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

February 3, 2016

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the state finance law, in relation to creating the health insurance guaranty fund

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

Section 1. Subsection (e) of section 7402 of the insurance law is amended to read as follows:

(e) Is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, creditors, or the public. THIS SHALL INCLUDE A HEALTH INSURER, AS DEFINED IN ARTICLE EIGHTY-ONE OF THIS CHAPTER, THAT IS CONSISTENTLY UNABLE TO MEET THE REQUIREMENTS OF SECTION THREE THOUSAND TWO HUNDRED TWENTY-FOUR-A OF THIS CHAPTER.

S 2. Section 7403 of the insurance law is amended by adding a new subsection (e) to read as follows:

(E)(1) UPON A DETERMINATION BY THE SUPERINTENDENT AND THE REHABILITATOR THAT FUNDS FROM THE NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND ARE NECESSARY TO MEET THE REQUIREMENTS OF ARTICLE EIGHTY-ONE OF THIS CHAPTER, THE SUPERINTENDENT SHALL MAKE AVAILABLE SUCH FUNDS AS ARE NECESSARY, PURSUANT TO THE REQUIREMENTS OF SUCH ARTICLE.

(2) THE SUPERINTENDENT SHALL ADVANCE SUCH FUNDS AS MAY BE NECESSARY PURSUANT TO SUBSECTION (D) OF SECTION EIGHT THOUSAND ONE HUNDRED FOUR OF THIS CHAPTER. THE REHABILITATOR AND THE SUPERINTENDENT SHALL ESTABLISH A PLAN, IF POSSIBLE, FOR REPAYMENT OF THE ADVANCE, AT A RATE OF INTEREST DETERMINED BY THE SUPERINTENDENT.

(3) ADVANCES, PURSUANT TO PARAGRAPH TWO OF THIS SUBSECTION, SHALL, IN ALL RESPECTS EXCEPT TO RATE OF INTEREST, BE SUBJECT TO THE PROVISIONS OF SECTION ONE THOUSAND THREE HUNDRED SEVEN OF THIS CHAPTER, PROVIDED THAT IN THE EVENT THAT AN INSURER WHICH HAS RECEIVED AN ADVANCE PURSUANT TO THIS SUBSECTION IS SUBSEQUENTLY THE SUBJECT OF AN ORDER OF LIQUIDATION, THE CLAIM OF THE FUND FOR THE ADVANCE AND ANY ACCRUED INTEREST SHALL HAVE PRIORITY ABOVE CLAIMS OF ALL NONSECURED CREDITORS, PROVIDED THE REQUIREMENTS OF ARTICLE EIGHTY-ONE OF THIS CHAPTER HAVE BEEN MET, AND

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

LBD13972-01-6

SHALL BE PAID IMMEDIATELY TO THE FUND OR AS SOON AS ASSETS ARE AVAILABLE THEREFOR.

S 3. Paragraph 1 of subsection (f) of section 7405 of the insurance law, as amended by chapter 33 of the laws of 2005, is amended to read as follows:

(1) No later than one hundred eighty days after a final order of liquidation with an adjudication of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator may in his sole discretion make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to any fund established by article seventy-six of this chapter, article six-A of the workers' compensation law [and], any foreign entity performing a similar function, AND ANY FUND ESTABLISHED PURSUANT TO ARTICLE EIGHTY-ONE OF THIS CHAPTER, PROVIDED THAT THE REQUIREMENTS OF SUBSECTION (A) OF SECTION EIGHT THOUSAND ONE HUNDRED THREE OF THIS CHAPTER HAVE BEEN MET, having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application authorized by this subsection shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

S 4. The insurance law is amended by adding a new article 81 to read as follows:

ARTICLE 81

HEALTH INSURANCE GUARANTY FUND

SECTION 8101. PURPOSE.
8102. DEFINITIONS.
8103. NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND.
8104. POWERS OF THE SUPERINTENDENT.

