

**INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
FIRST AMENDMENT TO REGULATION 166
(11 NYCRR 410)**

EXTERNAL APPEALS OF ADVERSE DETERMINATIONS OF HEALTH CARE PLANS

I, Eric Dinallo, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1109, and Article 49 of the Insurance Law, and Chapter 586 of the Laws of 1998 do hereby promulgate the First Amendment to Part 410 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 166) to take effect upon publication in the State Register, to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

Section 410.2(d) is repealed.

Sections 410.2(e), (f), (g), (h), (i), and (j) are relettered (d), (e), (f), (g), (h), and (i).

Section 410.6(b)(1) is amended to read as follows:

(1) has no material familial, financial or professional affiliation, as those terms are defined in section [410.2(f)-(h)] 410.2(e)-(g) of this Part, with any person or entity listed in subparagraphs (2)(i)-(v) of this subdivision; or

Section 410.11 is amended to add a new subdivision (e) to read as follows:

(e)(1) Upon requesting an external appeal, the insured, the insured's designee or the insured's health care provider shall acknowledge that the determination of the external appeal is binding on the plan and the insured, and shall agree not to commence any legal proceeding against an external appeal agent or clinical peer reviewer to review a determination made by such external appeal agent or clinical peer reviewer pursuant to Article 49 of the Insurance Law or Article 49 of the Public Health Law; provided, however, that the foregoing shall not limit any rights the insured, the insured's designee or the insured's health care provider may have with respect to bringing an action for damages for bad faith or gross negligence or with respect to bringing an action against the insured's health care plan.

(2) As specified in Insurance Law section 4914(c) and Public Health Law section 4914(3), no external appeal agent or clinical peer reviewer conducting an external appeal shall be liable in damages to any person for any opinions rendered by such external appeal agent or clinical peer reviewer upon completion of an external appeal conducted pursuant to Article 49 of the Insurance Law or Article 49 of the Public Health Law, unless such opinion was rendered in bad faith or involved gross negligence.

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the First Amendment to Part 410 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 166), entitled "External Appeals of Adverse Determinations of Health Care Plans," promulgated by me on October 28, 2008, pursuant to the authority granted by Sections 201, 301, 1109, and Article 49 of the Insurance Law, and Chapter 586 of the Laws of 1998, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on August 27, 2008. No other publication or prior notice is required by statute.

Eric R. Dinallo
Superintendent of Insurance

October 28, 2008