INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
SEVENTH AMENDMENT TO REGULATION NO. 172
(11 NYCRR 83)
FINANCIAL STATEMENT FILINGS AND ACCOUNTING PRACTICES AND PROCEDURES

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law, Sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law, and Chapter 599 of the Laws of 2002 and Chapter 311 of the Laws of 2008, do hereby promulgate the Seventh Amendment to Part 83 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 172) to take effect upon publication in the State Register, and to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

Subdivision (c) of section 83.2 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2006] 2010 * (accounting manual) includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2006] 2010, which will be filed in [2007] 2011.

* ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2006] 2010. © Copyright 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 by National Association of Insurance Commissioners, in Kansas City, Missouri.

Subdivision (c) of section 83.3 is amended to read as follows:

(c) [Notwithstanding any other provision of this Title, the Accounting Manual is adopted in its entirety, except as provided in Section 83.4 of this Part, and, subject to such conflicts and exceptions, insurers shall follow the accounting practices and procedures prescribed by the Accounting Manual.] Except as provided in Section 83.4 of this Part or where the Accounting Manual conflicts with any provision of the Insurance Law or this Title, the Accounting Manual is adopted in its entirety, subject to such conflicts and exceptions, and an insurer shall follow the accounting practices and procedures prescribed by the Accounting Manual. The Accounting Manual does not preempt states' legislative or regulatory authority. The Accounting Manual is intended to establish a comprehensive basis of accounting to be adhered to if not in conflict with the state statutes or regulations, or when the state statutes or regulations are silent. The [document] Accounting Manual may also be viewed at the New York State Insurance Department's New York City office at 25 Beaver Street, New York, NY 10004.

Section 83.4 is amended to read as follows:

The following are SSAPs or sections of SSAPs that conflict with provisions of the Insurance Law in whole or in part. These SSAPs or sections thereof are either not adopted, or modified as provided in this section and insurers shall follow the additional guidance, as indicated:

(a) (1) Paragraph 6 of SSAP No. 6 "Uncollected Premium Balances, Bills Receivable for Premiums, and Amounts Due from Agents and Brokers" is adopted with the following addition:

> Premium accruals pertaining to guaranteed rates in the form of annual level subscriber rates, as permitted by section 52.42(b)(3)(ii) of this Title (Regulation No. 62) for Public Health Law[,] article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans, meet the definition of assets in SSAP No. 4 "Assets and Nonadmitted Assets" and are admitted if evidenced by an approved contract provision or rider. In the event of the termination of a group, any premium due on such guaranteed rates shall be nonadmitted as prescribed in paragraph 9 of SSAP No. 6 or written off as prescribed in paragraph 10 of SSAP No. 6.

(2) Paragraph 9(a) of SSAP No. 6 "Uncollected Premium Balances, Bills Receivable for Premiums, and Amounts Due From Agents and Brokers" is adopted with the following addition:

> Overdue premiums (either direct or indirectly due) from the United States government or any of its instrumentalities shall be admitted assets, in accordance with section 1301(a) [(11)] (6) of the Insurance Law. Instrumentalities as used herein shall also include State and local governments.

(b) The guidance prescribed in paragraph 8 of SSAP No. [10] 10R "Income Taxes" is not adopted. A refund due from the Treasury should be collectible within a brief period after the statement date, in order to be considered an admitted asset. A balance due as a result of participation in a consolidated tax return should be paid over promptly by the parent. An open account or promissory note from the parent would not be an admissible asset, and may violate the provisions of section 1407(a)(4) of the Insurance Law. For financial statements required to be filed for periods ending on or after December 31, [2002] 2009, the calculation of adjusted gross deferred tax assets as admitted assets shall be made in [the following manner:

Gross deferred tax assets shall be deemed admitted in an amount not to exceed the sum of:

(1) Federal income taxes paid in prior years that can be recovered through loss carrybacks for existing temporary differences that reverse by the end of the subsequent calendar year;

(2) the lesser of:

> (i) the amount of gross deferred tax assets after the application of paragraph (1) of this subdivision expected to be realized within one year of the balance sheet date; or
>
> (ii) 10 percent of the insurer's statutory capital and surplus as required to be shown on the statutory balance sheet for its most recently filed statement with the superintendent adjusted to exclude any net

deferred tax assets, electronic data processing equipment, and goodwill as permitted by subdivision (t) of this section; and

(3) the amount of gross deferred tax assets after application of paragraphs (1) and (2) of this subdivision that can be offset against existing gross deferred tax liabilities.] accordance with SSAP No. 10R.

