



STATE OF NEW YORK
INSURANCE DEPARTMENT
AGENCY BUILDING ONE
EMPIRE STATE PLAZA
ALBANY, NY 12257

Circular Letter No. 2 (1998)
January 15, 1998

TO: ALL INSURERS AUTHORIZED TO WRITE LIFE INSURANCE, ANNUITIES OR ACCIDENT AND HEALTH INSURANCE IN NEW YORK STATE, INCLUDING ARTICLE 43 CORPORATIONS AND HEALTH MAINTENANCE ORGANIZATIONS

RE: PRELIMINARY GUIDANCE REGARDING THE EXPEDITED APPROVAL PROCEDURE IN SECTION 3201(b)(6) OF THE INSURANCE LAW

Chapter 616 of the Laws of 1997 amends Section 3201 of the Insurance Law to add an alternative policy form approval procedure that imposes time constraints on both the Department and submitting insurer and deems policy forms to be approved or denied if either the Department or the submitting insurer fails to act in a timely manner in accordance with statutory time limits. This new alternative approval procedure should allow insurers to bring products to market in an expeditious manner. The new law is effective on January 1, 1998.

The Department is committed to making this alternative procedure a viable option for insurers. However, at the outset, it should be noted that the Department intends to maintain an appropriate balance between policy forms submitted for prior approval under the existing procedures of Section 3201(b)(1) and policy forms submitted under the expedited approval procedure pursuant to the new Section 3201(b)(6). Nothing in the new legislation suggests that Section 3201(b)(6) submissions should receive higher priority than other submissions or that submissions made under Section 3201(b)(1) should be disadvantaged in any way.

It is not known how many and to what extent insurers will avail themselves of this new approval procedure. The purpose of this circular letter is to provide preliminary guidance to those insurers that are interested in submitting policy forms under this new alternative procedure. As experience develops under the new expedited approval procedure, additional guidance may be provided as needed.

To elect the expedited approval procedure, the new paragraph (6) of Section 3201(b) requires that an insurer file an expedited policy form approval application with the Superintendent. At this time, the Department does not contemplate drafting an application form for this alternative procedure. However, an insurer electing the expedited approval procedure should include a statement in bold print in the submission letter for a new policy form filing clearly indicating that the insurer has elected the Section 3201(b)(6) alternative approval procedure. Also, the caption describing the subject matter of the submission letter (and all subsequent correspondence regarding the policy form) should include the language "SECTION 3201(b)(6) DEEMER FILING" in addition to the form number, file number and other identifying information.

This statement in the submission letter and caption will allow the Department to track Section 3201(b)(6) submissions separately from Section 3201(b)(1) submissions. The Department's acknowledgement letter to

the insurer will identify the submission as a Section 3201(b)(6) submission, the date of receipt and the reviewing attorney. In addition, the acknowledgement letter will state that if the form is deemed approved, but is later found to fail to comply with applicable statutory or regulatory requirements, the superintendent may require an insurer to retroactively modify the form or order the withdrawal of approval of such form.

Section 3201(b)(6) provides that the filing must include the proposed policy forms, including rates as required, and all necessary supporting material required by rule . Insurers are advised to review the applicable submission rules in Sections 52.31, 52.33 and 52.40 of Regulation No. 62 (11 NYCRR 52) for accident and health insurance, and Circular Letters No. 4 (1963), No. 6 (1963), No. 12 (1976) and No. 4 (1983) for life insurance and annuities, as well as the statutes and regulations applicable to the type of policy form being submitted to verify that each submission is complete. As noted in Circular Letter No. 14 (1997), insurers are encouraged to contact appropriate Department personnel prior to making their submission with any questions concerning submission rules and filing requirements or for any guidance regarding the rules, regulations or statutes that apply to any insurance product intended for sale in this state. The Department website at www.ins.state.ny.us provides guidance for a number of product types.

Section 3201(b)(6) also requires that the initial filing with the Department under the alternative approval procedure include a certification signed by an officer of the insurer, who is knowledgeable of the law and regulation applicable to the type of policy form submitted, that such form and any required rates are in compliance with the applicable law and regulation to the best of his or her knowledge and belief. The Department understands that different officers of the insurer may provide the certification for various products.

The certification of compliance should make reference to any law, regulation or circular letter that specifically applies or is unique to the type of policy form (and rates as required) submitted. The certification need not refer to all generally applicable provisions. This certification will assist Department attorneys and actuaries in their initial review of the policy forms and rates.

