



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

**Circular Letter No. 27 (1999)  
November 1, 1999**

**TO: ALL INSURERS LICENSED TO WRITE ACCIDENT & HEALTH INSURANCE IN NEW YORK STATE, ARTICLE 43 CORPORATIONS AND HEALTH MAINTENANCE ORGANIZATIONS**

**RE: Chapter 2 of 1998: Fraudulent Health Insurance Acts Pursuant to §176.05(2) of the Penal Law and Healthcare Compliance Programs Pursuant to §4414 of the Public Health Law**

On September 24, 1998, Governor George Pataki signed into law Chapter 2 of the Laws of 1998, which among other things, enacted significant changes to the Penal Law and Public Health Law strengthening efforts to combat health insurance fraud. This circular letter will provide guidance to insurers and health maintenance organizations (HMOs) as to how these new provisions in the law should be understood and utilized.

NOTE: Given that Chapter 2 was signed into law late in 1998, its changes to the Insurance Law and the Penal Law do not appear in the 1999 Pocket Part of McKinney's statutes. They can be found in the 1998 Session Laws. These amendments also appear in the Department's website at [www.ins.state.ny.us](http://www.ins.state.ny.us).

Section 42 of Chapter 2 adds a new subdivision 2 to §176.05 of the Penal Law to define a fraudulent health care insurance act. A "fraudulent health care insurance act" has been committed when the following elements are present:

1. Any person,
2. knowingly and with the intent to defraud,
3. presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to, or by, any insurer, or purported insurer, or self-insurer, or any agent,
4. any written statement or physical evidence as part of or in support of an application for the issuance of a health insurance policy, or any policy or contract that provides for or allows for coverage or membership or enrollment or any other service of a public or private health plan;
5. or presents a claim for payment, services or any other benefit pursuant to such policy, contract or plan which that person knows to:
6. contain materially false information concerning any fact related to an application for the issuance of a health insurance policy or contract, or to a claim for payment, services or benefits under such a policy; or
7. conceal, for the purpose of misleading, any fact related to the issuance of a health insurance policy or contract, or to a claim for payment, services or any benefits under such a policy or plan.

A health insurance policy, contract or plan includes those issued or operated by any public or governmentally-sponsored or

supported plan for health care coverage or services or for any entity otherwise authorized pursuant to the Public Health Law. An "application for the issuance of a health insurance policy" may include any physical evidence of such application. It does not include an application for a health insurance policy or contract issued as an individual accident and health policy. It does not include individual enrollee direct payment contracts offered by HMOs, including individual direct payment HMO contracts providing out of plan benefits, and which are subject to the provisions of Article 43 of the Insurance Law. Further, it does not include any other application for a health insurance policy or contract approved by the Department in the individual or direct payment market. Such application also does not include any application for a certificate evidencing coverage under a self-insured plan or under a group contract approved by the Department.

Violations of §176.05(2) are felonies as described in §§176.10 through 176.35. Insurers are reminded that §176.05(2) is drafted in parallel form to the original §176.05(2) of the Penal Law and is to be accorded the same weight and importance as the original §176.05 Penal Law, except where it actually expands the scope of §176.05. The reporting requirements pursuant to Article 4 of the Insurance Law for insurers are also applicable to transactions which are suspected violations of §176.05(2).

Section 43 of Chapter 2 amended the Public Health Law to add a new §4414 regarding the establishment of health care compliance programs. Section 4414 requires that the Department Health, after consulting with the Department of Insurance, promulgate regulations to establish standards and criteria for compliance programs to be implemented by entities providing coverage or coverage and services under any public or governmentally-sponsored or supported plan for health care coverage or services. The regulations are required to have provisions for the design and implementation of programs or processes to prevent, detect and address instances of health care insurance fraud and abuse. The regulations are required to take into account the nature of an entity's business and the size of its enrolled population.

Section 4414 requires the Department of Health and the Department of Insurance to accept programs and processes implemented by entities pursuant to §409 Insurance Law, fraud prevention plans, as satisfying the obligations of §4414 and the regulations promulgated thereunder when such programs and processes incorporate the objectives contemplated by §4414.

Any questions regarding this circular letter should be directed to:

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SIGNED:

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