(c) [(1) SSAP No. 16 "Electronic Data Processing Equipment and Software" is not adopted.

(2) Paragraphs 1, 2, 4 and 5 of SSAP No. 79 "Depreciation of Nonoperating System Software" an amendment to SSAP No. 16 "Electronic Data Processing Equipment and Software" are not adopted.

(3) (i) Paragraph 3 of SSAP No. 79 states in part: "EDP equipment and operating system software shall be depreciated over the lesser of its useful life or three years." This quoted sentence is not adopted. Section 1301(a)(18) of the Insurance Law shall apply. In addition, nonoperating system software shall be nonadmitted.

(ii) Paragraph 3 of SSAP No. 79 states in part: "Nonoperating system software shall be depreciated over the lesser of its useful life or five years. In either case, the methods detailed in SSAP No. 19 "Furniture, Fixtures and Equipment; Leasehold Improvements Paid by the Reporting Entity as Lessee; Depreciation of Property and Amortization of Leasehold Improvements" shall be used. These quoted sentences are adopted.]

For accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans, the sentence in paragraph 3 of SSAP No. 79 that states: "EDP equipment and operating system software shall be depreciated over the lesser of its useful life or three years." is not adopted. EDP equipment and operating system software shall be depreciated over the lesser of its useful life or ten years.

(d) Paragraph 5 of SSAP No. 19 "Furniture, Fixtures and Equipment; Leasehold Improvements Paid by the Reporting Entity as Lessee; Depreciation of Property and Amortization of Leasehold Improvements" is adopted with the following addition:

> Leasehold improvements, relating to home office space of article 43 corporations, Public Health Law article 44 health maintenance organizations, and integrated delivery systems as lessees, approved for capitalization by the superintendent prior to January 1, 2001, shall be admitted. Leasehold improvements relating to home office space of comprehensive HIV special needs plans and prepaid health service plans as lessees, approved for capitalization by the Commissioner of Health prior to January 1, 2001, shall be admitted. Effective January 1, 2001, all new leasehold improvements shall be accounted for in accordance with paragraph 5 of SSAP No. 19.

(e) (1) Except as provided in [paragraphs] paragraph (2) [and (3)] of this subdivision, paragraph 4 of SSAP No. 20 "Nonadmitted Assets" is adopted.

(2) Paragraph 4(c) of SSAP No. 20 is adopted with the following addition:

Section 1411(f)(1) and (2) of the Insurance Law prohibits loans to officers or directors.

[(3) Paragraph 4(f) of SSAP No. 20 is adopted, except that aircraft may be recorded as an admitted asset if the requirements of section 1301(a)(19) of the Insurance Law are met.]

(f) Paragraph 3 of SSAP No. 22 "Leases" is adopted with the following addition:

> Leases entered into by article 43 corporations, Public Health Law[,] article 44 health maintenance organizations, and integrated delivery systems, approved for capitalization by the superintendent prior to January 1, 2001, shall be admitted. Leases entered into by comprehensive HIV special needs plans and prepaid health service plans, approved for capitalization by the Commissioner of Health prior to January 1, 2001, shall be admitted. Effective January 1, 2001, all new leases shall be accounted for in accordance with paragraph 3 of SSAP No. 22.

(g) (1) Paragraph 5 of SSAP No. 25 "Accounting for and Disclosures about Transactions with Affiliates and Other Related Parties" is not adopted. Section 1501(c) of the Insurance Law provides that the superintendent may determine upon application that any person does not, or will not upon the taking of some proposed action, control another person. 10 NYCRR 98-1.9(d) authorizes the Commissioner of Health to make a similar determination with respect to organizations with a certificate of authority pursuant to Public Health Law, article 44.

(2) Paragraphs [6] 7 and [7] 8 of SSAP No. 25 are not adopted. Section 4310(b) of the Insurance Law provides that certain article 43 corporations described therein may invest, in the aggregate, not more than three percent of their admitted assets in obligations, shares or other securities issued by a parent corporation which is organized as a not-for-profit entity or a corporation which is an affiliate or will be an affiliate after direct or indirect acquisition by the parent corporation. Section 1407(a)(4) of the Insurance Law prohibits accident and health insurers and property/casualty insurers from investing in obligations, shares or other securities issued by a parent corporation or a corporation which is an affiliate or will be an affiliate after direct or indirect acquisition by the insurer. Further, loans and advances between a domestic controlled insurer and any person in its holding company system are subject to the reporting and approval thresholds prescribed in section 1505 of the Insurance Law. Section 1411(f)(1) and (2) of the Insurance Law prohibits loans to officers and directors.

