



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

Insurance Circular Letter No. 3 (2016)
July 11, 2016

TO: All Insurers and Fraternal Benefit Societies Authorized to Write Life Insurance or Accident and Health Insurance in New York State (collectively, “issuers”)

RE: Underwriting for Maternal Depression in Life Insurance and Disability Income Insurance

STATUTORY AND REGULATORY REFERENCES: 42 U.S.C. § 300gg-13 (Section 2713 of the Public Health Service Act, as amended by the Affordable Care Act); N.Y. Ins. Law §§ 2608, 3201, 4224 and 4525; 11 NYCRR 52 (Insurance Regulation 62)

Purpose

The purpose of this circular letter is to advise insurers and fraternal benefit societies authorized to write life insurance and accident and health insurance in this state (collectively “issuers”) of their statutory obligations regarding underwriting for maternal depression.

Analysis

In Insurance Circular Letter No. 1 (2016), the Department of Financial Services (the “Department”) advised issuers of their obligations regarding mandated health insurance coverage for maternal depression screening and treatment. In this Circular Letter, we advise issuers of life and disability coverage regarding their obligations with respect to maternal depression.

In January 2016, the United States Preventive Services Taskforce (“USPSTF”) updated its recommendation for adult depression screening to specifically recommend screening for depression in pregnant and postpartum women. The recommendation reads: “The USPSTF recommends screening for depression in the general adult population, including pregnant and postpartum women. Screening should be implemented with adequate systems in place to ensure accurate diagnosis, effective treatment, and appropriate follow up.” All group health plans and issuers offering group or individual health insurance coverage subject to the Affordable Care Act (“ACA”) are required to provide coverage for this screening, with no copayment, coinsurance or deductible pursuant to the requirements of 42 U.S.C. § 300gg-13 (Section 2713 of the Public Health Service Act, as amended by the ACA). This updated recommendation encourages screening in an effort to improve the health of all pregnant and postpartum women.

The Department seeks to ensure that pregnant and postpartum women obtain the necessary screening and treatment for maternal depression. Relatedly, the Department seeks to ensure that pregnant and postpartum women diagnosed with depression do not face impermissible barriers in obtaining life insurance and disability income insurance and that their premiums are not impermissibly higher.

Therefore, the Department reminds issuers writing life insurance and disability income insurance of the existing statutory prohibitions and protections for mental health conditions, which include maternal depression. Pursuant to Insurance Law § 2608, issuers are prohibited from refusing to issue or renew or from cancelling any insurance policy because of any past treatment for a mental disability of the insured. An issuer may refuse to issue, renew or cancel a policy if the issuer relies on sound underwriting and actuarial principles reasonably related to actual or anticipated loss experience.

Similarly, Insurance Law § 4224(a)(1) and (b)(2) prohibit issuers from refusing to insure or continue to insure, limiting the amount, extent or kind of coverage, or charging a different rate for the same coverage solely because of the physical or mental disability, impairment or disease, or prior history of the disability or disease of an insured or potential insured except where the refusal, limitation or rate differential is permitted by law or regulation *and* is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

Conclusion

Accordingly, under Insurance Law §§ 2608 and 4224, issuers must not unfairly discriminate in their underwriting or rate setting based on maternal depression. Consumers with maternal depression should have the ability to purchase life insurance and disability income insurance at fair and reasonable premium rates. Issuers are advised that, as part of her regulatory responsibilities, the Superintendent may audit issuers to confirm that any underwriting of life or disability income insurance where maternal depression is relevant is based on sound underwriting and actuarial principles reasonably related to actual or anticipated loss experience.

Please direct any questions regarding this circular letter regarding life insurance to: Peter Dumar, Chief Insurance Attorney, Life Bureau, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257 or by email at peter.dumar@dfs.ny.gov.

Please direct any questions regarding this circular letter regarding disability income insurance to: Tobias J. Len, Assistant Chief, Health Bureau, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257 or by e-mail at tobias.len@dfs.ny.gov.

Very truly yours,

Lisa M. Fernez
Assistant Deputy Superintendent
and Chief, Life Bureau

Lisette Johnson
Bureau Chief, Health Bureau