



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

**Circular Letter No. 36 (1999)
December 28, 1999**

TO: All Public Health Law Article 44 Health Maintenance Organizations (HMOs); Article 43 Corporations and Health Insurers Issuing Community-rated Contracts ("insurers"); Accident and Health Insurance Agents; and Insurance Brokers

RE: Commission and Fee Payments

HMOs and insurers are reminded of the need to include in their premium rate manual for community-rated contracts on file with this Department the actual rate to be paid for commissions and fees payable to agents and brokers. The commission and fee schedule must provide for the same rate of payment for all contracts providing substantially similar benefits which make up a particular community-rated pool of risks (e.g. individual, small group (2-50 employees) and large group (over 50 employees)).

Any payments for additional services rendered for an HMO or an insurer by an insurance agent or broker which result in a payment to the agent or broker in excess of the maximum permissible rate, as established in the HMO's or insurer's filed premium rate manual, must be in keeping with the following guidelines:

- a. The additional services to be provided must be of a type which was not contemplated by the HMO or insurer when it established its rate of payment for commissions and fees and should not include services normally provided to an insured by an agent or broker.
- b. The additional services to be provided must be pursuant to a separate written agreement between the agent or broker and the HMO or insurer.
- c. The amount of payment by the HMO or insurer for the additional services provided must be expressed in terms of dollar and cents; it is inappropriate to pay for the additional services by using a payment methodology which is based upon a percentage of the HMO's or insurer's premium for the contract sold.

HMOs are reminded that the provisions of 11 NYCRR Part 52.42(f) (Regulation 62) dealing with other compensation paid only concerns services rendered by an agent or broker for an insured and any other compensation to the agent or broker which exceeds the HMO's filed commission and fee schedule must meet the guidelines for additional services as set forth in this Letter.

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