



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

**Insurance Circular Letter No. 11 (2017)
July 28, 2017**

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State

RE: Family Leave Benefits Coverage

STATUTORY AND REGULATORY REFERENCES: N.Y. Workers' Compensation Law Article 9; N.Y. Insurance Law § 4235(n); N.Y. Workers' Compensation Law § 2(16); 11 NYCRR 363 (Insurance Regulation 211); and 12 NYCRR 360, 361 and 380

On April 4, 2016, Governor Andrew M. Cuomo signed into law the legislation enacting New York's Paid Family Leave program, the most comprehensive paid family leave program in the United States. Commencing January 1, 2018, all eligible employees will be able to take time off, while still being paid a portion of their income, to bond with a new child, care for a family member or handle personal matters arising from an immediate family member being called to active duty in the Armed Forces of the United States. The purpose of this circular letter is to provide guidance to insurers authorized to write accident and health insurance in New York State regarding the requirements relating to family leave benefits coverage enacted pursuant to Part SS of Chapter 54 of the Laws of 2016. In furtherance of such legislation, the Department of Financial Services ("DFS") promulgated 11 NYCRR Part 363 (Insurance Regulation 211) and the Workers' Compensation Board promulgated 12 NYCRR Parts 360, 361 and 380.

I. Submissions to the Department

Beginning on January 1, 2018, every New York statutory Disability Benefits Law ("DBL") policy issued in accordance with Workers' Compensation Law Article 9 must include coverage for family leave benefits. Such coverage for family leave benefits must comply with Workers' Compensation Law Article 9 and the aforementioned regulations. Except as otherwise provided in Insurance Regulation 211, every insurer that provides DBL coverage must also provide coverage for family leave benefits by rider to the group DBL policy pursuant to § 363.6(a)(2) of Insurance Regulation 211. The family leave benefits rider is subject to the review and approval of the Superintendent of Financial Services ("Superintendent"). Pursuant to § 363.6(d) of Insurance Regulation 211, the Superintendent has developed a model rider that all DBL insurers must use in order to add the required family leave benefits coverage to their DBL policies. The Superintendent has also developed instructions and a checklist to assist insurers in preparing their filings. The model rider, instructions and checklist are available at the [Health Insurers](#) page on the DFS website.

In order to meet the family leave benefits program commencement date of January 1, 2018, insurers are asked to file their riders with the Superintendent by September 15, 2017, in order to

give the Superintendent adequate time to review and approve the riders. Insurers are to submit their filings to the Superintendent through the electronic form filing process established in SERFF.

All DBL insurers are encouraged to continue providing DBL benefits and the family leave benefits rider. Any DBL insurer that seeks to discontinue offering DBL coverage for calendar year 2018 must provide written notification of the proposed discontinuance to the Superintendent no later than July 31, 2017, pursuant to § 363.6(n) of Insurance Regulation 211. Such written notification must include the information set forth in § 363.6(l) of Insurance Regulation 211 and must be accompanied by a written withdrawal plan that is acceptable to the Superintendent to minimize any potential disruption in the DBL marketplace. A DBL insurer should submit a written notification of a proposed discontinuance to DFS by mail addressed to Sarah L. Allen, Supervising Insurance Attorney, Health Bureau, NYS Department of Financial Services, One Commerce Plaza, Albany, New York 12257 or electronically via e-mail to Sarah.Allen@dfs.ny.gov with a copy to Tobias J. Len, Assistant Chief of the Health Bureau, at Tobias.Len@dfs.ny.gov.

II. Calculation of Premium

On June 1, 2017, pursuant to Insurance Law § 4235(n), the Superintendent published her [Decision on Premium Rate for Family Leave Benefits and Maximum Employee Contribution for Coverage Beginning January 1, 2018](#) (the “Rate Decision”), which sets the 2018 rate for family leave benefits coverage at 0.126% of an employee’s weekly wages up to and not exceeding the statewide average weekly wage. Insurers are reminded that pursuant to §363.6(i) of Insurance Regulation 211, insurers must collect the premiums for a policy providing family leave benefits in the amount set by the Superintendent pursuant to the Rate Decision.

For the purposes of the family leave benefits rate, the applicable statewide average weekly wage is the most recent rate reported by the Commissioner of Labor to the Superintendent pursuant to Worker’s Compensation Law § 2(16) at the time the Rate Decision was published. It will remain in effect for the entire period for which the Rate Decision applies and will not change even though the Commissioner of Labor may report a new statewide average weekly wage during that time period. Specifically, the statewide average weekly wage for purposes of the family leave benefits rate for 2018 is \$1,305.92; for purposes of the family leave benefits rate for 2018, this statewide average weekly wage will remain in effect until December 31, 2018.

Some employees may earn wages on an irregular schedule, such as where commissions or bonuses are part of an employee’s wages. Pursuant to the Rate Decision and Insurance Law § 4235(n) and to ensure a stable and functioning market, insurers must collect the correct premium based on the total annual wages earned by such employee. Each insurer must collect premiums equal to 0.126% of the employee’s annual wages for the calendar year up to and not exceeding 0.126% of the annualized statewide average weekly wage. For the calendar year 2018, the annualized statewide average weekly wage is \$67,908, which means the maximum annual premium to be charged to an employee for paid family leave benefits coverage for 2018 is \$85.56.

Please direct any questions regarding this circular letter to Sarah L. Allen, Supervising Insurance Attorney, Health Bureau, by mail at New York State Department of Financial Services, One Commerce Plaza, Suite 1909, Albany, New York 12257, by telephone at (518) 486-7815, or by e-mail at Sarah.Allen@dfs.ny.gov.

Very truly yours,

Lisette Johnson
Bureau Chief, Health Bureau