



STATE OF NEW YORK
INSURANCE DEPARTMENT
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NOTE: REPEALED AS OF AUGUST 3, 2000

**Circular Letter No. 13 (1999)
May 17, 1999**

To: All Public Health Law Article 44 HMOs, Insurance Law Article 43 Corporations, and Insurers Licensed to Write Accident and Health Insurance in New York State

Subject: Point-of-Service Products

In the past, this Department has indicated its support of the development of products that combine a comprehensive health services benefit with an out-of-plan benefit, known as point-of-service "POS" products. A group POS product combining in and out-of-network benefits may either be written as two contracts, one issued by an HMO and one by an insurer licensed to do health indemnity business; or, as one contract issued by an HMO which is authorized to issue a POS product by the Commissioner of Health pursuant to Public Health Law Section 4406.

As large employers (more than 50 employees) transitioned from indemnity products to POS products, there was an expectation that the employers' POS premium rate would continue to be derived from the application of an experience rating methodology. However, as HMOs must use an approved community rate for all contracts and riders, the experience rating methodology could only be applied to that portion of the premium which represents the projected costs of providing the insured out-of-network benefit. Furthermore, for most POS products the percentage of out-of-network benefits to total POS product benefits has decreased and, as a result, the portion of the total POS premium which can be subject to a rate derived from an experience rating methodology has declined.

Many large employers, especially those who believe that their employees will have better than average claims experience, have asked HMOs and insurers to use a rate methodology that would allow a larger part of the total POS premium to be derived from the use of an experience rating methodology. Similarly, certain HMOs and insurers have sought to obtain or retain market share by using an experience rating methodology to rate the premium that is needed to provide the in-network HMO benefit. As a result of the employers' requests and the responses from HMOs and insurers, the total POS premium for certain large group POS policyholders is inadequate, thereby producing underwriting losses and requiring a subsidization from other community rated policyholders. This practice of subsidization violates the provisions of Insurance Law Section 4308 and Regulation 62 (11NYCRR 52).

In order to prevent the issuance of a POS product with a premium that is inadequate and unfairly discriminatory, it is necessary that all HMOs and insurers who provide the out-of-network benefit be made aware of the following rate review practices that will be used by the Health Bureau in its review of new and renewal premium rates for POS products:

1. Where the majority of the services to be provided under a POS product will be provided as an in-network benefit, pursuant to an approved contract issued by an HMO, then the entire premium, including the premium needed to provide the out-of-network benefit, must be rated using the rating methodology that is applicable to the HMO contract,

namely community rating as defined in Insurance Law Section 3231.

2. Where the majority of the services to be provided under a POS product will be provided as an out-of-network benefit, pursuant to an approved health indemnity contract, then the premium for this contract and the HMO contract must be community rated, since in the development of the entire premium it is inappropriate to blend a community rated component with an experience rated component.

In order to afford the health insurer which is currently providing the out-of-network benefit an opportunity to file the required community rate with this Department, the rate review practices set forth in this Letter will become effective for all POS new and renewal business with an effective date on or after February 1, 2000. Until such date, all HMOs and insurers currently issuing POS products may continue to use the rate methodologies which are in accordance with their respective rate filing or rate manual which is on file with this Department; provided such filing or manual has received all necessary approvals.

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