



**STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NEW YORK 12257**

George E. Pataki
Governor

Gregory V. Serio
Superintendent

**Circular Letter No. 1 (2003)
January 31, 2003**

TO: All Insurers Licensed To Write Accident and Health Insurance In New York State ("Commercial Insurers"), Article 43 Corporations, and Health Maintenance Organizations

RE: Women's Health and Wellness Act of 2002

STATUTORY REFERENCE: Insurance Law §§ 3217-c, 3221, 4303, 4306-b, 4322, and Chapter 554 of the Laws of 2002

Chapter 554 of the Laws of 2002 (Women's Health and Wellness Act of 2002) amends certain sections of the Insurance Law and Public Health Law. The law addresses access to obstetric and gynecologic care and increases the availability and frequency of mammography screening. It adds coverage for bone mineral density measurements and testing, including drugs and devices for such purposes. It also adds coverage of contraceptive drugs and devices. The law took effect January 1, 2003.

For contracts issued, renewed, altered, or modified on or after January 1, 2003, revisions are required to comply with the legislation. For existing contracts, such revisions are not required to take effect until the date of renewal, alteration, or modification in 2003. An outline of the necessary changes follows.

DIRECT ACCESS TO OBSTETRIC AND GYNECOLOGIC CARE (new §3217-c and new § 4306-b)

These sections of the law do not create a new mandate for obstetric and gynecologic care. Rather, they prohibit Article 43 Corporations and Commercial Insurers from limiting direct access to qualified providers for primary and preventive obstetric and gynecologic care, to the extent that benefits already exist for such services. Article 43 Corporations and Commercial Insurers are required to inform all covered females in writing of their "direct access" rights. However, the written notification need not be submitted to this Department for review and approval. A right to direct access for these services and a requirement to notify female enrollees have been in place for HMOs since January 1, 1995 under Public Health Law §4406-b. Note that the right to "direct access" has been added to the list of statutory disclosure materials for Article 43 Corporations and HMOs in Insurance Law §4324 and Public Health Law §4408, respectively.

MAMMOGRAPHY (amendments to §§ 3221, 4303 and 4322)

The existing mandated benefit for mammography screening has been amended by deleting the exemption for collectively bargained multi-state employer plans. The amendment also requires coverage for: (i) mammography screening for persons of any age who have a "first degree" relative with a prior history of breast cancer; and (ii) an annual mammogram for persons aged forty and older. Although the law does not amend Insurance Law §3216, entitled, "Individual accident and health insurance policy provisions", there is nothing in the law that prohibits Commercial Insurers from offering the additional mammography coverage to policyholders of individual health insurance products.

CERVICAL CYTOLOGY (amendments to §§ 3221 and 4303)

The existing mandated benefit for cervical cytology screening has been amended by deleting the exemption for collectively bargained multi-state employer plans.

BONE DENSITY MEASUREMENTS AND TESTING (amendments to §§3221, 4303, and 4322)

When major medical or similar comprehensive-type coverage is provided, coverage of bone mineral density measurements and testing for both men and women has been added as a mandated benefit in group and blanket contracts issued by Commercial Insurers and individual and group Article 43 contracts. Additionally, the benefit mandate applies to both group and individual HMO contracts. The coverage is subject to annual deductibles and coinsurance consistent with other benefits under the contract. If a contract provides coverage for prescription drugs, then the contract must also cover drugs and devices for bone density as approved by the federal Food and Drug Administration (FDA). Although the law does not amend Insurance Law §3216, there is nothing in the law that prohibits Commercial Insurers from offering bone density measurements, testing, drugs, and devices to policyholders of individual health insurance products.

To qualify for the bone density measurements and testing, and drugs and devices benefits, the covered person must meet either the eligibility criteria under the Medicare program or those set by the National Institutes of Health (NIH) for the detection of osteoporosis. The law provides that individuals qualifying for coverage shall at a minimum include individuals having:

- A previous diagnosis or having a family history of osteoporosis; or
- Symptoms or conditions indicative of the presence or significant risk of osteoporosis; or
- A prescribed drug regimen posing a significant risk of osteoporosis; or
- Lifestyle factors posing a significant risk of osteoporosis; or
- Age, gender, and/or physiological characteristics which pose a significant risk of osteoporosis.

Under the law, a covered person is eligible for bone density measurements or tests that are covered under the Medicare program as well as those in accordance with the NIH standards.

