



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

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Governor

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**Supplement No. 1 to Circular Letter No. 3  
(2007)  
February 23, 2007**

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

**RE: Chapter 748 of the Laws of 2006 ("Timothy's Law")**

**STATUTORY REFERENCE: Sections 3103, 3201, 3221, 4303 and 4308 of the Insurance Law**

Subsequent to the issuance of Circular Letter No. 3 (2007), the Department has received many inquiries about the requirements of Timothy's Law. The law applies to certain health insurance policies and contracts ("policies") issued, renewed, modified, altered or amended by an insurer licensed to write accident and health insurance in New York ("insurer"), Article 43 corporation or health maintenance organization ("HMO") on or after January 1, 2007. In certain circumstances, the letter of the enacted law is at variance with its stated intent, as well as with terminology commonly used in the health industry. This Supplement provides guidance in developing policy forms and premium rates in an effort to avoid: (1) unintended limitations on benefits; (2) use of terminology that does not reflect industry standards; and (3) inconsistent application to the various types of entities writing health insurance coverage. But see Insurance Law Section 3103. The Department will be working with the industry as well as with provider and consumer groups and other interested parties to develop a proposal that clarifies the newly enacted law. In the interim, insurers, Article 43 corporations and HMOs are reminded that, as stated in Circular Letter No. 3 (2007), failure to submit conforming policy form and rate submissions to the Superintendent by March 15, 2007 will subject the company to appropriate disciplinary action.

**1. "Active treatment" standard should not apply to outpatient benefits.**

**Issue:** Timothy's Law permits insurers, Article 43 corporations and HMOs to limit, on the basis of "active treatment," coverage of the 20 outpatient visits mandated by the law. The statute defines "active treatment" as treatment furnished in conjunction with inpatient confinement.

**Recommendation:** Insurers, Article 43 corporations and HMOs should not apply the “active treatment” standard to outpatient benefits under Timothy’s Law.

**Rationale:** To apply the “active treatment” standard to permit coverage of the outpatient benefit to be conditioned on there having been a prior inpatient stay would result in a limitation of mental health benefits not typically found in insurance policies issued prior to Timothy’s Law. Such a result is inconsistent with the legislature’s intent to broaden access to mental health benefits. Insurers, Article 43 corporations and HMOs, therefore, should not condition coverage on a prior inpatient stay.

## **2. Individual policies written by Article 43 corporations do not have to provide coverage under Timothy’s Law.**

**Issue:** The Department has been asked to clarify whether Timothy’s Law applies to individual policies written by Article 43 corporations since Section 4303 of the Insurance Law does not appear to specifically limit its application to group and group remittance contracts. Timothy’s Law does not apply to other individual policies, such as those written by commercial insurers or standardized individual direct pay HMO contracts.

**Recommendation:** For Article 43 corporations, Timothy’s Law benefits shall apply only to group and group remittance contracts.

**Rationale:** In the Department’s view, to have the benefit attach to already price-sensitive individual contracts is not consistent with the intent of the legislation, particularly in view of the fact that: (1) the legislature was concerned enough about the cost impact on small employers to provide a subsidy for the benefit; and (2) the legislature did not enact a similar subsidy mechanism for individual contract holders, who bear the full cost of their coverage. Further, although the law requires small employer groups to provide coverage for only thirty inpatient days and twenty outpatient days (“the 30/20 benefit”) the statute requires the individual contractholder’s coverage to include the full Timothy’s Law benefit (i.e., the 30/20 benefit, full parity for treatment of biologically based mental illness and full parity for treatment of children with serious emotional disorders) - a similarly illogical result that the Department believes that the Legislature could not have intended.

## **3. School blanket policies written by Article 43 corporations and HMOs should provide the coverages required under Timothy’s Law.**

**Issue:** Timothy’s Law requires school blanket policies written by commercial insurers to provide Timothy’s Law benefits, but does not extend the same requirement to school blanket policies issued by Article 43 corporations or HMOs.

**Recommendation:** The Department presumes that no action is immediately required to conform school blanket policies to Timothy’s Law, since the term of the coverage typically tracks the school year, with most policy issuances and renewals occurring in August and September. However, Article 43 corporations and HMOs should extend the coverage required under Timothy’s Law to their school blanket policies.

**Rationale:** Extending benefits to all school blanket coverage is consistent with the intent of Timothy’s Law, because of the specific benefits for children with serious emotional disorders, and to reach college students covered by blanket policies. There is no valid policy reason for the law not to apply equally to insurers, Article 43 corporations and HMOs alike.

## **4. Outpatient benefits should be construed as “visits” rather than “days”.**

**Issue:** Typical outpatient benefits for mental health are set forth as “visits”, but Timothy’s Law speaks only of covered “days”.

**Recommendation:** Policy forms should describe outpatient benefits in terms of “visits”.

**Rationale:** The statute’s use of the term “days” in the context of outpatient visits is confusing and inconsistent with the common nomenclature of the industry, which routinely uses the term “visits”. The use of the term “visits” furthers the intent of the legislature in enacting Timothy’s Law.

