

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
THIRTY-SIXTH AMENDMENT TO REGULATION NO. 62
(11 NYCRR 52)
MINIMUM STANDARDS FOR THE FORM, CONTENT AND SALE OF HEALTH
INSURANCE, INCLUDING STANDARDS FOR FULL AND FAIR DISCLOSURE

I, ERIC R. DINALLO, Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201, 301, 1109, 3217, 4308, 4321, 4322 and 4326 of the Insurance Law and section 168-b of the Correction Law of the State of New York, and Chapter 645 of the Laws of 2005, do hereby promulgate the Thirty-Sixth amendment to Part 52 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 62) to take effect upon publication in the State Register, to read as follows:

Section 52.16 is amended by adding a new subdivision (m) to read as follows:

(m)(1) Pursuant to sections 4322(b-1) and 4326 (d-1), no health maintenance organization or insurer shall issue a standardized individual enrollee direct payment contract issued pursuant to section 4321 or section 4322 of the Insurance Law, or a standardized health insurance contract for qualifying small employers and individuals issued pursuant to section 4326 of the Insurance Law, that provides coverage for drugs, procedures or supplies for the treatment of erectile dysfunction when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article 6-C of the Correction Law.

(2) Every notice of denial of coverage issued by a health maintenance organization or insurer pursuant to this subdivision shall advise the enrollee how to obtain additional information concerning the denial and the appeal process to challenge the denial. Use of a health maintenance organization's or insurer's existing grievance procedures shall be deemed sufficient to comply with the appeal requirements of this subdivision. Every such notice of denial shall also advise the enrollee that if the enrollee believes that he has been improperly placed on the registry of sex offenders maintained by the New York State Division of Criminal Justice Services, the enrollee should contact the division. The notice shall include the mailing address, phone number and web address of the division.

(3) Coverage of all drugs, procedures and supplies for the treatment of erectile dysfunction may be subject to prior determination of an enrollee's status under article 6-C of the Correction Law by a health maintenance organization or insurer for the purpose of implementing this subdivision.

(4) Nothing in this subdivision shall preclude a health maintenance organization or insurer from conducting utilization review on claims for coverage of drugs, procedures and supplies on behalf of an enrollee determined not to be a person required to register as a sex offender.

(5) Prior to obtaining access from the department of insurance to the registry information of sex offenders obtained from the New York State Division of Criminal Justice Services, a health maintenance organization or insurer shall execute a Nondisclosure Statement and Authorization Form as prescribed by the superintendent. The Nondisclosure Statement and Authorization Form shall be signed by an authorized officer of the health maintenance organization or insurer and shall contain the names of the persons in the employ of

the health maintenance organization or insurer who are authorized to receive the information. By signing the form the authorized officer certifies that:

(i) the named employees of the health maintenance organization or insurer are authorized to receive information from the department of insurance regarding persons required to register as sex offenders;

(ii) the health maintenance organization or insurer has developed and implemented administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of the information obtained pursuant to this subdivision, in accordance with Part 421 of this Title (Regulation 173), including but not limited to safeguards to ensure that such information will only be disclosed by the named employees to other persons in the employ of the health maintenance organization or insurer who are directly involved in approving or disapproving reimbursement or coverage for erectile dysfunction drugs, procedures and supplies and that no person receiving such information shall redisclose such information except to other persons in the employ of the health maintenance organization or insurer who are directly involved in approving or disapproving reimbursement or coverage for erectile dysfunction drugs, procedures and supplies; and

(iii) the health maintenance organization or insurer will promptly notify the department of insurance of any relevant changes of persons in the employ of the health maintenance organization or insurer who are authorized to receive such information.

Subdivision (a) of section 52.90 is amended by adding a new paragraph (18) to read as follows:

(18) Effective upon adoption, with respect to section 52.16(m) of this Part, except that a health maintenance organization or insurer shall have sixty days immediately following the effective date to implement its denial procedures pursuant to said section.

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Thirty-Sixth Amendment to Part 52 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Regulation 62), entitled "Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards for Fair and Full Disclosure," promulgated by me on October 31, 2008, pursuant to the authority granted by sections 201, 301, 1109, 3217, 4308, 4321, 4322 and 4326 of the Insurance Law and section 168-b of the Correction Law, and Chapter 645 of the Laws of 2005 to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on September 3, 2008. No other publication or prior notice is required by statute.

Eric R. Dinallo
Superintendent of Insurance

Dated: October 31, 2008

