

PROGRAM BILL #278

S.
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

INSURLA
(Relates to prior approval of health
insurance premium rates)

Ins. health insur premium rates

AN ACT

to amend the insurance law, in
relation to prior approval of health
insurance premium rates

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

- | | | | | |
|-----------------|-----------------|----------------|------------------|----------------|
| s20 Adams | s03 Foley | s24 Lanza | s37 Oppenheimer | s09 Skelos |
| s15 Addabbo | s08 Fuschillo | s39 Larkin | s11 Padavan | s14 Smith |
| s55 Alesi | s22 Golden | s01 LaValle | s21 Parker | s25 Squadron |
| s48 Aubertine | s47 Griffo | s40 Leibell | s13 Peralta | s58 Stachowski |
| s42 Bonacic | s06 Hannon | s52 Libous | s30 Perkins | s16 Stavisky |
| s46 Breslin | s36 Hassell- | s45 Little | s61 Ranzenhofer | s35 Stewart- |
| s50 DeFrancisco | Thompson | s05 Marcellino | s56 Robach | Cousins |
| s32 Diaz | s10 Huntley | s62 Maziarz | s41 Saland | s60 Thompson |
| s17 Dilan | s07 Johnson, C. | s43 McDonald | s19 Sampson | s49 Valesky |
| s29 Duane | s04 Johnson, G. | s18 Montgomery | s23 Savino | s59 Volker |
| s33 Espada | s34 Klein | s38 Morahan | s31 Schneiderman | s53 Winner |
| s44 Farley | s26 Krueger | s54 Nozzolio | s28 Serrano | s57 Young |
| s02 Flanagan | s27 Kruger | s12 Onorato | s51 Seward | |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

- | | | | | |
|-------------------|------------------|-------------------|-----------------|------------------|
| a049 Abbate | a010 Conte | a083 Heastie | a022 Meng | a067 Rosenthal |
| a001 Alessi | a032 Cook | a028 Hevesi | a102 Miller, J. | a118 Russell |
| a021 Alfano | a142 Corwin | a048 Hiskind | a038 Miller, M. | a012 Saladino |
| a105 Amedore | a085 Crespo | a018 Hooper | a052 Millman | a113 Sayward |
| a084 Arroyo | a107 Crouch | a144 Hoyt | a103 Molinaro | a029 Scarborough |
| a035 Aubry | a063 Cusick | a060 Hyer-Spencer | a015 Montesano | a016 Schimel |
| a136 Bacelles | a045 Cymbrowitz | a042 Jacobs | a132 Morelle | a140 Schimminger |
| a099 Ball | a138 DelMonte | a095 Jaffee | a003 Murray | a145 Schroeder |
| a124 Barclay | a034 DenDekker | a057 Jeffries | a037 Nolan | a122 Scozzafava |
| a014 Barra | a116 Destito | a131 John | a128 Oaks | a064 Silver |
| a040 Barron | a081 Dinowitz | a112 Jordan | a069 O'Donnell | a100 Skartados |
| a082 Benedetto | a114 Duprey | a074 Kavanagh | a137 O'Mara | a093 Spano |
| a079 Benjamin | a004 Englebright | a065 Kellner | a051 Ortiz | a121 Stirpe |
| a073 Bing | a130 Errigo | a129 Kolb | a150 Parment | a011 Sweeney |
| a055 Boyland | a072 Espallat | a135 Koon | a088 Paulin | a110 Tedisco |
| a008 Boyle | a071 Farrell | a025 Lanckman | a141 Peoples- | a002 Thiele |
| a044 Brennan | a005 Fields | a091 Latimer | Stokes | a061 Titone |
| a092 Brodsky | a123 Finch | a013 Lavine | a058 Perry | a031 Titus |
| a046 Brook-Krasny | a007 Fitzpatrick | a050 Lentol | a023 Pheffer | a062 Tobacco |
| a147 Burling | a143 Gabryszak | a125 Lifton | a068 Powell | a054 Towns |
| a117 Butler | a090 Galef | a127 Lopez, P. | a087 Pretlow | a115 Townsend |
| a101 Cahill | a133 Gantt | a053 Lopez, V. | a146 Quinn | a041 Weinstein |
| a096 Calhoun | a036 Gianaris | a126 Lupardo | a097 Rabbitt | a020 Weisenberg |
| a043 Camara | a077 Gibson | a111 Magee | a009 Raia | a024 Weprin, D. |
| a106 Canestrari | a149 Giglio | a120 Magnarelli | a006 Ramos | a070 Wright |
| a026 Carrozza | a066 Glick | a059 Maisel | a134 Reilich | a094 Zebrowski |
| a089 Castelli | a108 Gordon | a030 Markey | a109 Reilly | a039 |
| a086 Castro | a075 Gottfried | a027 Mayersohn | a078 Rivera, J. | |
| a119 Christensen | a098 Gunther | a019 McDonough | a080 Rivera, N. | |
| a033 Clark | a139 Hawley | a104 McEneany | a076 Rivera, P. | |
| a047 Colton | a148 Hayes | a017 McKevitt | a056 Robinson | |

