

August 21, 1991

SUBJECT: INSURANCE

Circular Letter No. 12 (1991)  
August 21, 1991

TO: All Insurers Authorized to Transact Accident and Health Insurance In New York

RE: Travel Insurance

It has come to our attention that some insurers licensed to transact accident and health insurance in this state have been providing group or blanket travel insurance policies (i.e. group or blanket accident and health insurance covering travelers) to travel agents either directly or through third parties. In some cases neither the travel agent nor the third party are licensed insurance agents or brokers. The travel agents then provide the travel insurance to persons who make travel arrangements through their agencies. In some cases, the travel agents have automatically provided the travel insurance to all of the customers who utilize certain of their services without imposing a separate charge for the coverage. Some insurers providing this coverage have been doing so without making the necessary rate and form filings, claiming that these filings may be dispensed with under the provisions of Article 63 of the New York Insurance Law.

New York law does not authorize group or blanket accident and health insurance policies covering customers of a travel agent (Sections 4235 and 4237 of the Insurance Law). Accordingly, no such policy may be issued or delivered in New York.

Certain certificates issued to New York residents under a group or blanket policy issued and delivered outside of New York are subject to the Insurance Department's regulatory authority pursuant to Section 3201(b)(1) of the Insurance Law and Departmental Regulation 123 (11 NYCRR 59), including the filing and approval requirements of Part 59.4.

An insurer providing this type of insurance in New York may not dispense with the rate and policy form filing requirements by claiming that it comes within the special risk insurance exceptions under the provisions of Article 63 of the New York Insurance Law, also known as the "Free Trade Zone." The Superintendent, pursuant to paragraph (b) of Section 6301 of the Insurance Law, has permitted, on a special risk insurance basis, only a travel insurance package which is written on an individual basis and which includes coverage in each of three areas: (1) travel accident and health insurance, (2) travel baggage insurance and (3) missed flight insurance. This exemption does not apply to any travel insurance policy: (1) which does not include significant coverage in each of the three required areas; (2) which allows the insured to opt out of coverage in any of the three required areas; (3) which is written on a group or blanket basis; or (4) which is subject to the requirements of Section 3201(b)(1) of the Insurance Law.

The Department is currently reviewing Regulation 86 (11 NYCRR 16) which implements the special risk exemption in Article 63 and is considering eliminating the travel insurance package as well as others. A hearing will be held in the near future. Until such time, while the limited Article 63 exemption for filing requirements continues as set forth in the preceding paragraph, insurers are directed that, pursuant to Section 308 of the Insurance Law, all travel insurance package policy forms, for policies to be delivered or issued for delivery in this state in the Free Trade Zone after the date of this Letter, shall be submitted to the Insurance Department within 30 days after the delivery or the

issuance of the policy. The insurer shall include the rates and an explanation as to why the rates should not be considered to be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to insurer solvency by the Department.

Additionally, paragraph (d)(1) of Section 4224 of the Insurance Law provides, in pertinent part, as follows:

No insurer authorized to do one or more of the kinds of insurance business specified in paragraphs one, two or three of subsection (a) of Section one thousand one hundred thirteen of this chapter [i.e. life insurance, annuities or accident and health insurance] ... shall directly or indirectly, or by any of its agents or representatives, participate in any plan to offer or effect any kind or kinds of such insurance business in this state as an inducement to, or interdependent with, the purchase of any goods, securities, commodities, services or subscriptions to periodicals ...

It is the position of this Department that when an authorized insurer directly or indirectly provides a travel agent with travel insurance which the travel agent then provides to customers making travel arrangements, both the insurer and the travel agent are in violation of the above provision unless the coverage is provided on an optional basis for a separate charge.

Further, a travel agent that markets or sells travel insurance, or another party which provides travel insurance to a travel agent, is acting as an insurance agent or broker as defined in Section 2101 of the Insurance Law and would be acting in violation of Section 2102 of the Insurance Law unless properly licensed as an insurance agent or broker by the Department.

After 90 days from the date of this letter, should the Department discover noncompliance with the statutory interpretations set forth in this letter, the Department shall consider such noncompliance to be a willful violation of the Insurance Law.

Very truly yours,

[SIGNATURE]

SALVATORE R. CURIALE

SUPERINTENDENT OF INSURANCE