



STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NY 12257

George E.
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Governor

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**Supplement No. 1 to
Circular Letter No. 27 2002)**

March 31, 2003

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

RE: Additional Guidance for the Implementation of the Provisions of Chapter 557 of the Laws of 2002 (ACCIDENT AND HEALTH INSURANCE COVERAGE ISSUED TO OR THROUGH ASSOCIATION AND CHAMBER GROUPS)

STATUTORY REFERENCES: Sections 3231 and 4317 of the Insurance Law

Circular Letter No. 27 (2002) issued December 18, 2002 provided an explanation of insurers' obligations in their implementation of Chapter 557 of the Laws of 2002. The purpose of this supplement is to clarify some of the positions set forth in the earlier Circular Letter and to provide additional guidance regarding compliance with the mandates of the statute.

Insurance Law sections 3231 and 4317, added by 1992 N.Y. Laws 501, set forth requirements for open enrollment and community rating of individual and small group health insurance. These sections were recently amended by Chapter 557 of the Laws of 2002, which took effect on September 20, 2002. Chapter 557 requires health insurers that issue coverage through association groups, including chambers of commerce, to offer the same coverage to sole proprietors. The new legislation also permits insurers to classify sole proprietors in their own community rating category and prohibits rates for sole proprietor coverage from exceeding 120% of the rates established for identical coverage issued to a group.

The purpose of this Circular Letter is to set forth insurers' obligations in their

implementation of the legislation. Insurers should consider this Circular Letter as guidance in establishing premium rates that comply with Chapter 557 of the Laws of 2002.

APPLICABILITY

Chapter 557 imposes requirements upon insurers issuing coverage to association groups, including chambers of commerce. Insurers are to interpret this as encompassing all types of contract arrangements (e.g.: group and group remittance) issued to or through legitimate association and chamber groups. Those insurers must issue the same coverage to sole proprietors who purchase coverage through the association as would be issued to groups that purchase coverage through the association. This statute does not prevent insurers from offering coverage to sole proprietors as part of their small group market, regardless of whether they issue coverage to association groups.

If an insurer makes available to sole proprietors the same coverage that it also issues to either association groups or small groups, it may not apply any requirements to sole proprietors that are more restrictive than the requirements of Chapter 557.

REQUIREMENTS FOR COVERAGE

Chapter 557 provides that an insurer may require members of the association purchasing health insurance to verify that all employees electing health insurance are legitimate employees of the employers, as documented in New York State tax form NYS-45-ATT-MN or comparable documentation.

In order to be eligible to purchase health insurance pursuant to Chapter 557 and obtain the same group insurance products as are offered to groups, a sole proprietor must present a copy of the following documentation to the insurer or health plan administrator on an annual basis:

- New York State tax form NYS-45-ATT-MN, or other comparable documentation of active employee status such as a copy of a pay stub or estimated tax form;
- for a business in operation for more than one year, the prior year's federal income tax Schedule C for an incorporated business subject to Subchapter S with a sole employee, federal income tax Schedule E for other incorporated businesses with a sole employee, a W-2 annual wage statement, or federal tax form 1099 with federal income tax Schedule F; or
- for a business in operation for less than one year, a cancelled business check, a copy of a business bank statement, a certificate of doing business, or appropriate tax documentation; and
- such other documentation as may be reasonably required by the insurer and as approved by the Superintendent to verify eligibility of an individual to purchase health insurance pursuant to Chapter 557.

Insurers must accept submission of the forms of documentation set forth above. However, beyond that insurers cannot require other forms of documentation without the prior approval of this Department. If an applicant is unable to submit one of the enumerated forms of documentation, insurers may, at their discretion, accept other forms of documentation. Insurers and HMOs must not interpret the documentation requirements set forth above as a means of limiting or terminating coverage for existing insureds.