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Subsection (e) of section 3231 of the insurance law, as
2 added by chapter 501 of the laws of 1992, subparagraph (B) of paragraph
3 2 as amended by chapter 237 of the laws of 2009, is amended to read as
4 follows:

5 (e) (1) (A) An insurer desiring to increase or decrease premiums
6 [after April first, nineteen hundred ninety-three] for any policy form
7 subject to this section shall submit a rate filing or application to the
8 superintendent.

9 An insurer shall send written notice of the proposed rate adjustment,
10 including the specific change requested, to each policy holder and
11 certificate holder affected by the adjustment on or before the date the
12 rate filing or application is submitted to the superintendent. The
13 notice shall prominently include mailing and website addresses for both
14 the insurance department and the insurer through which a person may,
15 within thirty days from the date the rate filing or application is
16 submitted to the superintendent, contact the insurance department or
17 insurer to receive additional information or to submit written comments
18 to the insurance department on the rate filing or application. The
19 superintendent shall establish a process to post on the department's
20 website, in a timely manner, all relevant written comments received
21 pertaining to rate filings or applications. The insurer shall provide a
22 copy of the notice to the superintendent with the rate filing or appli-
23 cation. The superintendent shall immediately cause the notice to be
24 posted on the insurance department's website. The superintendent shall
25 determine whether the filing or application shall become effective as
26 filed, shall become effective as modified, or shall be disapproved. The
27 superintendent may modify or disapprove the rate filing or application
28 if the superintendent finds that the premiums are unreasonable, exces-

1 sive, inadequate, or unfairly discriminatory, and may consider the
2 financial condition of the insurer when approving, modifying or disap-
3 proving any premium adjustment. The determination of the superintendent
4 shall be supported by sound actuarial assumptions and methods, and shall
5 be rendered in writing between thirty and sixty days from the date the
6 rate filing or application is submitted to the superintendent. Should
7 the superintendent require additional information from the insurer in
8 order to make a determination, the superintendent shall require the
9 insurer to furnish such information, and in such event, the sixty days
10 shall be tolled and shall resume as of the date the insurer furnishes
11 the information to the superintendent. If the superintendent requests
12 additional information less than ten days from the expiration of the
13 sixty days (exclusive of tolling), the superintendent may extend the
14 sixty day period an additional twenty days to make a determination. The
15 application or rate filing will be deemed approved if a determination is
16 not rendered within the time allotted under this section. An insurer
17 shall not implement a rate adjustment unless the insurer provides at
18 least sixty days advance written notice of the premium rate adjustment
19 approved by the superintendent to each policy holder and certificate
20 holder affected by the rate adjustment.

21 (B) The expected minimum loss ratio for a policy form subject to this
22 section, for which a rate filing or application is made pursuant to this
23 paragraph, other than a medicare supplemental insurance policy, or, with
24 the approval of the superintendent, an aggregation of policy forms that
25 are combined into one community rating experience pool and rated
26 consistent with community rating requirements, shall not be less than
27 eighty-two percent. In reviewing a rate filing or application, the
28 superintendent may modify the eighty-two percent expected minimum loss

1 ratio requirement if the superintendent determines the modification to
2 be in the interests of the people of this state or if the superintendent
3 determines that a modification is necessary to maintain insurer solven-
4 cy. No later than June thirtieth of each year, every insurer subject to
5 this subparagraph shall annually report the actual loss ratio for the
6 previous calendar year in a format acceptable to the superintendent. If
7 an expected loss ratio is not met, the superintendent may direct the
8 insurer to take corrective action, which may include the submission of a
9 rate filing to reduce future premiums, or to issue dividends, premium
10 refunds or credits, or any combination of these.

