

**INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
FIFTH AMENDMENT TO REGULATION NO. 146
(11 NYCRR 361)**

**ESTABLISHMENT AND OPERATION OF MARKET STABILIZATION MECHANISMS FOR
INDIVIDUAL AND SMALL GROUP HEALTH INSURANCE AND MEDICARE SUPPLEMENT
INSURANCE**

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1109, 3233 of the Insurance Law, and Chapter 501 of the Laws of 1992 and Chapter 504 of the Laws of 1995 do hereby promulgate the Fifth Amendment to Part 361 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 146) to take effect upon publication in the State Register to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.

(a) In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.

(b) The annual funding amount for all pool areas combined is as follows:

(1) \$80,000,000 for 2007;

(2) \$120,000,000 for 2008; and

(3) \$160,000,000 for 2009 and each calendar year thereafter.

(c) The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before February 28. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.

(d)(1) Each carrier's share of the total funding payable to or from the pools shall be determined based on the carrier's high cost claims in its areas of operation.

(2) In order to implement the phase in of the new specified medical condition pooling process, on or before November 10, 2006 each carrier shall report to the superintendent its annualized premium amount as of December 31, 2005 and its cumulative calendar year claims paid in 2005 for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. The superintendent will provide carriers with an estimate of potential pool receivables or liabilities using this 2005 data for advisory purposes only.

(3) Each following year, beginning in 2007, on or before February 28, each carrier shall report to the superintendent its annualized premium amount as of December 31 of the preceding year and its cumulative calendar year claims paid in the preceding year for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. In 2007, the superintendent provided carriers with a second estimate of potential pool receivables or liabilities using 2006 data, for advisory purposes. Payments to the pools, or collections from the pools, shall be required beginning in 2008 and shall be based upon the data from the preceding calendar year.

(4) Cumulative calendar year claims paid shall include the total of all claim payments on behalf of an insured individual from January 1 through December 31 of the preceding year, regardless of when the services were provided.

(5) Cumulative calendar year claims paid shall include payments for hospital and medical services, prescription drug payments, capitation payments, and regional covered lives assessments paid pursuant to section 2807-t of the Public Health Law or percentage surcharges paid pursuant to section 2807-j or section 2807-s of the Public Health Law. Carriers that include the covered lives assessments shall convert the family covered lives assessment into a per member assessment component in order to be included with claims expenses attributable to any one member.

(6) Cumulative calendar year claims paid shall not include amounts paid in satisfaction of the percentage surcharge requirement set forth in section 2807-j(2)(b)(i)(B) of the Public Health Law or interest paid out by a carrier pursuant to section 3224-a(c) of the Insurance Law.

(7) Each carrier's submission shall be signed by an officer of the carrier certifying that the information is accurate.

(8) If a carrier makes a submission after February 28 and the carrier is a pool payer, the carrier's payment into the pool will be increased by one percent interest per month. If a carrier makes a submission after February 28 and the carrier is a pool receiver, the carrier's distribution will be reduced by one percent per month.

(e) The superintendent shall calculate each carrier's share of the total funding payable to or from the pools pursuant to the example in subdivision (i) of this section for each pool area as follows:

(1) Identify the total claims paid by each carrier for the following types of policies: individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, other than Medicare supplement and Healthy New York insurance policies.

(2) Identify the total claims paid in excess of \$20,000 for each insured by type of policy.

(3) For each carrier for each type of policy, divide the claims paid in excess of \$20,000 by the total claims paid (the amount specified in paragraph (2) of this subdivision divided by the amount specified in paragraph (1) of this subdivision) to determine the high cost claim ratio.

(4) Calculate the average high cost claim ratio for all carriers for all types of policies combined and multiply that ratio by the total claims paid for each carrier for each type of policy (a carrier's amount specified in paragraph (1) of this subdivision multiplied by the average high cost claim amount specified in paragraph (3) of this subdivision.)

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier's net pool contribution or distribution.

