



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

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**Circular Letter No. 3 (2007)
January 31, 2007**

TO: All Insurers Licensed to Write Accident and Health Insurance in New York State, Article 43 Corporations and Health Maintenance Organizations

RE: Chapter 748 of the Laws of 2006 ("Timothy's Law")

STATUTORY REFERENCE: Sections 3103, 3201, 3221, 4303 and 4308 of the Insurance Law

Chapter 748 of the Laws of 2006, commonly referred to as Timothy's Law, became effective on January 1, 2007. The law amends Sections 3221 and 4303 of the Insurance Law to require coverage for inpatient and outpatient mental health services. This circular letter is intended to provide guidance to insurers licensed to write accident and health insurance ("insurers"), Article 43 corporations and HMOs to facilitate the development and submission of policy forms and rates needed to implement the law, and to summarize the coverage that is required by Timothy's Law.

Because there was less than two weeks between the bill having been signed into law and the law's effective date, the Department recognizes the difficulty for insurers, Article 43 corporations and HMOs to timely prepare and submit policy forms and premium rates for prior approval under Sections 3201 or 4308 of the Insurance Law and offers the following procedures for implementation of Timothy's Law. Insurers, Article 43 corporations and HMOs are expected, pursuant to Section 3103 of the Insurance Law, to administer their contracts consistently with Timothy's Law and provide all of the benefits required under that law for any contract issued, renewed, modified, altered or amended on or after January 1, 2007.

Implementation Procedures

Notice To Affected Parties

Although the Department recognizes the difficulty in making timely submissions of the policy forms and premium rates, policyholders, certificateholders and members should be made generally aware of the impact of Timothy's Law on their coverage as soon as possible. Therefore, pursuant to the Thirty-Eighth Amendment to Regulation 62 (11 NYCRR 52), no later than February 15, 2007, every insurer, Article 43 corporation and HMO must send notification to all affected group and school blanket policyholders and certificateholders or members informing them of the enactment of Timothy's Law. If permitted by the group contract, an insurer, Article 43 corporation or HMO may provide notices to the group policyholder for distribution to the individual certificateholders and members. However, the insurer, Article 43 corporation or HMO shall nonetheless be responsible for ensuring that the notice is provided. In addition, an Article 43 corporation must provide notice to policyholders of individual contracts covering inpatient hospital care. The notice must describe the key features of the mental health benefits that are required under the new law. The notice must state that

a formal contract and/or certificate amendment will be forthcoming that will explain the new benefits in greater detail. The notice must also specify a toll-free customer service telephone number that members may use to contact the company with any questions regarding their mental health coverage. Since there may be premium adjustments on policies currently in effect, the notice should advise the policyholders that their premiums may be adjusted. To assist companies in developing their notices, a model notice directed to certificateholders and members is attached hereto as Attachment 1.

Policy Form and Rate Submissions

The implementation of Timothy's Law will result in premium rate adjustments on many of the affected contracts. Some contractholders may see an increase in premiums for the additional coverage provided, while other contractholders, such as small employers, may see rate reductions due to the State subsidy that will fully cover the cost to small employers for the new mandated mental health benefits. Each insurer, Article 43 corporation and HMO should review its policy forms and rate manuals for mental health coverage to determine if a policy form and/or rate submission will be necessary to comply with Timothy's Law. If an insurer, Article 43 corporation or HMO does not have the applicable rates on file for the benefits that must be provided under Timothy's Law, rate filings must be made in accordance with Sections 3201(c)(3) and 4308(b) of the Insurance Law. The actuarial memorandum and rate manual pages comprising the rate submission should include the information set forth in Attachment 2. Failure to submit conforming policy form and rate submissions by March 15, 2007 will subject the insurer to appropriate disciplinary action.

To facilitate the prompt and efficient review and approval of the formal policy form and rate submissions, the submission should contain a cover letter that clearly identifies the submission as a "Timothy's Law" submission and identifies the contracts to which the submission shall apply, as well as an explanation of how the submission changes the existing mental health benefit. For filers using the System for Electronic Rate and Form Filing (SERFF): when creating a SERFF filing, please enter "Timothy's Law" prominently in the field entitled "Filing Description."