11 (2) (A) [Beginning October first, nineteen hundred ninety-four] Until
12 September thirtieth, two thousand ten, as an alternate procedure to the
13 requirements of paragraph one of this subsection, an insurer desiring to
14 increase or decrease premiums for any policy form subject to this
15 section may instead submit a rate filing or application to the super-
16 intendent and such application or filing shall be deemed approved,
17 provided that: (i) the anticipated minimum loss ratio for a policy form
18 shall not be less than [seventy-five] eighty-two percent of the premi-
19 um[,]; and (ii) the insurer submits, as part of such filing, a certifi-
20 cation by a member of the American Academy of Actuaries or other indi-
21 vidual acceptable to the superintendent that the insurer is in
22 compliance with the provisions of this paragraph, based upon that
23 person's examination, including a review of the appropriate records and
24 of the actuarial assumptions and methods used by the insurer in estab-
25 lishing premium rates for policy forms subject to this section. An
26 insurer shall not utilize the alternate procedure pursuant to this para-
27 graph to implement a change in rates to be effective on or after October
28 first, two thousand ten.

1 (B) Each calendar year, an insurer shall return, in the form of aggregate
2 benefits for each policy form filed pursuant to the alternate
3 procedure set forth in this paragraph at least [seventy-five] eighty-two
4 percent of the aggregate premiums collected for the policy form during
5 that calendar year. Insurers shall annually report, no later than [May
6 first] June thirtieth of each year, the loss ratio calculated pursuant
7 to this paragraph for each such policy form for the previous calendar
8 year. In each case where the loss ratio for a policy form fails to
9 comply with the [seventy-five] eighty-two percent loss ratio require-
10 ment, the insurer shall issue a dividend or credit against future premi-
11 ums for all policy holders with that policy form in an amount sufficient
12 to assure that the aggregate benefits paid in the previous calendar year
13 plus the amount of the dividends and credits shall equal [seventy-five]
14 eighty-two percent of the aggregate premiums collected for the policy
15 form in the previous calendar year. The dividend or credit shall be
16 issued to each policy holder who had a policy which was in effect at any
17 time during the applicable year. The dividend or credit shall be
18 prorated based on the direct premiums earned for the applicable year
19 among all policy holders eligible to receive such dividend or credit. An
20 insurer shall make a reasonable effort to identify the current address
21 of, and issue dividends or credits to, former policy holders entitled to
22 the dividend or credit. An insurer shall, with respect to dividends or
23 credits to which former policy holders that the insurer is unable to
24 identify after a reasonable effort would otherwise be entitled, have the
25 option, as deemed acceptable by the superintendent, of prospectively
26 adjusting premium rates by the amount of such dividends or credits,
27 issuing the amount of such dividends or credits to existing policy hold-
28 ers, depositing the amount of such dividends or credits in the fund

1 established pursuant to section four thousand three hundred twenty-two-a
2 of this chapter, or utilizing any other method which offsets the amount
3 of such dividends or credits. All dividends and credits must be
4 distributed by September thirtieth of the year following the calendar
5 year in which the loss ratio requirements were not satisfied. The annual
6 report required by this paragraph shall include an insurer's calculation
7 of the dividends and credits, as well as an explanation of the insurer's
8 plan to issue dividends or credits. The instructions and format for
9 calculating and reporting loss ratios and issuing dividends or credits
10 shall be specified by the superintendent by regulation. Such regulations
11 shall include provisions for the distribution of a dividend or credit in
12 the event of cancellation or termination by a policy holder.

13 (3) All policy forms subject to this subsection, other than medicare
14 supplemental insurance policy forms, issued or in effect during calendar
15 year two thousand ten shall be subject to a minimum loss ratio require-
16 ment of eighty-two percent. Insurers may use the alternate filing proce-
17 dure set forth in paragraph two of this subsection to adjust premium
18 rates in order to meet the required minimum loss ratio for calendar year
19 two thousand ten. The rate filing or application shall be submitted no
20 later than September thirtieth, two thousand ten.

