



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

David A. Paterson  
Governor

James J. Wrynn  
Superintendent

**Circular Letter No. 12 (2010)  
August 24 , 2010**

**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 REFERENCES: 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Letter supersedes Circular Letter No. 16 (1996) and Supplement No. 1 to Circular Letter No. 16 (1996), which are hereby withdrawn as of this date.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 reconsidered its position on this issue.

On June 16, 2010, the Department's Office of General Counsel opined in OGC Opinion No. 10-06-05 that:

The Legislature clearly intended payment to health providers to be included as part of basic economic loss when it enacted Article 51 of the Insurance Law. There is no similar evidence, however, that the Legislature intended payment of the surcharge to be included as a reimbursable health expense under the no-fault law. To the contrary, when it enacted the law providing for the HCRA surcharge, the Legislature did not amend the no-fault law in any manner. Accordingly, the interpretive guidance set forth in Circular Letter No. 16 no longer should be followed, and insurers may not offset the HCRA

surcharge against any no-fault benefits to which an injured person is entitled under Insurance Law § 5102(a).

In light of OGC Opinion No. 10-06-05, insurers and self-insurers may no longer 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 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 on the [New York State Department of Health's Web site](#).

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](mailto:dparris@ins.state.ny.us).

Very truly yours,

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