

Regulatory Impact Statement for the Proposed Fifty-Second Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Statutory authority: Financial Services Law (“FSL”) sections 202 and 302 and Insurance Law (“IL”) sections 301, 1120, 3201, 3216(i)(17), 3217, 3217(d), 3217-g, 3221(l)(8), 4303(j), and 4306-f.

FSL section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”). FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL section 1120 permits the Superintendent to authorize an insurer and a health maintenance organization (“HMO”) to issue child health insurance plan (“CHIP”) policies and contracts and to take certain actions related thereto.

IL section 3201 establishes certain requirements for accident and health insurance policies.

IL sections 3216(i)(17), 3221(l)(8), and 4303(j) require every policy or contract delivered or issued for delivery in New York that provides hospital, surgical, or medical care coverage, except for a grandfathered health plan, to provide coverage for certain preventive care and screenings, including maternal depression screenings, at no cost-sharing.

IL section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Article 32 and Article 43, and Public Health Law Article 44.

IL section 3217(d) states that when a regulation adopted pursuant to IL section 3217 so provides, all forms of the policies or contracts that do not comply with the regulation will be deemed to be disapproved for use without any further or additional notice after a date to be specified in the regulation, which may not be less than 60 days following the regulation’s effective date.

IL sections 3217-g and 4306-f provide that to the extent a policy or contract provides coverage for maternal depression screenings, an insurer or IL Article 43 corporation, including an HMO, may not limit a patient insured's direct access to maternal depression screening and referral, from a provider of obstetrical, gynecologic, or pediatric services of the insured's choice.

2. Legislative objectives: IL sections 3216(i)(17), 3221(l)(8), and 4303(j) require every policy or contract delivered or issued for delivery in New York that provides hospital, surgical, or medical care coverage, except for a grandfathered health plan, to provide coverage for certain preventive care and screenings, including maternal depression screenings, at no cost-sharing. IL sections 3217-g and 4306-f and Public Health Law section 4406-f provide that to the extent a policy or contract provides coverage for maternal depression screenings, an insurer or IL Article 43 corporation, including an HMO, may not limit a patient insured's direct access to screening and referral for maternal depression.

This proposed amendment to 11 NYCRR 52 (Insurance Regulation 62) accords with the public policy objectives that the Legislature sought to advance in IL sections 3216(i)(17), 3217-g, 3221(l)(8), 4303(j), and 4306-f and Public Health Law section 4406-f by requiring a policy or contract, including a CHIP policy or contract, that provides coverage for direct access to maternal depression screening and referral performed by a provider of obstetrical, gynecologic, or pediatric services of the mother's choice, to provide coverage for the screening and referral under the mother's policy and also under the infant's policy if the infant is covered under a different policy than the mother and a pediatric provider performs the screening and referral.

3. Needs and benefits: It is the policy of New York State that individuals have prompt access to comprehensive preventive care services, including coverage of maternal depression screening and referrals for treatment. Currently, the IL requires maternal depression screening and referrals for treatment to be covered under health insurance policies and contracts. However, the mother may not always have an insurance policy or contract in place. To ensure that all mothers get the maternal depression screening and prompt referrals they need

for the health of both themselves and their infants, this regulation also requires the infant's policy or contract to provide coverage for the screening and referral if the infant is covered under a policy or contract, including a CHIP policy or contract, that is different than the mother's policy or contract and the screening and referral are performed by a pediatric services provider. Maternal depression screening and referral are an important preventive service for both the mother and the infant. This regulation ensures that no coverage barriers exist for maternal depression screenings and referrals from the health care provider the mother most frequently visits following her infant's birth for well-baby checkups (i.e., the infant's pediatrician).

4. Costs: Insurers and HMOs may incur costs because they will need to file new rates and policy forms to provide coverage for maternal depression screenings and referrals under an infant's policy or contract when the infant is covered under a policy or contract, including a CHIP policy or contract, that is different than the mother's policy or contract and the screening and referral are performed by a pediatric services provider. However, any additional costs should be minimal because the insurers and HMOs are just providing coverage for maternal depression screening and referral and not additional treatment.