21 § 2. Section 4308 of the insurance law, subsection (b) as amended and
22 subsections (d), (e) and (f) as added by chapter 501 of the laws of
23 1992, paragraph 3 of subsection (c) as amended by chapter 520 of the
24 laws of 1999, subsections (g), (h), (i) and (j) as added by chapter 504
25 of the laws of 1995 and paragraph 2 of subsection (h) as amended by
26 chapter 237 of the laws of 2009, is amended to read as follows:

27 § 4308. Supervision of superintendent[; public hearings]. (a) No
28 corporation subject to the provisions of this article shall enter into

1 any contract unless and until it shall have filed with the superinten-
2 dent a copy of the contract or certificate and of all applications,
3 riders and endorsements for use in connection with the issuance or
4 renewal thereof, to be formally approved by him as conforming to the
5 applicable provisions of this article and not inconsistent with any
6 other provision of law applicable thereto. The superintendent shall,
7 within a reasonable time after the filing of any such form, notify the
8 corporation filing the same either of his approval or of his disapproval
9 of such form.

10 (b) No corporation subject to the provisions of this article shall
11 enter into any contract unless and until it shall have filed with the
12 superintendent a schedule of the premiums or, if appropriate, rating
13 formula from which premiums are determined, to be paid under the
14 contracts and shall have obtained the superintendent's approval thereof.
15 The superintendent may refuse such approval if he finds that such premi-
16 ums, or the premiums derived from the rating formula, are excessive,
17 inadequate or unfairly discriminatory, provided, however, the super-
18 intendent may also consider the financial condition of such corporation
19 in approving or disapproving any premium or rating formula. Any adjust-
20 ments to an approved schedule of premiums or to the approved rating
21 formula for non-community rated contracts shall also be subject to the
22 approval of the superintendent provided, however, such adjustments shall
23 not be subject to the requirements of subsection (c) of this section.
24 Any premium or formula approved by the superintendent shall make
25 provision for such increase as may be necessary to meet the requirements
26 of a plan approved by the superintendent in the manner prescribed in
27 section four thousand three hundred ten of this article for restoration
28 of the statutory reserve fund required by such section. Notwithstanding

1 any other provision of law, the superintendent, as part of the rate
2 increase approval process, may defer, reduce or reject a rate increase
3 if, in the judgment of the superintendent, the salary increases for
4 senior level management executives employed at corporations subject to
5 the provisions of this article are excessive or unwarranted given the
6 financial condition or overall performance of such corporation. The
7 superintendent is authorized to promulgate rules and regulations which
8 the superintendent deems necessary to carry out such deferral, reduction
9 or rejection.

10 (c) (1) [Except for an application pursuant to subsection (f) of
11 section four thousand three hundred four of this article, no] An
12 increase or decrease in premiums with respect to [individual] community
13 rated contracts [issued pursuant to the provisions of such section]
14 shall not be approved by the superintendent unless it is in compliance
15 with the provisions of this subsection as well as other applicable
16 provisions of law.

17 (2) [Prior to any such filing or application by or on behalf of a
18 corporation for an increase or decrease in premiums for such contracts,
19 such corporation, when directed by the superintendent, shall conduct a
20 public hearing with respect to the terms of such filing or application.
21 Notice of such hearing shall be published on three successive days in at
22 least two newspapers having general circulation within the territory or
23 district wherein such corporation seeking approval of the filing is
24 authorized to do business. The date specified for the hearing shall be
25 not less than ten nor more than thirty days from the date of the first
26 publication of the hearing. The notice of hearing shall state the
27 purpose thereof, the time when and the place where the public hearing
28 will be held. The public hearing shall be held at a time and location

1 deemed by the superintendent to be most convenient to the greatest
2 number of persons affected by such filing. At such hearing any person
3 may be heard in favor of, or against, the terms of the filing or appli-
4 cation.

5 (3) Following the public hearing held pursuant to paragraph two of
6 this subsection, a transcript of the testimony therein shall be submit-
7 ted together with a rate filing or application, to the superintendent.
8 Upon receipt of such filing or application by or on behalf of a corpo-
9 ration, the superintendent shall order that a public hearing be held
10 with respect to the terms of such filing or application. Notice of such
11 hearing shall be published on three successive days in at least two
12 newspapers having general circulation within the territory or district
13 wherein such corporation seeking approval of the filing or application
14 is authorized to do business. For a corporation writing more than three
15 billion dollars in premiums as of December thirty-first, nineteen
16 hundred ninety-six and whose service territory is greater than ten coun-
17 ties, such notice is to be published in at least one newspaper having
18 general circulation in each county where persons in the service territo-
19 ry are affected by the proposed change. The date specified for the hear-
20 ing shall be not less than ten nor more than thirty days from the date
21 of the last publication of the hearing. The notice of hearing shall also
22 state the purpose thereof, the time when and the place where the public
23 hearing will be held. For those corporations writing more than three
24 billion dollars in premiums as of December thirty-first, nineteen
25 hundred ninety-six, and whose territory is greater than ten counties,
26 the notice of hearing shall also state the changes proposed, the
27 contracts to be affected and the time when such changes would take
28 effect. The notice of hearing shall state, in prominent display, a toll-

