the sixty days shall be tolled and shall resume
46 as of the date the insurer furnishes the information to the superinten-
47 dent. If the superintendent requests additional information less than
48 ten days from the expiration of the sixty days (exclusive of tolling),
49 the superintendent may extend the sixty day period an additional twenty
50 days to make a determination. The application or rate filing will be
51 deemed approved if a determination is not rendered within the time
52 allotted under this section. An insurer shall not implement a rate
53 adjustment unless the insurer provides at least sixty days advance writ-
54 ten notice of the premium rate adjustment approved by the superintendent
55 to each policy holder and certificate holder affected by the rate
56 adjustment.

1 (B) The expected minimum loss ratio for a policy form subject to this
2 section, for which a rate filing or application is made pursuant to this
3 paragraph, other than a medicare supplemental insurance policy, or, with
4 the approval of the superintendent, an aggregation of policy forms that
5 are combined into one community rating experience pool and rated
6 consistent with community rating requirements, shall not be less than
7 eighty-two percent. In reviewing a rate filing or application, the
8 superintendent may modify the eighty-two percent expected minimum loss
9 ratio requirement if the superintendent determines the modification to
10 be in the interests of the people of this state or if the superintendent
11 determines that a modification is necessary to maintain insurer solven-
12 cy. No later than July thirty-first of each year, every insurer subject
13 to this subparagraph shall annually report the actual loss ratio for the
14 previous calendar year in a format acceptable to the superintendent. If
15 an expected loss ratio is not met, the superintendent may direct the
16 insurer to take corrective action, which may include the submission of a
17 rate filing to reduce future premiums, or to issue dividends, premium
18 refunds or credits, or any combination of these.

19 (2) (A) Until September thirtieth, two thousand ten, as an alternate
20 procedure to the requirements of paragraph one of this subsection, an
21 insurer desiring to increase or decrease premiums for any policy form
22 subject to this section may instead submit a rate filing or application
23 to the superintendent] and such [application or] filing shall be deemed
24 approved, provided that: (i) the anticipated minimum loss ratio for a
25 policy form shall not be less than eighty-two percent of the premium;
26 and (ii) the insurer submits, as part of such filing, a certification by
27 a member of the American Academy of Actuaries or other individual
28 acceptable to the superintendent that the insurer is in compliance with
29 the provisions of this paragraph, based upon that person's examination,
30 including a review of the appropriate records and of the actuarial
31 assumptions and methods used by the insurer in establishing premium
32 rates for policy forms subject to this section. [An insurer shall not
33 utilize the alternate procedure pursuant to this paragraph to implement
34 a change in rates to be effective on or after October first, two thou-
35 sand ten.] AN INSURER SHALL NOT IMPLEMENT A PREMIUM RATE ADJUSTMENT
36 UNLESS THE INSURER PROVIDES AT LEAST ONE HUNDRED TWENTY DAYS ADVANCE
37 NOTICE OF THE PREMIUM RATE ADJUSTMENT BY WRITTEN NOTICE TO EACH POLICY
38 HOLDER AND CERTIFICATE HOLDER AFFECTED BY THE RATE ADJUSTMENT.

39 (B) Each calendar year, an insurer shall return, in the form of aggre-
40 gate benefits for each policy form [filed pursuant to the alternate
41 procedure set forth in this paragraph] at least eighty-two percent of
42 the aggregate premiums collected for the policy form during that calen-
43 dar year. Insurers shall annually report, no later than [June thirtieth]
44 JULY THIRTY-FIRST of each year, the loss ratio calculated pursuant to
45 this paragraph for each such policy form for the previous calendar year.
46 In each case where the loss ratio for a policy form fails to comply with
47 the eighty-two percent loss ratio requirement, the insurer shall issue a
48 dividend or credit against future premiums for all policy holders with
49 that policy form in an amount sufficient to assure that the aggregate
50 benefits paid in the previous calendar year plus the amount of the divi-
51 dends and credits shall equal eighty-two percent of the aggregate premi-
52 ums collected for the policy form in the previous calendar year. The
53 dividend or credit shall be issued to each policy holder who had a poli-
54 cy which was in effect at any time during the applicable year. The divi-
55 dend or credit shall be prorated based on the direct premiums earned for
56 the applicable year among all policy holders eligible to receive such

