New York State Department of Financial Services

Guidance Regarding Emergency Risk Adjustment Regulation For the 2017 Plan Year for the Small Group Market (11 NYCRR 361.9)

This communication provides guidance to insurers that have issued policies and contracts for the 2017 plan year providing hospital, medical or surgical expense insurance, other than Medicare supplement insurance, covering one to 100 employees, regarding the 30% uniform percentage adjustment that the Department of Financial Services (DFS) will use, absent extraordinary circumstances, in administering the market stabilization mechanism authorized by 11 NYCRR 361.9.

This regulation authorizes the Superintendent to implement a market stabilization pool for the New York small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market for the 2017 plan year, the Superintendent determines that a market stabilization mechanism is a necessary amelioration.

Since the beginning of 2017, the superintendent has been carefully evaluating the impact of the federal risk adjustment program developed under the federal Affordable Care Act on the health insurance market in this State for the 2017 plan year. Based on all available information, the Superintendent has determined that, consistent with the authority conveyed by 11 NYCRR 361.9, a market stabilization mechanism will be a necessary amelioration for the New York small group health insurance market for the 2017 plan year. There are several reasons for this conclusion.

First, when applied to New York, there are certain inadequacies in the methodologies underlying the federal risk adjustment program. Specifically, the federal risk adjustment program does not adequately address the impact of carriers' administrative costs and profit and is distorted by how the number of children in a family are counted for purposes of 11 NYCRR 361.9(b)(1)(i) (related to the medical loss ratio) and 11 NYCRR 361.9(b)(1)(ii) (related to billable member months). DFS estimates that the calculation distortion attributable to these two regulations will result in excessive adjustments under the federal risk adjustment program on the magnitude of 25% in the small group market in New York for the 2017 plan year. The methodologies underlying the federal risk adjustment program also fail to account for network differences, plan efficiencies, effective care coordination, and disease management (*see*, "March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting, Discussion Paper," Centers for Medicare and Medicaid Services, March 24, 2016, at 93.) DFS estimates that the calculation distortion attributable to these methodology shortcomings will result in excessive adjustments under the federal risk adjustment program of at least 5% in the small group market in New York for the 2017 plan year.

Second, a market stabilization pool for the small group health insurance market for the 2017 calendar year will facilitate stability in the health insurance market by avoiding large premium swings that could result from application of the federal risk adjustment without such a stabilizing mechanism.

Section 361.9(e)(1) of Part 361 of the New York Insurance Regulations authorizes the Superintendent, in applying a market stabilization mechanism to the New York small group market for the 2017 plan year, to utilize a uniform percentage adjustment of up to 30%. Based on reasonable actuarial assumptions and all available information regarding the New York small group market for the 2017 plan year, the Superintendent has determined that a 30% uniform percentage adjustment will, absent extraordinary circumstances, be used in applying the market stabilization mechanism for the 2017 plan year.