

November 16, 1979

SUBJECT: INSURANCE

CIRCULAR LETTER NO. 29
NOVEMBER 16, 1979

TO: ALL INSURERS LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE, INCLUDING ARTICLE IX-C CORPORATIONS

RE: MANDATORY SECOND SURGICAL OPINION CONSULTATION

During the past few years there has been an increasing concern over the rate of surgery in the United States. At the hearing held by the Insurance Department on the subject of mandatory second surgical opinion consultations, it was revealed that since 1971 the rate of surgery has increased from approximately 7,800 procedures per 100,000 population to about 9,900 procedures per 100,000 population in 1977. In the same time period the total number of surgical procedures performed increased about 34%. Such a substantial increase in the surgery rate caused legislative action which required coverage for second surgical opinion consultations in health insurance contracts issued in New York State. This legislation has been in effect since August 29, 1976, and was enacted in an effort to improve the quality of care and eliminate unnecessary surgery and hospitalization.

The 1976 legislation required coverage of second surgical opinion consultations when requested at the option of the insured. The evidence is clear, however, that voluntary second surgical opinion consultation programs do not result in even moderate use by the program participants. There may be many reasons for the failure of patients to avail themselves of the second surgical opinion, but one understandable reason is the patient's reluctance to question the physician rendering the initial opinion when the consultation program is voluntary.

Efforts have been made by welfare funds to implement mandatory second opinion consultation programs and testimony at the Department hearing revealed that union trustees of various welfare funds considered the mandatory program as one which improved the quality of care to their members and resulted in cost savings.

Recognizing the benefits of improved access to quality medical care and the potential for health cost savings that can result from a mandatory second opinion consultation program, the Insurance Department will consider for approval such mandatory programs where the insurer establishes the program on an experimental basis and monitors the program in such a manner so as to provide the Insurance Department with specific information on its operation.

Some of the areas of concern requiring monitoring by the insurer will include:

- the effect, if any, of the mandate on participants
- the computation of any savings in health care costs
- continuing surveillance after non-confirmation of surgery
- ease of referral to board certified specialists

- excessive or repetitive testing by second opinion specialists.

The criteria which must be included in a mandatory second surgical consultation program are the following:

1. The second opinion must be given by a board certified specialist who personally examines the insured.
2. The second surgical opinion consultants must agree not to treat or perform surgery on those for whom they render second or third opinions.
3. Third surgical opinions will be available to those receiving a non-confirming second opinion.
4. The full cost of the second and any third surgical opinion must be paid under the insurance program.
5. The mandatory second opinion program should provide for some mechanism for appeal or forgiveness because of non-compliance with the second opinion mandate due to extenuating circumstances.
6. The second surgical opinion can be applicable to a limited number or all of non-emergency elective surgical procedures.
7. The penalty for failure to obtain a mandated second surgical opinion can include reduction or denial of surgical and/or hospital benefits.

This Circular Letter is intended to inform insurers and other interested parties of the Insurance Department's willingness to favorably consider mandatory second surgical opinion consultation programs meeting the criteria set forth above. The Department realizes that the criteria for approval of such programs may change as experience develops and consequently individual consideration of mandatory second surgical opinion consultation programs will be given.

Very truly yours,

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance