



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

NOTE: WITHDRAWN AND RESCINDED EFFECTIVE 12/07/2009

David A. Paterson
Governor

James J. Wrynn
Superintendent

**Circular Letter No. 21 (2009)
September 16, 2009**

TO: All Authorized Insurers Writing Motor Vehicle Insurance in New York State; Motor Vehicle Self-Insurers; the New York Automobile Insurance Plan; and the Motor Vehicle Accident Indemnification Corporation

RE: The New York State Health Care Reform Act and No-Fault Insurance

STATUTORY REFERENCE: New York Insurance Law §§ 5102, 5105 and 5108

This Circular Letter supersedes Circular Letter No. 16 (1996) and Supplement No. 1 to Circular Letter No. 16, which are hereby withdrawn as of this date.

In Circular Letter No. 16 (1996), issued November 22, 1996, the Department advised all authorized insurers writing motor vehicle insurance and motor vehicle automobile self-insurers that they were obligated, under the Health Care Reform Act ("HCRA") set forth in New York Public Health Law § 2807-c (McKinney 2009) and related provisions, to pay a surcharge to the Public Goods Pool on payments made for services rendered in general hospitals, diagnostic and treatment centers, and freestanding clinical laboratories. Supplement No. 1 to Circular Letter No. 16 (1996), issued November 21, 2003, updated the information set forth in Circular Letter No. 16 to take account of amendments to HCRA. Both Circular Letter No. 16 (1996) and Supplement No. 1 advised insurers and self-insurers that they may offset an applicant's aggregate no-fault benefit limit for the payment of a surcharge when the surcharge is paid directly to the New York State Department of Health's ("DOH") Office of Pool Administration. The purpose of this Circular letter is to advise insurers and self-insurers that the Department has changed its position on this issue.

On December 30, 2008, the Department's Office of General Counsel opined in OGC Opinion No. 08-12-07 that:

Basic economic loss does not include HCRA surcharges to insurers. Accordingly, first-party benefits do not encompass those surcharges, either. Therefore, although Insurance Law § 5105 permits the recovery of first-party benefits between no-fault insurers under certain limited circumstances, HCRA surcharges are not recoverable or reimbursable under Insurance Law § 5105, as they do not come within the definition of "first party benefits" set forth in Insurance Law § 5102.

In view of OGC Opinion No. 08-12-07, insurers and self-insurers may not offset an applicant's aggregate no-fault benefit limit for the payment of a surcharge when the surcharge is paid directly to the DOH's Office of Pool Administration.

The legislature recently made further changes to HCRA as part of the enacted 2009-2010 State Fiscal Year Budget, including changes to the surcharge percentages. These changes are explained at http://www.health.state.ny.us/nysdoh/hcra/letters/notice_of_statutory_changes_as_part_of_enacted_2009-2010_state_fiscal_year_budget.htm.

Please direct any questions regarding this Circular Letter to Ms. Debra Parris, Senior Insurance Examiner, at (212) 480-5665 or dparris@ins.state.ny.us.

Very truly yours,

Larry Levine
Assistant Deputy Superintendent &
Chief Examiner
Property Bureau