

January 10, 1979

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 3 (1979)

TO: ALL INSURERS LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE IN NEW YORK STATE

SUBJECT: EXCLUSION IN HEALTH INSURANCE CONTRACTS OF BENEFITS UNDER GOVERNMENTAL PROGRAMS

Insurance Department Regulation 62 permits the following exclusion in health insurance contracts delivered in New York State:

"Treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workmen's compensation, employers liability or occupational disease law; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered persons's immediate family and services for which no charge is normally made."

Questions have arisen concerning the meaning of the phrase "other governmental program (except Medicaid)" as it appears in the above quoted exclusion.

In particular, the Insurance Department has been advised by the New York State Department of Health that certain insurers have denied health insurance coverage to persons eligible under the Physically Handicapped Children's Program (Title V, Article 23, Public Health Law) on the basis of the "governmental program" exclusion.

When the legislation creating a governmental program specifically provides for the payment of private insurance benefits prior to the program benefits, there is no question of the Insurers' primary payment role. In addition, where it is clear that a governmental program is established to provide financial aid to those in the population deemed by the legislature to be in need of such financial assistance and the program is intended and designed as a "last resort" payment source, the use of the "governmental program" exclusion is inappropriate.

In general, when health benefits are provided through a governmental program and conditioned upon a "means test" or if it is clear the legislative intent was to provide payment for such services only after all other sources of payment, including health insurance, are exhausted, denial of claims by health insurers because the services were performed as part of a governmental program will not be considered by the Insurance Department to be a proper interpretation of the permissible exclusion set forth in Section 52.16(c) (8) of Regulation 62.

Health insurers should recognize "last resort" governmental health programs not as a substitution or duplication of the health insurance benefits purchased by the individual insured, but rather as a supplement to private health insurance which is designed to encourage the rendering of appropriate and timely health care services to those who might otherwise postpone or deny themselves such services because of financial hardship.

Very truly yours,

[SIGNATURE]

Albert B. Lewis

Superintendent of Insurance