

June 29, 1982

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 21

June 29, 1982

TO: ALL INSURERS LICENSED TO WRITE LIFE AND ACCIDENT AND HEALTH INSURANCE IN NEW YORK STATE

RE: NEW YORK INSURANCE DEPARTMENT REQUIREMENTS FOR APPROVAL OF SOCIAL INSURANCE SUBSTITUTE DISABILITY INCOME COVERAGES .

Social insurance substitute disability coverage is designed to avoid or minimize the duplication of benefits with defined social insurance programs specified in the policy form. Policy provisions are typically designed to require an insured to apply for benefits under defined social insurance programs and in the event benefits are available they are taken into consideration in the insured's benefit payments under the social insurance substitute disability coverage contained in the insurance policy form. The following is a summary of the conditions this Department will require of insurers submitting such coverage for approval.

#### Acceptable Social Insurance Programs

The Department will not approve a policy provision which refers to "any government program" to describe the type of social insurance program which is the subject of non-duplication. Workers' Compensation, Occupational Disease Laws, and Social Security are the only permissible programs. No fault automobile insurance is not a permitted program because of the lack of uniformity of no-fault coverage throughout the country and the fact that the overall automobile no-fault limit is often a combined limit involving medical expenses and disability benefits.

#### Titles

The title "Social Insurance Supplement" is not acceptable because it implies a benefit that is in addition to social insurance programs. The title should state that the coverage takes the place of, is in lieu of, or substitutes for the benefits provided by social insurance programs, not that it is an add-on to those social insurance programs.

#### Renewal Provisions

If the social insurance substitute coverage is not unconditionally guaranteed renewable or non-cancellable to age 65, and if it is attached to a non-cancellable or a guaranteed renewable policy as a rider, the social insurance substitute coverage must have its own renewal provision and appropriate caption. If the social insurance substitute coverage is a separate provision of the policy, both sets of renewal conditions (or appropriate captions with cross references) must be clearly set forth on the face page. The captions must clearly highlight the differences in the renewal conditions.

If a rider is used, some reference to the different renewal provision in the rider should appear in the schedule page.

If the renewal provision applicable to the social insurance substitute coverage differs from the renewal provision of

the policy, it should state the actual conditions for renewal or termination and the words "non-cancellable", "guaranteed renewable" or "guaranteed continuable" should not be used. In the case of a rider, the schedule page of the policy or a special caption on the rider must bear a legend stating in substance; "The renewal provision of the social insurance substitute rider differs from that of the policy".

In the case of a noncancellable policy, the policy may provide that the premium for the social insurance substitute coverage can be increased if Congress eliminates the Social Security disability benefit, but not in excess of the premium rate at issue for base coverage of the same amount.

#### Application and Re-Application for Coverage Under Social Insurance Programs

The Department will approve provisions that require insureds to apply for coverage under a social insurance program when it appears entitlement to some benefits exist.

An insurer may also reserve the right to require an individual whose claim for Social Security benefits has been denied to periodically re-apply for benefits so long as the standards for re-application are reasonable.

#### Requests for Reconsideration and Appeal of Denials

The Department will approve a provision that requires the insured to request reconsideration of a denied application for coverage under a social insurance program. An insurer can also require an appeal if an appeal appears reasonable under the circumstances, but a provision will not be approved that requires an insured denied coverage under a social insurance program to incur expenses in pursuing an appeal.

#### Failure to Apply for Coverage Under Social Insurance Programs

The Department will not approve a provision which predicates the payment of all or part of any guaranteed base benefits in the policy upon the insured applying for coverage under a social insurance program.

The Department will not approve a provision under which the policyholder would forfeit in the future the right to all or a part of the social insurance substitute disability benefit unless he applies for coverage under a social insurance program within a specified time, (such as 30 days) after the date on which he is first entitled to apply. The Department has no objection, however, to a provision which would suspend the social insurance substitute disability benefits in a manner such as follows:

- 1) A policy or rider furnishing social insurance substitute disability benefits may provide that, upon determination that the circumstances of a claim make it reasonably probable that the insured is entitled to apply for coverage under a social insurance program, the insurer may require the insured to apply under such program within ten days after receipt of written notice from the insurer of his obligation to do so. Such a policy or rider may further provide that, unless within 30 days thereafter, the insurer is furnished with satisfactory evidence that such application has been made within ten days, it will discontinue the payment of its substitute disability benefits under the policy from the end of the ten day period after receipt of such notice and will not resume the payment of such benefits until a date on which such application has actually been made.
- 2) With respect to Social Security Disability Benefits, if the elimination period for the social insurance substitute disability benefits is between 6 months and one year, the insurer may require the insured to apply for Social Security Disability benefits not later than five months after the onset of total disability, and may further provide that, in the event such application for benefits is deferred later than such specified time, the length of the elimination period applicable to social insurance substitute disability benefits may be increased by the length of such deferment of application.

