

March 15, 1985

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 8 (1985)

March 15, 1985

TO: All Insurers, including Article 43 Corporations, licensed to write Accident and Health Insurance in New York State

RE: Chapter 996 of the Laws of 1984: Coverage for Services within the Lawful Scope of Practice of a Duly Licensed Registered Professional Nurse

Chapter 996 of the Laws of 1984, effective April 1, 1985, amends Sections 3221 and 4303 of the New York Insurance Law and provides that every insurer issuing a group policy for delivery in this state, and every health service or medical expense indemnity corporation issuing a group contract or a group remittance contract, must make available coverage for services of a duly licensed registered professional nurse acting within the lawful scope of his/her practice if the services are reimbursable under the contract.

Certain questions have arisen regarding the implementation of this legislation. In order to assist insurers in filing and obtaining approval of appropriate policy forms in conformance with Chapter 996, the Department is providing the following questions and answers relating to this legislation:

1. Question: What types of health services performed by RN's will be covered under health insurance contracts?

Answer: Home and office visits, often included in comprehensive coverage such as major medical insurance, appear to be the types of services envisioned by this legislation. Under a contract providing coverage for home and office visits, insureds would be entitled to coverage for services provided by RN's in the home or in a nurse's office as long as the service is within the lawful scope of practice of the nurse and covered under the contract had it been furnished by a physician. Chapter 996 is a freedom of choice provision which is not intended to add any benefits to the basic coverage.

2. Question: Chapter 996 states that coverage shall be provided for those services which are within the lawful scope of practice of a duly licensed registered professional nurse. What services comprise a RN's lawful scope of practice?

Answer: The Insurance Department is unable to define all services which may be within the lawful scope of practice of a RN. In any case where insurers are billed for services rendered by a RN where scope of practice may be in question, insurers are advised to contact the State Board for Nursing of the New York State Education Department at the Cultural Education Center, Empire State Plaza, Albany, New York 12230, to obtain guidance on those services which may lawfully be performed by a RN.

3. Question: What is the appropriate level of reimbursement at which RN's should be paid under Chapter 996?

Answer: The level of reimbursement for nursing services is not specified in the legislation. RN's should be reimbursed at a payment level which takes into account the experience and education of the RN as well as the amount of reimbursement made to other providers, such as physicians, for the same services.

4. Question: What is a proper premium for this "make available" benefit?

Answer: Insurers may submit appropriate premium rates for the addition of this coverage. The Department has no objection to an insurer providing the nursing benefit without an initial rate for experience rated contracts. For Article 43 corporations issuing group remittance contracts, an appropriate rate for this nursing coverage must be submitted and approved by the Department. Rates for the nursing coverage may vary depending upon the existing benefits of any given contract to which the "make available" nursing benefit rider may be attached.

5. Question: Does Chapter 996 entitle registered nurses providing home care services to bill independently and qualify for reimbursement under the home care benefit included in health insurance contracts pursuant to Sections 3221 and 4303 of the Insurance Law?

Answer: NO. The home care mandate found in the Insurance Law requires that the home care must be provided by a certified home health agency possessing a valid certificate of approval issued pursuant to Article 36 of the Public Health Law. In addition, the Plan covering the home health service must be established and approved in writing by a physician. The general freedom of choice provision found in Chapter 996 does not supersede the specific requirements incorporated in the home care legislation identifying criteria which must be satisfied in order to qualify for reimbursement.

6. Question: When the "make available" nursing benefit has been added to group coverage, may an insurer predicate the availability of a private duty nursing benefit, or any other benefit which can be provided by a nurse, on the certification or recommendation of the need for nursing services by a physician?

Answer: NO. Chapter 996 allows a RN to be reimbursed for services, if covered under the contract, which are within the lawful scope of practice of the RN. An insurer cannot limit this reimbursement by making coverage for the services provided by the nurse available only upon the certification or the recommendation of a physician of the need for the nursing services. Insurers may, of course, contest the necessity for any services rendered by a RN, or any other health provider.

7. Question: What deductible and coinsurance amounts may be imposed on this "make available" coverage?

Answer: Only deductibles and coinsurance amounts which are consistent with those imposed on a given policy will be approved as in compliance with Chapter 996. Consistency shall be based upon the deductible and coinsurance amounts in the base coverage which apply to the majority of benefits. For example, a major medical contract with a \$ 100 deductible and a 20% co-pay on all services except mental and nervous care, on which a \$ 200 deductible and 50% coinsurance is imposed, must apply the \$ 100 deductible and 20% coinsurance to this nursing coverage. A maximum benefit limit may not be included with the "make available" coverage required by Chapter 996. Any such maximum benefit limit imposed on nursing services must be included in the base coverage.

Very truly yours,

[SIGNATURE]

James P. Corcoran

Superintendent of Insurance