1 dividend or credit. An insurer shall make a reasonable effort to identi-
2 fy the current address of, and issue dividends or credits to, former
3 policy holders entitled to the dividend or credit. An insurer shall,
4 with respect to dividends or credits to which former policy holders that
5 the insurer is unable to identify after a reasonable effort would other-
6 wise be entitled, have the option, as deemed acceptable by the super-
7 intendent, of prospectively adjusting premium rates by the amount of
8 such dividends or credits, issuing the amount of such dividends or cred-
9 its to existing policy holders, depositing the amount of such dividends
10 or credits in the fund established pursuant to section four thousand
11 three hundred twenty-two-a of this chapter, or utilizing any other meth-
12 od which offsets the amount of such dividends or credits. All dividends
13 and credits must be distributed by September thirtieth of the year
14 following the calendar year in which the loss ratio requirements were
15 not satisfied. The annual report required by this paragraph shall
16 include an insurer's calculation of the dividends and credits, as well
17 as an explanation of the insurer's plan to issue dividends or credits.
18 The instructions and format for calculating and reporting loss ratios
19 and issuing dividends or credits shall be specified by the superinten-
20 dent by regulation. Such regulations shall include provisions for the
21 distribution of a dividend or credit in the event of cancellation or
22 termination by a policy holder.

23 [(3) All policy forms subject to this subsection, other than medicare
24 supplemental insurance policy forms, issued or in effect during calendar
25 year two thousand ten shall be subject to a minimum loss ratio require-
26 ment of eighty-two percent. Insurers may use the alternate filing proce-
27 dure set forth in paragraph two of this subsection to adjust premium
28 rates in order to meet the required minimum loss ratio for calendar year
29 two thousand ten. The rate filing or application shall be submitted no
30 later than September thirtieth, two thousand ten.]

31 S 2. Subsections (c) and (d) of section 4308 of the insurance law are
32 REPEALED and two new subsections (c) and (d) are added to read as
33 follows:

34 (C) A CORPORATION SUBJECT TO THE PROVISIONS OF THIS ARTICLE DESIRING
35 TO INCREASE OR DECREASE PREMIUMS FOR ANY PREVIOUSLY APPROVED COMMUNITY
36 RATED CONTRACT SUBJECT TO THIS SECTION SHALL SUBMIT A RATE FILING TO THE
37 SUPERINTENDENT AND SUCH FILING SHALL BE DEEMED APPROVED, PROVIDED THAT
38 (1) THE ANTICIPATED INCURRED LOSS RATIO FOR A CONTRACT FORM, OTHER THAN
39 A MEDICARE SUPPLEMENTAL INSURANCE CONTRACT, SHALL NOT BE LESS THAN
40 EIGHTY-TWO PERCENT, AND (2) THE CORPORATION SUBMITS, AS PART OF SUCH
41 FILING, A CERTIFICATION BY A MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES
42 OR OTHER INDIVIDUAL ACCEPTABLE TO THE SUPERINTENDENT THAT SUCH CORPO-
43 RATION IS IN COMPLIANCE WITH THE PROVISIONS OF THIS SUBSECTION, BASED
44 UPON THAT PERSON'S EXAMINATION, INCLUDING A REVIEW OF THE APPROPRIATE
45 RECORDS AND OF THE ACTUARIAL ASSUMPTIONS AND METHODS USED BY THE CORPO-
46 RATION IN ESTABLISHING PREMIUM RATES FOR CONTRACTS SUBJECT TO THIS
47 SECTION. THE EXPECTED MINIMUM LOSS RATIO FOR A MEDICARE SUPPLEMENTAL
48 INSURANCE CONTRACT FORM SHALL BE NOT LESS THAN EIGHTY PERCENT. A CORPO-
49 RATION SHALL NOT IMPLEMENT A PREMIUM RATE ADJUSTMENT UNLESS THE CORPO-
50 RATION PROVIDES AT LEAST ONE HUNDRED TWENTY DAYS ADVANCE NOTICE OF THE
51 PREMIUM RATE ADJUSTMENT BY WRITTEN NOTICE TO EACH POLICY HOLDER AND
52 CERTIFICATE HOLDER AFFECTED BY THE RATE ADJUSTMENT.

