NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
REVISED PROPOSED
FORTY-NINTH AMENDMENT TO 11 NYCRR 52
(INSURANCE REGULATION 62)

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

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2606, 2607, 2608, 3201, 3221(h), 3231(a), 3232(g) and (h), 3240(b) and (d), 4303(ll), 4317(a), 4318(g) and (h), and 4328(b)(1) of the Insurance Law, do hereby promulgate the Forty-Ninth Amendment to Part 52 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 62), to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

A new subdivision 52.1(q) is added as follows:

(q)(1) The federal Patient Protection and Affordable Care Act ("ACA") requires all individual and small group accident and health insurance policies delivered or issued for delivery in this State that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies delivered or issued for delivery in this State to include coverage for ten categories of essential health benefits. The essential health benefits provide a set of minimum standards that ensure that all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies provide their insureds with comprehensive coverage for medically necessary care. Independent of the ACA, the Insurance Law and this Title include broad protections to ensure that all accident and health insurance coverage sold in this State is comprehensive and that insurers shall not discriminate against residents of this State based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

(2) It is the policy of this State that all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies provide insureds with essential health benefits and that insurers shall not discriminate against residents of this State based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition, whether in issuing policies or setting premiums. Accordingly, irrespective of any changes to the essential health benefit rules in the ACA, as set forth in section 52.71 of this Part, this State will continue to require that individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and student accident and health insurance policies cover the same essential health benefits and be subject to the same benchmark plan and model contract rules as currently apply. Similarly, irrespective of any changes to the anti-discrimination rules in the ACA, as set forth in section 52.72 of this Part, this State will continue to ensure that all New York insureds covered by small or large group or individual accident and health insurance policies that provide hospital, surgical, or medical expense coverage and student accident and health insurance policies are not subject to discrimination based on race, color, creed, national origin, sex, age, marital status, disability, or

preexisting condition.

A new section 52.71 is added as follows:
§ 52.71 Essential health benefits.

(a) Every individual and small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and is not a grandfathered health plan, and every student accident and health insurance policy shall provide coverage of at least the following essential health benefits:

(1) ambulatory patient services, such as office visits, ambulatory surgical services, dialysis, radiology services, chemotherapy, infertility treatment, abortion services, hospice care, and diabetic equipment, supplies and self-management education;

(2) emergency services, such as emergency room services, urgent care services, and ambulance services;

(3) hospitalization, such as preadmission testing, inpatient physician and surgical services, hospital care, skilled nursing facility care, and hospice care;

(4) maternity and newborn care, such as delivery, prenatal and postnatal care, and breastfeeding education and equipment;

(5) mental health and substance use disorder services, including behavioral health treatment, such as inpatient and outpatient services for the diagnosis and treatment of mental, nervous and emotional disorders including maternal depression, screening, diagnosis and treatment for autism spectrum disorder, and inpatient and outpatient services for the diagnosis and treatment of substance use disorder;

(6) prescription drugs, such as coverage for generic, brand name and specialty drugs, enteral formulas, contraceptive drugs and devices, abortifacient drugs, and orally administered anti-cancer medication;

(7) rehabilitative and habilitative services and devices, such as durable medical equipment, medical supplies, prosthetic devices, hearing aids, chiropractic care, physical therapy, occupational therapy, speech therapy, and home health care;

(8) laboratory services, such as diagnostic testing;

(9) preventive and wellness services and chronic disease management, such as well child visits, immunizations, mammography, gynecological exams including cervical cytology screening, bone density measurements or testing, and prostate cancer screening; and

(10) pediatric services, including oral and vision care, such as preventive and routine pediatric vision and dental care, and prescription lenses and frames.

(b) The scope of the minimum benefits covered as essential health benefits pursuant to subdivision (a) of this section shall be equal to the benefits provided by the benchmark plan selected by the superintendent as the

New York Benchmark Plan in accordance with this section.

