

January 19, 1981

SUBJECT: INSURANCE

WITHDRAWN

CIRCULAR LETTER NO. 2 (1981)

January 19, 1981

TO: ALL INSURERS LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE, INCLUDING ARTICLE IX-C CORPORATIONS

RE: COORDINATION OF BENEFITS

Insurers writing group health insurance policies providing hospital-medical-surgical benefits include in their contracts provisions which coordinate their benefits with similar benefits provided in other group health insurance plans. The coordination provisions used by insurers in New York have followed the NAIC Model Coordination of Benefits provision. The New York Insurance Department has not formally adopted the NAIC Model as a standard, but we have permitted its use subject to some modifications.

In the past several years, a portion of the rules contained in coordination of benefits provisions establishing the order of benefit determination has been criticized. The rule which has caused the greatest concern states:

"The benefits of a Plan which covered the person on whose expenses claim is based as a dependent of a male person shall be determined before the benefits of a Plan which covers such person as a dependent of a female person."

It has been alleged that this rule is sex discriminatory.

In practice, the application of the quoted rule has caused difficulties in claims settlements where the person for whom claim has been made is a dependent child of parents who are divorced, had their marriage annulled or are separated. Claim settlements have been further complicated by court determinations regarding custody and financial responsibility. What has resulted is confusion to some insureds and inconsistent claims practices by insurers.

The NAIC Model Coordination of Benefits provision, including the rules establishing the order of benefit determination, were developed in the early 1960's. The rule quoted above was not written to address situations where parents of a dependent child are divorced, had their marriage annulled, or are separated.

The rules establishing the order of benefit determination, in the NAIC Model Coordination of Benefits provision, have recently been amended to address situations involving coverage of dependent children where parents are divorced, had their marriage annulled, or are separated. The rule quoted above has been amended to read as follows:

"The benefits of a Plan which covers the person on whose expenses claim is based as a dependent of a male person shall be determined before the benefits of a Plan which covers such person as a dependent of a female person; except that in the case of a person for whom claim is made as a dependent child.

(i) when the parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.

(ii) when the parents are divorced and the parent with the custody of the child has remarried, the benefits of a Plan which covers the child as a dependent of the parent with custody shall be determined before the benefits of a plan which covers that child as a dependent of the step-parent, and the benefits of a plan which covers that child as a dependent of the step-parent will be determined before the benefits of a plan which covers that child as a dependent of the parent without custody.

Notwithstanding (i) and (ii) above, if there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child."

Insurance carriers writing group health insurance in this state are advised that the Insurance Department will approve only Coordination of Benefits provisions containing the amended NAIC Model rule as quoted above. With regard to in-force group policy forms containing a Coordination of Benefits provision, insurers are urged to revise the provision to comply with the NAIC Model rule at the next most convenient opportunity.

Very truly yours,

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance