

November 3, 1977

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 13

TO: ALL INSURERS LICENSED TO WRITE AUTOMOBILE INSURANCE IN NEW YORK STATE

RE: IMPLEMENTATION OF CHAPTER 892 OF THE LAWS OF 1977-AUTOMOBILE INSURANCE REFORM LAW

Chapter 892 of the Laws of 1977 requires modification of certain coverages afforded under automobile policies either in force, with effective renewal dates, or newly issued on and after December 1, 1977. The statute also requires reductions in premiums where appropriate. In order to comply with the provisions of the new amendments to the Insurance Law, insurers must furnish their insureds with information about various coverage changes, some of which are mandated by law and others of which must be made available at the insureds' option.

In addition, insurers must obtain information, by questionnaire or other appropriate means, from their insureds concerning these coverage changes. Insurers must also notify their insureds that failure to reply to the questionnaire can result in the insured's not receiving a premium reduction to which the insured might otherwise be entitled.

1. Reduction in No-Fault Benefits For Medicare Eligibles

For accidents occurring on and after December 1, 1977 persons eligible for Medicare benefits shall not be entitled to receive first party no-fault benefits for the same health expenses which are covered by Medicare. Therefore, insurers must determine by questionnaire, or other means, which of their insureds are eligible to receive Medicare benefits. Appropriate reductions in Personal Injury Protection premiums will be required for such insureds. Insurers which intend to have different reductions for different classifications of older drivers, (e.g., those enrolled for Medicare Part A, those enrolled for Medicare Parts A and B, those employed, those not employed) shall obtain more specific information from their insureds.

2. Reduction in No-Fault Benefits For Certain Sick Pay Plans

For accidents occurring on and after December 1, 1977 persons who do not suffer a "loss of earnings from work" within the meaning of Section 671(1) shall not be entitled to receive first party no-fault benefits for loss of earnings from work that would duplicate such payments from their employers. Section 671(1) provides, in pertinent part, that there shall be no payment for loss of earnings from work to the extent that monetary payments or benefits from an employer "do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury." Therefore, insurers must determine, by questionnaire or other means, which of their insureds are eligible to receive such employer payments. Appropriate reductions in Personal Injury Protection premiums will be required for such insureds. Insurers which intend to have different reductions for different types of employer payment plans shall obtain more specific information from their insureds.

3. Re-Rating and Refund Procedures for Insureds Eligible for Medicare and Sick Pay Exclusions

(a) Re-Rating

All policies with effective dates on and after January 1, 1978 shall be issued with rates that reflect the appropriate Medicare and/or Sick Pay premium reduction. Policies issued with effective dates from December 1, 1977 through December 31, 1977 inclusive, shall be re-rated to reflect the appropriate Medicare and/or Sick Pay premium reduction, no later than March 31, 1978, except if such policies reflected said reductions as issued. The re-rating shall be accompanied by a return of premium, except that an insurer may credit the amount thereof against other amounts due from the insured on the same policy.

(b) Refunds

Insurers shall issue refunds to all eligible insureds with policies in force on December 1, 1977. Such refunds shall be equal to the pro rata portion of the total policy period's Medicare and/or Sick Pay credit which is attributable to the period between December 1, 1977 and the next renewal. The refunds shall be paid by the earlier of (a) March 31, 1978 or (b) within 15 days after the insurer receives a written request for refund from the insured. Insurers may round all refunds to the nearest dollar amount. Unless the insurer receives a written request for refund from the insured, it may credit a refund against other amounts due from the insured on the same policy or its renewal.

4. Exclusion of Medical Expenses from Personal Injury Protection Coverage

Premium reductions will also be required for those insureds who are covered for the medical portion of their personal injury protection coverage by a company or corporation in accordance with the provisions of Section 672(7) of the Insurance Law. If such coverage is added during the term of the automobile policy, an appropriate refund shall be issued to the insured.

5. Premium Reductions Required for Personal Injury Protection Coverage

Premium reductions on personal injury protection coverage for Medicare eligibles, for insureds with certain sick pay plans and for insureds who obtain coverage for the medical expense portion of no-fault benefits from a health insurer, must be filed with the Insurance Department for approval. Based upon information available to the Insurance Department on loss experience under personal injury protection coverage and on certain additional assumptions, the Insurance Department has made preliminary estimates of reductions in exposure to loss as a result of the changes established by Chapter 892 of the Laws of 1977. The Insurance Department believes that its estimated reductions are reasonable and the Department will approve rate filings which meet or exceed the reductions set forth below.

For insurers with no subclassification of Medicare eligibles, an average premium reduction of forty per cent (40%) of the personal injury protection premium has been projected. For insurers with subclassifications applicable to Medicare eligibles, the weighted average of premium reductions for all subclassifications should be reasonably close to forty per cent (40%) of the personal injury protection premium, unless demonstrable evidence indicates that a different average percentage reduction is appropriate.

For insurers with no subclassification of sick pay plans, an average premium reduction of ten per cent (10%) of the personal injury protection premium has been projected. For insurers with sick pay plan subclassifications, the weighted average of sick pay plan premium reductions for all subclassifications should be reasonably close to ten per cent (10%) of the personal injury protection premium, unless demonstrable evidence indicates that a different average percentage reduction is appropriate.

