



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
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George E. Pataki
Governor

Howard Mills
Superintendent

**Circular Letter No. 13 (2005)
August 24, 2005**

TO: All Health Maintenance Organizations and Article 43 Corporations

RE: Section 4308(g) Notices of Premium Rate Increases Sent To Subscribers

STATUTORY REFERENCE: New York Insurance Law ("NYIL") Section 4308(g)

The Insurance Department has become aware that premium rate increase notices in accordance with Insurance Law Section 4308(g) by Not-For-Profit Health Insurers and Health Maintenance Organizations to their subscribers are, in some instances, inaccurate and misleading. The purpose of this Circular Letter is to remind insurers of the proper procedures with respect to premium rate increase made in accordance with Insurance Law Section 4308(g).

In accordance with Insurance Law Section 4308(g)(1) rate filings that meet the loss ratio and certification requirements set forth therein are deemed approved. This has been confirmed in *Excellus Health Plans, Inc. v. Serio*, where the Court of Appeals held that the Superintendent may not disapprove or modify any rate increase filings made in accordance with Insurance Law § 4308(g)(1).

Because rate filings made pursuant to Section 4308(g)(1) are deemed approved upon submission to the Department, it is inaccurate and misleading for an insurer or HMO to state or imply in its notice to subscribers, or in any other communication with subscribers, that a rate increase obtained pursuant to this provision has been approved by the Department. Such rate increases are filed with the Department and deemed approved by operation of law. Since the Department can neither approve nor disapprove rate increases under Section 4308(g)(1), it is inappropriate for an insurer or HMO to suggest otherwise in its communications with subscribers.

Insurance Law Section 4308(g)(2) requires 30 day advance notice of the premium rate increase. Accordingly, a premium rate increase in accordance with Insurance Law Section 4308(g) may not be implemented unless each contractholder and subscriber receives an accurate and proper notice at least 30 days prior to the effective date of the premium rate increase. A notice that does not accurately state the revised premium or the exact percentage increase for the subscriber's

contract is defective. It is unacceptable to merely provide a range of increases or an average rate increase in such notice.

A notice is also defective if it is not mailed within such time as to be received by the contractholder and subscriber at least 30 days in advance of the premium rate increase.

Even if a company delegates the mailing of premium increase notices to either a third party or the group contractholder, the insurer remains responsible for assuring that the notices contain the proper information and are mailed in a timely fashion.

A company is expected to take such steps as are necessary to assure that any employee or designee provides notices and supplementary information that are in accordance with Insurance Law Section 4308(g).

Any company that has issued a defective notice has not complied with Insurance Law Section 4308(g) and thus may not implement a rate change until proper notice has been given. Additionally, any company found to have violated the notice requirements of Insurance Law Section 4308(g) will be subject to appropriate disciplinary action.

Any questions on this Circular Letter may be directed to:

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Very truly yours,

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Assistant Deputy Superintendent
and Bureau Chief Health Bureau