



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsby
Superintendent

**Insurance Circular Letter No. 7 (2013)
September 18, 2013**

TO: Insurers, Health Maintenance Organizations (“HMOs”), and Prepaid Health Service Plans (“PHSPs”) Offering Health Benefit Plans on New York’s Individual Health Benefit Exchange (“QHP Issuers”)

RE: Segregation of Funds for Certain Abortion Services on the Exchange for Enrollees who Receive Federal Funds

STATUTORY AND REGULATORY REFERENCES: Financial Services Law § 301; Insurance Law § 308; 42 USC § 18023; 45 CFR 156.280

Purpose:

The purpose of this Circular Letter is to remind issuers of qualified health plans (“QHP issuers”) that will be sold on New York State’s Individual Health Benefit Exchange (the “Exchange”) of their obligations under the Affordable Care Act (“ACA”) (42 USC § 18023) and regulations promulgated thereunder by the United States Department of Health and Human Services (“HHS”) (45 CFR § 156.280), regarding segregation of funds for abortion services when the pregnancy is not a result of rape, incest or when the life of the mother is not endangered (“non-excepted abortion services”); and how the Superintendent of Financial Services (“Superintendent”) expects QHP issuers to implement the requirements.

Background:

The ACA requires states to ensure that federal tax credits and cost sharing reductions on the Exchange are not used to pay for abortion services, except in cases of rape, incest or when failure to provide the services would endanger the life of the mother. See 42 USC § 18023. Under the ACA, QHP issuers that cover non-excepted abortion services must collect in the premium for each enrollee a payment for non-excepted abortion services. QHP issuers must deposit the payment for non-excepted abortion services into a separate allocation account, and use payments in the separate account to pay for non-excepted abortion services.

Instructions:

The ACA permits QHP issuers to collect premiums for non-excepted abortion services and all other services in one transfer of funds. See 42 USC § 18023(b)(2)(B). QHP issuers will be in compliance with the ACA if they do not itemize non-excepted abortion services on the premium bill and collect both premiums through a single transfer of funds.

Under the HHS regulation, each QHP issuer shall establish and maintain one allocation account solely for the deposit of premium dollars to pay for non-excepted abortion services and a second account for the deposit of premium dollars for all other covered benefits. Under the HHS regulation, QHP issuers shall ensure that claims for non-excepted abortion services are not paid from an allocation account into which federal funds are deposited. See 45 CFR § 156.280.

Each QHP issuer should submit a plan (“segregation plan”) to the Superintendent that details the QHP issuer’s process and methodology for meeting the separate allocation account requirements including:

- The QHP issuer’s financial accounting systems, including accounting documentation and internal controls, that would ensure the appropriate segregation of payments consistent with 45 C.F.R. § 156.280;
- The QHP issuer’s financial accounting systems, including accounting documentation and internal controls, that would ensure that all expenditures for services described in 45 C.F.R. § 156.280(d) are reimbursed from the appropriate account; and
- How the QHP issuer's systems, accounting documentation, and controls meet the requirements for segregation accounts under 45 C.F.R. § 156.280.

See 45 C.F.R. §156.280(e)(5)(ii).

The Superintendent strongly encourages every QHP issuer to submit its segregation plan to the Superintendent in writing at least 30 days prior to the segregation plan’s proposed effective date. Any subsequent amendments to the segregation plan should be submitted within 30 days of the proposed effective date of the amendment.

In addition, under the HHS regulation a QHP issuer must file an annual assurance with the Superintendent attesting that the QHP issuer has complied with 42 USC § 18023 and all applicable regulations. The Superintendent strongly encourages QHP issuers to file the annual assurance for each preceding calendar year by January 15th. For example, the first attestation should be submitted by January 15, 2015 for calendar year 2014. The attestation should be submitted to:

Christine Galton
Assistant Chief
NYS Department of Financial Services
Health Bureau – 11th Floor
One State Street
New York, NY 10004

The Superintendent may periodically audit QHP issuers to verify compliance with the requirements of 42 USC § 18023 and all applicable regulations.

Please direct any questions regarding this circular letter to Tracy L. Hennige, Senior Insurance Policy Examiner by telephone at (518) 486-2970 or by e-mail to Tracy.Hennige@dfs.ny.gov.

Very truly yours,

Lisette Johnson
Chief, Health Bureau