

# STATE OF NEW YORK

4328

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

Introduced by M. of A. GOTTFRIED, BUCHWALD, STIRPE, HEVESI, ENGLEBRIGHT, FAHY, SEAWRIGHT, SIMOTAS, SKOUFIS, BENEDETTO, MAYER, MAGNARELLI, WEPRIN, THIELE, RODRIGUEZ, PAULIN, BRAUNSTEIN, CUSICK, JAFFEE, OTIS, COLTON, QUART, RAIA, GRAF, BRINDISI, TITONE, GALEF, SEPULVEDA, JEAN-PIERRE, PEOPLES-STOKES, HUNTER, STECK, PERRY, KAVANAGH, ABINANTI -- Multi-Sponsored by -- M. of A. COOK, GLICK, LUPARDO, LUPINACCI, PICHARDO, SIMON, SKARTADOS, SOLAGES -- read once and referred 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:

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

3 (e) Is found, after examination, to be in such condition that its  
4 further transaction of business will be hazardous to its policyholders,  
5 creditors, or the public. This shall include a health insurer, as  
6 defined in article eighty-one of this chapter, that is consistently  
7 unable to meet the requirements of section three thousand two hundred  
8 twenty-four-a of this chapter.

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

11 (e)(1) Upon a determination by the superintendent and the rehabilita-  
12 tor that funds from the New York health insurance consumer protection  
13 security fund are necessary to meet the requirements of article eighty-  
14 one of this chapter, the superintendent shall make available such funds  
15 as are necessary, pursuant to the requirements of such article.

16 (2) The superintendent shall advance such funds as may be necessary  
17 pursuant to subsection (d) of section eight thousand one hundred four of  
18 this chapter. The rehabilitator and the superintendent shall establish a

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

LBD02604-01-7

1 plan, if possible, for repayment of the advance, at a rate of interest  
2 determined by the superintendent.

3 (3) Advances, pursuant to paragraph two of this subsection, shall, in  
4 all respects except to rate of interest, be subject to the provisions of  
5 section one thousand three hundred seven of this chapter, provided that  
6 in the event that an insurer which has received an advance pursuant to  
7 this subsection is subsequently the subject of an order of liquidation,  
8 the claim of the fund for the advance and any accrued interest shall  
9 have priority above claims of all nonsecured creditors, provided the  
10 requirements of article eighty-one of this chapter have been met, and  
11 shall be paid immediately to the fund or as soon as assets are available  
12 therefor.

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

16 (1) No later than one hundred eighty days after a final order of  
17 liquidation with an adjudication of insolvency of an insurer by a court  
18 of competent jurisdiction of this state, the liquidator may in his sole  
19 discretion make application to the court for approval of a proposal to  
20 disburse assets out of marshalled assets, from time to time as such  
21 assets become available, to any fund established by article seventy-six  
22 of this chapter, article six-A of the workers' compensation law ~~[and]~~,  
23 any foreign entity performing a similar function, and any fund estab-  
24 lished pursuant to article eighty-one of this chapter, provided that the  
25 requirements of subsection (a) of section eight thousand one hundred  
26 three of this chapter have been met, having obligations because of such  
27 insolvency. If the liquidator determines that there are insufficient  
28 assets to disburse, the application authorized by this subsection shall  
29 be considered satisfied by a filing by the liquidator stating the  
30 reasons for this determination.

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

#### 33 ARTICLE 81

#### 34 HEALTH INSURANCE GUARANTY FUND

#### 35 Section 8101. Purpose.

#### 36 8102. Definitions.

#### 37 8103. New York health insurance consumer protection security 38 fund.

#### 39 8104. Powers of the superintendent.

40 § 8101. Purpose. The purpose of this article is to protect covered  
41 individuals against the failure or inability of a health insurer to  
42 perform its contractual obligations due to financial impairment or  
43 insolvency. To provide this protection, the legislature hereby creates a  
44 New York health insurance consumer protection security fund to serve as  
45 a guaranty fund mechanism capable of insuring that the financial obli-  
46 gations of health insurers to their enrollees and health care providers  
47 are satisfied.

#### 48 § 8102. Definitions. As used in this article:

49 (a) "Fund" means the New York health insurance consumer protection  
50 security fund created by this article.

51 (b) "Health insurer" means any organization or entity providing  
52 reimbursement for a covered expense under any individual, group or blan-  
53 ket policy or contract covering the kinds of insurance described in item  
54 (i) of paragraph three of subsection (a) of section one thousand one  
55 hundred thirteen of this chapter and licensed under article thirty-two  
56 or forty-two of this chapter, which is not a member of, or participant

1 in, or a subsidiary of a member of or participant in, the funds created  
2 pursuant to articles seventy-five, seventy-six, and seventy-seven of  
3 this chapter; a corporation organized under article forty-three of this  
4 chapter; or an organization certified under article forty-four of the  
5 public health law.

6 (c) "Contractual obligation" means any payment or reimbursement owed  
7 by a health insurer for a covered benefit under a policy, contract, or  
8 comprehensive health benefits plan.

9 (d) "Impaired health insurer" means a health insurer for whom the  
10 superintendent has initiated a proceeding under the provisions of arti-  
11 cle seventy-four of this chapter.

12 (e) "Commissioner" means the commissioner of taxation and finance.

13 § 8103. New York health insurance consumer protection security fund.

