



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

**Circular Letter No. 16 (2002)  
September 4, 2002**

**TO: All Public Health Law Article 44 Health Maintenance Organizations, Insurance Law Article 43 Corporations, and Insurers Licensed to Write Accident and Health Insurance in New York State ("Insurers")**

**RE: Rate Distinctions for Medicare Beneficiaries**

**Statutory References: Insurance law Sections 3201(c)(3), 3217, 3231 and 4317**

It has come to the attention of this Department that some insurers and health maintenance organizations are making a distinction in their community rated premium rates for benefits not covered under the Federal Social Security Act (Medicare), 42 U.S.C.A. § 1395 *et seq.* (West 1992 and 2001 Supplement) between individuals who are eligible for Medicare and those who are not so eligible.

A definition of "community rated" appears in the Insurance Law Sections 3231(a) and 4317(a):

"a rating methodology in which the premiums for all persons covered by a policy or contract form is the same based on the experience of the entire pool or risks covered by that policy or contract form without regard to age, sex, health status or occupation."

Accordingly, except for those situations where an insurer opts to file an appropriate rate reduction because of the primacy of Medicare, as set forth in 42 U.S.C.A. § 1395y(b) (West 1992 and 2001 Supplement), which situation is recognized by N.Y. Comp. Codes R & Regs. tit. 11, § 52.26(c) (2001), or where the insurer has excluded benefits provided under Medicare, which is permitted by N.Y. Comp. Codes R. & Regs. tit. 11, § 52.16(c)(8), no insurer shall impose with respect to any community rated policy, contract or rider any differential in premium rates for such benefits because of the subscriber's eligibility for Medicare. The use of a rate differential because an individual is eligible for Medicare by virtue of being in excess of 65 years of age is an illegal distinction because of age. The use of a rate differential because an individual is eligible for Medicare by virtue of being disabled, is an illegal distinction because of health status.

Any insurer which has heretofore imposed such differential because of eligibility for Medicare shall submit a rate filing to remove such differential for contracts, policies or riders to be issued or renewed on or after January 1, 2003.

Acknowledgement of this Circular Letter, by September 20, 2002, and any inquiries should be directed to:

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