



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

**Circular Letter No. 2 (2001)
January 26, 2001**

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: Urine Testing for the Human Immunodeficiency Virus

STATUTORY Section 201 and Section 2611 of the New York Insurance Law and

REFERENCE: Article 27-F and Section 576 of the New York Public Health Law

The purpose of this Circular Letter is to respond to recent inquiries concerning the Department's position on the use of urine 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 and/or the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Chapter 661 of the Laws of 1997.

An insurer may utilize a urine testing protocol to detect HIV antibodies for insurance underwriting purposes in New York when urine testing is performed in accordance with the New York State Department of Health regulations found at Subpart 58-8 of Title 10 NYCRR. A laboratory holding a valid clinical laboratory permit from the New York State Department of Health for such testing would be the only facility appropriate for use by an insurer. Insurers should be aware that a limited number of laboratories hold permits in HIV testing. Interested parties may contact the Clinical Laboratory Evaluation Program at 518-485-5378, or through its website

@ www.wadsworth.org/labcert/clep/lep_links.html, for a list of laboratories approved for HIV testing of insurance applicants. If the result is to be communicated to the subject of the test, Department of Health regulations require that specimens reactive in the screening test (e.g., ELISA) be confirmed by a Western blot or other approved procedure. 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 a urine test protocol as the basis for an adverse underwriting decision.

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

Jeffrey Angelo
Deputy Chief Examiner
Life Bureau

Thomas C. Zyra
Co-Chief, Health Bureau