1 free telephone number of the insurance department that may be contacted
2 to receive additional information on the subject rate application. The
3 public hearing shall be held at a time and location deemed by the super-
4 intendent to be most convenient to the greatest number of persons
5 affected by such filing or application. A copy of such notice of hearing
6 shall be forwarded by the superintendent by registered or certified mail
7 to the principal address of the corporation seeking approval of such
8 filing or application. The hearing may be continued or adjourned from
9 day to day within the discretion of the superintendent. At such hearing
10 any person may be heard in favor of, or against, the terms of the filing
11 or application. After conclusion of the public hearing the superinten-
12 dent shall render a written decision determining whether the filing or
13 application shall become effective as filed, shall become effective as
14 modified, or shall be disapproved. If, subsequent to the hearing, but
15 prior to the issuing of the superintendent's written decision on a rate
16 increase request, the corporation increases its requested rate for any
17 contract by two percent or more, a re-hearing shall be held. The time,
18 location, and notice requirements for such re-hearing shall be deter-
19 mined by the superintendent.

20 (4) A corporation desiring to increase or decrease premiums for any
21 contract subject to this subsection shall submit a rate filing or appli-
22 cation to the superintendent. A corporation shall send written notice
23 of the proposed rate adjustment, including the specific change
24 requested, to each contract holder and subscriber affected by the
25 adjustment on or before the date the rate filing or application is
26 submitted to the superintendent. The notice shall prominently include
27 mailing and website addresses for both the insurance department and the
28 corporation through which a person may, within thirty days from the date

1 the rate filing or application is submitted to the superintendent,
2 contact the insurance department or corporation to receive additional
3 information or to submit written comments to the insurance department on
4 the rate filing or application. The superintendent shall establish a
5 process to post on the department's website, in a timely manner, all
6 relevant written comments received pertaining to rate filings or appli-
7 cations. The corporation shall provide a copy of the notice to the
8 superintendent with the rate filing or application. The superintendent
9 shall immediately cause the notice to be posted on the insurance depart-
10 ment's website. The superintendent shall determine whether the filing
11 or application shall become effective as filed, shall become effective
12 as modified, or shall be disapproved. The superintendent may modify or
13 disapprove the rate filing or application if the superintendent finds
14 that the premiums are unreasonable, excessive, inadequate, or unfairly
15 discriminatory, and may consider the financial condition of the corpo-
16 ration in approving, modifying or disapproving any premium adjustment.
17 The determination of the superintendent shall be supported by sound
18 actuarial assumptions and methods, and shall be rendered in writing
19 between thirty and sixty days from the date the rate filing or applica-
20 tion is submitted to the superintendent. Should the superintendent
21 require additional information from the corporation in order to make a
22 determination, the superintendent shall require the corporation to
23 furnish such information, and in such event, the sixty days shall be
24 tolled and shall resume as of the date the corporation furnishes the
25 information to the superintendent. If the superintendent requests addi-
26 tional information less than ten days from the expiration of the sixty
27 days (exclusive of tolling), the superintendent may extend the sixty day
28 period an additional twenty days, to make a determination. The applica-

1 tion or rate filing will be deemed approved if a determination is not
2 rendered within the time allotted under this section. A corporation
3 shall not implement a rate adjustment unless the corporation provides at
4 least sixty days advance written notice of the premium rate adjustment
5 approved by the superintendent to each contract holder and subscriber
6 affected by the rate adjustment.

7 (3)(A) The expected minimum loss ratio for a contract form subject to
8 this subsection for which a rate filing or application is made pursuant
9 to this paragraph, other than a medicare supplemental insurance
10 contract, or, with the approval of the superintendent, an aggregation of
11 contract forms that are combined into one community rating experience
12 pool and rated consistent with community rating requirements, shall not
13 be less than eighty-two percent. In reviewing a rate filing or applica-
14 tion, the superintendent may modify the eighty-two percent expected
15 minimum loss ratio requirement if the superintendent determines the
16 modification to be in the interests of the people of this state or if
17 the superintendent determines that a modification is necessary to main-
18 tain insurer solvency. No later than June thirtieth of each year, every
19 corporation subject to this subparagraph shall annually report the actu-
20 al loss ratio for the previous calendar year in a format acceptable to
21 the superintendent. If an expected loss ratio is not met, the super-
22 intendent may direct the corporation to take corrective action, which
23 may include the submission of a rate filing to reduce future premiums,
24 or to issue dividends, premium refunds or credits, or any combination of
25 these.