(c) Subject to subdivisions (d) and (e) of this section, the superintendent may select the New York Benchmark Plan in consultation with the commissioner of health from any of the following plans:

(1) Small group market health plan. The largest health plan by enrollment in any of the three largest small group insurance products by enrollment in the small group market in this state;

(2) State employee health benefit plan. Any of the largest three employee health benefit plan options by enrollment offered and generally available to state employees in this state;

(3) FEHBP plan. Any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by aggregate enrollment that is offered to all health-benefits-eligible federal employees under 5 U.S.C. section 8903;

(4) HMO. The coverage plan with the largest insured commercial non-Medicaid enrollment offered by a health maintenance organization operating in this State;

(5) Any other plan identified by the superintendent as a typical employer plan providing the coverage of essential health benefits required by this section;

(6) An essential health benefit benchmark plan that another state used for the 2017 plan year;

(7) Replacing one or more categories of essential health benefits in the New York Benchmark Plan used for the 2017 plan year with the same category or categories of essential health benefits from a benchmark plan that another state used for the 2017 plan year; or

(8) Any other set of benefits that the superintendent selects that would become the New York Benchmark Plan.

(d)(1) In order to be eligible to be selected as the New York Benchmark Plan, a plan shall provide coverage of at least the categories of benefits identified in subdivision (a) of this section.

(2) Coverage in each benefit category. A plan not providing any coverage in one or more of the categories described in paragraph (1) of this subdivision may be selected as the New York Benchmark Plan if the plan is supplemented as follows:

(i) General supplementation methodology. A plan that does not include items or services within one or more of the categories described in subdivision (a) of this section shall be supplemented by the addition of the entire category of such benefits offered under any other benchmark plan option described in subdivision (c) of this section unless otherwise described in this subdivision.

(ii) Supplementing pediatric oral services. A plan lacking the category of pediatric oral services shall be supplemented by the addition of the entire category of pediatric oral benefits from one of the following:

(*a*) The Federal Employees Dental/Vision Program ("FEDVIP") dental plan with the largest national enrollment that is described in and offered to federal employees under 5 U.S.C. section 8952; or

(*b*) The benefits available under that State's separate Children's Health Insurance Program ("CHIP") plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(iii) Supplementing pediatric vision services. A plan lacking the category of pediatric vision services shall be supplemented by the addition of the entire category of pediatric vision benefits from one of the following:

(*a*) The FEDVIP vision plan with the largest national enrollment that is offered to federal employees under 5 U.S.C. section 8982; or

(*b*) The benefits available under the State's separate CHIP plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(e) The superintendent may issue model contract language identifying the coverage requirements for all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and all student accident and health insurance policies delivered or issued for delivery in this State.

(f) The model language issued by the superintendent summarizes the federal and state laws and rules that are applicable to health insurance policies delivered or issued for delivery in this State, including the requirement that the policies include coverage for essential health benefits required by the federal Patient Protection and Affordable Care Act. Every individual and small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy delivered or issued for delivery in this State shall comply with the federal and state laws and rules that are applicable to health insurance policies issued in New York State as set forth in the model language.

(g) Except for subdivisions (e) and (f) of this section, the provisions of this section shall not be applicable unless and until the essential health benefits provision in 42 U.S.C. section 18022 and 45 C.F.R. 156.100 *et seq*. are no longer in effect or are modified as determined by the superintendent.

A new section 52.72 is added as follows:

§ 52.72 Nondiscrimination on the basis of race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

(a) With regard to a small or large group or individual accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy delivered or issued for delivery in this State, no insurer shall, because of race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition:

(1) make any distinction or discrimination between persons as to the premiums or rates charged for the policy or in any other manner whatever;

(2) demand or require a greater premium from any person than it requires at that time from others in similar cases;

(3) make or require any rebate, discrimination or discount upon the amount to be paid or the service to be rendered on any policy;

(4) insert in the policy any condition, or make any stipulation, whereby the insured binds his or herself, or his or her heirs, executors, administrators or assigns, to accept any sum or service less than the full value or amount of such policy in case of a claim thereon except such conditions and stipulations as are imposed upon others in similar cases; and any such stipulation or condition so made or inserted shall be void;

(5) reject any application for a policy issued or sold by it;

(6) cancel or refuse to issue, renew or sell such policy after appropriate application therefor; or

(7) fix any lower rate or discriminate in the fees or commissions of insurance agents or insurance brokers for writing or renewing such a policy.

(b) For the purposes of this section, “disability” shall have the same meaning set forth in Executive Law section 292(21).

(c)(1) Discrimination because of national origin shall include discrimination based on an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

(2) Discrimination because of sex shall include discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, sexual orientation, gender identity or expression, and transgender status.