



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
ONE COMMERCE PLAZA  
ALBANY, NY 12257

**NOTE: WITHDRAWN EFFECTIVE JUNE 29, 2006**

**Supplement No. 2 to  
Circular Letter No. 8 (2006)  
May 24, 2006**

**TO: All Insurers Licensed to Write Accident and Health Insurance in New York State ("Commercial Insurers"), Article 43 Corporations, and Health Maintenance Organizations ("HMOs")**

**RE: Discretionary Clauses in Health Insurance Policies and Contracts including Disability Income Insurance**

**STATUTORY REFERENCE: Sections 3201 and 4308 of the Insurance Law**

[Circular Letter No. 8 \(2006\)](#) issued March 27, 2006 informed commercial insurers, Article 43 Corporations and HMOs that the Department has determined that the use of discretionary clauses violates Sections 3201(c) and 4308(a) of the Insurance Law in that the provisions "encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive, or contrary to law or to the public policy of this state." In accordance with Sections 3201 and 4308 of the Insurance Law, discretionary clause provisions in accident and health insurance policies and in subscriber contracts will no longer be approved by the Department. Circular Letter No. 8 (2006) requires each commercial insurer, Article 43 Corporation and HMO to: provide the Department with a statement of whether it has discretionary clause provisions in its policies or contracts; identify the policies and contracts that contain the provisions; and set forth its plan for appropriate revision within 30 days of the date of the letter.

The purpose of this Supplement is to advise that the compliance deadline has been extended to June 30, 2006.

Very truly yours,

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Charles Rapacciuolo  
Assistant Deputy Superintendent and  
Chief, Health Bureau