For insurers whose insureds have elected to obtain coverage for the family unit for the medical expense portion of no-fault benefits from a health insurer, an average reduction of fifty per cent (50%) of the personal injury protection premium has been projected. Where the named insured is the only person covered by such a health insurer, a lesser

average reduction may be filed.

If an insurer believes that lesser reductions in premium than those projected by the Insurance Department are appropriate for its insureds, it should file such reductions with the Insurance Department for approval, together with documented credible experience as support for its filing.

The Insurance Department will review the experience of insurers periodically to determine if the premium rates hereby affected should be modified.

6. Rate Reductions for Bus and School Bus Insureds

The new statute requires that injured passengers on a bus or school bus (other than the owner, operator or employees of the owner or operator of the bus or school bus) look to their respective family automobile insurance policies for personal injury protection benefits in the event of an accident involving the bus or school bus. All insurers providing, or intending to provide, coverage for buses or school buses should file with the Insurance Department for approval appropriate personal injury protection premium reductions to reflect the reduced exposure to loss.

7. Automobile Physical Damage Deductibles

Section 167-d(11) of the new statute requires insurers to offer a standard \$ 200 deductible for all automobile physical damage coverages for policies issued or renewed on and after December 1, 1977. Insurers must, therefore, furnish their insureds with information which includes the estimated or approximate costs (in dollar amounts or as related to the premium for the standard \$ 200 deductible) of the various deductible options available to insureds and an appropriate form which the insured may use to request the coverage permitted under the statute.

Policies with deductibles below the \$ 200 standard deductible shall be renewed with the \$ 200 standard deductible unless the insured subsequently requests a different permissible deductible.

Policies with deductibles of \$ 200 or higher shall be renewed without change in deductible levels unless the insured subsequently requests a different permissible deductible.

The opportunity to order different deductible levels shall be afforded to insureds at policy issuance, at the annual anniversary date and at the time an automobile is added or replaced.

The options which must be offered are:

a) Fire, Theft and Comprehensive Coverage

- i) \$ 50 deductible
- ii) \$ 50 deductible, full coverage for window glass
- iii) \$ 200 deductible *STANDARD*
- iv) \$ 200 deductible, full coverage for window glass
- v) \$ 250 deductible
- vi) \$ 500 deductible
- vii) \$ 1,000 deductible

b) Collision

- i) \$ 100 deductible
- ii) \$ 100 deductible, full coverage for window glass
- iii) \$ 200 deductible *STANDARD*

- iv) \$ 200 deductible, full coverage for window glass
- v) \$ 250 deductible
- vi) \$ 500 deductible
- vii) \$ 1,000 deductible

Insurers may offer other deductible levels in addition to those set forth above.

Insurers which do not have approved rates for all the options listed above are required to file appropriate rates for such options for Department approval. Insurers which intend to offer physical damage with co-insurance in combination with deductibles, shall file appropriate forms, rules and rates for Department approval.

All policies issued or renewed on and after January 1, 1978 shall be issued with rates that reflect at least the \$ 200 standard deductible or with rates that reflect the different permissible deductible level selected by the insured. Policies issued or renewed from December 1, 1977 through December 31, 1977, inclusive, shall be corrected as soon as possible but no later than February 1, 1978 to comply with the standards set forth herein unless the insurer has already substantially complied with these requirements. If, through inadvertence or otherwise, such December policies were issued with collision deductibles below \$ 100 and/or comprehensive deductibles below \$ 50, such policies shall be corrected to be in compliance with Section 167-d(11). All corrections on such policies shall be effective as of the date of request, prospectively, and premium adjustments, if any, shall be made at the time of correction.

8. Supplementary Uninsured (or "Underinsured") Motorists Coverage

Section 167(2-a) of the new statute requires insurers to offer supplementary Uninsured (or "underinsured") motorists coverage to their insureds, in amounts up to the bodily injury liability limits of coverage provided in the insured's policy. Insurers are not required to offer supplementary uninsured motorists coverage at limits in excess of \$ 100,000/ \$ 300,000, but may do so if they wish.

Insurers must furnish their insureds with information which provides an adequate explanation of this new coverage. Insurers must also furnish the estimated or approximate costs of the various coverage limits available to insureds, and an appropriate form which the insureds may use to request this coverage.

The opportunity to request this coverage shall be afforded to insureds with policies issued or renewed with effective dates on and after January 1, 1978, and thereafter at subsequent annual anniversary dates. Insureds with policies issued or renewed with effective dates from December 1, 1977 through December 31, 1977 inclusive, must be offered this additional coverage and explanatory information as soon as possible, but no later than February 1, 1978, if such offer was not included when the policy was issued or renewed.

Insurers which do not have approved rates and endorsements for supplementary uninsured motorists insurance must file appropriate rates and endorsements for Department approval.

9. Reporting of Anti-Theft Devices

In accordance with the provisions of Section 167-d(12) of the new statute, insurers must maintain statistics to determine the effectiveness of anti-theft devices. Accordingly, insurers must determine, by questionnaire or other means, which of their insureds with fire, theft and comprehensive coverages have equipped their automobiles with anti-theft devices. The name, type and manufacturer of such devices must be obtained by the insurer.

This requirement applies to all fire, theft and comprehensive policies issued or renewed on and after January 1, 1978.

Very truly yours,

[SIGNATURE]

JOHN F. LENNON

Acting Superintendent of Insurance