(h) SSAP No. 29 "Prepaid Expenses" is not adopted. Section[s 1301(a)(9) and] 1302(a)(2) of the Insurance Law shall apply.

(i) [Paragraph 7 of SSAP No. 30 "Investments in Common Stock" (excluding investments in common stock of subsidiaries, controlled, or affiliated entities) is adopted with the following addition:

> Section 1414(c)(1) and (2) of the Insurance Law requires that the shares of an insurer that is not a subsidiary be valued at market value if they are listed on a national exchange, or, if they are not so listed, at the lesser of market value or book value as shown by the insurer's last annual statement or the last report on examination, whichever is more recent.

(j) Paragraphs 5 and 6 of SSAP No. 34 "Investment Income Due and Accrued" are not adopted. Section 1301(a)(4), (5), (6) and (7) of the Insurance Law shall apply.

(k)] Paragraph 5 of SSAP No. 35 "Guaranty Fund and Other Assessments" is adopted with the following addition:

> The following shall be admitted assets of article 43 corporations, Public Health Law[,] article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans with or without notification of refund or payment:
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> (i) estimated market stabilization reinsurance or pooling recoverables under section 3233 of the Insurance Law;
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> (ii) estimated stop-loss recoverables under sections 4321-a, 4322-a and 4327 of the Insurance Law; and
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> (iii) estimated reinsurance recoverables under the Department of Health New York State Medicaid Managed Care Reinsurance Program.
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> In accordance with SSAP No. 5, amounts determined to be uncollectible, or otherwise impaired, shall be written off.

[(l) Paragraph 14 of SSAP No. 37 "Mortgage Loans" is not adopted. The limitations on amounts of accrued interest prescribed in section 1301(a)(7) of the Insurance Law shall apply.

(m) (1) For life insurers, paragraph 8 of SSAP No. 40 "Real Estate Investments" is not adopted. Depreciation on real estate investments owned by life insurers shall be computed at a rate no greater than 2 1/2 percent per annum, in accordance with section 1405(b)(1)(C) of the Insurance Law.

(2) (i)] (j) (1) For article 43 corporations and not-for-profit health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans authorized pursuant to article 44 of the Public Health Law, SSAP No. 40 "Real Estate Investments" is adopted with the following addition:

> In accordance with Section 4310(l) of the Insurance Law, in determining the financial condition of Article 43 corporations and not-for-profit health maintenance organizations, integrated delivery systems, prepaid health service plans and comprehensive HIV special needs plans authorized pursuant to Article 44 of the Public Health Law, real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, less encumbrances. Market value shall be determined by an independent appraisal undertaken annually, no earlier than September 30 of each year, by a member of the Appraisal Institute, 55 West Van Buren Street, Suite 1000, Chicago, IL 60607. (website address is http:/[.]appraisalinstitute.org.) This option is not applicable to for-profit corporations authorized pursuant to Article 44 of the Public Health Law.

[(ii)] (2) Real estate "owned and held" and "utilized in the ordinary course of business" as set forth in

[subparagraph] paragraph [(i)] (1) of this [paragraph] subdivision shall have the same definition as "property occupied by the company" as set forth in paragraph 5 of SSAP No. 40 "Real Estate Investments."

[(iii)] (3) The provisions of paragraph 11 of SSAP No. 40 shall govern the independent appraisal requirement set forth in [subparagraph] paragraph [(i)] (1) of this [paragraph] subdivision.

[(iv)] (4) The election to value real estate at either its current amortized book value or at 90 percent of its current market value, less encumbrances, shall be applied to the valuation of all property not held for sale. As of any determination date, either all real estate shall be valued at current amortized book value or all real estate shall be valued at 90 percent of its current market value, less encumbrances. Changes in the statement value of real estate held under this election shall be accounted for as unrealized capital gains or losses.

[(v)] (5) If an entity elects to value its real estate at 90 percent of its current market value, less encumbrances, in addition to the Schedule A filed as part of the NAIC Annual Statement Health Blank, a Supplemental Schedule A must be completed for what the current amortized book value would be if the entity had not made such an election as of the determination date. A Supplemental Schedule A is herein defined as a Schedule A submitted for informational purposes only, not intended to supersede the Schedule A filed as part of the NAIC Annual Statement Health Blank. The completed Supplemental Schedule A shall be submitted annually on or before the first day of March for article 43 corporations and on or before the first day of April for not-for-profit health maintenance organizations as a supplement to the NAIC Annual Statement Health Blank in support of the note requirement of [subparagraph] paragraph [vii] (7) of this [paragraph] subdivision.