Contract amendments and the premium rates associated with the benefit changes should be directed to Charles Rapacciuolo, Assistant Deputy Superintendent and Chief, Health Bureau, New York Insurance Department, One Commerce Plaza, Albany, NY 12257. For those submitting files through SERFF, use the website <https://login.serff.com>.

Summary of Benefit Requirements under Timothy's Law

Definitions

Active treatment is defined as treatment furnished in connection with inpatient confinement for mental, nervous, or emotional disorders or ailments that meet the standards prescribed pursuant to the regulations of the commissioner of mental health.

Biologically based mental illness is defined as a mental, nervous, or emotional disorder caused by a biological disorder of the brain which results in a clinically significant, psychological syndrome or pattern that substantially limits the functioning of the person with the illness. Under the law, the following disorders satisfy the definition of biologically based mental illness: schizophrenia/psychotic disorders; major depression; bipolar disorder; delusional disorders; panic disorder; obsessive compulsive disorders, anorexia and bulimia.

Children with serious emotional disturbances is defined as those persons under the age of eighteen years who have a diagnosis of attention deficit disorders, disruptive behavior disorders, or pervasive development disorders and one or more of the following: serious suicidal symptoms or other life-threatening self-destructive behaviors; significant psychotic symptoms (hallucinations, delusion, bizarre behaviors); behavior caused by emotional disturbances that placed the child at risk of causing personal injury or significant property damage; or behavior caused by emotional disturbances that placed the child at substantial risk of removal from the household.

Coverage Requirements

1. A group or school blanket health insurance policy issued pursuant to Section 3221 of the Insurance Law that provides coverage for inpatient hospital care must include coverage for no less than thirty days of active treatment per calendar year in a hospital defined by Section 1.03(10) of the Mental Hygiene Law and no less than twenty days of active treatment per calendar year for outpatient care in a facility issued an operating certificate by the commissioner of mental health, a facility operated by the office of mental health, a psychiatrist or psychologist, or a professional corporation or university faculty practice corporation.

2. A group or school blanket health insurance policy issued pursuant to Section 3221 of the Insurance Law that provides coverage for inpatient hospital care must include coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances, except where the policy is issued to a small group (a group with fifty or fewer employees).
3. A group health insurance policy issued to a small group (a group with fifty or fewer employees) pursuant to Section 3221 of the Insurance Law that provides coverage for inpatient hospital care must make available, and if requested by the group purchaser, provide coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances.
4. A hospital service corporation or a health service corporation that provides coverage for inpatient hospital care must include coverage for no less than thirty days of active treatment per calendar year in a hospital defined by Section 1.03(10) of the Mental Hygiene Law and no less than twenty days of active treatment per calendar year for outpatient care in a facility issued an operating certificate by the commissioner of mental health or a facility operated by the office of mental health. This requirement applies to group, group remittance and individual subscriber contracts, but not to school blanket contracts.
5. A hospital service corporation or a health service corporation that provides inpatient hospital care must include coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances, except when the coverage is issued to a small group (a group with fifty or fewer employees). This requirement applies to all group, group remittance and individual subscriber contracts, but not to school blanket contracts.
6. A hospital service corporation or a health service corporation that provides inpatient hospital care to a small group (a group with fifty or fewer employees) must make available, and if requested by the group purchaser, coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances.
7. A medical expense indemnity corporation or a health service corporation that provides coverage for physician services must include coverage for no less than twenty days of active treatment for outpatient care provided by a licensed psychiatrist or psychologist, a licensed clinical social worker, or professional corporation or university practice corporation. If the corporation would also be required to include coverage for twenty days of active treatment by virtue of it providing inpatient care, then the aggregate outpatient benefit is twenty days per calendar year. This requirement applies to all group, group remittance and individual subscriber contracts, but not to school blanket contracts.
8. A medical expense indemnity corporation or a health service corporation that provides coverage for physician services must include coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances, except when the coverage is issued to a small group (a group with fifty or fewer employees). This requirement applies to all group, group remittance and individual subscriber contracts but not to school blanket contracts.
9. A medical expense indemnity corporation or a health service corporation that provides coverage for physician services to a small group (a group with fifty or fewer employees) must make available, and, if requested by the group purchaser, provide coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances.
10. An HMO must provide coverage for no less than thirty days of active treatment per calendar year in a hospital defined by Section 1.03(10) of the Mental Hygiene Law and no less than twenty days of active treatment per calendar year for outpatient care in a facility issued an operating certificate by the commissioner of mental health, a facility operated by the office of mental health, a psychiatrist or psychologist, a licensed clinical social worker, or a professional corporation or university faculty practice corporation. This requirement does not apply to either the standardized direct payment contracts issued pursuant to Sections 4321 and 4322 of the Insurance Law or to the Healthy New York program.

11. An HMO must provide coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances, except when the coverage is issued to a small group (a group with fifty or fewer employees). This requirement does not apply to either the standardized direct payment contracts issued pursuant to Sections 4321 and 4322 of the Insurance Law or to the Healthy New York program.
12. An HMO that provides coverage to a small group (a group with fifty or fewer employees) must make available, and if requested by the group purchaser, provide coverage comparable to the medical coverage under the policy for adults and children with biologically based mental illness and children with serious emotional disturbances. This requirement does not apply to the Healthy New York program.

Exceptions to Timothy's Law

Timothy's Law does not apply to:

1. individuals who are incarcerated, confined or committed to a local correctional facility or prison, or a custodial facility for youth operated by the office of children and family services;
2. services solely because such services are ordered by a court; or
3. services determined to be cosmetic on the grounds that changing or improving an individual's appearance is justified by the individual's mental health needs.

Utilization Review

Benefits provided under Timothy's Law may be subject to the general utilization review requirements that apply to other benefits under the contract. However, section one of the legislation requires that such utilization review requirements be applied "in a consistent fashion to all services covered by such contracts." Thus, benefits provided under Timothy's Law shall not be subject to additional utilization review requirements other than those that apply to other benefits under the contract.

Cost Sharing

Benefits provided under Timothy's Law may be subject to appropriate annual deductibles and coinsurance, provided that the deductible and coinsurance are consistent with those imposed on other benefits within the policy. Under a policy offering both in- and out-of-network coverage, the deductibles and coinsurance for Timothy's Law benefits accessed in-network must be consistent with the in-network deductibles and coinsurance for other benefits accessed in-network. The deductibles and coinsurance for Timothy's Law benefits accessed out-of-network must be consistent with the out-of-network deductibles and coinsurance for other benefits accessed out-of-network.

Network Requirements

Benefits provided under Timothy's Law may be subject to the same network limitations as generally applicable to the other benefits provided under the contract.

Contact Information

Any questions regarding the premium rates may be directed to Satya N. Pabuwal, FSA, MAAA, Chief Actuary, Health Bureau, New York Insurance Department, One Commerce Plaza, Albany, NY 12257 or by e-mail to spabuwal@ins.state.ny.us or to K. Gloria Dee, FSA, MAAA, CFA, Supervising Actuary, Health Bureau, New York Insurance Department, One Commerce Plaza, Albany, NY 12257 or by email to kdee@ins.state.ny.us

Any other questions on this Circular Letter may be directed to Thomas Fusco, Associate Insurance Attorney, Health Bureau, New York Insurance Department, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, NY 14202 or by e-mail to tfusco@ins.state.ny.us.

Very Truly Yours,

Charles Rapacciuolo
Assistant Deputy Superintendent and
Chief,
Health Bureau

Attachment 1

Sample Notice for Timothy's Law

On December 22, 2006, legislation known as "Timothy's Law" was signed into law. It changes the coverage requirements for the diagnosis and treatment of mental, nervous or emotional disorders under most group health insurance policies and contracts.

Timothy's Law took effect on January 1, 2007 and applies to all policies and contracts issued or renewed on or after that date. Because of the very short time frame between when the law was signed and when it took effect, we are not able to develop the necessary formal amendments to your contract or certificate of coverage at this time. We are working on the amendments now and will get them to you as soon as they are ready. However, if your contract or certificate is one that is subject to Timothy's Law, you may be entitled to benefits right now even without formal change to your contract or certificate. The purpose of this notice is to briefly describe Timothy's Law and to explain how you can find out if the law applies to you.