S 8101. PURPOSE. THE PURPOSE OF THIS ARTICLE IS TO PROTECT COVERED INDIVIDUALS AGAINST THE FAILURE OR INABILITY OF A HEALTH INSURER TO PERFORM ITS CONTRACTUAL OBLIGATIONS DUE TO FINANCIAL IMPAIRMENT OR INSOLVENCY. TO PROVIDE THIS PROTECTION, THE LEGISLATURE HEREBY CREATES A NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND TO SERVE AS A GUARANTY FUND MECHANISM CAPABLE OF INSURING THAT THE FINANCIAL OBLIGATIONS OF HEALTH INSURERS TO THEIR ENROLLEES AND HEALTH CARE PROVIDERS ARE SATISFIED.

S 8102. DEFINITIONS. AS USED IN THIS ARTICLE:

(A) "FUND" MEANS THE NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND CREATED BY THIS ARTICLE.

(B) "HEALTH INSURER" MEANS ANY ORGANIZATION OR ENTITY PROVIDING REIMBURSEMENT FOR A COVERED EXPENSE UNDER ANY INDIVIDUAL, GROUP OR BLANKET POLICY OR CONTRACT COVERING THE KINDS OF INSURANCE DESCRIBED IN ITEM (I) OF PARAGRAPH THREE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER AND LICENSED UNDER ARTICLE THIRTY-TWO OR FORTY-TWO OF THIS CHAPTER, WHICH IS NOT A MEMBER OF, OR PARTICIPANT IN, OR A SUBSIDIARY OF A MEMBER OF OR PARTICIPANT IN, THE FUNDS CREATED PURSUANT TO ARTICLES SEVENTY-FIVE, SEVENTY-SIX, AND SEVENTY-SEVEN OF THIS CHAPTER; A CORPORATION ORGANIZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER; OR AN ORGANIZATION CERTIFIED UNDER ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW.

(C) "CONTRACTUAL OBLIGATION" MEANS ANY PAYMENT OR REIMBURSEMENT OWED BY A HEALTH INSURER FOR A COVERED BENEFIT UNDER A POLICY, CONTRACT, OR COMPREHENSIVE HEALTH BENEFITS PLAN.

(D) "IMPAIRED HEALTH INSURER" MEANS A HEALTH INSURER FOR WHOM THE SUPERINTENDENT HAS INITIATED A PROCEEDING UNDER THE PROVISIONS OF ARTICLE SEVENTY-FOUR OF THIS CHAPTER.

(E) "COMMISSIONER" MEANS THE COMMISSIONER OF TAXATION AND FINANCE.

S 8103. NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND. (A) CONSISTENT WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION NINETY-SEVEN-YYYY OF THE STATE FINANCE LAW, THERE IS HEREBY ESTABLISHED A NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND. SUCH FUND SHALL BE USED IN THE PAYMENT OF UNPAID CONTRACTUAL OBLIGATIONS, IN WHOLE OR IN PART, BY AN IMPAIRED HEALTH INSURER, AFTER APPLICATION OF ANY FUNDS AVAILABLE FROM A PROCEEDING IMPLEMENTED PURSUANT TO ARTICLE SEVENTY-FOUR OF THIS CHAPTER.

(B)(1) PAYMENT INTO THE FUND BY HEALTH INSURERS SHALL BE MADE THROUGH AN ASSESSMENT BASED ON THE PREMIUMS RECEIVED BY A HEALTH INSURER FOR BUSINESS IN THIS STATE FOR THE MOST RECENT CALENDAR YEAR FOR WHICH PREMIUM INFORMATION IS AVAILABLE, EXCLUDING PREMIUMS RECEIVED FOR INDIVIDUALS UNDER TITLE XIX OF THE SOCIAL SECURITY ACT. THE SUPERINTENDENT SHALL ESTABLISH ASSESSMENT LEVELS SUFFICIENT TO FULLY PAY ALL UNPAID CLAIMS OF AN IMPAIRED HEALTH INSURER, PURSUANT TO SUBSECTIONS (B), (C) AND (D) OF SECTION EIGHT THOUSAND ONE HUNDRED FOUR OF THIS ARTICLE, AND TO REPAY ANY TRANSFERS MADE PURSUANT TO SUBDIVISION FIVE OF SECTION SEVENTY-TWO OF THE STATE FINANCE LAW.

