



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

George E. Pataki  
Governor

Howard Mills  
Superintendent

**Circular Letter No. 2 (2006)  
January 27, 2006**

**To: The following Managed Care Organizations (MCOs)-All health maintenance organizations (HMOs); special purpose health maintenance organizations, also known as prepaid health services plans (PHSPs); comprehensive HIV special needs plans (HIV SNPs) and managed long term care plans (MLTCPs)**

**Re: Required Escrow Deposits**

**Statutory Reference: Public Health Law Section 4403(2), Section 1109 of the Insurance Law**

A regulation of the Department of Health, Section 98-1.11(f) of Title 10 NYCRR (which became effective June 29, 2005) requires each health maintenance organization (HMO); special purpose health maintenance organization, also known as prepaid health services plan (PHSP); comprehensive HIV special needs plan (HIV SNP); and managed long term care plan (MLTCP) to establish a deposit in the form of an escrow account for the protection of its enrollees, without preference or priority to any beneficiary. The regulation requires that the escrow account shall be in the form of a trust account with a custodian that is either a New York State chartered bank or trust company or a bank located in New York State that is a member of the Federal Reserve System.

Furthermore, the regulation provides that the assets deposited in the escrow account shall consist of only cash, certificates of deposit and investments of the types noted in Section 1404(a)(1) and (2) of the Insurance Law. Such assets shall be valued at their current fair market value. The required escrow deposit must be made with the custodian as soon as possible but no later than March 31, 2006. A Deed of Trust approved by the Superintendent with the advice of the Commissioner of Health is required to be executed between each organization and its custodian. A sample Deed of Trust is attached for your information.

For the year ending December 31, 2005, the required escrow deposit reported in the NAIC financial statement and the New York Data Requirement should be the required escrow deposit as of December 31, 2004, which is based upon the entity's projected 2005 hospital and medical expenses. For an entity that does not file the above statements, the required escrow deposit should be the greater of \$100,000 or 5% of the 2005 projected health care expenditures as reported to the Department of Health.

Pursuant to the regulation, commencing with the calendar year 2006 and thereafter, no later than March 31<sup>st</sup> of each calendar year, the amount in the escrow account shall be equal to the greater of the following:

- (i) five percent of the projected hospital and medical expenses

(before recoveries for reinsurance, stop loss funds and Regulation No. 146 pool) as reported in the MCO's prior year annual New York Data Requirements statement or Medicaid Managed Care Operating Report (MMCOR) or

(ii) \$100,000.

The required escrow deposit shall be recalculated no later than March 31<sup>st</sup> of each year. If the required escrow deposit is less than the amount held in the Deed of Trust, the MCO may request approval from the Superintendent for the withdrawal of any excess funds.

A MLTCP may request a reduction in its required escrow amount (up to 50%). The Superintendent, in consultation with the Commissioner, may approve the reduction based on the financial condition of the MLTCP, as well as the provision of less than comprehensive services as defined in Part 98-1.

No later than April 30 of each year, the custodian shall submit a statement to both the Health Bureau, New York State Insurance Department, 25 Beaver Street, New York, NY 10004 and to the Bureau of Managed Care Financing, New York State Department of Health, Empire State Plaza, Tower Building, Room 1970, Albany, New York 12237 indicating the assets, and their fair market value, that are held in trust for the MCO as of March 31 of such year.

Please note that the requirements to establish an escrow deposit as required in Part 98 do not apply to line of business HMOs of an Article 43 Corporations, which are subject to the Insurance Law.

Any questions regarding this Circular Letter may be directed to Veronica Bruckstein of this Department at 212-480-5242 or by email to [Veronica Bruckstein](#).

[Sample Deed of Trust](#) (pdf Format)

Very truly yours,

Charles S. Rapacciuolo  
Assistant Deputy Superintendent  
and  
Bureau Chief, Health Bureau