For purposes of the mandate, comprehensive-type coverage includes major medical policies, including those with a "preferred provider" feature. The term comprehensive-type coverage does not include basic hospital insurance or basic medical insurance, as defined in Regulation 62. However, a policy that provides basic hospital and basic medical insurance and coverage for provider office visits on an expense-incurred basis is deemed comprehensive-type coverage for purposes of the mandate. The term does not include Medicare supplement insurance or a policy covering only long term care benefits, nursing home benefits, home care benefits, dental or vision care benefits, accidental death and dismemberment benefits, prescription drug benefits or disability income benefits.

CONTRACEPTIVES (amendments to §§3221, 4303, and 4322)

Contracts containing prescription drug coverage issued on or after January 1, 2003 must include coverage of contraceptive drugs and devices prescribed by any health care provider authorized to prescribe under the Education Law. Contracts containing prescription drug coverage issued prior to January 1, 2003 must be revised to comply with Chapter 554 of the Laws of 2002 upon renewal, alteration, or modification in 2003.

The law requires that coverage of contraceptive drugs and devices be included in contracts and certificates only through the addition of a rider. Commercial Insurers, Article 43 Corporations, and HMOs must amend insurance contracts and certificates that provide for coverage of contraceptive drugs and/or devices so that such coverage is provided by the rider. Therefore, contracts and certificates that contain such coverage must be amended to remove it. The rider must only contain coverage for the contraceptive drugs and devices. Commercial Insurers, Article 43 Corporations, and HMOs may issue either a single amendment rider that removes the existing benefit and adds the contraceptive drugs and devices coverage required by the Act or, in the alternative, issue two riders, one to remove the existing benefit from the contract/certificate and the other to add the coverage required by the Act. The contraceptive coverage rider and associated premium rates are required to be approved by the Department prior to use. Although the law does not amend Insurance Law §3216, there is nothing in the law that prohibits Commercial Insurers from offering contraceptive coverage to policyholders of individual health insurance products.

The copayments for contraceptive drugs and devices must be commensurate with those charged under the contract's prescription drug coverage. Commercial Insurers, Article 43 Corporations, and HMOs may charge a provider office visit copayment for contraceptive devices that require an office visit. For those Commercial Insurers, Article 43 Corporations, and HMOs charging a separate copayment for contraceptive devices, such copayment must be consistent with the prescription drug copayment.

A religious employer, as defined in the law, may request a contract without such coverage where contraception is contrary to its religious tenets, provided that it meets the criteria set forth in §§3221(l)(16)(A)(1) or 4303(cc)(1)(A) of the law. To ensure that such criteria have been met, appropriate questions may be added to the group policyholder application or by a supplemental application designed for this purpose.

The religious employer opting not to include contraceptive coverage must provide written notice of its decision to prospective enrollees prior to enrollment with the plan, listing the contraceptive health care services the employer refuses to cover for religious reasons. Where such group contractholder makes an election not to purchase coverage for contraceptive drugs or devices, the Commercial Insurer, Article 43 Corporation, or HMO is to provide written notice to certificateholders upon enrollment of their right to directly purchase the coverage and of the premium cost therefor. Individual certificateholders have the right to purchase the rider for coverage directly from the Commercial Insurer, Article 43 Corporation, or HMO at the prevailing small group community rate for such rider whether or not the employee is part of a small group. The premium rate for individual certificateholders who exercise the right must be the same as the community rate charged to all small groups for this rider.

PROCEDURAL REQUIREMENTS

Contract amendments and the premium rates associated with the benefit changes should be directed to Thomas C. Zyra, Co-Chief, Health Bureau, New York State Department of Insurance, One Commerce Plaza, Albany, New York 12257.

Any questions regarding the premium rates may be directed to:

James Gutterman
Chief, Accident and Health Rating Section
Health Bureau
New York Insurance Department
One Commerce Plaza
Albany, New York 12257

Or by email: jgutterm@ins.state.ny.us

Any other questions may be directed to:

Sarah Allen
Senior Insurance Attorney
Health Bureau
New York Insurance Department
One Commerce Plaza
Albany, New York 12257

Or by e-mail: sallen@ins.state.ny.us

Very truly yours,

Very truly yours,

Charles S. Henricks
Co-Chief, Health Bureau

Thomas C. Zyra
Co-Chief, Health Bureau