



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

George E. Pataki
Governor

Howard Mills
Superintendent

**Circular Letter No. 18 (2005)
October 18, 2005**

TO: All Insurers Licensed to Write Accident and Health Insurance in New York State, Article 43 Corporations, and Health Maintenance Organizations.

RE: Medicare Part D

STATUTORY REFERENCE: The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub.L.No.108-173); Insurance Law sections 4321 and 4322.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (PubL.No. 108-173) created a new voluntary prescription drug benefit under section 1860(D) of the Social Security Act ("Medicare Part D"). The law provides that beneficiaries entitled to Medicare Part A or enrolled in Medicare Part B, enrollees in Medicare Advantage plans, and enrollees in Medicare Savings Account plans are eligible for Medicare Part D beginning January 1, 2006.

In anticipation of the January 1, 2006 effective date of the Medicare Part D benefit, the Department wishes to clarify some of the responsibilities of insurers licensed to write accident and health insurance, Article 43 corporations and health maintenance organizations (collectively, "insurers") regarding the MMA.

1. The Insurance Department has received inquiries regarding the permissibility of provisions in health insurance policies or contracts, including the standardized individual direct pay contracts issued by HMOs, which would "carve-out" from coverage the prescription drug benefit available under Part D for Medicare-eligible individuals, even if those individuals are not enrolled in Part D. As provided in Section 52.16(c)(8) of Regulation 62 (11 NYCRR 52), such carve-out provisions are impermissible in the context of the Medicare Part D benefit where the individual is not enrolled in Part D.

(NOTE: Although similar carve-out provisions have been permitted by the Insurance Department in the context of Medicare Part B, Part D is distinguishable from Part B because Part D is a limited benefit, requires affirmative enrollment, imposes a substantial penalty on individuals for late enrollment, and may be underwritten by different insurers with varying formularies and utilization review/managed care procedures.)

Thus, while insurers may have contract provisions that coordinate coverage with Medicare Part D coverage, the contract provisions may be applied only to those individuals who are actually enrolled in Medicare Part D. Insurers may not carve out Medicare Part D benefits solely because a subscriber is eligible for such coverage.

2. Insurers issuing coverage for prescription drugs are reminded of their responsibility under the MMA to send appropriate notice to covered persons who are also Medicare beneficiaries, advising of creditable coverage. More information about insurers' obligations under the MMA and a model notice is available on the federal Centers for Medicare and Medicaid Services (CMS) website at <http://www.cms.hhs.gov/medicarereform/Credcovrg.asp>.

Any questions on this Circular Letter may be directed to:

Sarah L. Allen
Health Bureau
New York Insurance Department
One Commerce Plaza
Albany, New York 12257

Or by e-mail to sallen@ins.state.ny.us.

Very truly yours,

Charles Rapacciuolo
Assistant Deputy Superintendent &
Chief, Health Bureau