



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

**Insurance Circular Letter No. 12 (2011)  
November 17, 2011**

**TO: All Insurers Authorized to Write Accident and Health Insurance in New York, Article 43 Corporations, and Health Maintenance Organizations (Collectively, “Insurers”)**

**RE: Premium Rate Adjustment Notices**

**STATUTORY REFERENCES: N.Y. Ins. Law §§ 3231(e) and 4308(c)**

On June 8, 2010, Governor David A. Paterson signed into law Chapter 107 of the Laws of 2010, which requires insurers to obtain approval from the Superintendent of Financial Services (the “Superintendent”) prior to making changes in premium rates for community rated hospital or medical insurance and for Medicare supplement insurance. Insurers must notify policyholders and certificate holders of proposed premium rate adjustments and afford policyholders and certificate holders the opportunity to submit comments regarding the proposed adjustment to the Department of Financial Services (“Department”). Insurers also must notify policyholders and certificate holders of the premium rates approved by the Superintendent at least 60 days prior to implementing the approved premium rate adjustments.

The purpose of this Circular Letter is to provide guidance and clarification regarding the two types of notices that insurers must send to policyholders and certificate holders for premium rate adjustments subject to Chapter 107 of the Laws of 2010: the initial notice informing policyholders and certificate holders of the proposed rate adjustment (the “initial notice”); and the final notice informing policyholders and certificate holders of the rate adjustment that the Superintendent has approved (the “60-day notice”).

I. Initial Notice

A. Overview

Chapter 107 of the Laws of 2010 amended Insurance Law §§ 3231(e) and 4308(c) to require an insurer to send written notice of its proposed premium rate adjustment to each policyholder and certificate holder affected by the adjustment, including the specific change requested, on or before the date the insurer submits a premium rate application to the Superintendent. This notice informs policyholders and certificate holders of the right to contact the insurer for additional information regarding the rate application. The notice requirement also affords policy holders and certificate holders the opportunity to submit written comments to the Department regarding the proposed premium rate adjustment. The Superintendent may consider input from the public as one of the factors in making a decision on a premium rate adjustment application.

An insurer should provide initial notices that are clear, unambiguous, informative and not misleading. In order to aid insurers in meeting these criteria, the Department is furnishing the guidelines below. Additionally, insurers should submit a SERFF filing, identified as a “Prior Approval Prefiling” type and containing a draft of the initial notice, to the Department at least 10 calendar days before submitting a premium rate adjustment application. Pursuant to Insurance Law §§ 3231(e) and 4308(c), an insurer must include a copy of the initial notice in its final form with the insurer’s application.

#### B. Guidelines for Initial Notice

For all policies or contracts for which an insurer is seeking a premium rate adjustment, the initial notice should clearly state either: (1) the policyholder or contract holder’s current monthly premium and the proposed monthly premium; or (2) the percentage change to the current premium. If an insurer bills a policyholder or certificate holder on a basis other than monthly, (e.g., quarterly), then the premium or percentage change should be stated on that basis.

Insurance Law §§ 3231(e) and 4308(c) do not require insurers to provide justification for the proposed rate adjustment in the initial notice. However, insurers should include the justification for the requested rate adjustment in the initial notice in language that is clear and not misleading. In addition, if an insurer chooses to cite more than one reason as justification, then the insurer should state the approximate percentage of the total proposed adjustment that is attributable to each reason.

Moreover, if an insurer intends to make other rate adjustments, apart from those in the rate adjustment application, then the insurer also should explain the impact or potential impact of the other rate adjustments. For example, if the insurer has made a separate policy form and rate filing to address a change in benefits or a change in the law, then the initial notice should explain the combined impact of both rate adjustments.

The initial notice should inform policyholders and certificate holders that the insurer has prepared a narrative summary that provides a more detailed, plain English explanation of the reason or reasons why the insurer is seeking a premium rate adjustment and that such summary will be posted on the insurer’s website and the Department’s website. Additionally, insurers should submit a SERFF filing, identified as a “Prior Approval Prefiling” type and containing a draft of the narrative summary, to the Department at least 10 calendar days prior to the submission of the premium rate adjustment application.