26 (B) The expected minimum loss ratio for a medicare supplemental insur-
27 ance contract form shall not be less than eighty percent. No later than
28 May first of each year, every corporation subject to this subparagraph

1 shall annually report the actual loss ratio for each contract form
2 subject to this section for the previous calendar year in a format
3 acceptable to the superintendent. In each case where the loss ratio for
4 the contract form fails to comply with the eighty percent loss ratio
5 requirement, the corporation shall submit a corrective action plan to
6 the superintendent for assuring compliance with the applicable minimum
7 loss ratio standard. The corrective action plan shall be submitted to
8 the superintendent within sixty days of the corporation's submission of
9 the annual report required by this subparagraph. The corporation's plan
10 may utilize premium refunds or credits, subject to the approval of the
11 superintendent.

12 (4) In case of conflict between this subsection and any other
13 provision of law, this subsection shall prevail.

14 (d) The superintendent shall order an independent management and
15 financial audit of corporations subject to the provisions of this arti-
16 cle with a combined premium volume exceeding two billion dollars annual-
17 ly in order to develop a detailed understanding of such corporation's
18 financial status and to determine the viability of such corporation's
19 products. Such audit shall be performed by an organization upon
20 submission of a program plan in response to a request for proposal
21 approved by the superintendent in consultation with the commissioner of
22 health and the state comptroller. Such audit shall not be performed by
23 any organization that has in any way performed or furnished services of
24 any kind to the corporation within the past five years, unless it is
25 adequately demonstrated that such services would not compromise that
26 organization's performance and objectivity. The audit shall be completed
27 and a report submitted by May first, nineteen hundred ninety-three to
28 the superintendent, the commissioner of health, and the chairs of the

1 senate and assembly committees on health and insurance. The scope of the
2 audit shall include, but not be limited to, financial and competitive
3 position, corporate structure and governance, organization and manage-
4 ment, strategic direction, rate adequacy, and the regulatory and compet-
5 itive environment in the state of New York. Specifically, the audit
6 shall include, but not be limited to:

7 (i) determining the corporation's financial and market position,
8 including its reserves, trends in membership, market share, and profit-
9 ability by market segment;

10 (ii) evaluating the corporation's product offerings with respect to
11 market requirements and trends, the corporation's responses to the New
12 York health care market, and its management of medical claims costs;

13 (iii) assessing the effectiveness of the organizational and management
14 structure and performance, including, but not limited to, possible
15 improvement in the size, structure, composition and operation of the
16 board of directors, productivity improvement, information systems,
17 management development, personnel practices, mix and level of skills,
18 personnel turnover, investment practices and rate of return upon invest-
19 ment activities;

20 (iv) analyzing the corporation's strategic directions, its adequacy to
21 meet competitive, market, and existing regulatory trends, including an
22 evaluation of the use of brokers in marketing products, and the impact
23 of those strategies on the corporation's future financial performance
24 and on the health care system of New York;

25 (v) evaluating the adequacy of rates for existing products, partic-
26 ularly (but not limited to) small group, medicare supplemental, and
27 direct payment to identify areas that may need immediate remedial atten-
28 tion;

1 (vi) identifying any changes to the regulatory and legislative envi-
2 ronment that may need to be made to ensure that the corporation can
3 continue to be financially viable and competitive;

4 (vii) identifying and assessing specific transactions such as the
5 procurement of reinsurance, sale of real property and the sale of future
6 investment income to improve the financial condition of the corporation;
7 and

8 (viii) evaluating and identifying possible improvements in the corpo-
9 ration's managed care strategies, operations and claims handling.