The time constraints placed on the Department and the submitting insurer under Section 3201(b)(6) are as follows:

1. Within 60 days of receipt of the filing, the Department may terminate the expedited approval procedure by notifying the insurer that its filing is incomplete or fails to comply with applicable statutory or regulatory requirements. The notice shall indicate that the filing is being returned with no action by the Superintendent and that the period for substantive review has not commenced.
2. Within 90 days of receipt of the filing, the Department must, in writing, either approve the filing, request additional information or deny such filing by stating the reasons for disapproval. Otherwise, the filing will be deemed approved.
3. Within 45 days of receipt of such request or denial, the insurer must provide the additional information requested and respond to all objections. Otherwise, the filing will be deemed denied and the filing cannot be resubmitted for up to 90 days from the due date of such information or response.
4. Within 45 days of receipt of such information or response, the Department may, in writing, deny the filing stating the reasons for disapproval or affirmatively approve the filing. Otherwise, the filing will be deemed approved after such 45 day period.

With respect to item 1 above, the Department will identify the policy form, rate information or supporting material that is missing and/or will describe how the policy form fails to comply with the applicable statutory or regulatory requirements. In addition, where forms fail to comply with applicable requirements, the Department will review the certification of compliance to determine whether any action should be taken

regarding such certification and the officer who signed such certification. However, the Department does not contemplate taking action with respect to a certification which is based upon prior Department positions or interpretations of the applicable statutory and regulatory requirements where the prior positions or interpretations have been revised.

With respect to items 2, 3 and 4 above, the Department does not intend to send letters by certified or registered mail. The Department will assume that letters it sends to an insurer are received within five business days of the date of such letter, unless date of actual receipt can be established. If the insurer receives a letter from the Department more than five business days after the date on the letter, it should immediately contact the reviewing attorney (or actuary) upon receipt of the letter and advise the attorney (or actuary) of the actual date of receipt so that the date in which the 45 day period commences can be adjusted. Similarly, an insurer can assume that the Department will receive a response letter within five business days of the date on such letter, unless date of actual receipt can be established. If the Department receives the letter after the date of assumed receipt, the reviewing attorney (or actuary) will advise the insurer accordingly. If an insurer believes that a policy form has been deemed approved pursuant to Section 3201(b)(6), it should contact the reviewing attorney to confirm that no comment letter has in fact been sent to the insurer within the time limits prescribed by law. When a form has been deemed denied for failure to meet the time period in item 3 above, the Department will advise the insurer in writing. When the Department completes its review and the form is approved, the Department will notify the insurer in writing.

Also, with respect to items 2, 3 and 4 above, for policy form filings that require both actuarial and legal review, the Life Bureau and the Health Bureau intend to continue their practice of sending separate letters from the actuarial and legal sections. Of course, the initial legal and actuarial letters must be received within the 90 day time period. The insurer should respond to each comment letter within the required 45 day time period.

Section 3201(b)(6)(B) specifically provides that the Superintendent can require an insurer to retroactively modify a form or withdraw the approval of a form if such form is found to fail to conform with the requirements of the Insurance Law or applicable regulation. The order to withdraw or modify such form must be issued in accordance with Section 3110 or Section 3202 of the Insurance Law.

Furthermore, Section 3201(b)(6)(C) provides that, in addition to any other penalties, an insurer shall be ineligible to apply for expedited review for a period not to exceed one year if a deemed approved form is found to fail to comply with the provisions of the Insurance Law or applicable regulation. The period of ineligibility will be based on a number of factors, including any substantive harm to policy and certificate holders, the impact on the marketplace and the ability to remedy the violation.

Please direct all inquiries concerning this Circular Letter to Francis F.E. Morse, for life insurance and annuity legal issues; Austin J. Rinella, for accident and health legal issues; William B. Carmello, for life insurance and annuity actuarial and rating issues and James M. Gutterman, for accident and health insurance actuarial and rating issues at the following address, Life Bureau, (for Messrs. Morse and Carmello) or Health Bureau (for Messrs. Rinella and Gutterman), New York State Insurance Department, Agency Building One, Empire State Plaza, Albany, New York 12257.

Very truly yours,

Fredric L. Bodner, J. D.
Assistant Deputy Superintendent and
Chief, Health Bureau

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Assistant Deputy Superintendent and
Chief, Life Bureau