Further, pursuant to Insurance Law §§ 3231(e) and 4308(c), the initial notice must state that within 30 days from the date the insurer submits its proposed premium rate adjustment filing to the Superintendent, policyholders and certificate holders may contact the insurer or the Department to request additional information or to submit written comments to the Department. The initial notice should state the approximate date that the insurer intends to submit its rate adjustment filing to the Superintendent, or the date it was submitted, so that policyholders and certificate holders may determine when the 30-day comment period begins. The initial notice also should inform policyholders and certificate holders that they may contact the insurer to determine the start and conclusion of this 30-day comment period, and should state that

policyholders and certificate holders submitting written comments to the Department should include the name of their insurer in their written comments.

Finally, the initial notice should indicate that the insurer will provide each policyholder and certificate holder with at least 60 days advance written notice of the premium rate adjustment that the Superintendent ultimately approves.

Under Insurance Law §§ 3231(e) and 4308(c), the initial notice must prominently include the insurer's and the Department's mailing and website addresses. The Department's mailing and website addresses are:

Health Bureau-Premium Rate Adjustments  
New York State Department of Financial Services  
25 Beaver Street  
New York, NY 10004  
<http://www.dfs.ny.gov>

However, for rate applications applicable only to Medicare Supplemental policies, the notice should indicate the Department's Albany address rather than the New York City address. The Albany address is:

Health Bureau-Premium Rate Adjustments  
New York State Department of Financial Services  
One Commerce Plaza  
Albany, NY 12257  
<http://www.dfs.ny.gov>

The initial notice also should include the insurer's telephone number and the Department's e-mail address ([PremiumRateIncreases@dfs.ny.gov](mailto:PremiumRateIncreases@dfs.ny.gov)), and may include the insurer's e-mail address. In addition, the initial notice should state that written comments submitted to the Department will be posted to the Department's website with personal identifying information removed.

Furthermore, the initial notice should clearly identify the name of the insurer seeking the premium rate adjustment. For example, initial notices sent out on stationary with headings that list insurance groups should identify the particular insurer within the insurance group to which the initial notice applies.

An insurer may delegate to a group policyholder or contract holder the dissemination of the initial notices to the certificate holders within the group if the group policyholder or contract holder agrees. However, it remains the insurer's responsibility to ensure that the initial notices are delivered to the certificate holders on or before the date that the insurer submits its rate adjustment application to the Superintendent.

## II. 60-Day Notice

Chapter 107 of the Laws of 2010 also amended Insurance Law §§ 3231(e) and 4308(c) to prohibit an insurer from implementing a rate adjustment unless the insurer provides at least 60-days' advance written notice of the premium rate adjustment approved by the Superintendent to each policyholder and certificate holder affected by the adjustment.

An insurer should not send the 60-day notice to policyholders or certificate holders more than 180 days prior to the date the policyholder's or contract holder's rate will change. For example, insurers with monthly or quarterly rolling rates should not send the 60-day notice for more than one calendar quarter at a time.

The 60-day notice should state the current premium rate and either the new approved premium rate that the insurer will charge the policyholder or certificate holder or the exact percentage change to the premium. The notice also should state the date that the rate adjustment will take effect for the policyholder or the certificate holder.

An insurer may delegate to a group policyholder or contract holder the dissemination of the 60-day notices to the certificate holders within the group if the group policyholder or contract holder agrees. However, it remains the insurer's responsibility to ensure that the 60-day notices are delivered to the certificate holders at least 60 days prior to the rate adjustment's effective date.

Evidence of mailing for the initial notice and the 60-day notice are "records" as defined in 11 NYCRR § 243.1(b) (Regulation 152); must be maintained in accordance with the provisions of that regulation; and are subject to the Superintendent's review during examination.

Please direct any questions or comments regarding this Circular Letter to:

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Very truly yours,

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