

Assessment of Public Comments on the Proposed Fifty-Third Amendment to 11 NYCRR 52 (Insurance Regulation 62)

The New York State Department of Financial Services (the “Department”) received comments from associations that represent insurers and health maintenance organizations (“issuers”), associations that represent healthcare providers, and from advocacy organizations, including organizations that provide or promote civil liberties or primary and preventive sexual and reproductive health care services. Most of the comments supported the proposed regulation. However, some of the commenters requested changes to or clarification of the regulation.

Comment: The regulation would take effect 90 days after publication of the Notice of Adoption in the State Register. Two commenters raised concerns with the timing to implement the regulation because updating systems and issuing new cards will take time. One commenter requested the effective date to be extended to 120 days after publication. Another commenter asked for confirmation that the new health insurance identification card (“ID card”) information will not be required to be included on ID cards issued for policies and contracts issued or renewed effective January 1, 2020.

Response: In response to these comments, the Department changed the implementation date from 90 days to 120 days to allow issuers more time to implement the regulation. The regulation will apply to all policies and contracts issued, renewed, modified, or amended after that date. The regulation does not apply to policies and contracts issued or renewed effective January 1, 2020 because it has not been adopted yet.

Comment: The proposed regulation requires ID cards to include the annual or plan year deductible amount for participating providers, if applicable. One commenter requested that this requirement be removed from the regulation because the commenter does not believe its inclusion is a worthwhile use of the limited space on ID cards. The commenter explained that, unlike copayment information, which remains the same throughout the year, the amount that a member owes toward the deductible changes each time a claim is processed, and therefore,

the full amount of the deductible is only useful to the member before a single claim is processed. The commenter also explained that health care providers and members have multiple channels to readily access deductible and accumulation details in real time, which are more up-to-date than the static display on the ID card. The commenter noted that many products have deductibles to which not all benefits apply, which would create confusion, and that adding the level of detail that would be required to specify which services are subject to the deductible cannot feasibly be displayed on an ID card. Further, the commenter stated that many products have both individual and family deductibles, with the deductibles being either embedded or aggregated. The commenter claimed that simply indicating the deductible, without necessary explanatory information as to how the deductible is applied, will result in insureds being confused.

Response: To address the commenter's concerns, the Department removed the requirement that an ID card include deductible information.

Comment: The proposed regulation requires ID cards to include the annual or plan year deductible amount for participating providers, if applicable. One commenter requested clarification whether issuers that have more than one tier of in-network providers (i.e., preferred providers and participating providers) must include the deductible for both tiers. The commenter recommended, due to space restrictions on ID cards, that only the deductible for preferred providers be required.

Response: The Department revised the regulation to remove the requirement that deductible information be included on ID cards.

Comment: One commenter requested that the requirement that ID cards include the emergency room and urgent care copayments be removed from the regulation but gave no rationale for the request.

Response: The Department added this requirement because the information is beneficial to insureds and was requested by consumer advocates. Thus, the Department did not make any changes to the regulation in response to this comment.

Comment: One commenter requested that large groups be permitted to have custom ID cards, which may or may not include copayment information.

Response: The proposed regulation was drafted to intentionally require cost-sharing information on ID cards and is intended to include large groups in such requirements. There is no reason why an insured who has coverage as part of a large group should be treated differently. Thus, the Department did not make any changes to the regulation in response to this comment.

Comment: One commenter requested that the requirement in the regulation for “a statement of whether the coverage has out-of-network benefits” be modified to enable issuers to satisfy the requirement by indicating whether the coverage is “EPO” (exclusive provider organization), “PPO” (preferred provider organization), or “POS” (point-of-service). Another commenter asked for confirmation that a “statement of whether the coverage has out-of-network benefits” is sufficient and that issuers are not required to display or detail the actual out-of-network benefits on the card. The commenter also asked for clarification that EPO products that are required by New York law to provide coverage for out-of-network emergency services would not be considered to be offering out-of-network benefits.