10 (e) Notwithstanding any other provision of law, the superintendent
11 shall have the power to require independent management and financial
12 audits of corporations subject to the provisions of this article whenev-
13 er in the judgment of the superintendent, losses sustained by a corpo-
14 ration jeopardize its ability to provide meaningful coverage at afforda-
15 ble rates or when such audit would be necessary to protect the interests
16 of subscribers. The audit shall include, but not be limited to, an
17 investigation of the corporation's provision of benefits to senior citi-
18 zens, individual and family, and small group and small business
19 subscribers in relation to the needs of those subscribers. The audit
20 shall also include an evaluation of the efficiency of the corporation's
21 management, particularly with respect to lines of business which are
22 experiencing losses. In every case in which the superintendent chooses
23 to require an audit provided for in this subsection, the superintendent
24 shall have the authority to select the auditor. Any costs incurred as a
25 result of the operation of this subsection shall be assessed on all
26 domestic insurers in the same manner as provided for in section three
27 hundred thirty-two of this chapter.

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

14 (g)(1) [Beginning January first, nineteen hundred ninety-six] Until
15 September thirtieth, two thousand ten, as an alternate procedure to the
16 requirements of subsection (c) of this section, a corporation subject to
17 the provisions of this article desiring to increase or decrease premiums
18 for any contract subject to this section may instead submit a rate
19 filing or application to the superintendent and such application or
20 filing shall be deemed approved, provided that (A) the anticipated
21 incurred loss ratio for a contract form shall not be less than [eighty-
22 five] eighty-two percent for individual direct payment contracts or
23 [seventy-five] eighty-two percent for small group and small group remit-
24 tance contracts, nor, except in the case of individual direct payment
25 contracts with a loss ratio of greater than one hundred five percent
26 during nineteen hundred ninety-four, shall the loss ratio for any direct
27 payment, group or group remittance contract be more than one hundred
28 five percent of the anticipated earned premium, and (B) the corporation

1 submits, as part of such filing, a certification by a member of the
2 American Academy of Actuaries or other individual acceptable to the
3 superintendent that that corporation is in compliance with the
4 provisions of this subsection, based upon that person's examination,
5 including a review of the appropriate records and of the actuarial
6 assumptions and methods used by the corporation in establishing premium
7 rates for contracts subject to this section. A corporation shall not
8 utilize the alternate procedure pursuant to this subsection to implement
9 a change in rates to be effective on or after October first, two thou-
10 sand ten. For purposes of this section, a small group is any group whose
11 contract is subject to the requirements of section forty-three hundred
12 seventeen of this article.

13 (2) Prior to January first, two thousand, no rate increase or decrease
14 may be deemed approved under this subsection if that increase or
15 decrease, together with any other rate increases or decreases imposed on
16 the same contract form, would cause the aggregate rate increase or
17 decrease for that contract form to exceed ten percent during any contin-
18 uous twelve month period. No rate increase may be imposed pursuant to
19 this subsection unless at least thirty days advance written notice of
20 such increase has been provided to each contract holder and subscriber.

21 (h)(1) Each calendar year, a corporation subject to the provisions of
22 this article shall return, in the form of aggregate benefits incurred
23 for each contract form filed pursuant to the alternate procedure set
24 forth in subsection (g) of this section, at least [eighty-five] eighty-
25 two percent for individual direct payment contracts or [seventy-five]
26 eighty-two percent for small group and small group remittance contracts,
27 but, except in the case of individual direct payment contracts with a
28 loss ratio of greater than one hundred five percent in nineteen hundred

1 ninety-four, for any direct payment, group or group remittance contract,
2 not in excess of one hundred five percent of the aggregate premiums
3 earned for the contract form during that calendar year. Corporations
4 subject to the provisions of this article shall annually report, no
5 later than [May first] June thirtieth of each year, the loss ratio
6 calculated pursuant to this subsection for each such contract form for
7 the previous calendar year.

8 (2) In each case where the loss ratio for a contract form fails to
9 comply with the [eighty-five] eighty-two percent minimum loss ratio
10 requirement for individual direct payment contracts, or the [seventy-
11 five] eighty-two percent minimum loss ratio requirement for small group
12 and small group remittance contracts, as set forth in paragraph one of
13 this subsection, the corporation shall issue a dividend or credit
14 against future premiums for all contract holders with that contract form
15 in an amount sufficient to assure that the aggregate benefits incurred
16 in the previous calendar year plus the amount of the dividends and cred-
17 its shall equal no less than [eighty-five] eighty-two percent for indi-
18 vidual direct payment contracts, or [seventy-five] eighty-two percent
19 for small group and small group remittance contracts, of the aggregate
20 premiums earned for the contract form in the previous calendar year. The
21 dividend or credit shall be issued to each contract holder or subscriber
22 who had a contract that was in effect at any time during the applicable
23 year. The dividend or credit shall be prorated based on the direct
24 premiums earned for the applicable year among all contract holders or
25 subscribers eligible to receive such dividend or credit. A corporation
26 shall make a reasonable effort to identify the current address of, and
27 issue dividends or credits to, former contract holders or subscribers
28 entitled to the dividend or credit. A corporation shall, with respect to

