



STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10013

NOTE: WITHDRAWN EFFECTIVE OCTOBER 11, 2002

**Circular Letter No. 17 (1995)
October 30, 1995**

TO: All Commercial Insurers Licensed to Write Accident and Health Insurance in New York State

RE: Supplementary Payment Rate Conversion Factor (SPRCF) Statewide Pool

Chapter 55 of the Laws of 1992 imposed an additional 11% surcharge on hospital bills covering discharges between April 1, 1992 and March 31, 1993 that were insured by commercial accident & health insurers and created the SPRCF Statewide Pool. This Department issued Circular Letter No. 10 of 1992 on June 16, 1992 (copy enclosed){Footnote 1} to effectuate the requirements of Chapter 55.

Payment of the 11% surcharge was stayed by the United States District Court for the Southern District of New York as a result of two cases brought by insurers: *Travelers Insurance Company v. Cuomo and Health Insurance Association of America v. Chassin*. The District Court required that the surcharge amounts be paid into "an interest - bearing escrow account pending resolution of defendants' appeals." The determination of the District Court was affirmed by the United States Court of Appeals for the Second Circuit.

On April 26, 1995 the United States Supreme Court in *New York State Conference of Blue Cross Blue Shield Plans v. Travelers Insurance* reversed the determination of the Circuit Court and held that the surcharge is not pre-empted by the Employee Retirement Income Security Act (ERISA). However, the determination of the Circuit Court that the surcharge was pre-empted by the Federal Employee Health Benefits Act (FEHBA) was not disturbed by the decision of the Supreme Court.

Accordingly, all amounts that should have been paid to the SPRCF Statewide Pool for hospital discharges between April 1, 1992 and March 31, 1993 covering ERISA insured plans are due. Consequently, affected insurers should remit any liability for 11% SPRCF payments withheld to date, along with separately calculated and stated interest, **to the appropriate hospital** by November 15, 1995.

Payments should be accompanied by sufficient documentation to enable the hospital to associate the payment to a specific claim. If possible, the insurer should furnish the hospital with a detailed listing of all claims for which payment to the SPRCF Statewide Pool was applicable for the April 1, 1992 to March 31, 1993 period.

Affected hospitals have been instructed by the Department of Health to issue amended claims to insurers for relevant hospital discharges during the above stated period, for which the 11% SPRCF had not already been billed, by November 30, 1995 (copy of Department of Health letter attached). Liability for the 11% SPRCF should be ascertained in accordance with Circular Letter No. 10 of 1992, except for insured FEHBA discharges. We request that affected

insurers review such amended claims within 31 days of receipt and either make payments, where required, **to the billing hospital** or provide a written justification that the SPRCF is not applicable to a particular claim.

In order to assist the Department of Health in reconciling statewide liability for the SPRCF, each insurer should submit, by January 15, 1996, a listing indicating for each hospital in the state aggregate SPRCF and interest amounts paid. These listings should be submitted to:

Mr. Richard Pellegrini, Director
Bureau of Financial Management and Information Support
New York State Department of Health
Room 984 Corning Tower
Empire State Plaza
Albany, NY 12237

Any questions regarding such submissions should be directed to Mr. Pellegrini at (518) 474-1673.

Hospitals have been instructed by the Department of Health to report any noncompliance by insurers to that Department. Any allegation of noncompliance will be reviewed by the Insurance Department for determination of appropriate action.

Please acknowledge receipt of this letter to the undersigned at:

New York State Insurance Department
Life & Health Bureau
Agency Building One
Empire State Plaza
Albany, NY 12257.