(2) THE SUPERINTENDENT MAY EXEMPT, ABATE OR DEFER, IN WHOLE OR IN PART, THE ASSESSMENT OF A HEALTH INSURER IF THE SUPERINTENDENT DETERMINES THAT PAYMENT OF THE ASSESSMENT WOULD ENDANGER THE ABILITY OF THE HEALTH INSURER TO FULFILL ITS CONTRACTUAL OBLIGATIONS OR PLACE THE HEALTH INSURER IN AN UNSAFE OR UNSOUND FINANCIAL CONDITION.

(3) IN THE EVENT AN ASSESSMENT AGAINST A HEALTH INSURER IS EXEMPTED, ABATED OR DEFERRED, IN WHOLE OR IN PART, THE AMOUNT BY WHICH THAT ASSESSMENT IS EXEMPTED, ABATED OR DEFERRED SHALL BE ASSESSED AGAINST OTHER HEALTH INSURERS IN A MANNER CONSISTENT WITH THIS SECTION.

(C) REPAYMENT OF HEALTH INSURERS WHEN FUNDS BECOME AVAILABLE FROM A PROCEEDING PURSUANT TO ARTICLE SEVENTY-FOUR OF THIS CHAPTER SHALL BE PROPORTIONATE TO THE CONTRIBUTION FROM EACH HEALTH INSURER.

S 8104. POWERS OF THE SUPERINTENDENT. (A) FOR ANY IMPAIRED HEALTH INSURER, THE SUPERINTENDENT SHALL DIRECT THE COMMISSIONER TO MAKE PAYMENTS FROM THE NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND TO ENSURE THAT PAYMENTS TO HEALTH CARE PROVIDERS, OR INDEMNITY PAYMENTS TO COVERED INDIVIDUALS, ARE MADE IN FULL FOR SERVICES PROVIDED THAT WOULD NOT OTHERWISE BE FULLY REIMBURSED DESPITE THE PROCEEDINGS IMPLEMENTED PURSUANT TO ARTICLE SEVENTY-FOUR OF THIS CHAPTER. SERVICES PROVIDED EITHER PRIOR TO THE IMPLEMENTATION OF A PROCEEDING UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER OR AFTER IMPLEMENTATION OF SUCH PROCEEDING SHALL BE ELIGIBLE FOR REIMBURSEMENT, IN PART OR IN WHOLE, FROM THE FUND. PAYMENT IN FULL SHALL BE DETERMINED BY THE TERMS OF THE HEALTH INSURANCE CONTRACT, ANY CONTRACT BETWEEN A HEALTH CARE PROVIDER AND THE IMPAIRED HEALTH INSURER AND ANY APPLICABLE STATE OR FEDERAL LAWS OR REGULATIONS INCLUDING BUT NOT LIMITED TO PART H OF CHAPTER SIXTY OF THE LAWS OF TWO THOUSAND FOURTEEN AND SECTION TWO THOUSAND NINETEEN-A OF THE PUBLIC HEALTH SERVICES ACT, AS AMENDED BY THE PATIENT PROTECTION AND AFFORDABLE CARE ACT.

(B) THE SUPERINTENDENT SHALL DIRECT THE COMMISSIONER TO MAKE PAYMENTS TO ENSURE THAT PAYMENT IN FULL IS MADE TO HEALTH CARE PROVIDERS, OR INDEMNITY PAYMENTS TO COVERED INDIVIDUALS, FOR SERVICES PROVIDED BEFORE THE IMPLEMENTATION OF PROCEEDINGS PURSUANT TO ARTICLE SEVENTY-FOUR OF

THIS CHAPTER WITHIN THIRTY DAYS OF THE IMPLEMENTATION OF SUCH PROCEEDING.

