

**STATE OF NEW YORK
DEPARTMENT OF FINANCIAL SERVICES
SECOND AMENDMENT TO 11 NYCRR 94
(INSURANCE REGULATION 56)**

**VALUATION OF INDIVIDUAL AND GROUP ACCIDENT AND HEALTH INSURANCE
RESERVES**

I, Shirin Emami, Acting Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310, and 4517 of the Insurance Law, do hereby promulgate the Second Amendment to Part 94 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 56) to take effect upon publication in the State Register, to read as follows:

(New Matter is Underscored; Matter in Brackets is Deleted)

Sections 94.3(j) through 94.3(t) are re-lettered as 94.3(k) through 94.3(u) and a new 94.3(j) is added to read as follows:

(j) Group long-term disability income contract means a contract that is based on a group pricing structure and provides group disability income coverage with a maximum benefit duration of longer than two years and does not include such a contract with a maximum benefit duration of two years or less or such a contract that is priced on an individual risk structure.

Section 94.4(b)(1)(ii)(a) is amended to read as follows:

(a) Claims incurred under an individual policy.

(1) [in] In calculating the claim reserve on any valuation date for a claim incurred under an individual policy:

[(1)](i) with respect to claim termination rates for claim durations from date of disablement of less than two years, an insurer shall use the termination rates specified in section 94.10 of this Part; provided, however, the insurer may base its termination rates [may be based] on the insurer's own credible claim termination rate experience [if such experience is considered credible,] or upon other assumptions designed to place a sound value on the liabilities; and

[(2)](ii) claim termination rates for claim durations after the first two years from the date of disablement must be those specified in section 94.10 of this Part[;].

[(3) example](2) Example: A study of [your company's] the insurer's claim termination rates shows that for claims terminating in the first 24 months from the date of disablement [its] the claim termination rates are 110 percent of the adjusted termination rates shown in section 94.10 of this Part. [Your company has an] An open claim as of December 31, 2002 that has a date of disablement of March 31, 2002 and an elimination period of 90 days:

(i) in order to calculate the claim reserve as of December 31, 2001 [your company] an insurer may increase the adjusted termination rates for months 10 through 24 by 10 percent, but must use 100 percent of the adjusted termination rates for all claim durations beyond the 24th month;

(ii) in order to calculate the claim reserve as of December 31, 2003 [your company] an insurer may increase the adjusted termination rates for months 22 through 24 by 10 percent, but must use 100 percent of the adjusted termination rates for all claim durations beyond the 24th month.

Section 94.4(b)(1)(ii)(b) is amended to read as follows:

(b) Claims incurred under a group policy that is not a group long-term disability policy.

(1) [in] In calculating the claim reserve on any valuation date for a claim incurred under a group policy:

[(1)](i) with respect to claim termination rates for claim durations from date of disablement of less than two years, an insurer shall use the termination rates specified in section 94.10 of this Part; provided, however, the insurer may base its termination rates [may be based] on the insurer's own credible claim termination rate experience [if such experience is considered credible,] or upon other assumptions designed to place a sound value on the liabilities;

[(2)](ii) with respect to claim termination rates for claim durations from the date of disablement of more than two years but less than five years[may], an insurer shall use the termination rates specified in section 94.10 of this Part; provided, however, that with the approval of the superintendent, rates may be based on the insurer's own claim termination experience for claim durations of more than two years but less than five years and for which the insurer maintains underwriting and claim administration control if the superintendent determines that the experience is credible. For experience to be considered credible for purposes of this subclause, the [company] insurer must [be able to] provide claim termination patterns of its own over no more than six years reflecting at least 5,000 claims terminations during the third through fifth claims durations on reasonably similar applicable policy forms; and

[(3)](iii) claim termination rates for claim durations after the first five years from the date of disablement of such claims must be those specified in section 94.10 of this Part.

[(4) example](2) Example: A study of [your company's] the insurer's group claim termination rates shows that for claims terminating in the first 24 months from date of disablement [its] the claim termination rates are 120 percent of those of the 1987 Commissioners Group Disability Income Table found in Group Long-Term Disability Valuation Tables, Transactions of Society of Actuaries 1987, Volume XXXIX, pp. 393 through 457¹ (87CGDT) and for months 25 through 60 (years three through five) are 110 percent of the 87CGDT. A copy of such document, as adopted by

¹ TRANSACTIONS SOCIETY OF ACTUARIES 1987, VOLUME XXXIX Copyright 1988 by Society of Actuaries, in Schaumburg, Illinois.

the Society of Actuaries, 475 N. Martingale Road, Suite 800, Schaumburg, IL 60173-2226, in 1988 is available for public inspection at the Department of Financial Services offices at One Commerce Plaza, Albany, New York 12257 and at One State Street, New York, New York 10004. [Your company has an] An open claim as of December 31, 2002 [that] has a date of disablement of July 31, 2001 and an elimination period of 180 days. In order to calculate the claim reserve:

(i) as of December 31, 2002, [your company] the insurer may increase the claim termination rates of the 87CGDT for months 18 through 24 by 20 percent, and may increase the claim termination rates of the 87CGDT for durations three through five years by 10 percent (if approved by the superintendent) but must use 100 percent of the claim termination rates of the 87CGDT for all claim durations beyond the fifth claim year;

(ii) as of December 31, 2003 and thereafter, [your company] the insurer may increase the claim termination rates of the 87CGDT for months 30 through 60 by 10 percent (if approved by the superintendent) but must use 100 percent of the claim termination rates of the 87CGDT for all claim durations beyond the fifth claim year.

[(5) the] (3) The request for approval described in subclause [(2)] (1)(ii) of this clause regarding the use of the insurer's own experience must include:

(i) an analysis of the credibility of the experience;

(ii) a description of how all of the insurer's experience is proposed to be used in setting reserves;

(iii) a description and quantification of the margins to be included;

(iv) a summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement;

(v) a copy of the approval of the proposed plan of modification by the superintendent of the state of domicile; and

(vi) any other information deemed necessary by the superintendent.

New clauses (c) – (e), and a new footnote 2 to the new clause (e), are added to section 94.4(b)(1)(ii) to read as follows:

(c) Claims incurred prior to October 1, 2014 for group long-term disability income contracts.

(1) In calculating the claim reserve for a claim incurred under a group long-term disability income contract prior to January 1, 2005, an insurer shall comply with the requirements in clause (e) of this subparagraph or comply with items (i) through (iii) of this subclause; provided, however, that once an insurer elects to calculate reserves pursuant to clause (e) of this subparagraph, all open claims incurred prior to October 1, 2014 shall be calculated on that basis, and the insurer shall continue to make all of its future valuations on that basis. In calculating the claim reserve:

(i) with respect to claim termination rates for claim durations from the date of disablement of less than two years, an insurer shall use the termination rates specified in section 94.10 of this Part; provided, however, the insurer may base its termination rates on the insurer's own credible claim termination rate experience or upon other assumptions designed to place a sound value on the liabilities;

(ii) with respect to claim termination rates for claim durations from the date of disablement of more than two years but less than five years, an insurer shall use the termination rates specified in section 94.10 of this Part; provided, however, that with the approval of the superintendent, rates may be based on the insurer's own claim termination experience for claim durations of more than two years but less than five years and for which the insurer maintains underwriting and claim administration control if the superintendent determines that the experience is credible. For experience to be considered credible for purposes of this subclause, the insurer must provide claim termination patterns of its own over no more than six years reflecting at least 5,000 claim terminations during the third through fifth claim durations on reasonably similar applicable policy forms; and

(iii) claim termination rates for claim durations after the first five years from the date of disablement of such claims shall be those specified in section 94.10 of this Part.

(2) Example: A study of the insurer's group claim termination rates shows that for claims terminating in the first 24 months from date of disablement the claim termination rates are 120 percent of those of the 87CGDT and for months 25 through 60 (years three through five) are 110 percent of the 87CGDT. An open claim as of December 31, 2002 has a date of disablement of July 31, 2001 and an elimination period of 180 days. In order to calculate the claim reserve:

(i) as of December 31, 2002, the insurer may increase the claim termination rates of the 87CGDT for months 18 through 24 by 20 percent, and the claim termination rates of the 87CGDT for durations three through five years by 10 percent (if approved by the superintendent) but must use 100 percent of the claim termination rates of the 87CGDT for all claim durations beyond the fifth claim year.

(ii) as of December 31, 2003 and thereafter, the insurer may increase the claim termination rates of the 87CGDT for months 30 through 60 by 10 percent (if approved by the superintendent) but must use 100 percent of the claim termination rates of the 87CGDT for all claim durations beyond the fifth claim year.

(3) The insurer's request for approval described in subclause (1)(ii) of this clause, regarding the use of the insurer's own experience, must include the information specified in clause (b)(3) of this subparagraph.

(4) Except where an insurer opts to apply the minimum standards in clause (e) pursuant to clause (c)(1) of this subparagraph with respect to a claim incurred under a group long-term disability income contract prior to January 1, 2005, in calculating the claim reserve for all claims incurred under a group long-term disability income contract on or after January 1, 2005 and prior to the date

selected by the insurer under clause (d) of this subparagraph an insurer shall either comply with the requirements of items (i) through (iii) of clause (c)(1) of this subparagraph or clause (e) of this subparagraph; provided, however, that once an insurer elects to calculate reserves for all open claims incurred on or after January 1, 2005 pursuant to clause (e) of this subparagraph, the insurer shall continue to make all of its future valuations on that basis.

