

**INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
FIFTH AMENDMENT TO REGULATION NO. 172
(11 NYCRR 83)**

**FINANCIAL STATEMENT FILINGS AND ACCOUNTING
PRACTICES AND PROCEDURES**

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law, Sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law, and Chapter 599 of the Laws of 2002, do hereby promulgate the Fifth Amendment to Part 83 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 172) to take effect upon publication in the State Register to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

Subdivision (c) of Section 83.2 of Part 83 is amended to read as follows:

(c) To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the *Accounting Practices and Procedures Manual as of March [2004*]2005** ("Accounting Manual") includes a body of accounting guidelines referred to as *Statements of Statutory Accounting Principles* ("SSAPs"). The Accounting Manual shall be used in the preparation of Quarterly Statements and the Annual Statement for 2005, which will be filed in 2006.

The footnote to subdivision (c) of Section 83.2 is amended to read as follows:

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Subdivision (m) of Section 83.4 is amended to read as follows:

(m)(1) For life insurers, Paragraph 8 of SSAP No. 40 *Real Estate Investments* is not adopted. Depreciation on real estate investments owned by life insurers shall be computed at a rate no greater than two and one-half percent per annum, in accordance with Section 1405(b)(1)(C) of the Insurance Law.

(2)(i) For Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, SSAP No. 40 *Real Estate Investments* is adopted with the following addition:

In accordance with Section 4310(l) of the Insurance Law, in determining the financial condition of Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Service Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, less encumbrances. Market value shall be determined by an independent appraisal undertaken annually, no earlier than September 30 of each year, by a member of the Appraisal Institute, 55 West Van Buren Street, Suite 1000, Chicago IL 60607. (website address is <http://appraisalinstitute.org>.) This option is not applicable to for-profit corporations authorized pursuant to Article 44 of the Public Health Law.

(ii) Real estate “owned and held” and “utilized in the ordinary course of business” as set forth in subparagraph (m)(2)(i) of this subdivision shall have the same definition as “property occupied by the company” as set forth in Paragraph 5 of SSAP No. 40 *Real Estate Investments*.

(iii) The provisions of paragraph 11 of SSAP No. 40 shall govern the independent appraisal requirement set forth in subparagraph (m)(2)(i) of this subdivision.

(iv) The election to value real estate at either its current amortized book value or at ninety percent of its current market value, less encumbrances, shall be applied to the valuation of all property not held for sale. As of any determination date either all real estate shall be valued at current amortized book value or all real estate shall be valued at ninety percent of its current market value, less encumbrances. Changes in the statement value of real estate held under this election shall be accounted for as unrealized capital gains or losses.

(v) If an entity elects to value its real estate at ninety percent of its current market value, less encumbrances, in addition to the Schedule A filed as part of the NAIC Annual Statement Health Blank, a Supplemental Schedule A must be completed for what the current amortized book value would be if the entity had not made such an election as of the determination date. A Supplemental Schedule A is herein defined as a Schedule A submitted for informational purposes only, not intended to supersede the Schedule A filed as part of the NAIC Annual Statement Health Blank. The completed Supplemental Schedule A shall be submitted annually on or before the first day of March for Article 43 corporations and on or before the first day of April for not-for-profit Health Maintenance Organizations as a supplement to the NAIC Annual Statement Health Blank in support of the note requirement of subparagraph 83.4(m)(2)(vii) of this subdivision.

(vi) Notwithstanding the valuation methodology permitted in subparagraph (m)(2)(i) of this subdivision and the instructions of subparagraph (m)(2)(iv) of this subdivision, properties that the reporting entity has the intent to sell, or is required to sell, shall be classified as properties held for sale and carried at the lower of depreciated cost or current market value less encumbrances and estimated sales costs consistent with the requirements of paragraph 10 of SSAP No. 40.

(vii) An entity which elects to change its valuation of real estate pursuant to subparagraph (m)(2)(i) of this subdivision shall disclose all of the following in the notes to its annual and quarterly financial statements:

- a. The current amortized book value of each property.
- b. The current market value and ninety percent of the current market value, less encumbrances, of each property.
- c. The determination date of the annual appraisal.
- d. The name and qualifications of the independent appraiser.

(viii) Appraisals obtained in satisfaction of subparagraph (m)(2)(i) of this subdivision shall be maintained in good order and shall be readily available for examination.

Subdivision (n) of Section 83.4 is amended to read as follows:

(n)(1) Paragraph [5]6 of SSAP No. [46]88 *Investments in Subsidiary, Controlled, and Affiliated Entities, A Replacement of SSAP No. 46*, is not adopted. Pursuant to Section 1501(c) of the Insurance Law, the superintendent may determine upon application that any person does not, or will not upon taking of some proposed action, control another person. 10 NYCRR 98-1.9(d) authorizes the Commissioner of Health to make a similar determination with respect to organizations with a certificate of authority pursuant to Public Health Law Article 44.

(2) Paragraph [7]8 of SSAP No. [46]88 is not adopted with respect to subsidiaries that are insurers. Pursuant to Section 1414(c)(2) of the Insurance Law, the shares of an insurer that is a subsidiary shall be valued at the lesser of its market value or book value as shown by its last annual statement or the last report on examination, whichever is more recent.

(3) Paragraph [7 b)(i)]8(b)(i) of SSAP No. [46]88 is not adopted with respect to Public Health Law Article 44 Health Maintenance Organizations which are subsidiaries and which record goodwill as an admitted asset pursuant to Section 83.4(t) of this Part. Investments in such entities shall be recorded based on the underlying statutory equity of the respective entity's financial statements, including an admitted asset for goodwill as provided for in Section 83.4(t) of this Part.

Subdivision (t) of Section 83.4 is amended to read as follows:

(t) Paragraph 7 of SSAP No. 68 *Business Combinations and Goodwill* is not adopted. Section 1302(a)(1) of the Insurance Law shall apply. Goodwill recorded as an admitted asset on the books of a Public Health Law Article 44 Health Maintenance Organization, Integrated Delivery System, Prepaid Health Services Plan or Comprehensive HIV Special Needs Plan as of December 31, 2000[, which is in compliance with Generally Accepted Accounting Principles,] shall continue to be treated as an admitted asset on Financial Statements filed with the superintendent or the Commissioner of Health. Goodwill shall be written off over its useful life. The period of amortization shall not exceed 40 years.

Subdivision (v) of Section 83.4 is amended to read as follows:

(v) Paragraph 9 of SSAP No. 73 *Health Care Delivery Assets – Supplies, Pharmaceutical and Surgical Supplies, Durable Medical Equipment, Furniture, Medical Equipment and Fixtures, and Leasehold Improvements in Health Care Facilities* is not adopted. Durable medical equipment, furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated utilizing a depreciation schedule no less conservative than that set forth in the latest revision of *Estimated Useful Lives of Depreciable Hospital Assets (Revised [1998]2004 Edition)***. The document may also be viewed at the New York State Insurance Department's New York City office at 25 Beaver Street, New York, NY 10004. Lease improvements in health care facilities shall be amortized against net income over the shorter of their estimated useful life or the remaining life of the original lease excluding renewal or option periods, using methods detailed in SSAP No. 19.

The footnote to subdivision (v) of Section 83.4 is amended to read as follows;

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I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the forgoing is the Fifth Amendment to Part 83 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 172), promulgated by me on December 21, 2006 pursuant to the authority granted by Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law, Sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law, and Chapter 599 of the Laws of 2002, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on October 25, 2006. No other publication or prior notice is required by statute.

Howard Mills
Superintendent of Insurance

Dated: December 21, 2006