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

Eliot Spitzer
Governor

Eric R. Dinallo
Superintendent

Supplement No. 2 to Circular Letter No. 3 (2007)
October 29, 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 3201, 3221, 4303 and 4308 of the Insurance Law

This Supplement to Circular Letter No.3 (2007) provides further guidance to insurers licensed to write accident and health insurance ("insurers"), Article 43 corporations and health maintenance organizations ("HMOs") for the implementation of and ongoing compliance with the requirements of Timothy's Law as to (1) procedures for return of premium billed for the subsidized benefits covered under Timothy's Law; (2) disclosure in invoices of the premium attributable to Timothy's Law coverage and the reimbursement credit applied to cover such premium; and (3) procedures and requirements for the initial rating period, running through March 31, 2008, and for future periods, beginning April 1, 2008.

Supplement No 1 to Circular Letter No. 3 (2007), dated February 23, 2007, is hereby withdrawn because of the enactment of Chapter 502 of the Laws of 2007, which codified the clarifications to Timothy's Law that were the subject of Supplement No. 1.

Return of Premiums Billed for Subsidized Timothy's Law Benefits.

Sections 3221(l)(5)(D)(ii), 4303(g)(4) and 4303(h)(4) of the Insurance Law direct that the Superintendent develop and implement a methodology to fully cover the cost to any small group contract holder for providing the mandated benefit of 30 inpatient days and 20 outpatient visits for the diagnosis and treatment of mental, nervous or emotional disorders (the 30/20 benefit"). The cost of this methodology is financed from moneys from the General Fund. Section B of Attachment 2 to Circular Letter No. 3 (2007) dated January 31, 2007, entitled "Rate Manual," notes that Timothy's Law may result in a premium reduction under small group policies issued or renewed in 2007 because of the required state subsidy of the mandated benefits and, if premiums are consequently reduced, then insurers, Article 43 corporations and HMOs must provide a full premium credit or refund to affected small groups for the amount of the approved premium reduction measured from the renewal date or issue date.

Insurers, Article 43 corporations and HMOs have received the necessary approvals of the premium rates associated with Timothy's Law. The premium rate approval letters issued by the Department's Accident and Health Rating Section in May and June of 2007 further discussed the credit or refund requirement. The Department expects that insurers, Article 43 corporations and HMOs have now had adequate time to implement the approved premium rate and make the required credits or refunds. As of November 1, 2007, the Department will commence enforcement activities, including imposition of monetary penalties upon insurers, Article 43 corporations and HMOs that have not either:

1. Issued a credit for all months from the group's 2007 issue or renewal date and then reduced monthly premiums prospectively as directed by the Department's rate approval letter; or

2. Issued a refund check for all months from the group's issue or renewal date and then reduced monthly premiums prospectively as directed by the Department's rate approval letter.

Either method of returning the premium should be based upon actual membership for each month from policy issuance or renewal in 2007 through the date of refund or credit, and all accrued prior credits should be applied in full at the time of implementation of the rate change. In no case should refunds or credits be deferred or pro-rated over the remaining months of the contract. Credits should be disclosed as a separate line item on the bill.

For insurers, Article 43 corporations and HMOs that issued credits or refund checks, the monthly premiums should accordingly be reduced in subsequent billings.

Subsidy Disclosure in Invoices.

Sections 3221(l)(5)(D)(ii), 4303(g)(4) and 4303(h)(4) of the Insurance Law direct that the Superintendent develop and implement a methodology to fully cover the cost to any small group contract holder for providing "the 30/20 benefit". The Insurance Department is implementing the methodology by having the premium subsidy payments made directly to the insurers, Article 43 corporations and HMOs issuing the policies and contracts. However, the subsidy directly benefits the small group contract holder by accordingly reducing the premium rates for the policy and, as such, the small group contract holder should be aware of the extent of that benefit Therefore, monthly invoices for small group premiums should include a notation to clearly indicate that the monthly premium shown in the invoice excludes the entire cost of "the 30/20 benefit" mandated by Timothy's Law. The total monthly amount that would otherwise be charged for the Timothy's Law benefits under the small group's policy should be stated on the invoice, expressed on a per member per month ("PMPM") basis and contain a definition of the term "member."

> <u>Sample disclosure language</u>: The cost of providing the mental health benefits required by "Timothy's Law," beginning in 2007, is estimated to be $x.xx per member per month. The term "member" includes each covered employee, spouse and other dependents. This amount is fully subsidized by the State and is therefore excluded from the amount billed to you.

PMPM Rates for the 30/20 Benefit in Small Group Contracts.

Because the premium subsidy is being financed from moneys from the General Fund and paid directly to the insurers, Article 43 corporations and HMOs, the PMPM rates forming the basis for the subsidy that were that were filed pursuant to Circular Letter No. 3 (2007) and approved by the Department in 2007 will remain in effect until March 31, 2008, which is the end of the current fiscal year. Thereafter, the Superintendent will review the PMPM calculations supporting anticipated subsidy payment requests on an annual basis to determine whether the calculation submitted by the insurer, Article 43 corporation or HMO is appropriate and meets the statutory criteria that the subsidy payments for each fiscal year period (April 1 thru March 31) not be excessive, inadequate or unfairly discriminatory. The review will take place regardless of whether an insurer, Article 43 corporation or HMO proposes to reduce, increase, or leave PMPM subsidy rates unchanged.

Moreover, so long as the subsidy remains in effect, an annual filing will be necessary to allow the Superintendent to responsibly implement and properly develop the methodology to cover fully the cost of the mandated benefit to small group contract holders and to facilitate acting as payer of the subsidy. Every submission must include an actuarial memorandum and rate manual pages. The Department is considering the promulgation of a regulation to clarify this process further.

Contact Information.

Any questions regarding the premium rates should be directed to Satya N. Pabuwal, FSA, MAAA, Chief Actuary, Health Bureau, New York Insurance Department, One Commerce Plaza, Albany, NY 12257 or by e-mail to spabuwal@ins.state.ny.us or to K. Gloria Dee, FSA, MAAA, CFA, Supervising Actuary, Health Bureau, New York Insurance Department, One Commerce Plaza, Albany, NY 12257 or by email to kdee@ins.state.ny.us

Any questions as to the changes made to Timothy's Law by Chapter 502 of the Laws of 2007 should be directed 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 tfusco@ins.state.ny.us.

Very truly yours,

Charles Rapacciuolo
Assistant Deputy Superintendent & Chief,
Health Bureau