This amendment may impose compliance costs on the Department of Financial Services ("Department") because the Department will need to review amended policy and contract forms and rates. However, any additional costs incurred by the Department should be limited. As such, the costs to the Department should be minimal and the Department expects to absorb the costs in its ordinary budget.

This amendment will not impose compliance costs on state or local governments.

5. Local government mandates: This amendment does not impose a new mandate on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: As noted, insurers may need to file new policy and contract rates and forms with the Superintendent to provide coverage for maternal depression screenings and referrals under an infant's policy or

contract when the infant is covered under a policy or contract that is different than the mother's policy or contract and the screening and referral are performed by a pediatric services provider.

7. Duplication: This amendment does not duplicate 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 amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The amendment will take effect 60 days after publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis for Small Businesses and Local Governments Statement for the Proposed Fifty-Second Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Effect of rule: This amendment to the regulation applies to insurers, including health maintenance organizations, in New York State that provide hospital, surgical, or medical care coverage. Although most insurers are not small businesses, industry has asserted previously that certain insurers, in particular mutual insurers, subject to the regulation are small businesses but has not provided the Department of Financial Services (“Department”) with specific insurers or the number of such entities. The amendment does not apply to local governments.

2. Compliance requirements: Any insurer that is a small business affected by this amendment may be subject to reporting, recordkeeping, or other compliance requirements as the insurer may need to file new policy and contract forms and rates with the Superintendent of Financial Services (“Superintendent”) to provide coverage for maternal depression screenings and referrals under an infant’s policy or contract when the infant is covered under a policy or contract, including a child health insurance plan (“CHIP”) policy or contract, that is different than the mother’s policy or contract and the screening and referral are performed by a pediatric services provider.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the amendment.

3. Professional services: It is not anticipated that any insurer that is a small business affected by this amendment will need to retain professional services, such as lawyers or auditors, to comply with this amendment.

4. Compliance costs: This amendment may impose compliance costs on insurers that are small businesses because they may need to file new policy and contract forms and rates with the Superintendent to provide coverage for maternal depression screenings and referrals under an infant’s policy or contract when the infant is

covered under a policy or contract, including a CHIP policy or contract, that is different than the mother's policy or contract and the screening and referral are performed by a pediatric services provider. The Department has no current basis to estimate such additional costs but expects that any additional costs will be minimal because the insurers are just providing coverage for a maternal depression screening and referral and not additional treatment.

5. Economic and technological feasibility: No insurer that is a small business affected by this amendment should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The Department considered the criteria in State Administrative Procedures Act ("SAPA") section 202-b(1) but the Department could not design the amendment to minimize any adverse impact on insurers that are small businesses because insureds covered under policies or contracts issued by these insurers would not have the coverage to which insureds covered under policies or contracts issued by other insurers would be entitled.

7. Small business and local government participation: The Department will comply with SAPA section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on the Department's website.

Statement Setting Forth the Basis for the Finding that the Proposed Fifty-Second Amendment to 11 NYCRR 52 (Insurance Regulation 62) Will Not Impose Any Adverse Impact on Rural Areas.

The Department of Financial Services finds that this amendment to Part 52, which requires an insurance policy or contract, including a child health insurance plan policy or contract, that provides coverage for direct access to maternal depression screening and referral performed by a provider of obstetrical, gynecologic, or pediatric services of the mother's choice, to provide coverage for the screening and referral under the mother's policy and also under the infant's policy if the infant is covered under a different policy than the mother and a pediatric provider performs the screening and referral, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. This amendment will not impose any additional costs on rural areas.

Statement Setting Forth the Basis for the Finding that the Proposed Fifty-Second Amendment to 11 NYCRR 52 (Insurance Regulation 62) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities.

The Department of Financial Services finds that this amendment to Part 52 should have no negative impact on jobs or employment opportunities in this state. The amendment requires an insurance policy or contract, including a child health insurance plan policy or contract, that provides coverage for direct access to maternal depression screening and referral performed by a provider of obstetrical, gynecologic, or pediatric services of the mother's choice, to provide coverage for the screening and referral under the mother's policy and also under the infant's policy if the infant is covered under a different policy than the mother and a pediatric provider performs the screening and referral.