Response: In response to this comment, the Department revised the regulation to require that ID cards include “the coverage type, which shall be identified as point-of-service (POS), health maintenance organization (HMO), exclusive provider organization (EPO), preferred provider organization (PPO) or fee-for-service.”

Comment: One commenter requested that the requirement for ID cards to include the issuer’s formulary name be removed from the regulation. The commenter argued that the formulary name is of little to no value to an insured, and that an insured can learn the formulary name and access the formulary online. Also, the commenter alleged that the formulary name is of no use when accessing benefits, as the “BIN/PCN values” on the card are used by pharmacists to submit claims.

Response: The regulation requires the issuer's formulary name on ID cards because the information is beneficial to insureds. Issuers often have multiple formularies and insureds will need to know the name of their particular formulary to locate prescription drug information on an issuer's website. The Department did not make any changes to the regulation in response to this comment.

Comment: The regulation requires that ID cards be provided within 30 days of the effective date of the insured's or dependent's coverage. One commenter requested that the regulation be revised to address situations where a member is enrolled retroactively. The commenter suggested revising the regulation to require ID cards to be issued "within 30 days of the effective date of the insured's or dependent's coverage, (or, if the member is enrolled retroactively, within 30 days of the enrollment transaction)..."

Response: The Department revised the regulation as requested in response to this comment.

Comment: The regulation requires every issuer whose name appears on the ID card, when acting as an administrator on behalf of a group that provides coverage for comprehensive hospital, surgical, and medical care under a self-funded plan, to include a statement on the ID card that the coverage is self-funded and is not provided or insured by the issuer. One commenter requested clarification of whether both clauses need to be included on the ID card, or whether stating that the coverage is self-funded is sufficient to satisfy the requirement.

Response: In response to this comment, the Department revised the regulation to require that a statement be included on the ID card that reads as follows: "This coverage is self-funded."

Comment: The proposed regulation allows an issuer to provide ID cards electronically if an insured or dependent of the primary insured who is 18 years of age or older consents to electronic delivery. One commenter requested clarification that once consent for electronic delivery is obtained, it remains in effect until and unless it is revoked by the insured. The commenter also requested clarification of whether consent must be obtained specifically for ID cards, or if it can be included in a broader request for consent or electronic communications.

Response: Once an insured or dependent of the primary insured who is 18 years of age or older consents to electronic delivery of his or her ID card, such consent may be deemed to be in effect until it is revoked by the insured or dependent. Consent for electronic delivery of ID cards may be included in a broader request for consent to electronic communications. However, the request should clearly indicate that ID cards are included in the request, and also provide an option for the insured or dependent to consent to electronic communications, but receive a physical ID card rather than receive the ID card electronically.

Comment: One commenter who submitted comments in support of the proposed regulation recommended that all of the newly required information for ID cards also be available in the “electronic eligibility response.” The commenter also explained that much of the patient registration process is done electronically, sometimes by the patients themselves, and that patients often present in emergency departments without any insurance identification on them. The commenter further explained that most information is both gathered and stored electronically. The commenter contended that for this regulation to be practical, it needs to include appropriate electronic requirements.

Response: The Department is unsure as to what this commenter is requesting. If the commenter is requesting that the regulation include a requirement for the issuance and use of electronic ID cards, the use of electronic documents by an insured is optional pursuant to state and federal law. Therefore, the Department made no changes in response to the comment.

Comment: One commenter who submitted comments in support of the proposed regulation recommended that the regulation require very specific information as to the plan name, because issuers offer many different products that are governed by different state and federal rules, and providers need to know the exact product name to facilitate compliance with those rules and issuer requirements.

Response: The proposed regulation requires ID cards to include the plan name. The Department will take standardization of plan names under advisement for future rulemaking. Therefore, the Department made no changes in response to the comment at this time.