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

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:

Section 1. Subsections (d) and (e) of section 3231 of the insurance law, subsection (d) as amended by section 1 of part A of chapter 494 of the laws of 2009, subsection (e) as amended by chapter 107 of the laws of 2010, subparagraph (A) of paragraph 1 of subdivision (e) as further amended by section 104 of part A of chapter 62 of the laws of 2011 and subparagraph (B) of paragraph 1 of subsection (e) as amended by section 61 of part D of chapter 56 of the laws of 2013, are amended to read as follows:

(d) (1) Notwithstanding any other provision of this chapter to the contrary, no NEW OR INITIAL policy form subject to this section shall be issued or delivered, nor any insurance contract entered into, unless and until the insurer has filed with the superintendent a schedule of premiums, not to exceed twelve months in duration, to be paid under the policy forms and obtained the superintendent's approval thereof. The superintendent may refuse such approval if he or she finds that such premiums are excessive, inadequate, or unfairly discriminatory. The superintendent may consider the financial condition of such insurer in approving or disapproving any premium. In determining whether to approve the schedule of premiums filed, the superintendent shall, subject to the provisions of section three thousand two hundred thirty-three of this 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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and the insurer's projections relating to claim costs, utilization and administrative expenses and shall not adjust the insurer's rates based upon the rates approved for other insurers.

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

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

An insurer shall send written notice of the proposed rate adjustment, including the specific change requested, to each policy holder and certificate holder affected by the adjustment on or before the date the rate filing or application is submitted to the superintendent. The notice shall prominently include mailing and website addresses for both the department of financial services and the insurer through which a person may, within thirty days from the date the rate filing or application is submitted to the superintendent, contact the department of financial services or insurer to receive additional information or to submit written comments to the department of financial services on the rate filing or application. The superintendent shall establish a process to post on the department's website, in a timely manner, all relevant written comments received pertaining to rate filings or applications. The insurer shall provide a copy of the notice to the superintendent with the rate filing or application. The superintendent shall immediately cause the notice to be posted on the department of financial services' website. The superintendent shall determine whether the filing or application shall become effective as filed, shall become effective as modified, or shall be disapproved. The superintendent may modify or disapprove the rate filing or application if the superintendent finds that the premiums are unreasonable, excessive, inadequate, or unfairly discriminatory, and may consider the financial condition of the insurer when approving, modifying or disapproving any premium adjustment. The determination of the superintendent shall be supported by sound actuarial assumptions and methods, and shall be rendered in writing between thirty and sixty days from the date the rate filing or application is submitted to the superintendent. Should the superintendent require additional information from the insurer in order to make a determination, the superintendent shall require the insurer to furnish such information, and in such event, the sixty days shall be tolled and shall resume as of the date the insurer furnishes the information to the superintendent. If the superintendent requests additional information less than ten days from the expiration of the sixty days (exclusive of tolling), the superintendent may extend the sixty day period an additional twenty days to make a determination. The application or rate filing will be deemed approved if a determination is not rendered within the time allotted under this section. An insurer shall not implement a rate adjustment unless the insurer provides at least sixty days advance written notice of the premium rate adjustment approved by the superintendent to each policy holder and certificate holder affected by the rate adjustment.

(B) The expected minimum loss ratio for a policy form subject to this section, for which a rate filing or application is made pursuant to this paragraph, other than a medicare supplemental insurance policy, or, with the approval of the superintendent, an aggregation of policy forms that are combined into one community rating experience pool and rated consistent with community rating requirements, shall not be less than eighty-two percent. In reviewing a rate filing or application, the superintendent may modify the eighty-two percent expected minimum loss ratio requirement if the superintendent determines the modification to be in the interests of the people of this state or if the superintendent determines that a modification is necessary to maintain insurer solvency. No later than July thirty-first of each year, every insurer subject to this subparagraph shall annually report the actual loss ratio for the previous calendar year in a format acceptable to the superintendent. If an expected loss ratio is not met, the superintendent may direct the insurer to take corrective action, which 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.

