

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
FIFTIETH 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, Sections 301, 3201, 3217, 3221(h), 3221(l)(7-b), 4303(l-1) and (ll), 4304(l), 4308(a), and 4328(b)(1), and Article 49 of the Insurance Law, Article 49 of the Public Health Law, and 45 C.F.R. § 156.122(c) do hereby promulgate the Fiftieth 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 60 days after publication of the notice of adoption in the State Register:

(ALL MATERIAL IS NEW)

A new section 52.73 is added as follows:

§ 52.73 Formulary exception process for medication for the detoxification or maintenance treatment of a substance use disorder.

(a) Every insurer that delivers or issues for delivery in this state an accident and health insurance policy that provides hospital, surgical, or medical expense coverage and also provides coverage for medication for the detoxification or maintenance treatment of a substance use disorder shall include in the policy processes that allow an insured, the insured's designee, or the insured's prescribing physician (or other prescriber, as appropriate) to request a formulary exception and gain access to clinically appropriate medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy (a request for formulary exception). 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.

(b) Standard formulary exception request. (1) An insurer shall have a process for an insured, the insured's designee, or the insured's prescribing physician (or other prescriber) to request a standard review of a decision that a medication for the detoxification or maintenance treatment of a substance use disorder drug is not covered by the policy.

(2) An insurer shall make a determination on a standard exception request and notify the insured or the insured's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours following receipt of the request.

(3) An insurer that grants a standard exception request shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the prescription, including refills.

(c) Expedited formulary exception request. (1) An insurer shall have a process for an insured, the insured's designee, or the insured's prescribing physician (or other prescriber) to request an expedited review of a decision that a medication for the detoxification or maintenance treatment of a substance use disorder is not covered by the policy based on exigent circumstances.

(2) Exigent circumstances exist when an insured is suffering from a health condition that may seriously jeopardize the insured's life, health, or ability to regain maximum function or when an insured is undergoing a current course of treatment using a non-formulary medication for the detoxification or maintenance treatment of a substance use disorder.

(3) An insurer shall make a determination on an expedited review request based on exigent circumstances and notify the insured or the insured's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 24 hours following receipt of the request.

(4) An insurer that grants an exception based on exigent circumstances shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the exigency.

(d) Notice. An insurer that denies an exception request under subdivision (b) or (c) of this section shall provide written notice of its determination to the insured or the insured's designee and the prescribing physician (or other prescriber, as appropriate). The written notice shall be considered a final adverse determination under Insurance Law section 4904 or Public Health Law section 4904, as applicable. Written notice shall also include the name or names of clinically appropriate medications for the detoxification or maintenance treatment of a substance use disorder covered by the insurer to treat the insured.

(e) External appeal. (1) If an insurer denies a request for an exception under subdivision (b) or (c) of this section, then the insurer shall have a process for the insured, the insured's designee, or the insured's prescribing physician (or other prescriber) to request that the denial of such request be reviewed by an external appeal agent certified by the Superintendent pursuant to Insurance Law section 4911 in accordance with Insurance Law Article 49 or Public Health Law Article 49, as appropriate.

(2) An external appeal agent shall make a determination on the external appeal and notify the insurer, the insured or the insured's designee, and the prescribing physician (or other prescriber, as appropriate) of its determination no later than: (i) 72 hours following the agent's receipt of the request, if the original request was a standard exception request under subdivision (b) of this section; or (ii) 24 hours following the agent's receipt of the request, if the original request was an expedited exception request under subdivision (c) of this section and the prescribing physician (or other prescriber) attests that exigent circumstances exist.

(3) An external appeal agent shall make a determination in accordance with Insurance Law section 4914(b)(4)(A) or Public Health Law section 4914(2)(d)(A), as applicable. When making a determination, the external appeal agent shall also consider whether the formulary medication for the detoxification or maintenance treatment of a substance use disorder covered by the insurer will be or has been ineffective, would not be as effective as the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder, or would have adverse effects.

(4) If an external appeal agent overturns the insurer's denial of a standard exception request under subdivision (b) of this section, then the insurer shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the prescription, including refills. If an external appeal agent overturns the insurer's denial of an expedited exception request under subdivision (c) of this section, then the insurer shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the exigency.