[(vi)] (6) Notwithstanding the valuation methodology permitted in [sub] paragraph [(i)] (1) of this [paragraph] subdivision and the instructions of [subparagraph] paragraph [iv] (4) of this [paragraph] subdivision, properties that the reporting entity has the intent to sell, or is required to sell, shall be classified as properties held for sale and carried at the lower of depreciated cost or current market value less encumbrances and estimated sales costs consistent with the requirements of paragraph 10 of SSAP No. 40.

[(vii)] (7) An entity which elects to change its valuation of real estate pursuant to [subparagraph] paragraph [(i)] (1) of this [paragraph] subdivision shall disclose all of the following in the notes to its annual and quarterly financial statements:

[(a)] (i) the current amortized book value of each property;

[(b)] (ii) the current market value and 90 percent of the current market value, less encumbrances, of each property;

[(c)] (iii) the determination date of the annual appraisal; and

[(d)] (iv) the name and qualifications of the independent appraiser.

[(viii)] (8) Appraisals obtained in satisfaction of [subparagraph] paragraph (i) of this [paragraph] subdivision shall be maintained in good order and shall be readily available for examination.

[(n)](k) (1) Paragraph 6 of SSAP No. [88] 97 "Investments in Subsidiary, Controlled, and Affiliated Entities, A Replacement of SSAP No. [46] 88," is not adopted. Pursuant to section 1501(c) of the Insurance

Law, the superintendent may determine upon application that any person does not, or will not upon the taking of some proposed action, control another person. 10 NYCRR 98-1.9(d) authorizes the Commissioner of Health to make a similar determination with respect to organizations with a certificate of authority pursuant to Public Health Law, article 44.

(2) [Paragraph 8 of SSAP No. 88 is not adopted with respect to subsidiaries that are insurers. Pursuant to section 1414(c)(2) of the Insurance Law, the shares of an insurer that is a subsidiary shall be valued at the lesser of its market value or book value as shown by its last annual statement or the last report on examination, whichever is more recent.

(3)] Paragraph 8(b)(i) of SSAP No. [88] 97 is not adopted with respect to Public Health Law, article 44 health maintenance organizations which are subsidiaries and which record goodwill as an admitted asset pursuant to subdivision [(t)] (p) of this section. Investments in such entities shall be recorded based on the underlying statutory equity of the respective entity's financial statements, including an admitted asset for goodwill as provided for in subdivision [(t)] (p) of this section.

[(o)] (l) (1) Paragraph 19(g) of SSAP No. 57 "Title Insurance" is not adopted. Pursuant to section 6404(a) of the Insurance Law, a title insurance corporation may claim an admitted asset of up to five percent of its admitted assets for its investment in its title plant acquired after December 31, 1969.

(2) Appendix A-628-17(b)(iv) to SSAP No. 57 is not adopted. Section 6405(a)(1) and (2) of the Insurance Law provide a formula for determining the amounts to be released from the reinsurance reserve for title insurance companies. The formula differs from the requirements of the appendix to SSAP No. 57.

[(p) Paragraph 53 of SSAP No. 61 "Life, Deposit-Type and Accident and Health Reinsurance" is not adopted. Pursuant to section 1302(a)(1) of the Insurance Law, all goodwill resulting from assumption reinsurance transactions shall be nonadmitted.

(q)] (m) (1) Paragraph 36 of SSAP No. 62 "Property and Casualty Reinsurance" is adopted with the following addition:

> Insurers shall apply the additional restrictions as to admitted reinsurance premiums past due prescribed in section [1301(a)(11)] 1301(a)(6) of the Insurance Law.
>
> (2) The accounting treatment for loss portfolio transfers effective January 1, 2001 and subsequent shall follow the guidelines set forth in paragraphs 27 through 33 of SSAP No. 62 and paragraph 3 of SSAP No. 75. All loss portfolio transfers effective prior to January 1, 2001 shall continue to be governed by the provisions of Part 112 of this Title (Regulation No. 108).

[(r)] (n) Paragraph 4 of SSAP No. 64 "Offsetting and Netting of Assets and Liabilities" is adopted with the following addition:

> Claims paid in error by health entities to providers may not be fully recoverable. To the extent that the claim overpayments meet the setoff conditions in SSAP No. 64, the right of offset is supported by a contractual agreement, and the overpayments are specific identifiable payments and not high level estimates, the receivable shall be offset against the related liability. In

accordance with SSAP No. 5, any amounts not reasonably expected to be recovered shall be written off. Amounts in excess of that written off that do not meet the right of offset shall be nonadmitted, as they are not available to satisfy policyholder obligations.