### Future Increase Option

Provisions are permissible under which an insured has the right to increase benefits (under social insurance substitute coverages or under other coverages), if his earnings permit additional benefits without evidence of medical insurability.

### Direct Offset Coverage

The Department does not believe that Section 164 of the New York Insurance Law can reasonably be interpreted to permit the so-called direct offset coverage. Under direct offset coverage, disability benefits otherwise payable are reduced dollar for dollar by the amount of the benefits paid under a social insurance program.

### Indirect Offset Coverage

Some policies or riders contain indirect offsets of benefits from Social Security and Workers' Compensation, and base the amount of monthly indemnity on percentage loss of income. Under this approach, where the benefit payable is based upon the difference between pre-disability income and income during disability, social insurance benefits from such sources as Workers' Compensation and Social Security plans are included with any current earnings in determining current income in the application of the income replacement formula.

This approach is not presently approvable in New York.

### Overinsurance Provisions

The Department objects to the use of provisions which tend to encourage overinsurance (such as presumptive total disability benefits), simultaneously with social insurance substitute coverage as inherently in conflict with the principal purpose of social insurance substitute disability coverage.

### Reporting Experience to the New York State Insurance Department

1. An insurer shall maintain experience data under individual disability insurance forms providing social insurance substitute benefits and report such experience as required herein.
2. The method for reporting the experience shall be one of the following:

#### A. Loss Ratio Method

Maintain records of earned premiums, incurred claims and increases in policy reserves on the same basis as required for the accident and health policy experience exhibit on all forms that include social insurance substitute disability coverage. Separate data should be maintained for each policy form, except that experience under forms which provide substantially similar coverage may be combined. An insurer may report its experience on forms containing social insurance substitute disability coverage on either of the following two methods:

- a) Separately for the social insurance substitute disability coverage and for other coverage, if any, or;
- b) Separately for those policies with social insurance substitute disability benefits and those without such benefits.

The Department would prefer that data be split both by (a) and (b), above. Although we will accept (a) alone or (b) alone, at least until the report due in 1986, we may thereafter require both (a) and (b), if developing experience indicates such action to be desirable.

B. Actual to Expected Method

Maintain ratios of actual claim experience to expected claim experience, consisting of rates of claims and rates of recovery/ average claim duration or claim costs. Expected values are to be based on the rate assumptions used in calculating the premium being charged.

C. Other Methods

Subject to the prior written approval of the Superintendent of Insurance, another method which adequately reports the experience of the social insurance substitute disability benefit may be adopted.

3. Data shall be maintained separately for each calendar year of experience and on a cumulative inception-to-date basis, except that no data will be required for issues of 1980 and prior years. In the event that an insurer should, at some future time, submit a rate increase request for the Department's approval, with respect to a guaranteed renewable social insurance substitute disability benefit, it will be necessary for at least some data to be provided for issues of 1980 and prior years, in order to support such approval.
4. An insurer shall notify the Department and obtain our prior approval if it intends to change the method by which data is maintained.
5. Where exact data is not available, acceptable methods of approximation may be used.
6. Data shall be submitted to this Department for each calendar year no later than July 1 of the following year. We will not require the submission of any data by an insurer adopting method (A) prior to 1983, or by an insurer adopting method (B) prior to 1985. The Department, on approving method (C), will specify the first year for which data must be submitted.
7. Approval of any form containing social insurance substitute disability benefits will be conditioned on a commitment by the insurer to maintain the data as described above.
8. In evaluating the credibility of the experience data, due consideration shall be given to all relevant factors such as:
  - (a) The statistical credibility of the data, i.e., limited exposure or low expected frequency claim;
  - (b) Experience and projected trends;
  - (c) The concentration of business in the early policy durations where select morbidity, preliminary term reserves, and other possible factors may result in low loss ratios; and
  - (d) The mix of business by risk classification.

[SIGNATURE]

ALBERT B. LEWIS

SUPERINTENDENT OF INSURANCE