

December 1, 1976

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 21 (1976)

TO: ALL INSURERS INCLUDING ARTICLE IX-C CORPORATIONS, LICENSED TO WRITE ACCIDENT & HEALTH INSURANCE IN NEW YORK STATE

RE: REQUIREMENT FOR SECOND SURGICAL OPINION BENEFIT IN ACCIDENT AND HEALTH INSURANCE CONTRACTS

Recognizing the need to question the necessity of many surgical procedures in an effort to improve the quality of care and eliminate unnecessary hospitalization, Sections 5, 6 and 7 of Chapter 955 of the Laws of 1976 were enacted. This legislation requires that policies or contracts issued in New York State on or after August 26, 1976 which provide coverage for in-patient surgical care shall include coverage for a second surgical opinion by a qualified physician on the need for surgery.

A number of questions have been raised by insurers concerning the implementation of this legislative mandate. This circular letter sets forth the Insurance Department's interpretation concerning implementation of the law and our guidelines for approval of required policy provisions or policy amendments. Chapter 955 of the Laws of 1976 became effective on August 26, 1976, thirty days after it became law. The limited time between the day the bill became law and its effective date has made it impossible for insurers to develop a second surgical opinion program, draft contracts and riders and receive Department approval as required by law. The law, however, is effective and insurers should be prepared to provide coverage for a second surgical opinion to any insured entitled to such benefit on an administrative basis until such time as contracts are redrafted or riders attached to the policies.

The law requires coverage for a second surgical opinion on all new policies and contracts issued after August 26, 1976 and on existing individual policies and Article IX-C Corporation contracts issued prior to June 1, 1976 on the first anniversary date thereafter. A hiatus was created with regard to policies and contracts issued between June 1, 1976 and August 26, 1976. There is no apparent reason for this hiatus and, thus, to insure equitable application of the law, the Department will interpret the provisions relating to amendment of existing contracts to require the addition of the second surgical opinion benefit to all individual policies and Article IX-C Corporation contracts issued prior to August 26, 1976 on the first annual anniversary date thereafter.

The Department guidelines for approval of policy provisions or policy riders to comply with the second surgical opinion legislation are as follow:

1. A second surgical opinion by a "qualified physician", as that term is used in the law, requires the opinion be given by a board certified specialist who by reason of his specialty is an appropriate physician to consider the surgical procedure being proposed. The original recommendation for surgery must be given by the insured's surgeon, who need not be board certified or by another board certified specialist.

2. The obtaining of the second surgical opinion must be at the option of the insured, except that in group and master

group cases a mandatory program may be considered for approval by the Department.

3. The benefit of a second surgical opinion by a qualified physician on the need for surgery shall be applicable to all in-patient surgical procedures of a non-emergency nature covered by the policy. The benefit shall be payable only if the patient is examined in person by the physician rendering the second surgical opinion and a written report is submitted to the insurer.

4. The second surgical opinion can be rendered by a board certified specialist selected from a panel of specialists designated by the insurer or the insurer may provide the insured a list of board certified specialists in the area, or, refer the insured to the local Medical Society, local chapter American College of Surgeons, County Health Department or hospital for a list of board certified specialists.

5. If a board certified specialist renders a second surgical opinion and also performs the surgery, no second surgical opinion benefit will be payable under the contract.

6. The benefit payment for the second surgical opinion should be an amount which is reasonably related to the amounts payable under the policy for covered surgical procedures and may include reimbursement for ancillary services, such as x-rays and laboratory tests.

7. The second surgical opinion benefit shall be added to all new and existing policies and contracts as required by the law without a premium increase. The anticipated savings in hospital and medical costs payable by the insurer should more than offset the cost of the second surgical opinion program.

8. Insurers should collect and maintain experience data concerning the second surgical benefit, including at least a tabulation of cases confirmed and not confirmed for surgery, so that an on-going evaluation of the program can be made by the insurer and the Insurance Department.

[SIGNATURE]

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Superintendent of Insurance