

Assessment of Public Comments for the Fiftieth Amendment to 11 NYCRR 52 (Insurance Regulation 62).

The Department of Financial Services (“Department”) received comments from one interested person in response to its proposed addition of Section 52.73 to 11 NYCRR. Generally supportive of the regulation as proposed, the commenter made three suggestions for revisions. For the reasons set forth in more detail below, the Department determined that no changes were necessary to the regulation as proposed.

Comment:

The commenter suggested that all insurers regulated by the Department should be subject to the rule and not merely those plans that provide coverage for medication for the detoxification or maintenance treatment of a substance use disorder.

Response:

The proposed regulation applies to all insurers that deliver or issue for delivery in this state an accident and health insurance policy that provides hospital, surgical, or medical expense coverage, but a formulary exception process, as required by this rule, only makes sense in a policy that covers pharmaceuticals. Since all large group, small group, and individual plans are required by law to provide coverage for medication for the detoxification or maintenance treatment of a substance use disorder, this rule would apply to all such policies. As such, no changes were made to the proposed regulation in response to the comment.

Comment:

The commenter next suggested that the regulation set out standards that will guide all determinations for exceptions.

Response:

The suggested standards already exist in the utilization review process and the standards required by Articles 49 of the Insurance Law (IL) and Public Health Laws (PHL) and all determinations are subject to those standards, which the regulation explicitly states. The provisions of 11 NYCRR 410 (Insurance Regulation 166)

and Subpart 98-2 of 10 NYCRR, which govern external appeals, will govern except as otherwise provided in 11 NYCRR Section 52.73(e). As such, no changes were made to the proposed regulation in response to the comment.

Comment:

The commenter also suggested that the notification requirements of IL and PHL Articles 49 should be applicable under the regulation.

Response:

As noted, the proposed regulation already applies the requirements of IL and PHL Articles 49. The proposed regulation specifically states: “With respect to the process for such a formulary exception, an insurer shall follow the process and procedures specified in Insurance Law Article 49 or Public Health Law Article 49, as applicable, except as otherwise provided in this section.” As such, no changes were made to the proposed regulation in response to the comment.