(f) Billings will be done by the superintendent beginning in 2008 within thirty days of receipt of submissions from all carriers, and payments will be due from carriers within five business days from the date billed. Payments made after the due date shall include interest at a rate of one percent per month. Subsequent to the billing date, but within the calendar year, carrier data that formed the basis of the billing will be audited. In the event audits necessitate post-billing adjustments, the adjustments will be charged or credited in the next year's billing or distribution. Additional payments due from any carrier whose data errors caused it to underpay, or refunds due back from any carrier whose data errors caused it to be overpaid shall include a one percent interest charge per month from the original due date or payment date.

(g) A carrier shall, with respect to distributions from the pools attributable to each type of policy, as determined in paragraph (7) of subdivision (e) of this section, without reduction for contributions owed on other types of policies:

(1) refund the distributions directly to insureds based upon the type of policy that caused the payments to be received without consideration of minimum loss ratio provisions; or

(2) submit a detailed plan to the superintendent for approval:

(i) demonstrating how the distribution will be applied to reduce future premium rates for the type of policy whose insureds caused the payments to be received, or

(ii) providing a detailed explanation as to how the distribution was considered in the development of premium rates for that year.

(h) Claim Submission Form.

Claims Paid From January 1 – December 31, (____)

Carrier: _____

Pool Area: _____

Total annualized premium for individual standardized direct payment health maintenance organization (HMO) policies, individual standardized direct payment point of service (POS) policies, other individual health insurance policies, and small group policies: _____.

Cumulative Total Claims Paid Above Listed Amounts (Attachment Point)	Direct Payment HMO	Direct Payment POS	Direct Payment Other	Small Group	Total
ZERO					
\$10,000					
\$15,000					
\$20,000					
\$25,000					
\$30,000					
\$35,000					
\$40,000					
\$45,000					
\$50,000					
\$60,000					
\$70,000					
\$80,000					

\$90,000					
\$100,000					

Instructions:

* Do not include Medicare Supplement Policies or Healthy New York Policies.

** For each insured determine the cumulative claims paid from January 1 through December 31 and report the total claims paid for all insureds for each type of policy listed above.

***At each dollar level (Attachment Point), report all claims paid over that attachment point level amount from January 1 through December 31 for any insured. Cumulative total claims paid above the ZERO attachment point level would equal the total claims paid by the carrier for all insureds for the period.

(i) Chart for calculation of pool amounts.

	1	2	3	4	5	6
Albany Region	Total Claims Paid	Claims Paid in Excess of \$20,000	High Cost Claim Ratio (Column 2 Divided by Column 1)	Claims Paid Multiplied by Average High Cost Claim Ratio (Column 1 Multiplied by Column 3 Average)	Adjustment to Equalize High Cost Claims (Column 2 Minus Column 4)	Pool Amount Owed or Receivable (Predetermined Total Pool Amount Divided by Column 5 Total Net Contributions of All Net Contributors Multiplied by Column 5)
Carrier A						
Dir Pay HMO						
Dir Pay POS						
Dir Pay Other						
Small Group						
Carrier A Net Contribution or Distribution						
Carrier B						
Dir Pay HMO						
Dir Pay POS						
Dir Pay Other						
Small Group						
Carrier B						

Net Contribution or Distribution						
Total Net Contributions All Net Contributors						
Total Net Distributions All Net Receivers						

Section 361.6 is renumbered to be 361.7 and the opening paragraph of subdivision (a) is amended to read as follows:

361.7(a) The pools shall be administered either directly by the superintendent, or in conjunction with a firm, performing at least the following functions:

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, do hereby certify that the forgoing is the Fifth Amendment to Part 361 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 146), promulgated by me on June 5, 2008, pursuant to the authority granted by Sections 201, 301, 1109, 3233 of the Insurance Law and Chapter 501 of the Laws of 1992 and Chapter 504 of the Laws of 1995, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the State Register on October 10, 2007. No other publication or prior notice is required by statute.

Eric R. Dinallo
Superintendent of Insurance

Dated: June 5, 2008