

January 17, 1989

SUBJECT: INSURANCE

Circular Letter No. 3 (1989)

TO: All Insurers Licensed to Write Life and Accident and Health Insurance in New York State

SUBJECT: Insurers' Use of HIV Antibody Test -- Need for Authorization and Informed Consent

Chapter 584 of the Laws of 1988 addressed the subject of confidentiality of information relating to human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS). This legislation specifically sets forth conditions under which an insurance institution, as defined in the Public Health Law, may obtain confidential HIV related information and the requirements for obtaining written informed consent to an HIV related test, as well as the contents of the consent document(s).

The purpose of this circular letter is to advise you that provisions of Chapter 584 of the Laws of 1988, which takes effect February 1, 1989, specifically relate to insurers and to remind you of your obligation to meet the requirements of the law including those that relate to written authorizations and informed consent documents.

Section 2782 of the Public Health Law prohibits the disclosure of confidential HIV related information obtained in the course of providing any health or social service or pursuant to a release except to specified entities, including an insurance institution provided the insurance institution secures a dated and written authorization. Such an authorization must indicate that health care providers, health facilities, insurance institutions and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and the authorization must be signed by the protected individual, a beneficiary or claimant if the protected individual is deceased, or by a person authorized to consent for the protected individual.

Section 2611 of the Insurance Law provides that no insurer shall request or require an individual proposed for insurance coverage to be a subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.

In addition, Section 2611 requires that the written informed consent consist of a written authorization that is dated and includes at least the following:

- "(1) a general description of the test;
- (2) a statement of the purpose of the test;
- (3) a statement that a positive test result is an indication that the individual may develop AIDS and may wish to consider further independent testing;
- (4) a statement that the individual may identify on the authorization form the person to whom the specific test results may be disclosed in the event of an adverse underwriting decision, which person may be the individual or a physician or other designee at the discretion of the individual proposed for

insurance;

(5) the department of health's statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services; and

(6) the signature of the applicant or individual proposed for insurance, or if such individual lacks capacity to consent, the signature of such other person authorized to consent for such individual."

The Insurance Department has already reviewed a number of written authorizations and informed consent documents and found that such documents fail to comply with all of the specific requirements set forth in Chapter 585 of the Laws of 1988.

In drafting authorizations and informed consent documents, insurers should be careful to meet all of the requirements of law and should be aware that Section 2611(e) provides that any person who violates Section 2611 shall be subject to the provisions of Article 24 of the Insurance Law which relates to unfair methods of competition and unfair and deceptive practices.

Please acknowledge receipt of this letter to:

Chief, Health and Life Policy Bureau
New York State Insurance Department
Agency Building One
Empire State Plaza
Albany, New York 12257

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance