STATE OF NEW YORK

5928

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. BRESLIN -- 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 requiring actuarial certification of certain rate determinations made by the superintendent of financial services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

(1) Notwithstanding any other provision of this chapter to the contrary, no 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 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. **All premium rate determinations shall be certified by an actuary designated by the superintendent who meets the**

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

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qualification standards established by the American academy of actuaries, who shall follow the practice standards established by the actuarial standards board, and who shall describe in detail the actuarial assumptions and methods used in the superintendent's determination.

(A) An insurer desiring to increase or decrease premiums for any 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. **All rate determinations shall be certified by an actuary designated by the superintendent who meets the qualification standards established by the American academy of actuaries and who shall follow the practice standards established by the actuarial standards board.** 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.

§ 2. Subsection (b) and paragraph 2 of subsection (c) of section 4308 of the insurance law, as amended by chapter 107 of the laws of 2010, and paragraph 2 of subsection (c) as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

(b) No corporation subject to the provisions of this article shall enter into any contract unless and until it shall have filed with the superintendent a schedule of the premiums or, if appropriate, rating formula from which premiums are determined, to be paid under the contracts and shall have obtained the superintendent's approval thereof. The superintendent may refuse such approval if he **or she** finds that such premiums, or the premiums derived from the rating formula, are excessive, inadequate or unfairly discriminatory, provided, however, the superintendent may also consider the financial condition of such corporation in approving or disapproving any premium or rating formula. Any adjustments to an approved schedule of premiums or to the approved rating formula for non-community rated contracts shall also be subject to the approval of the superintendent provided, however, such adjustments shall not be subject to the requirements of subsection (c) of this section. Any premium or formula approved by the superintendent shall make provision for such increase as may be necessary to meet the requirements of a plan approved by the superintendent in the manner prescribed in section four thousand three hundred ten of this article for restoration of the statutory reserve fund required by such section. Notwithstanding any other provision of law, the superintendent, as part of the rate increase approval process, may defer, reduce or reject a rate increase if, in the judgment of the superintendent, the salary increases for senior level management executives employed at corporations subject to the provisions of this article are excessive or unwarranted given the financial condition or overall performance of such corporation. **All rate determinations shall be certified by an actuary designated by the superintendent who meets the qualification standards established by the American academy of actuaries and who shall follow the practice standards established by the actuarial standards board.** The superintendent is authorized to promulgate rules and regulations which the superintendent deems necessary to carry out such deferral, reduction or rejection.

(2) A corporation desiring to increase or decrease premiums for any contract subject to this subsection shall submit a rate filing or application to the superintendent. A corporation shall send written notice of the proposed rate adjustment, including the specific change requested, to each contract holder and subscriber 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 corporation 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 corporation 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 corporation 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 corporation in 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 corporation in order to make a determination, the superintendent shall require the corporation to furnish such information, and in such event, the sixty days shall be tolled and shall resume as of the date the corporation 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. **All rate determinations shall be certified by an actuary designated by the superintendent who meets the qualification standards established by the American academy of actuaries and who shall follow the practice standards established by the actuarial standards board.** A corporation shall not implement a rate adjustment unless the corporation provides at least sixty days advance written notice of the premium rate adjustment approved by the superintendent to each contract holder and subscriber affected by the rate adjustment.

§ 3. This act shall take effect immediately.