In addition to the documentation requirements set forth above, an insurer may require a sole proprietor to work at least twenty hours per week in order to be eligible to purchase health insurance pursuant to Chapter 557 and obtain the same group insurance products as are offered to groups.

Also among the eligibility requirements for coverage set forth in Chapter 557 is a requirement that if purchasing coverage through an association group, a sole proprietor must have been a member of the association or chamber group for at least sixty days prior to the effective date of the insurance policy. The effective date of the group policy itself should not be relevant. Insurers may require the sole proprietor to have been a member of the association for at least sixty days prior to the date the sole proprietor's coverage under the association or chamber policy would become effective. Insurers may, at their discretion, impose a lesser timeframe or waive the sixty-day membership requirement in its entirety, so long as such action is uniformly applied to all sole proprietors applying for coverage through an association group.

RATING ISSUES

The newly enacted statute permits insurers that sell coverage to sole proprietors through an association or chamber group to classify those sole proprietors in their own community rating category and prohibits the rates offered to sole proprietors from exceeding 120% of the corresponding small group rate for the same coverage prior to 2006. These requirements are applicable both to policies that are purchased by a sole proprietor through an association or chamber group and those that are purchased by a sole proprietor directly from an insurer. Insurers may also offer rates that do not contain a differential between the sole proprietor and small group rates.

Insurers wishing to apply for a rate differential between their sole proprietor and small group rates must file rating materials with the Department and provide actuarial justification for the proposed rate differential. Additionally, Chapter 557 does not prevent insurers from beginning or continuing to offer sole proprietor coverage at a rate that is reflective of a blending of sole proprietor and small group experience without a differential. Insurers that do not have a rate differential approved by this Department must apply their small group rates to coverage issued to sole proprietors and small groups who purchase such coverage to or through an association or chamber group.

Insurers should be submitting rating materials to this Department so that they have the same approved for use in order to comply with these requirements. All insurers adjusting their rate structures on current policies in order to newly apply a rate differential for sole proprietors must

submit the rate adjustment designed to implement such a differential to this Department for prior review and approval. The file and use rate adjustment mechanism set forth in sections 3221(e) and 4308(g) & (h) of the Insurance Law is not applicable to rate adjustments designed to implement changes in rate structure. Insurers' rate adjustments and actuarial support designed to bring their companies into compliance with Chapter 557 may be submitted to:

James M. Gutterman, FSA, MAAA
Chief, Accident & Health Rating Section
NYS Insurance Department
One Commerce Plaza
Albany, NY 12257

IMPLEMENTATION

Chapter 557 of the Laws of 2002 became effective on September 20, 2002 and applies to "any policy issued, delivered, modified or renewed on or after such date." Accordingly, insurers issuing coverage to association or chamber groups must now make coverage for sole proprietors available in all newly issued policies. For existing policies, coverage must be made available to sole proprietors as policies are modified or renewed. All existing group and group remittance policies must renew on an annual basis. Therefore, existing policies must be compliant with the mandates of Chapter 557 of the Laws of 2002 as of the policy renewal date occurring between September 20, 2002 and September 19, 2003.

Insurers issuing coverage to association or chamber groups must issue the same coverage to sole proprietors who purchase coverage through the association or chamber group as the insurer issues to groups which purchase coverage through the association or chamber group. Chapter 557 does not require insurers to, in any other way, change the manner in which coverage issued prior to the enactment of Chapter 557 is underwritten or rated. If an insurer previously issued its small group coverage to sole proprietors at the same premium rate charged to other small groups it may continue to do so. We are concerned that the sole proprietor law is being viewed by some as authorization now to remove sole proprietors from existing group business or otherwise change existing business practices to the detriment of sole proprietors. Insurers must not implement Chapter 557 in such manner.

The Department will continue to monitor the implementation of Chapter 557, and will provide further guidance and clarification as the need arises. In the interim, questions regarding rate filings should be directed to Mr. Gutterman.

Any other questions on this Supplement or Circular Letter No. 27 (2002) may be directed to:

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