[(s)] (o) Paragraphs 10, 11 and 14 of SSAP No. 65 "Property and Casualty Contracts" are not adopted. In accordance with section 4117(d)(1) and (2) of the Insurance Law, nontabular known case reserves for indemnity and medical claims may be discounted; incurred but not reported reserves and unpaid loss adjustment expenses shall not be discounted.

[t] (p) With regard to accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans, [Paragraph] paragraph 7 of SSAP No. 68 "*Business Combinations and Goodwill*" is not adopted. [Section 1302(a)(1) of the Insurance Law shall apply.] Goodwill shall not be allowed as an admitted asset, except that goodwill recorded as an admitted asset on the books of a Public Health Law Article 44 health maintenance organization, integrated delivery system, prepaid health services plan or comprehensive HIV special needs plan as of December 31, 2000 shall continue to be treated as an admitted asset on financial statements filed with the superintendent or the Commissioner of Health. Goodwill shall be written off over its useful life. The period of amortization shall not exceed 40 years.

[(u) Paragraphs 15, 16 and 17 (quasi-reorganizations) of SSAP No. 72 "Surplus and Quasi-reorganizations" are not adopted for domestic stock property/casualty insurance companies. Section 4105(a) of the Insurance Law permits dividends to be declared or distributed only out of earned surplus as defined in section 4105(a)(1).

(v)] (q) Paragraph 9 of SSAP No. 73 "Health Care Delivery Assets - Supplies, Pharmaceutical and Surgical Supplies, Durable Medical Equipment, Furniture, Medical Equipment and Fixtures, and Leasehold Improvements in Health Care Facilities" is not adopted. Durable medical equipment, furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated utilizing a depreciation schedule no less conservative than that set forth in the latest revision of Estimated Useful Lives of Depreciable Hospital Assets (Revised 2004 Edition). ** The document may also be viewed at the New York State Insurance Department's New York City office at 25 Beaver Street, New York, NY 10004. Lease improvements in health care facilities shall be amortized against net income over the shorter of their estimated useful life or the remaining life of the original lease excluding renewal or option periods, using methods detailed in SSAP No. 19.

[(w)] (r) SSAP No. 74 "Accounting for the Issuance of Insurance-Linked Securities Issued by a Property and Casualty Insurer through a Protected Cell" is not adopted. The New York Insurance Law does not permit an insurer to reduce its loss reserves by any credits other than reinsurance.

[(x)] (s) (1) Paragraphs 10, 11, 12 and 13 of SSAP No. 84 "Certain Health Care Receivables and Receivables Under Government Insured Plans" (to be effective January 1, 2003) pertaining to pharmaceutical rebates are adopted. Paragraph 27 of SSAP No. 84 is adopted except that prior to January 1, 2003 pharmaceutical rebates estimated by a health entity shall be admitted assets. In accordance with SSAP No. 5, amounts determined to be uncollectible, or otherwise impaired, shall be written off.

(2) Paragraphs 20, 21 and 22 of SSAP No. 84 pertaining to risk sharing receivables are adopted. Paragraph 28 of SSAP No. 84 is adopted except that prior to January 1, 2003 all unsecured risk sharing receivables from

health care providers shall not be admitted. Secured shall be defined as evidenced by an executed note. In accordance with SSAP No. 5, amounts determined to be uncollectible, or otherwise impaired, shall be written off.

(t) Paragraph 25 of SSAP No. 61 "Life, Deposit-Type and Accident and Health Reinsurance" is adopted with the following addition:

> If a ceding insurer that receives credit for reinsurance by way of deduction from its reserve liability remits the associated reinsurance premiums for coverage beyond the paid-to-date of the policy, the ceding insurer may record an asset for the portion of the gross reinsurance premium that provides reinsurance coverage for the period from the next policy premium due date to the earlier of: (1) the end of the policy year or (2) the next reinsurance premium due date. The asset shall be admitted as a write-in asset to the extent that the reinsurer must refund premiums to the ceding insurer in the event of either the termination of the ceded policy or the termination of the reinsurance agreement.

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INSURANCE DEPARTMENT
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I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the seventh amendment to Part 83 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 172), promulgated by me on FEBRUARY 28, 2011, pursuant to the authority granted by Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law, Sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law, and Chapter 599 of the Laws of 2002 and Chapter 311 of the Laws of 2008, to take effect publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on January 12, 2011. No other publication or prior notice is required by statue.

James J. Wrynn
Superintendent of Insurance

Date: FEBRUARY 28, 2011