



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
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**Circular Letter No. 7 (2003)
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TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Including Article 43 Corporations and Health Maintenance Organizations

RE: New York Insurance Law Protections for Members of the Reserves, Including National Guard, Called to Active Duty

STATUTORY REFERENCE: Insurance Law Sections 3216(c)(13), (14); 3221(n), (o); 4304(i), (j); and 4305(g), (h)

With the activation of U. S. military personnel (many of whom are New Yorkers) for service both overseas and to protect our homeland, concerns regarding the continuation of insurance coverage for affected individuals have been raised. Given the situation, the purpose of this Circular Letter is to remind insurers, Article 43 Corporations and Health Maintenance Organizations (HMOs) of their obligations under the New York Insurance Law to afford such military personnel special rights of conversion, continuation and suspension of health insurance coverage. These protections are in addition to the rights of continuation and conversion otherwise available pursuant to the Insurance Law.

I. Individual Coverage Issued Pursuant to Sections 3216 or 4304 of the Insurance Law.

Members of the Reserves, including the National Guard, who hold individual health insurance policies, and who enter active duty or have their active duty extended, are afforded supplemental rights to suspend their coverage during such period of active duty. Commercial insurers should consult Section 3216(c)(13) and (14) of the Insurance Law for the details of these rights. Article 43 Corporations and HMOs should consult Section 4304(i) and (j) of the Insurance Law. In general, the law provides for the following:

1. Upon written request, affected individuals are entitled to have coverage suspended during a period of active duty. Furthermore, insurers, Article 43 Corporations and HMOs must refund any unearned premiums for the period of such suspension.
2. Upon termination of active duty affected individuals are entitled to resume their coverage. The affected individual must make a written request to resume the coverage and remit the required premium within sixty days of termination of active duty. The resumption of coverage must be with no limitations or conditions imposed as a result of such active duty. However, limitations may be imposed with respect to conditions that arose during active duty and are determined by the Secretary of Veterans Affairs to have been incurred in the line of duty. In addition, if there was a waiting period in place at the time of call to active duty which had not been satisfied, the waiting period balance may be imposed.
3. Resumption of suspended coverage must be retroactive to the date of termination of active duty.

II. Group Coverage Issued Pursuant to Sections 3221 or 4305 of the Insurance Law.

Members of the Reserves, including the National Guard, who are covered under group policies, and who enter active

duty or have their active duty extended, are afforded supplemental rights to continue, convert and/or suspend their coverage. Commercial insurers should consult Sections 3221(n) and (o) of the Insurance Law for the details of these rights. Article 43 Corporations and HMOs should consult Sections 4305(g) and (h) of the Insurance Law. In general, the law provides for the following:

1. An affected individual called to active duty may elect to continue his or her group coverage, including family coverage, by making a written request and paying to the group policyholder up to 100% of the premium for the coverage.
2. If an affected individual does not elect continuation rights, group coverage is suspended while the affected individual is on active duty. (It should be noted that an employer may treat affected individuals as active employees to maintain coverage under the employer's group plan.)
3. If an affected individual elects continuation of coverage, or if coverage is suspended, and the affected individual dies while on active duty, the surviving spouse and children are entitled to conversion rights. Conversion rights are also available to children upon reaching age limitations for dependent status. Furthermore, conversion rights are also available upon divorce or annulment if occurring while on active duty.
4. Continuation is not available for those who become covered or could be covered by Medicare or other group coverage (except for that available to active duty members of the uniformed services).
5. Affected individuals who return to work after active duty are entitled to resume participation under the employer's plan without the imposition of limitations or conditions. However, limitations may be imposed with respect to conditions that arose during active duty and are determined by the Secretary of Veterans Affairs to have been incurred in the line of duty. In addition, if there was a waiting period in place at the time of call to active duty which had not been satisfied, the waiting period balance may be imposed.
6. For affected individuals who opted for suspension of group coverage and return to employment, coverage is retroactive to the effective date of termination of active duty.
7. For affected individuals who do not return to employment upon return to civilian status, the Reservist is entitled to the standard conversion and continuation rights provided by Sections 3221(e) and (m) or 4305(d) and (e) of the Insurance Law.

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