14 (a) Consistent with the provisions of subdivision one of section nine-  
15 ty-seven-yyy of the state finance law, there is hereby established a  
16 New York health insurance consumer protection security fund. Such fund  
17 shall be used in the payment of unpaid contractual obligations, in whole  
18 or in part, by an impaired health insurer, after application of any  
19 funds available from a proceeding implemented pursuant to article seven-  
20 ty-four of this chapter.

21 (b)(1) Payment into the fund by health insurers shall be made through  
22 an assessment based on the premiums received by a health insurer for  
23 business in this state for the most recent calendar year for which  
24 premium information is available, excluding premiums received for indi-  
25 viduals under title XIX of the social security act. The superintendent  
26 shall establish assessment levels sufficient to fully pay all unpaid  
27 claims of an impaired health insurer, pursuant to subsections (b), (c)  
28 and (d) of section eight thousand one hundred four of this article, and  
29 to repay any transfers made pursuant to subdivision five of section  
30 seventy-two of the state finance law.

31 (2) The superintendent may exempt, abate or defer, in whole or in  
32 part, the assessment of a health insurer if the superintendent deter-  
33 mines that payment of the assessment would endanger the ability of the  
34 health insurer to fulfill its contractual obligations or place the  
35 health insurer in an unsafe or unsound financial condition.

36 (3) In the event an assessment against a health insurer is exempted,  
37 abated or deferred, in whole or in part, the amount by which that  
38 assessment is exempted, abated or deferred shall be assessed against  
39 other health insurers in a manner consistent with this section.

40 (c) Repayment of health insurers when funds become available from a  
41 proceeding pursuant to article seventy-four of this chapter shall be  
42 proportionate to the contribution from each health insurer.

43 § 8104. Powers of the superintendent. (a) For any impaired health  
44 insurer, the superintendent shall direct the commissioner to make  
45 payments from the New York health insurance consumer protection security  
46 fund to ensure that payments to health care providers, or indemnity  
47 payments to covered individuals, are made in full for services provided  
48 that would not otherwise be fully reimbursed despite the proceedings  
49 implemented pursuant to article seventy-four of this chapter. Services  
50 provided either prior to the implementation of a proceeding under arti-  
51 cle seventy-four of this chapter or after implementation of such  
52 proceeding shall be eligible for reimbursement, in part or in whole,  
53 from the fund. Payment in full shall be determined by the terms of the  
54 health insurance contract, any contract between a health care provider  
55 and the impaired health insurer and any applicable state or federal laws  
56 or regulations including but not limited to part H of chapter sixty of

1 the laws of two thousand fourteen and section two thousand nineteen-a of  
2 the Public Health Services Act, as amended by the Patient Protection and  
3 affordable Care Act.

4 (b) The superintendent shall direct the commissioner to make payments  
5 to ensure that payment in full is made to health care providers, or  
6 indemnity payments to covered individuals, for services provided before  
7 the implementation of proceedings pursuant to article seventy-four of  
8 this chapter within thirty days of the implementation of such proceed-  
9 ing.

10 (c) The superintendent shall direct the commissioner to ensure that  
11 payment in full is made to health care providers, or indemnity payments  
12 to covered individuals, for services provided after the implementation  
13 of proceedings pursuant to article seventy-four of this chapter within  
14 thirty days of receipt of a claim.

15 (d) If necessary, the superintendent shall direct the commissioner to  
16 advance monies from the fund to comply with the provisions of  
17 subsections (b) and (c) of this section.

18 (e) The superintendent shall notify the director of the budget of the  
19 need for monies to be transferred pursuant to subdivision five of  
20 section seventy-two of the state finance law to meet the requirements of  
21 subsections (b), (c) and (d) of this section.

22 (f) The superintendent shall direct the commissioner to use the monies  
23 of the fund to repay any transfers made pursuant to subdivision five of  
24 section seventy-two of the state finance law, when such funds are paid  
25 pursuant to subsection (b) of section eight thousand one hundred three  
26 of this article.

27 (g) The superintendent shall ensure that the cost of assessments  
28 established pursuant to subdivision (b) of section eight thousand one  
29 hundred three of this article are not included in premiums by any health  
30 insurer.

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

33 5. Notwithstanding any provision of law to the contrary, upon notifi-  
34 cation from the superintendent of financial services of the need for  
35 monies to meet the requirements of subsections (b), (c) and (d) of  
36 section eight thousand one hundred four of the insurance law, the direc-  
37 tor of the budget shall transfer such funds as are necessary.

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

40 § 97-yyyy. New York health insurance consumer protection security  
41 fund. 1. There is hereby established in the custody of the commissioner  
42 of the department of taxation and finance an account of the miscella-  
43 neous special revenue fund to be known as the New York health insurance  
44 consumer protection security fund account.

45 2. Notwithstanding any other law, rule or regulation to the contrary,  
46 the commissioner of taxation and finance is hereby authorized and  
47 directed to receive for deposit to the credit of the New York health  
48 insurance consumer protection security fund account, assessments imposed  
49 pursuant to article eighty-one of the insurance law and transfers from  
50 the general fund pursuant to subdivision five of section seventy-two of  
51 this article.

52 3. The commissioner of taxation and finance shall make payments from  
53 the monies on deposit in the New York health insurance consumer  
54 protection security fund account in the amounts and at the times deter-  
55 mined by the superintendent of insurance.

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