1 dividends or credits to which former contract holders that the corpo-
2 ration is unable to identify after a reasonable effort would otherwise
3 be entitled, have the option, as deemed acceptable by the superinten-
4 dent, of prospectively adjusting premium rates by the amount of such
5 dividends or credits, issuing the amount of such dividends or credits to
6 existing contract holders, depositing the amount of such dividends or
7 credits in the fund established pursuant to section four thousand three
8 hundred twenty-two-a of this article, or utilizing any other method
9 which offsets the amount of such dividends or credits. All dividends and
10 credits must be distributed by September thirtieth of the year following
11 the calendar year in which the loss ratio requirements were not satis-
12 fied. The annual report required by paragraph one of this subsection
13 shall include a corporation's calculation of the dividends and credits,
14 as well as an explanation of the corporation's plan to issue dividends
15 or credits. The instructions and format for calculating and reporting
16 loss ratios and issuing dividends or credits shall be specified by the
17 superintendent by regulation. Such regulations shall include provisions
18 for the distribution of a dividend or credit in the event of cancella-
19 tion or termination by a contract holder or subscriber.

20 (3) In each case where the loss ratio for a contract form fails to
21 comply with the one hundred five percent maximum loss ratio requirement
22 of paragraph one of this subsection, the corporation shall institute a
23 premium rate increase in an amount sufficient to assure that the aggre-
24 gate benefits incurred in the previous calendar year shall equal no more
25 than one hundred five percent of the sum of the aggregate premiums
26 earned for the contract form in the previous calendar year and the
27 aggregate premium rate increase. The rate increase shall be applied to
28 each contract that was in effect as of December thirty-first of the

1 applicable year and remains in effect as of the date the rate increase
2 is imposed. All rate increases must be imposed by September thirtieth of
3 the year following the calendar year in which the loss ratio require-
4 ments were not satisfied. The annual report required by paragraph one of
5 this subsection shall include a corporation's calculation of the premium
6 rate increase, as well as an explanation of the corporation's plan to
7 implement the rate increase. The instructions and format for calculating
8 and reporting loss ratios and implementing rate increases shall be spec-
9 ified by the superintendent by regulation.

10 (i) The alternate procedure described in subsections (g) and (h) of
11 this section shall apply to individual direct payment contracts issued
12 pursuant to sections four thousand three hundred twenty-one and four
13 thousand three hundred twenty-two of this article on and after January
14 first, nineteen hundred ninety-seven. Such alternate procedure shall not
15 be utilized to implement a change in rates to be effective on or after
16 October first, two thousand ten.

17 (j) [The eighty-five percent minimum loss ratio for individual direct
18 payment contracts described in subsections (g) and (h) of this section
19 shall be reduced to eighty-two and one-half percent as of January first,
20 nineteen hundred ninety-seven and shall be further reduced to eighty
21 percent as of January first, nineteen hundred ninety-eight and thereaft-
22 er. The refund or credit requirements for failure to meet minimum loss
23 ratios will continue, but at these reduced percentages.] All community
24 rated contracts, other than medicare supplemental insurance contracts,
25 issued or in effect during calendar year two thousand ten shall be
26 subject to a minimum loss ratio requirement of eighty-two percent.
27 Corporations may use the alternate procedure set forth in subsection (g)
28 of this section to adjust premium rates in order to meet the required

1 minimum loss ratio for calendar year two thousand ten. The rate filing
2 or application shall be submitted no later than September thirtieth, two
3 thousand ten.

4 § 3. If any clause, sentence, paragraph, section or part of this act
5 shall be adjudged by any court of competent jurisdiction to be invalid,
6 the judgment shall not affect, impair or invalidate the remainder there-
7 of, but shall be confined in its operation to the clause, sentence,
8 paragraph, section or part thereof directly involved in the controversy
9 in which such judgment shall have been rendered.

10 § 4. This act shall take effect immediately.