(C) THE SUPERINTENDENT SHALL DIRECT THE COMMISSIONER TO ENSURE THAT PAYMENT IN FULL IS MADE TO HEALTH CARE PROVIDERS, OR INDEMNITY PAYMENTS TO COVERED INDIVIDUALS, FOR SERVICES PROVIDED AFTER THE IMPLEMENTATION OF PROCEEDINGS PURSUANT TO ARTICLE SEVENTY-FOUR OF THIS CHAPTER WITHIN THIRTY DAYS OF RECEIPT OF A CLAIM.

(D) IF NECESSARY, THE SUPERINTENDENT SHALL DIRECT THE COMMISSIONER TO ADVANCE MONIES FROM THE FUND TO COMPLY WITH THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF THIS SECTION.

(E) THE SUPERINTENDENT SHALL NOTIFY THE DIRECTOR OF THE BUDGET OF THE NEED FOR MONIES TO BE TRANSFERRED PURSUANT TO SUBDIVISION FIVE OF SECTION SEVENTY-TWO OF THE STATE FINANCE LAW TO MEET THE REQUIREMENTS OF SUBSECTIONS (B), (C) AND (D) OF THIS SECTION.

(F) THE SUPERINTENDENT SHALL DIRECT THE COMMISSIONER TO USE THE MONIES OF THE FUND TO REPAY ANY TRANSFERS MADE PURSUANT TO SUBDIVISION FIVE OF SECTION SEVENTY-TWO OF THE STATE FINANCE LAW, WHEN SUCH FUNDS ARE PAID PURSUANT TO SUBSECTION (B) OF SECTION EIGHT THOUSAND ONE HUNDRED THREE OF THIS ARTICLE.

(G) THE SUPERINTENDENT SHALL ENSURE THAT THE COST OF ASSESSMENTS ESTABLISHED PURSUANT TO SUBDIVISION (B) OF SECTION EIGHT THOUSAND ONE HUNDRED THREE OF THIS ARTICLE ARE NOT INCLUDED IN PREMIUMS BY ANY HEALTH INSURER.

S 5. Section 72 of the state finance law is amended by adding a new subdivision 5 to read as follows:

5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, UPON NOTIFICATION FROM THE SUPERINTENDENT OF FINANCIAL SERVICES OF THE NEED FOR MONIES TO MEET THE REQUIREMENTS OF SUBSECTIONS (B), (C) AND (D) OF SECTION EIGHT THOUSAND ONE HUNDRED FOUR OF THE INSURANCE LAW, THE DIRECTOR OF THE BUDGET SHALL TRANSFER SUCH FUNDS AS ARE NECESSARY.

S 6. The state finance law is amended by adding a new section 97-yyyy to read as follows:

S 97-YYYY. NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE COMMISSIONER OF THE DEPARTMENT OF TAXATION AND FINANCE AN ACCOUNT OF THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND ACCOUNT.

2. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, THE COMMISSIONER OF TAXATION AND FINANCE IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR DEPOSIT TO THE CREDIT OF THE NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND ACCOUNT, ASSESSMENTS IMPOSED PURSUANT TO ARTICLE EIGHTY-ONE OF THE INSURANCE LAW AND TRANSFERS FROM THE GENERAL FUND PURSUANT TO SUBDIVISION FIVE OF SECTION SEVENTY-TWO OF THIS ARTICLE.

3. THE COMMISSIONER OF TAXATION AND FINANCE SHALL MAKE PAYMENTS FROM THE MONIES ON DEPOSIT IN THE NEW YORK HEALTH INSURANCE CONSUMER PROTECTION SECURITY FUND ACCOUNT IN THE AMOUNTS AND AT THE TIMES DETERMINED BY THE SUPERINTENDENT OF INSURANCE.

S 7. This act shall take effect immediately and shall be applicable to any health insurer determined by the superintendent of financial services, on or after such effective date, to be insolvent within the meaning of section 1309 of the insurance law.