#### **5. Partial hospitalization days should be covered with two partial hospitalization days equal to one covered inpatient day.**

**Issue:** Timothy’s Law does not address the proper categorization of partial hospitalization services.

**Recommendation:** Partial hospitalization days should be covered under Timothy’s Law with two partial hospitalization days equal to one covered inpatient day.

**Rationale:** Many policies currently treat partial hospitalization days as an inpatient benefit, with one inpatient day equaling two partial hospitalization days. The Department views continuing this practice, which is more beneficial to the consumer than treating these services as a single outpatient visit, as consistent with the intent of Timothy’s Law.

#### **6. The calculation of benefits should be determined on a “contract year” or “plan year” basis, as opposed to a “calendar year” basis.**

**Issue:** Timothy’s Law provides that the 30/20 benefit is to be calculated on a “calendar year” basis.

**Recommendation:** Policy forms should calculate Timothy’s Law benefits on a “contract year” or “plan year” basis, as appropriate.

**Rationale:** Most benefits afforded under group policies are provided on a contract year or plan year basis. Deductibles and out-of-pocket maximums, too, are calculated on a contract or plan year basis. Therefore, it is inconsistent to have the Timothy’s Law benefits calculated on a basis different than that of all other benefits available under a group policy.

#### **7. Policies that provide coverage only for hospital care need only cover facility-based outpatient services.**

**Issue:** The Department has been asked to clarify whether, under Article 32 of the Insurance Law, Timothy’s Law requires an insurer writing a hospital-only policy to cover both outpatient-facility and outpatient-provider office visits. An Article 43 corporation writing hospital-only coverage must cover only facility-based care.\*

**Recommendation:** Insurers preparing policy forms that provide hospital-only coverage may limit the outpatient benefit to facility-based care.

**Rationale:** Mandated coverage for office-based care is usually required only under insurance policies that provide coverage for office visits. Basic hospital policies do not usually provide coverage for office visits. In the Department’s view, coverage of provider office visits under a hospital-only policy is inconsistent with the scope and purpose of hospital-only policies.

## 8. Contractual definition of “mental, nervous or emotional disorders or ailments”.

**Issue:** Timothy’s Law does not specifically define “mental, nervous or emotional disorders or ailments,” and allows the term to be defined in the policy. However, Timothy’s Law charges the Superintendent with the responsibility to ensure that the policy’s definition is not “unreasonable,” and the statute ties the test of whether a definition is reasonable to consistency with the coverage provided to public officers and employees pursuant to Article 11 of the Civil Service Law (i.e., the Empire Plan).

**Recommendation and rationale:** Some insurers, Article 43 corporations and HMOs have indicated to the Department that they are unable to obtain information about the Empire Plan’s definition. The Department offers the following guidance on drafting a definition of “mental, nervous or emotional disorders or ailments” in policy forms. Although the Empire Plan contracts do not contain a specific definition of “mental, nervous or emotional disorders” per se, such contracts do include a definition of “mental health care.” For Timothy’s Law purposes, an insurer, Article 43 corporation or HMO may adopt appropriate language from the following definition of “mental health care” taken from the Empire Plan to draft the definition of “mental, nervous or emotional disorders or ailments” in its policy forms:

*Mental Health Care* means medically necessary care rendered by an eligible practitioner or approved facility and which, in the opinion of [the insurer], is directed predominantly at treatable behavioral manifestations of a condition that [the insurer] determines (a) is a clinically significant behavioral or psychological syndrome, pattern, illness or disorder; and (b) substantially or materially impairs a person’s ability to function in one or more major life activities; and (c) has been classified as a mental disorder in the current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

Should an insurer, Article 43 corporation or HMO choose not to use the Empire Plan provision as a basis for its definition, it should refrain from using the terms “acute,” “short term,” “amenable to short term therapy,” “serious,” or similar words or phrases in its definition. While those terms may have been acceptable in the past in defining non-mandated mental health benefits, they are inconsistent with the requirements of Timothy’s Law.

## 9. Utilization Review.

**Issue:** The Department has been asked to clarify that insurers, Article 43 corporations and HMOs may conduct utilization review of Timothy’s Law benefits.

**Response and rationale:** Timothy’s Law specifically states that nothing contained therein shall be construed to prevent medical management or utilization review of mental health benefits, including the use of preauthorization of care. Therefore, insurers, Article 43 corporations and HMOs may conduct utilization review of Timothy’s Law benefits.

Any question about this Supplement No. 1 to Circular Letter No. 3 (2007) may be directed by mail to Thomas Fusco, Associate Insurance Attorney, Health Bureau, New York Insurance Department, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, NY 14202 or by e-mail to [Thomas Fusco](mailto:Thomas.Fusco).

Very Truly Yours,

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Assistant Deputy Superintendent and  
Chief,  
Health Bureau

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\* Under the Public Health Law, HMOs are required to write comprehensive coverage; they can never write hospital-only coverage.