53 (D) (1) EACH CALENDAR YEAR, A CORPORATION SUBJECT TO THE PROVISIONS OF
54 THIS ARTICLE SHALL RETURN, IN THE FORM OF AGGREGATE BENEFITS INCURRED
55 FOR EACH CONTRACT FORM FILED PURSUANT TO THE PROCEDURE SET FORTH IN
56 SUBSECTION (C) OF THIS SECTION, AT LEAST EIGHTY-TWO PERCENT, OR IN THE

1 CASE OF MEDICARE SUPPLEMENTAL INSURANCE CONTRACT FORM, AT LEAST EIGHTY
2 PERCENT OF THE AGGREGATE PREMIUMS EARNED FOR THE CONTRACT FORM IN THE
3 PREVIOUS CALENDAR YEAR. CORPORATIONS SUBJECT TO THE PROVISIONS OF THIS
4 ARTICLE SHALL ANNUALLY REPORT, NO LATER THAN JULY THIRTY-FIRST OF EACH
5 YEAR, THE LOSS RATIO CALCULATED PURSUANT TO THIS SUBSECTION FOR EACH
6 SUCH CONTRACT FORM FOR THE PREVIOUS CALENDAR YEAR.

7 (2) IN EACH CASE WHERE THE LOSS RATIO FOR A CONTRACT FORM FAILS TO
8 COMPLY WITH THE MINIMUM LOSS RATIO REQUIREMENT, AS SET FORTH IN PARA-
9 GRAPH ONE OF THIS SUBSECTION, THE CORPORATION SHALL ISSUE A DIVIDEND OR
10 CREDIT AGAINST FUTURE PREMIUMS FOR ALL CONTRACT HOLDERS WITH THAT
11 CONTRACT FORM IN AN AMOUNT SUFFICIENT TO ASSURE THAT THE AGGREGATE BENE-
12 FITS INCURRED IN THE PREVIOUS CALENDAR YEAR PLUS THE AMOUNT OF THE DIVI-
13 DENDS AND CREDITS SHALL EQUAL NO LESS THAN EIGHTY-TWO PERCENT (OR EIGHTY
14 PERCENT IN THE CASE OF A MEDICARE SUPPLEMENTAL INSURANCE CONTRACT FORM),
15 OF THE AGGREGATE PREMIUMS EARNED FOR THE CONTRACT FORM IN THE PREVIOUS
16 CALENDAR YEAR. THE DIVIDEND OR CREDIT SHALL BE ISSUED TO EACH CONTRACT
17 HOLDER OR SUBSCRIBER WHO HAD A CONTRACT THAT WAS IN EFFECT AT ANY TIME
18 DURING THE APPLICABLE YEAR. THE DIVIDEND OR CREDIT SHALL BE PRORATED
19 BASED ON THE DIRECT PREMIUMS EARNED FOR THE APPLICABLE YEAR AMONG ALL
20 CONTRACT HOLDERS OR SUBSCRIBERS ELIGIBLE TO RECEIVE SUCH DIVIDEND OR
21 CREDIT. A CORPORATION SHALL MAKE A REASONABLE EFFORT TO IDENTIFY THE
22 CURRENT ADDRESS OF, AND ISSUE DIVIDENDS OR CREDITS TO, FORMER CONTRACT
23 HOLDERS OR SUBSCRIBERS ENTITLED TO THE DIVIDEND OR CREDIT. A CORPORATION
24 SHALL, WITH RESPECT TO DIVIDENDS OR CREDITS TO WHICH FORMER CONTRACT
25 HOLDERS THAT THE CORPORATION IS UNABLE TO IDENTIFY AFTER A REASONABLE
26 EFFORT WOULD OTHERWISE BE ENTITLED, HAVE THE OPTION, AS DEEMED ACCEPTA-
27 BLE BY THE SUPERINTENDENT, OF PROSPECTIVELY ADJUSTING PREMIUM RATES BY
28 THE AMOUNT OF SUCH DIVIDENDS OR CREDITS, ISSUING THE AMOUNT OF SUCH
29 DIVIDENDS OR CREDITS TO EXISTING CONTRACT HOLDERS, DEPOSITING THE AMOUNT
30 OF SUCH DIVIDENDS OR CREDITS IN THE FUND ESTABLISHED PURSUANT TO SECTION
31 FOUR THOUSAND THREE HUNDRED TWENTY-TWO-A OF THIS ARTICLE, OR UTILIZING
32 ANY OTHER METHOD WHICH OFFSETS THE AMOUNT OF SUCH DIVIDENDS OR CREDITS.
33 ALL DIVIDENDS AND CREDITS MUST BE DISTRIBUTED BY SEPTEMBER THIRTIETH OF
34 THE YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE LOSS RATIO REQUIRE-
35 MENTS WERE NOT SATISFIED. THE ANNUAL REPORT REQUIRED BY PARAGRAPH ONE OF
36 THIS SUBSECTION SHALL INCLUDE A CORPORATION'S CALCULATION OF THE DIVI-
37 DENDS AND CREDITS, AS WELL AS AN EXPLANATION OF THE CORPORATION'S PLAN
38 TO ISSUE DIVIDENDS OR CREDITS. THE INSTRUCTIONS AND FORMAT FOR CALCULAT-
39 ING AND REPORTING LOSS RATIOS AND ISSUING DIVIDENDS OR CREDITS SHALL BE
40 SPECIFIED BY THE SUPERINTENDENT BY REGULATION. SUCH REGULATIONS SHALL
41 INCLUDE PROVISIONS FOR THE DISTRIBUTION OF A DIVIDEND OR CREDIT IN THE
42 EVENT OF CANCELLATION OR TERMINATION BY A CONTRACT HOLDER OR SUBSCRIBER.

