

June 1, 1988

SUBJECT: INSURANCE

Circular Letter No. 13 (1988)

Dated: June 1, 1988

TO: ALL INSURANCE LAW ARTICLE 43 CORPORATIONS AND PUBLIC HEALTH LAW ARTICLE 44
HEALTH MAINTENANCE ORGANIZATIONS

Re: Rate Adjustment Applications and Preliminary Hearing Criteria

This Circular Letter updates the Department's guidelines on the captioned subject, which were previously published in Circular Letter No.1 (1973).

The Insurance Department has reviewed the procedures for processing rate adjustment applications made by corporations organized under Article 43 of the Insurance Law or Article 44 of the Public Health Law and believes that it would be useful to: (i) set forth the information needed by the Superintendent in determining whether an applicant will be required to hold its own preliminary public hearing provided for in Insurance Law Section 4308 (c)(2) prior to the filing of an application for a rate adjustment; (ii) advise applicants of the time needed to process rate adjustment applications; and (iii) describe the format and content of hearing notices for both the preliminary hearing and the Department's Section 4308 (c)(3) hearing.

There is an apparent misunderstanding regarding the purpose of having a corporation hold a preliminary hearing prior to the formal filing of an application for a rate adjustment. The purpose of the preliminary hearing is to enable the Board of Directors of a plan to assess public attitudes and concerns before filing an application for a rate adjustment. The Department expects that the preliminary hearing will be utilized for its intended purpose rather than viewed as a meaningless step in the process of formulating a decision on whether to request a rate adjustment. This is particularly so when matters of special policy importance are involved. The guidelines set forth in this Circular Letter outline the factors that should be considered by the corporation and those that will be considered by the Department in determining whether a preliminary public hearing should be held.

The Department has been experiencing a great deal of difficulty in processing rate adjustment applications in a timely manner because of the increased volume of applications and the fact that many are filed by various applicants to be effective on the same date. Sufficient time is need to analyze and process rate adjustment applications and to give adequate notice to affected subscribers. Therefore, we have also established guidelines for filing rate adjustment applications.

Finally, it is also clear that there has been great variety in the format and content of the notices that are required to be published in local newspapers by Section 4308 for both the preliminary and Insurance Department hearing. Sometimes these notices appear as ordinary legal notices which are often overlooked by the public. Furthermore, the information set forth in notices varies significantly. The guidelines describe an acceptable notice format, and establish, in general but flexible terms, the information that should be set forth in each notice. Deviations from the suggested format should be held to a minimum.

Guidelines for Requesting a Waiver of the Preliminary Public Hearing

(1) If an applicant wishes the Superintendent not to require a preliminary public hearing it should notify the Department of this request by letter at least four months prior to the effective date of a contemplated rate adjustment. The letter should detail why the applicant believes that a preliminary hearing should not be held and it should at least provide the following information:

- the number of subscribers affected by the adjustment;
- the contemplated effective date of the adjustment;
- whether the application will involve a discontinuance of a class of policies or reduction of benefits other than a reduction designed to coordinate benefits with a State or Federal health insurance program;
and
- any proposed changes in the schedule of allowance or its equivalent and the amount of such changes.

(2) In determining if a preliminary public hearing will be required, the Superintendent will review the information submitted by the applicant under guideline (1) above, the efforts made by the applicant to afford its subscribers an opportunity to participate in the governance of the Plan's affairs, and the subscribers' previously expressed interest in such participation.

Guidelines for Filing a Rate Adjustment Application

- (1) If a rate adjustment application is received less than three months prior to its desired effective date the Superintendent may not be able to act upon it by such date.
- (2) The applicant should file an original and six copies of the application and supporting data with the Department's New York City Office, and one copy with the Department's Albany Office and, if Erie County residents are affected by the adjustment, one copy with the Department's Buffalo Office. An Article 44 Health Maintenance Organization should file three additional copies of the application and supporting data with the Department of Health.
- (3) All Department requests for additional information are to be complied with prior to date of the Insurance Department's Section 4308 (c)(3) hearing. In the event this information is not forthcoming prior to the hearing, the Department may postpone and reschedule the hearing date.
- (4) The Insurance Department will notify an applicant regarding the time and place of the Department's hearing on a proposed application.

Guidelines for Preparation of Required Notice of Hearing

(1) The applicant will have the responsibility of preparing the required notice of hearing. The applicant should submit a draft copy of such notice to the Insurance Department for the Department's review, with the names of the newspapers of general circulation where such notice will be published. The Superintendent may also require the applicant to publish additional copies of such notice in other newspapers of general circulation which publish in one or more of the territories where the applicant is authorized to do business. The applicant will be responsible for making all necessary arrangements for the publication of the notice in accordance with the provisions of Section 4308 (c) and pay all necessary expenses associated with the publication.

(2) The required notice for a hearing should be approximately 6 inches in length and 3 1/2 inches in width. Each notice should have the following headline prominently displayed in bold-face capital letters no less than 1/4 of an inch in

height:

NOTICE OF A PUBLIC HEARING ON AN APPLICATION FOR A RATE ADJUSTMENT BY (APPLICANT'S NAME)

(3) The notice for the hearing should be written in simple, non-technical language and at a minimum contain the following information:

- the time, date and place of the hearing;
- the number of subscribers affected by the rate adjustment;
- the counties affected by the applicant's rate adjustment;
- the average percentage rate of the adjustment for Medicare and non-Medicare contracts and the contemplated effective date;
- statements setting forth the Superintendent's right to disapprove the requested adjustment if he finds that the requested premiums are excessive, inadequate or unfairly discriminatory, and his right to establish a modified rate and that as a result of any such modification the approved rate may be higher or lower than the rate requested in the application;
- whether the proposed application contemplates the discontinuation of a class of policies, a reduction of benefits other than a reduction designed to coordinate benefits with a State or Federal health insurance program or involves an increase resulting from an upgrading of the schedule of allowances or its equivalent and the amount of increase of the schedule of allowances;
- that the application and supporting data are available for inspection at the applicant's principal office, Insurance Department's offices in New York City, Albany and, if applicable, Buffalo and as respects Article 44 Health Maintenance Organizations at the Department of Health's offices, and the addresses of these offices;
- that a narrative summary describing the reasons for the rate adjustment is available from (Name, address and telephone number of Applicant);
- that persons unable to attend the hearing may submit a written statement, within ten days from the hearing date, for inclusion in the official record; and
- that written requests to testify and statements for the record should be sent to:

Public Information Office
New York State Insurance Department
160 West Broadway
New York, New, York 10013-3393

Notices of a preliminary public hearing held by the applicant should be similar in style and format.

Please acknowledge receipt of this letter to Mrs. Veronica Hee Bruckstein, Associate Insurance Examiner, Health Care Finance Unit, Property Companies Bureau, 160 West Broadway, New York, New York 10013-3393.

Very truly yours,

[SIGNATURE]

James P. Corcoran

Superintendent of Insurance