If you are covered under a policy or contract issued to a small group (that is, a group with 50 or fewer eligible employees), your benefits could include coverage for the diagnosis and treatment of mental, nervous or emotional disorders for up to thirty days of inpatient care and twenty days of outpatient care. These benefits have to be provided comparable to other benefits under your contract or certificate. The deductibles, copayments or coinsurance applied to the "Timothy's Law" benefits may be no greater than those applied to other benefits under the contract.

If you are covered under a policy or contract issued to a large group (that is, a group with more than 50 eligible employees), your benefits could include coverage for the thirty days of inpatient care and the twenty days of outpatient care mentioned above as well as benefits comparable to other health benefits under the contract or certificate to treat adults and children with biologically based conditions such as schizophrenia/psychotic disorder, major depression, bipolar disorder, delusional disorders, panic disorder, obsessive compulsive disorder, bulimia and anorexia. You might also have benefits to treat children with serious emotional disturbances comparable to other benefits under the contract or certificate. Any deductible, copayments or coinsurance applied to the "Timothy's Law" benefits may be no greater than those applied to other benefits under the contract.

You can find out if you have "Timothy's Law" benefits or have your questions about "Timothy's Law" answered by calling us at [insert toll-free telephone number].

Attachment 2

The rate filings for Timothy's Law must include an actuarial memorandum and revised rate manual pages as described below.

A. Actuarial Memorandum

1. Detailed description of any existing benefit and the new benefit, including applicable copayment, deductible, and coinsurance amounts.

2. Detailed explanation and justification of the derivation of rates, including the methods and assumptions used, the underlying experience data used and modifications made thereto, the utilization frequencies, the average cost, and the net claims cost for the calculation of the premium rates. These calculations must be shown separately for each segment of business as set forth in 2.a and 2.b below, and separately for the new and existing benefit, the 30/20 benefit, the Biologically Based Mental Illness benefit, and the Children with Serious Emotional Disturbances benefit, in the format shown below:

a. Small Group

i. Mental health benefits built into the existing premium rates, if any. The rates associated with the removal of the existing benefit that overlaps the 30/20 mandated benefits should be expressed as a negative premium.

30/20 mandated benefit expressed as net per member per month (PMPM). The Department plans on using the net PMPM as the basis for determining the amount of reimbursement under the subsidy mechanism.

The policy form number(s) for which the 30/20 benefit is mandated should be identified and the total number of small groups and covered lives should also be provided.

ii. Biologically Based Mental Illness coverage on a make-available basis.

iii. Children with Serious Emotional Disturbances coverage on a make-available basis.

b. Large Group, school blanket (written by commercial insurers) and, as applicable, individual, contracts issued by Article 43 corporations:

i. Mental health benefits built into the existing premium rates, if any.

ii. 30/20 benefit.

iii. Biologically Based Mental Illness coverage.

iv. Children with Serious Emotional Disturbances coverage.

c. If the net PMPM is based on a capitated cost, please provide a copy of the

relevant page(s) from the capitation agreement to show the capitation.

d. The breakdown of the non-claims expense component into administrative expenses, commissions, contribution to statutory reserve and surplus, etc.

e. The expected loss ratio.

f. Actuarial certification, separately for Small Group, and Large Group and for school blanket (written by commercial insurers) and, as applicable, individual coverage issued by Article 43 corporations.

B. Rate Manual

1. Numbered rate manual pages with a description of benefits and premium rates separately for Small Group, and Large Group and for school blanket (written by commercial insurers) and, as applicable, individual coverage issued by Article 43 corporations.

2. Timothy's Law may require benefit changes for policies that are issued or renewed in 2007 prior to the Department's approval of requested rate increases for such policy forms. Insurers, Article 43 corporations and HMOs may, at their option and consistent with the terms of their contracts, implement the full annual impact for the policy year of the requested rate increase on a pro rata basis over the months remaining between the Department's approval date and the next renewal date. If this option is elected by an insurer, Article 43 corporation or HMO, it shall be clearly described in the rate manual pages set forth in B.1., above.

3. Timothy's Law may result in a premium reduction under small group policies issued or renewed in 2007 because of the required state subsidy of the mandated benefits. If premiums are reduced, then insurers, Article 43 corporations and HMOs must provide a full premium credit or refund to affected small groups for the amount of the approved premium reduction measured from the renewal date or issue date.