43 S 3. Subsections (e) and (f) of section 4308 of the insurance law, as
44 amended by chapter 107 of the laws of 2010, are amended to read as
45 follows:

46 (e) Notwithstanding any other provision of law, the superintendent
47 shall have the power to require independent management and financial
48 audits of corporations subject to the provisions of this article whenever
49 in the judgment of the superintendent, losses sustained by a corpo-
50 ration jeopardize its ability to provide meaningful coverage at afforda-
51 ble rates or when such audit would be necessary to protect the interests
52 of subscribers. The audit shall include, but not be limited to, an
53 investigation of the corporation's provision of benefits to senior citi-
54 zens, individual and family, and small group and small business
55 subscribers in relation to the needs of those subscribers. The audit
56 shall also include an evaluation of the efficiency of the corporation's

1 management, particularly with respect to lines of business which are
2 experiencing losses. In every case in which the superintendent chooses
3 to require an audit provided for in this subsection, the superintendent
4 shall have the authority to select the auditor. Any costs incurred as a
5 result of the operation of this subsection shall be assessed on all
6 domestic insurers in the same manner as provided for in section [three
7 hundred thirty-two of this chapter] TWO HUNDRED SIX OF THE FINANCIAL
8 SERVICES LAW.

9 (f) The results of any audit conducted pursuant to [subsections (d)
10 and] SUBSECTION (e) of this section shall be provided to the corporation
11 and each member of its board of directors. The superintendent shall have
12 the authority to direct the corporation in writing to implement any
13 recommendations resulting from the audit that the superintendent finds
14 to be necessary and reasonable; provided, however, that the superinten-
15 dent shall first consider any written response submitted by the corpo-
16 ration or the board of directors prior to making such finding. Upon any
17 application for a rate adjustment by the corporation, the superintendent
18 shall review the corporation's compliance with the directions and recom-
19 mendations made previously by the superintendent, as a result of the
20 most recently completed management or financial audit and shall include
21 such findings in any written decision concerning such application.

22 S 4. Subsections (g), (h), (i) and (j) of section 4308 of the insur-
23 ance law are REPEALED.

24 S 5. This act shall take effect immediately.