

# STATE OF NEW YORK

7153

2023-2024 Regular Sessions

## IN ASSEMBLY

May 11, 2023

Introduced by M. of A. SIMONE, STIRPE, HEVESI, FAHY, SEAWRIGHT, BENEDETTO, MAGNARELLI, WEPRIN, THIELE, PAULIN, BRAUNSTEIN, OTIS, COLTON, JEAN-PIERRE, PEOPLES-STOKES, HUNTER, STECK, D. ROSENTHAL, LAVINE, L. ROSENTHAL, DICKENS, GONZALEZ-ROJAS -- Multi-Sponsored by -- M. of A. COOK, EPSTEIN, GLICK, LUPARDO, SIMON -- 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  
19 plan, if possible, for repayment of the advance, at a rate of interest  
20 determined by the superintendent.

21 (3) Advances, pursuant to paragraph two of this subsection, shall, in  
22 all respects except to rate of interest, be subject to the provisions of  
23 section one thousand three hundred seven of this chapter, provided that  
24 in the event that an insurer which has received an advance pursuant to

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

LBD07942-01-3

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 shall be paid immediately to the fund or as soon as assets are available therefor.

§ 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.

§ 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.

§ 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.

###### § 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.

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

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

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

8 § 8103. New York health insurance consumer protection security fund.  
9 (a) Consistent with the provisions of subdivision one of section nine-  
10 ty-eight-d of the state finance law, there is hereby established a New  
11 York health insurance consumer protection security fund. Such fund shall  
12 be used in the payment of unpaid contractual obligations, in whole or in  
13 part, by an impaired health insurer, after application of any funds  
14 available from a proceeding implemented pursuant to article seventy-four  
15 of this chapter.

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

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

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

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

38 § 8104. Powers of the superintendent. (a) For any impaired health  
39 insurer, the superintendent shall direct the commissioner to make  
40 payments from the New York health insurance consumer protection security  
41 fund to ensure that payments to health care providers, or indemnity  
42 payments to covered individuals, are made in full for services provided  
43 that would not otherwise be fully reimbursed despite the proceedings  
44 implemented pursuant to article seventy-four of this chapter. Services  
45 provided either prior to the implementation of a proceeding under arti-  
46 cle seventy-four of this chapter or after implementation of such  
47 proceeding shall be eligible for reimbursement, in part or in whole,  
48 from the fund. Payment in full shall be determined by the terms of the  
49 health insurance contract, any contract between a health care provider  
50 and the impaired health insurer and any applicable state or federal laws  
51 or regulations including but not limited to part H of chapter sixty of  
52 the laws of two thousand fourteen and section two thousand nineteen-a of  
53 the Public Health Services Act, as amended by the Patient Protection and  
54 affordable Care Act.

55 (b) The superintendent shall direct the commissioner to make payments  
56 to ensure that payment in full is made to health care providers, or

1 indemnity payments to covered individuals, for services provided before  
2 the implementation of proceedings pursuant to article seventy-four of  
3 this chapter within thirty days of the implementation of such proceed-  
4 ing.

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

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

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

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

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

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

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

33 § 6. The state finance law is amended by adding a new section 98-d to  
34 read as follows:

35 § 98-d. New York health insurance consumer protection security fund.  
36 1. There is hereby established in the custody of the commissioner of the  
37 department of taxation and finance an account of the miscellaneous  
38 special revenue fund to be known as the New York health insurance  
39 consumer protection security fund account.

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

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

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