



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

**Circular Letter No. 4 (2004)  
July 9, 2004**

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

**RE: Health Savings Accounts and High Deductible Health Plans**

**STATUTORY REFERENCE: Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub.L.No.108-173)("Health Savings and Affordability Act of 2003")**

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, entitled the "Health Savings and Affordability Act of 2003," added section 223 to the Internal Revenue Code. The law permits eligible individuals to establish Health Savings Accounts (HSAs) as of January 1, 2004. HSAs are tax-exempt trusts or custodial accounts established for the purpose of paying the beneficiary's qualified medical expenses. To be eligible to establish an HSA, an individual must be enrolled in a high deductible health plan (HDHP), must not be covered by another non-HDHP plan (with certain exceptions for plans providing limited coverage), must not be entitled to Medicare benefits, and may not be claimed as a dependent on another person's tax return.

An HDHP is defined as a health insurance plan which has an annual deductible of at least \$1,000 and an annual out-of-pocket expense maximum of no more than \$5,000 for self-coverage and an annual deductible of \$2,000 and an annual out-of-pocket maximum of no more than \$10,000 for family coverage. Such amounts are subject to cost-of-living adjustments consistent with the Health Savings and Affordability Act of 2003. An HDHP may exempt preventive care from the deductible but may not provide benefits in any year for any non-preventive care until the deductible for that year is met.

HSAs, used in conjunction with HDHPs, will give New York residents another option regarding their health care coverage. As such, the Insurance Department will make every effort to work with insurers to ensure that New York residents who want to establish HSAs have qualifying coverage available to them.

Insurers should be aware of the following:

Group coverage offered by commercial insurers and Article 43 corporations

Currently, there are no statutory or regulatory barriers preventing commercial insurers and Article 43 corporations from offering group coverage that qualifies as HDHP coverage. For those insurers and Article 43 corporations that do not currently have products qualifying as HDHPs and who wish to offer such products in the future, the Department encourages submission of policy forms and rates for our review and approval. The Department is willing to work with insurers to attain approval of such products expeditiously.

We request that when an insurer or Article 43 corporation does submit policy forms and rates for our review, that the submission letter indicate the insurer's intent to market the product for use with HSAs. This will substantially assist the Insurance Department's efforts to identify and keep track of the products that are available in the HSA market. Likewise, for those insurers and Article 43 corporations that currently have HDHP-qualifying products approved, we request that they advise the Insurance Department in writing as to which products they are marketing for use with HSAs.

Individual coverage offered by commercial insurers and Article 43 corporations

Sections 3216(l) and 4304(l) of the Insurance Law currently prohibit insurers and Article 43 corporations from offering major medical, comprehensive, or other comparable individual contracts on a direct payment basis, unless the benefits are identical to the benefits contained in the standardized individual direct pay contracts governed by § 4322 of the Insurance Law. Because of this prohibition, insurers and Article 43 corporations may only issue HDHPs that do not provide major medical, comprehensive or comparable benefits.

Group and Individual Coverage offered by HMOs, Including Healthy NY

Currently, HMOs may not offer HDHP coverage as they are prohibited from imposing deductibles on in-network benefits. The Insurance Department is currently reviewing, in consultation with the Department of Health, the statutory and/or regulatory changes that may be required to permit HMOs to offer such coverage under limited circumstances. We will provide more guidance as to whether and under what circumstances HMOs will be permitted to offer HDHP coverage once our review is complete.

Any questions on this Circular Letter may be directed to:

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Or by e-mail to [Thomas Fusco](mailto:Thomas.Fusco).

Very truly yours,

Very truly yours,

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Charles Rapacciuolo  
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