

Regulatory Impact Statement for the Emergency and Proposed Eighth Amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D).

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301 and 3420(f)(2-a).

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”).

Financial Services Law Section 302 and Insurance Law Section 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 Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy, other than a commercial risk insurance policy, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of a motor vehicle, by the insured, where the policy is originally entered into on or after June 16, 2018, to provide supplementary uninsured/underinsured motorists (“SUM”) insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured’s SUM coverage limit equal the insured’s bodily injury liability insurance limit under the policy.

2. Legislative objectives: On December 18, 2017, Governor Andrew M. Cuomo signed into law Chapter 490 of the Laws of 2017, which added a new Insurance Law Section 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law Chapter 15 of the Laws of 2018, which amended Chapter 490. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance

coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

Insurance Law Section 3420(f)(2-a)(B) requires an insurer to provide an insured with a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law Section 3420(f)(2-a) by updating Subpart 60-2 to comply with Chapters 490 and 15.

3. Needs and benefits: Chapter 490 of the Laws of 2017 added a new Insurance Law Section 3420(f)(2-a) and Chapter 15 of the Laws of 2018 made amendments thereto. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. This rule amends Subpart 60-2 to comply with Chapters 490 and 15. The rule also clarifies which policies are commercial risk policies and which are not, as well as how the law applies to transportation network company policies.

4. Costs: This rule may impose compliance costs on insurers because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with

Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

The Department of Financial Services will not incur costs for the implementation and continuation of this rule. This rule does not impose compliance costs on any local government.

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: An insurer may incur additional paperwork because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, the insurer is already required under the law and Subpart 60-2 to provide a notice; therefore, this amendment creates no additional requirement. Moreover, this amendment is a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There were no significant alternatives to consider.

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: Chapters 490 and 15 take effect on June 16, 2018. The Superintendent is promulgating these regulations on an emergency basis to facilitate the orderly implementation of the new law.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Emergency and Proposed Eighth Amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D).

1. Effect of the rule: On December 18, 2017, Governor Andrew M. Cuomo signed into law Chapter 490 of the Laws of 2017, which added a new Insurance Law Section 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law Chapter 15 of the Laws of 2018, which amended Chapter 490. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide supplementary uninsured/underinsured motorists (“SUM”) insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured’s SUM coverage limit equal the insured’s bodily injury liability insurance limit under the policy.

Insurance Law Section 3420(f)(2-a)(B) requires an insurer to provide an insured a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

This rule reflects the amendments to the Insurance Law by Chapters 490 and 15. As such, it should not affect local governments.

Industry asserts that certain domestic insurers, in particular co-operative insurers and mutual insurers, subject to the rule are small businesses. However, the law, rather than the rule, imposes the written notice and waiver requirements. The rule cannot vary a requirement imposed by law.

2. Compliance requirements: No local government must undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer

that is a small business affected by this rule, if any, may be subject to reporting, recordkeeping, or other compliance requirements because the insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, this is a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. No insurer that is a small business affected by the rule, if any, should need to retain professional services to comply with this rule.

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may incur additional compliance costs because the insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department of Financial Services (“Department”) has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact because of the rule. No insurer

that is a small business affected by this rule, if any, should experience any economic or technological impact because of the rule. Furthermore, this rule merely implements Chapters 490 and 15, which impose written notice and waiver requirements regarding SUM coverage.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule and merely implements Chapters 490 and 15, which impose written notice and waiver requirements regarding SUM coverage.

7. Small business and local government participation. Small businesses and local governments will have an opportunity to participate in the rulemaking process when the notice of emergency adoption and proposed rulemaking is published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis for the Emergency and Proposed Eighth Amendment to 11 NYCRR 60-2  
(Insurance Regulation 35-D).

1. Types and estimated numbers of rural areas: Insurers affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements because an insurer, including an insurer in a rural area, must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding supplementary uninsured/underinsured motorists (“SUM”) insurance coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, this is a consequence of Chapters 490 of the Laws of 2017 and Chapter 15 of the Laws of 2018, which impose the written notice and waiver requirements.

An insurer in a rural area should not need to retain professional services to comply with this rule.

3. Costs: The rule may result in additional costs to insurers, including insurers located in rural areas, because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department of Financial Services (“Department”) has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and 11 NYCRR Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

4. Minimizing adverse impact: This rule uniformly affects insurers 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: Insurers in rural areas will have an opportunity to participate in the rule-making process when the notice of emergency adoption and proposed rulemaking are published in the State Register and posted on the Department's website.

Statement setting forth the basis for the finding that the Emergency and Proposed Eighth Amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D) 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. The amendment merely conforms the rule to Chapter 490 of the Laws of 2017 and Chapter 15 of the Laws of 2018, which added and amended, respectively, new Insurance Law Section 3420(f)(2-a).