



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

Circular Letter No. 5 (1997)
April 4, 1997

TO: All Insurers and Fraternal Benefit Societies Licensed to Write Life Insurance and Accident and Health Insurance in New York State, Including Article 43 Corporations

RE: Oral Fluid Testing for the Human Immunodeficiency Virus

The purpose of this Circular Letter is to respond to numerous recent inquiries concerning the Department's position on the use of oral fluid testing for the human immunodeficiency virus (HIV-1) antibody in the insurance underwriting process. This Circular Letter is not applicable to health insurance coverage provided by insurers, including Article 43 Corporations, when such coverage is not permitted to be underwritten, including, but not limited to, coverage subject to the open enrollment requirements of Chapter 501 of the Laws of 1992.

An insurer may utilize an oral fluid testing protocol to detect HIV antibodies for insurance underwriting purposes in New York. A laboratory which has an oral fluid testing protocol in accordance with the United States Food and Drug Administration approved test systems and which holds a valid laboratory permit from the New York State Department of Health for such testing, would be the only appropriate facility to be utilized by the insurer. Insurers should be aware that there are only a limited number of laboratories which hold such valid permits. Oral fluid specimens are required to be tested using both ELISA screening and confirmatory Western Blot technologies in accordance with New York State Health Department permit regulations. In addition, insurers must be in compliance with the requirements of Section 2611 of the Insurance Law and Section 2782 of the Public Health Law concerning written informed consent and disclosure of confidential HIV related information.

Under the above circumstances, an insurer may utilize an oral fluid test protocol as the basis for an adverse underwriting decision.

Please direct all inquiries concerning this Circular Letter to Kathleen A. Nelligan, Associate Insurance Attorney, Life and Health Bureau, Empire State Plaza, Agency Building One, Albany, New York 12257.