

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
43rd AMENDMENT TO REGULATION NO. 62
(11 NYCRR 52)

**MINIMUM STANDARDS FOR THE FORM, CONTENT AND SALE OF HEALTH INSURANCE,
INCLUDING STANDARDS OF FULL AND FAIR DISCLOSURE**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1109, 1117, 2601, 3217, 3234 and 4512 of the Insurance Law do hereby promulgate the 43rd 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:

(ALL MATTER BELOW IS NEW)

Section 52.25 is hereby amended to add a new subdivision (f) to read as follows:

(f) *Internal Appeal.*

(1) *General requirement.*

(i) This subdivision establishes minimum standards for internal appeal benefits found in long term care insurance, nursing home and home care insurance, nursing home insurance only, and home care insurance only policies and certificates.

(ii) No policy or certificate shall be delivered or issued for delivery in this State as long term care insurance, nursing home insurance only, home care insurance only, or nursing home and home care insurance unless the policy or certificate contains provisions setting forth an internal appeal benefit that, at a minimum, complies with the requirements of this subdivision.

(iii) The requirements of this subdivision are in addition to any external appeal benefits afforded to insureds as required by the New York State Partnership for Long Term Care program established under Section 367-f of the Social Services Law.

(2) *Reasonable opportunity to appeal an adverse claim determination.* (i) Every insurer issuing a policy or certificate subject to this section shall establish, and describe in the policy or certificate, a procedure providing the insured, subscriber or an authorized representative thereof with reasonable opportunity to appeal to the insurer an initial adverse claim determination. The insurer shall allow an internal appeal for an adverse claim determination involving expense incurred coverage where the insured, subscriber or the estate thereof has been billed a valid charge for long term care services. For coverage provided without regard to expenses incurred as permitted under the Internal Revenue Code, the insurer shall allow an internal appeal for an adverse claim determination where a plan of care has been prescribed by a licensed health care practitioner for the insured.

(ii) Every insurer shall provide an initial adverse claim determination in writing, which contains the information provided in subparagraph (iii) of this paragraph.

(iii) The policy or certificate shall state that the initial adverse claim determination shall be in writing and include:

(a) The specific reason for the initial adverse claim determination, including a specific reference to policy or certificate language that supports the denial, if applicable;

(b) Instructions to the insured, subscriber or an authorized representative thereof on how and when to initiate and facilitate the insurer's effective handling of an internal appeal, which shall:

(1) include the mailing address and other contact information where the written appeal must be sent and the time frame available for initiating such internal appeal;

(2) specify that the insurer will consider any new or modified information or explanations the insured, subscriber or an authorized representative thereof sends to the insurer; and

(3) state the insurer will accept the names, addresses and phone numbers of persons who may facilitate the insurer's effective handling of the internal appeal; and

(c) A notification that the insured, subscriber or an authorized representative thereof is entitled to all documents, records and other information relevant to the claim.

(3) *Request to appeal.* The insurer shall permit the insured, subscriber or an authorized representative thereof at least 60 days from receipt of the initial adverse claim determination to appeal the denial to the insurer. The insurer shall require that the appeal of the initial adverse claim determination must be in writing; however, the insurer shall not require the insured, subscriber or an authorized representative thereof to use a special form to appeal the initial adverse claim determination.

(4) *Internal appeal procedures.*

(i) Every insurer shall issue a determination with regard to an internal appeal within 60 days of the insurer's receipt of the appeal.

(ii) If the insurer reasonably needs additional information from the insured, subscriber or an authorized representative thereof to issue a determination on the internal appeal, the insurer shall request in writing the additional information from the insured, subscriber or authorized representative thereof within 15 business days of receipt of the internal appeal. The insurer shall allow the insured, subscriber or the authorized representative thereof at least 45 days from receipt of the insurer's written request to provide the additional information to the insurer.

(iii) If the insurer cannot reasonably decide the internal appeal within the 60-day timeframe because the insurer is awaiting additional information from the insured, subscriber or an authorized representative thereof, then the insurer shall provide the insured, subscriber or authorized representative thereof with written notice of an extension to decide the internal appeal prior to the expiration of the initial 60-day period. The written notice of an extension shall describe the need to await further information and indicate the date by which the insurer

expects to issue the determination. In no event shall the extension afforded the insurer exceed 120 days from receipt of the internal appeal by the insurer.

(iv) If the additional information is not received within 120 days from receipt of the internal appeal by the insurer, the insurer shall immediately issue an internal appeal determination based on the information available to the insurer at that time.

(v) The internal appeal determination shall be made by a person not involved in the initial adverse claim determination by the insurer, and the person shall have the ability and expertise to reasonably evaluate and decide the internal appeal.

(5) *Internal appeal determination.* The internal appeal determination shall be made in writing to the insured, subscriber or an authorized representative thereof and include:

(i) A statement as to whether the initial adverse claim determination is upheld or reversed in whole or in part;

(ii) A detailed explanation, with references to specific policy or certificate language if applicable, of the reason(s) why the initial adverse claim determination is being upheld in whole or in part;

(iii) If the denial is reversed in whole or in part, a detailed description of the benefits that will be paid; and

(iv) A notification that the insured, subscriber or an authorized representative thereof is entitled to copies of all documents, records or other relevant information regarding the claim and the internal appeal.

Subdivision (a) of section 52.90 is amended by adding a new paragraph (19) to read as follows:

(19) Effective upon adoption, with respect to section 52.25(f) of this Part, affecting policies and certificates delivered or issued for delivery in this State six months or more from such effective date.



STATE OF NEW YORK
INSURANCE DEPARTMENT
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I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Forty-third Amendment to Part 52 of Title 11 NYCRR (Regulation No. 62) promulgated by me on March 14, 2011, pursuant to the authority granted by Sections 201, 301, 1109, 1117, 2601, 3217, 3234 and 4512 of the Insurance Law 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 January 12, 2011. No other publication or prior notice is required by statute.

James J. Wrynn
Superintendent of Insurance

March 14, 2011