(2) (A) Until September thirtieth, two thousand ten, as an alternate procedure to the requirements of paragraph one of this subsection, an insurer desiring to increase or decrease premiums for any policy form subject to this section may instead submit a rate filing or application to the superintendent] and such [application or] filing shall be deemed approved, provided that: (i) the anticipated minimum loss ratio for a policy form shall not be less than eighty-two percent of the premium; and (ii) the insurer submits, as part of such filing, a certification by a member of the American Academy of Actuaries or other individual acceptable to the superintendent that the insurer is in compliance with the provisions of this paragraph, based upon that person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the insurer in establishing 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.] AN INSURER SHALL NOT IMPLEMENT A PREMIUM RATE ADJUSTMENT UNLESS THE INSURER PROVIDES AT LEAST ONE HUNDRED TWENTY DAYS ADVANCE NOTICE OF THE PREMIUM RATE ADJUSTMENT BY WRITTEN NOTICE TO EACH POLICY HOLDER AND CERTIFICATE HOLDER AFFECTED BY THE RATE ADJUSTMENT.

(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 eighty-two percent of the aggregate premiums collected for the policy form during that calendar year. Insurers shall annually report, no later than [June thirtieth] JULY THIRTY-FIRST 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 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 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. Subsections (c) and (d) of section 4308 of the insurance law are REPEALED and two new subsections (c) and (d) are added to read as follows:

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

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

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

(2) IN EACH CASE WHERE THE LOSS RATIO FOR A CONTRACT FORM FAILS TO COMPLY WITH THE MINIMUM LOSS RATIO REQUIREMENT, AS SET FORTH IN PARAGRAPH ONE OF THIS SUBSECTION, THE CORPORATION SHALL ISSUE A DIVIDEND OR CREDIT AGAINST FUTURE PREMIUMS FOR ALL CONTRACT HOLDERS WITH THAT CONTRACT FORM IN AN AMOUNT SUFFICIENT TO ASSURE THAT THE AGGREGATE BENEFITS INCURRED IN THE PREVIOUS CALENDAR YEAR PLUS THE AMOUNT OF THE DIVIDENDS AND CREDITS SHALL EQUAL NO LESS THAN EIGHTY-TWO PERCENT (OR EIGHTY PERCENT IN THE CASE OF A MEDICARE SUPPLEMENTAL INSURANCE CONTRACT FORM), OF THE AGGREGATE PREMIUMS EARNED FOR THE CONTRACT FORM IN THE PREVIOUS CALENDAR YEAR. THE DIVIDEND OR CREDIT SHALL BE ISSUED TO EACH CONTRACT HOLDER OR SUBSCRIBER WHO HAD A CONTRACT THAT 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 CONTRACT HOLDERS OR SUBSCRIBERS ELIGIBLE TO RECEIVE SUCH DIVIDEND OR CREDIT. A CORPORATION SHALL MAKE A REASONABLE EFFORT TO IDENTIFY THE CURRENT ADDRESS OF, AND ISSUE DIVIDENDS OR CREDITS TO, FORMER CONTRACT HOLDERS OR SUBSCRIBERS ENTITLED TO THE DIVIDEND OR CREDIT. A CORPORATION SHALL, WITH RESPECT TO DIVIDENDS OR CREDITS TO WHICH FORMER CONTRACT HOLDERS THAT THE CORPORATION 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 CONTRACT 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 ARTICLE, 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 PARAGRAPH ONE OF THIS SUBSECTION SHALL INCLUDE A CORPORATION'S CALCULATION OF THE DIVIDENDS AND CREDITS, AS WELL AS AN EXPLANATION OF THE CORPORATION'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 CONTRACT HOLDER OR SUBSCRIBER.

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

(e) Notwithstanding any other provision of law, the superintendent shall have the power to require independent management and financial audits of corporations subject to the provisions of this article whenever in the judgment of the superintendent, losses sustained by a corporation jeopardize its ability to provide meaningful coverage at affordable rates or when such audit would be necessary to protect the interests of subscribers. The audit shall include, but not be limited to, an investigation of the corporation's provision of benefits to senior citizens, individual and family, and small group and small business subscribers in relation to the needs of those subscribers. The audit shall also include an evaluation of the efficiency of the corporation's

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

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

S 4. Subsections (g), (h), (i) and (j) of section 4308 of the insurance law are REPEALED.

S 5. This act shall take effect immediately.