

Regulatory Impact Statement for the Forty-Ninth Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301, 2606, 2607, 2608, 3201, 3217, 3221(h), 3231(a), 3232(g) and (h), 3240(b) and (d), 4303(II), 4317(a), 4318(g) and (h), and 4328(b)(1).

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services (“Superintendent”). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 2606 prohibits discrimination because of race, color, creed, national origin, or disability, Insurance Law § 2607 prohibits discrimination because of sex or marital status, and Insurance Law § 2608 prohibits discrimination because of treatment for a mental disability.

Insurance Law § 3201 requires a policy form delivered or issued for delivery in New York to be filed with and approved by the Superintendent.

Insurance Law § 3217 requires the Superintendent to issue such regulations as the Superintendent deems necessary or desirable to establish minimum standards for the form, content and sale of accident and health insurance policies and subscriber contracts offered by a corporation authorized under Insurance Law Article 43 and entities licensed pursuant to Public Health Law article 43.

Insurance Law §§ 3221(h), 3240(d), 4303(II), and 4328(b)(1) require an individual or small group health insurance policy or contract delivered or issued for delivery in New York, including a health maintenance organization (“HMO”) contract (other than a grandfathered health plan), that provides hospital, medical or surgical expense coverage, and a student accident and health policy or contract delivered or issued for delivery in New York, to provide coverage for essential health benefits (“EHB”) as defined in 42 U.S.C. § 18022(b).

Insurance Law §§ 3231(a) and 4317(a) require an individual and small group health insurance policy or contract, including an HMO contract, to be community rated.

Insurance Law §§ 3232(g) and (h), 3240(b), and 4318(g) and (h) prohibit an issuer from imposing any preexisting condition exclusion in any individual, group or blanket health insurance policy or contract, including an HMO contract, that provides hospital, medical or surgical expense coverage and is not an individual grandfathered health plan and any student accident and health insurance policy or contract.

2. Legislative objectives: Insurance Law §§ 3221(h), 3240(d), 4303(II), and 4328(b)(1) require an individual or small group policy or contract delivered or issued for delivery in New York (other than a grandfathered health plan) that provides coverage for hospital, medical or surgical expense, and a student accident and health insurance policy or contract delivered or issued for delivery in New York, to provide coverage for EHB defined in 42 U.S.C. § 18022(b). In addition, Insurance Law §§ 3232(g) and (h), 3240(b), and 4318(g) and (h) prohibit an issuer from imposing any preexisting condition exclusion in any individual, group or blanket health insurance policy or contract that provides hospital, medical or surgical expense coverage and is not a grandfathered health plan and in any student accident and health insurance policy or contract. Insurance Law Article 26 prohibits discrimination because of race, color, creed, national origin, disability, sex, or marital status.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law §§ 3221(h), 3240(d), 4303(II), 4328(b)(1) by requiring every individual and small group accident and health insurance policy or contract delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage (other than a grandfathered health plan), and every student accident and health insurance policy or contract delivered or issued for delivery in New York, to provide coverage of at least the enumerated ten categories of EHB if the EHB provision in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 *et seq.* are no longer in effect or are modified as determined by the Superintendent.

This rule also accords with the public policy objectives that the Legislature sought to advance in Insurance Law Article 26, which prohibits an issuer from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition with respect to an individual or small group accident and health insurance policy or contract that provides hospital, surgical, or medical expense coverage or a student accident and health insurance policy or contract.

3. Needs and benefits: There is movement underway in Congress to repeal and replace the federal Affordable Care Act (“ACA”), including the requirement that issuers cover EHB, such as benefits for maternity and newborn care and mental health and substance use disorder services, and the prohibition against discrimination in the issuance and rating of accident and health insurance because of factors such as race, color, national origin, sex, age, and disability. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to provide coverage of at least the enumerated ten categories of EHB if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 *et seq.* are no longer in effect or are modified as determined by the Superintendent. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to an individual or small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

4. Costs: This rule will not impose compliance costs on issuers because it only continues the existing

protections provided under the ACA.

The Department will not incur costs for the implementation and continuation of this rule.

This rule does not impose compliance costs on state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule does not impose any reporting requirements, including forms and other paperwork.

7. Duplication: With regard to the section in the rule that pertains to EHB, it does not duplicate or conflict with any existing state or federal rules or other legal requirements because it only applies if Congress repeals the ACA. With regard to the section in the rule that pertains to nondiscrimination, there is some duplication and overlap with Insurance Law Article 26.

8. Alternatives: The Department considered not promulgating the rule. However, the Department is concerned about the negative impact on consumers if the protections under the ACA are repealed. As a result, the Department determined that it is necessary to promulgate this rule requiring coverage of EHB and continuing to prohibit discrimination for the individual and small group health insurance markets and for student accident and health insurance.

Another alternative considered by the Department was to implement the amendment immediately. However, if the ACA remains in effect in its current form, then there is no need to implement mandating the EHB benefits in the regulation.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The Department is promulgating this rule on an emergency basis in the event that Congress repeals the ACA.

Statement setting forth the basis for the finding that the Forty-Ninth Amendment to 11 NYCRR 52 (Insurance Regulation 62) will not have a substantial adverse impact on jobs and employment opportunities.

This rule should not adversely impact jobs or employment opportunities in New York State. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to continue providing coverage of at least the enumerated ten categories of essential health benefits (“EHB”) if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 *et seq.* are no longer in effect or are modified as determined by the Superintendent of Financial Services. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to an individual or small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

Statement setting forth the basis that for the finding that the Forty-Ninth Amendment to 11 NYCRR 52 (Insurance Regulation 62) will not have a substantial adverse impact on small businesses and local governments.

Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers and health maintenance organizations (“HMOs”), which do not fall within the definition of a “small business” as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs.

Rural Area Flexibility Analysis for the Forty-Ninth Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations (“HMOs”) (collectively, “issuers”) affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule does not impose additional reporting, recordkeeping, and other compliance requirements on issuers located in rural areas. An issuer in a rural area should not need to retain professional services to comply with this rule.

3. Costs: This rule will not impose compliance costs on issuers, including issuers in rural areas.

4. Minimizing adverse impact: This rule uniformly affects issuers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: The Department of Financial Services (“Department”) is promulgating this rule on an emergency basis in the event that Congress repeals the ACA. Issuers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department’s website.