(d) In calculating the claim reserve for a claim incurred under a group long-term disability income contract on or after October 1, 2014 and prior to January 1, 2017, an insurer shall either comply with the requirements of clause (c) of this subparagraph or clause (e) of this subparagraph; provided, however, that once an insurer elects to calculate reserves for all open claims pursuant to clause (e) of this subparagraph, the insurer shall continue to make all of its future valuations on that basis.

(e) In calculating the claim reserve for a claim incurred under a group long-term disability income contract on or after January 1, 2017, an insurer shall use the 2012 Group Long-Term Disability Valuation Table (2012 GLTD Table)², which was adopted by the NAIC in 2014, provided that:

(1) the insurer shall incorporate its own experience exemption determined in accordance with the standards of valuation of group long-term disability reserves governed by Part 83 of this Title (Insurance Regulation 172); or

(2) if the exemption specified in subclause (1) of this clause is not available, then the insurer shall incorporate:

(i) the insurer's own experience computed in accordance with the standards of the valuation of group long-term disability reserves governed by Part 83 of this Title;

(ii) an adjustment to include an own experience measurement margin derived in accordance with the standards of valuation of group long-term disability reserves governed by Part 83 of this Title; and

(iii) a credibility factor derived in accordance with the standards of valuation of group long-term disability reserves governed by Part 83 of this Title.

Footnotes 2, 3 and 4 to section 94.8 are re-numbered as footnotes 3, 4, and 5, respectively.

Section 94.10(a)(2)(i)(b) is amended to read as follows:

² 2012 Group Long-Term Disability Valuation Table ("2012 GLTD Table"), published by the National Association of Insurance Commissioners, is hereby incorporated by reference in this Part. The 2012 GLTD Table is readily available without charge at the following internet address: http://www.naic.org/documents/01_naic_2012_group_long-term_disability_valuation_table.xls. The 2012 GLTD Table is also available for public inspection and copying at the New York State Department of Financial Services at One State Street, New York, NY 10004.

(b) Claim reserves for a group disability income contract that is not a group long-term disability contract. In calculating the claim reserve on any valuation date for a claim incurred under a group policy:

(1) [For]for claims incurred prior to January 1, 1989, claim reserves shall be on the same basis, if any, as that employed by the insurer as of January 1st of the year of incurral; and

(2) [For]for claims incurred on or after January 1, 1989, the 1987 Commissioners Group Disability Income Table (87CGDT) shall be used.

Footnote 5 in section 94.10(a)(1)(ii)(a)(1) is re-numbered as footnote 6.

Footnote 6 in section 94.10(a)(1)(ii)(a)(2) is re-numbered as footnote 7.

Footnote 7 in section 94.10(a)(1)(iii) is re-numbered as footnote 8.

Footnote 8 in section 94.10(a)(1)(iv) is re-numbered as footnote 9.

Section 94.10(a)(2)(i)(c) is added to read as follows:

(c) Claim reserves for a group long-term disability income contract.

(1) For claims incurred prior to January 1, 1989, an insurer's claim reserves shall be on the same basis, if any, as that employed by the insurer as of January 1st of the year of incurral;

(2) for claims incurred on or after January 1, 1989 and prior to January 1, 2017, the insurer shall use the 1987 Commissioners Group Disability Income Table (87CGDT); and

(3) for claims incurred on or after January 1, 2017, the insurer shall use the 2012 Group Long-Term Disability Valuation Table (2012 GLTD Table) noted in section 94.4(b)(1)(ii)(e) of this Part.

Footnote 9 in section 94.10(c)(1) is re-numbered as footnote 10.

Section 94.10(c)(2) is amended to read as follows:

(2) For long-term care insurance individual policies or group certificates issued on or after January 1, 1997 and before January 1, 2005, the mortality basis used shall be the 1983 Group Annuity Mortality Table (83GAM), contained in Part [99.10(i)(3)] 99.10(i)(4) (Insurance Regulation 151) of this Title, without projection.

Section 94.10(c)(3) is amended to read as follows:

(3) For long-term care insurance individual policies or group certificates issued on or after January 1, 2005, the mortality basis used shall be the 1994 Group Annuity Mortality Static Table. Rates of

mortality for such basis are shown in the q_x^{1994} column of the 1994 Group Annuity Reserving Table contained in Part [99.10(i)(4)] 99.10(i)(5) (Insurance Regulation 151) of this Title.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Shirin Emami
Acting Superintendent

I, Shirin Emami, Acting Superintendent of Financial Services, do hereby certify that the foregoing is the Second Amendment to Part 94 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 56), promulgated by me on February 3, 2016, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310, and 4517 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions in the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on October 28, 2015. No other publication or prior notice is required by statute.

A handwritten signature in black ink, appearing to read "SEmami", written over a horizontal line.

Shirin Emami

Acting Superintendent of Financial Services

Date: February 3, 2016