Assessment of Public Comments

The Department of Financial Services ("Department") received comments from associations representing insurers and health maintenance organizations ("issuers"), associations representing healthcare providers, an issuer, and an advocacy organization. Some comments support the regulation, while other comments request changes to or clarification of the regulation.

Comment: Several commenters requested that the Department either remove the statements "this coverage is fully insured" or "this coverage is self-insured" in Section 52.69(a)(4) and (e) or amend the language to read "fully-insured" or "self-funded." One commenter requested that the Department change this language to read "underwritten by."

Response: The Department received two sets of comments supporting the inclusion of these statements in the regulation as crucial for insureds and providers to understand whether the coverage is subject to consumer protections afforded by New York law, e.g., protections from surprise bills and the right to an external appeal. While the statement "underwritten by" may provide similar information to insureds, the comments clearly indicated that the words "fully insured" and "self-funded" are necessary to convey whether the coverage is subject to New York consumer protections. Thus, due to the limited space on health insurance identification cards ("ID cards"), the Department is simplifying the statements to read "fully insured coverage" and "self-funded coverage."

Comment: The regulation requires ID cards to include copayment or coinsurance amounts applicable to participating providers for certain health care services. One commenter indicated that since coinsurance amounts are charged after the health care services are provided based on the issuer's allowed amount, placing the coinsurance amount on the ID card is irrelevant and requested its removal from the regulation.

Response: The Department disagrees with the comment. Alerting the insured and provider to the coinsurance amount provides approximate information about the relative coverage for the health care service. A coinsurance amount of 10% would indicate the insured's responsibility for only a small portion of the allowed

amount, while a coinsurance amount of 50% would indicate responsibility for a greater portion of the allowed amount. While not providing an exact amount, the coinsurance amount provides the approximate extent of the insured's financial responsibility. Thus, the Department did not change the regulation in response to this comment.

Comment: The regulation requires that the ID card contain the primary care and specialist copayment or coinsurance amount. A commenter requested that the Department revise the regulation to only require one office visit copayment or coinsurance amount when the primary care and specialist office visits cost-sharing amounts are the same.

Response: The commenter's suggestion would comply with the intent of the regulation since the ID card would disclose the insured's office visit copayment or coinsurance amount. While the regulation is not being revised to specifically address this scenario, an issuer would be in compliance if it only placed one office visit copayment or coinsurance amount on the ID card if the primary care and specialist office visit cost-sharing amounts are the same.

Comment: A commenter requested that the Department remove from the regulation the requirement to disclose prescription drug copayment or coinsurance information on the ID card. The commenter noted that prescription drug cost-sharing information was not in an earlier proposal and the Department added it when it revised the regulation. Additionally, the commenter noted that Medicare Part D plans are not required to disclose prescription drug cost-sharing information on their ID cards. Lastly, the commenter noted that, since most plans have three tiers of cost-sharing, disclosing the prescription drug cost-sharing tiers would be meaningless to insureds, who would not know which cost-sharing amount applied to their prescription drug at the time of purchase.

Response: The Department disagrees with the comment. Insureds would have both the prescription drug tier cost-sharing information and formulary name disclosed on their ID cards, allowing insureds and providers to

determine which prescription drug cost-sharing amount applies to a prescription drug. Additionally, most plans have three tiers of prescription drug cost-sharing amounts. Disclosing them would allow insureds to know that their prescription drug cost-sharing is one of those amounts, giving them a reasonable expectation about their out-of-pocket costs. Lastly, several issuers already disclose prescription drug cost-sharing information on their ID cards, indicating that at least some think it is information useful for their insureds. Thus, the Department did not change the regulation in response to this comment.

Comment: One commenter requested that the Department exclude the requirement that ID cards include the issuer's formulary name and network if the member is automatically directed to the applicable network or formulary when providing an ID number when calling customer service or logging on to the issuer's website.

Response: The regulation requires the issuer's formulary name and network name on ID cards as information beneficial to insureds. Issuers often have multiple formularies and insureds need to know the name of their formularies to locate prescription drug information on an issuer's website. Issuers also often have multiple networks and insureds need to know the name of their networks to locate information on participating provider status on an issuer's website. Having the name on the ID card will allow an insured to confirm that, even when automatically directed by phone or on the issuer's website, they are receiving correct information. Additionally, having this information on the ID card will allow providers to verify the information when services are provided. Therefore, the Department did not change the regulation in response to this comment.

Comment: One commenter requested that the Department amend the regulation to make it effective no sooner than issuances or renewals occurring on or after July 1, 2021.

Response: The proposed regulation has been under consideration for some time: the original proposal was published in the State Register on August 14, 2019. In response to prior comments on the effective date of the regulation, the Department changed the effective date from 90 days to 120 days to allow issuers more time to implement the regulation. This prior change already had addressed the issue of providing issuers with sufficient

time to implement the regulation. Thus, the Department did not change the regulation in response to this comment.

Comment: A commenter noted that the regulation requires the issuer to identify the formulary name "if applicable." The commenter requested clarification as to the meaning of "if applicable" and questioned whether the requirement to identify prescription drug cost-sharing amounts applies to plans that do not have coverage for prescription drugs. Lastly, the commenter noted that adding the formulary name will take several months to implement once the regulation is finalized.

Response: The regulation requires the inclusion of the formulary and network name "if applicable" to accommodate plans that do not have provider networks or coverage for prescription drugs. Thus, if a plan does not have a provider network or coverage for prescription drugs, it would not need to place the formulary or network name on the ID card. Likewise, if a plan does not provide coverage for prescription drugs, then prescription drug cost-sharing amounts may also be removed from the ID card. The regulation has been revised to clarify this intent. Finally, as stated above, the Department changed the effective date from 90 days to 120 days to allow issuers more time to implement the regulation.

Comment: A commenter requested that the Department expand on the meaning of Section 52.69(a)(7), which requires an issuer to disclose the name of the issuer's health care provider network or networks for the plan, if applicable, on the issuer's ID card. The commenter requested specific direction to be added to the regulation to address "carve-out networks," i.e., services managed by a third-party network.

Response: An issuer must disclose the issuer's health care provider network or networks on the insured's ID card. If an issuer has multiple networks or separate networks for specific benefits, it should indicate the name of those networks on its ID cards. The name of the provider network or networks is required on ID cards so that the insured may locate a participating provider. The commenter appears to be requesting additional information beyond the name of the provider network or networks, focusing more on disclosing when a third-party is

managing specific benefits, i.e., providing access to a network of providers and performing utilization review on behalf of an issuer. Entities that perform utilization review on behalf of issuers ("utilization review agents") must either register with the Commissioner of Health or report to the Superintendent of Financial Services. An issuer may have one or several utilization review agents that perform utilization review on its behalf but the issuer is responsible for ensuring that benefits are provided in accordance with the Insurance Law. Lastly, adding the names of every utilization review agent to the ID card is not feasible due to space constraints. Therefore, the Department did not change the regulation in response to this comment.

Comment: One commenter requested that the Department remove the requirement for a "plan name" on the ID card. The commenter stated that issuers do not always have marketing names for products, and the plan names used by some issuers are too long to fit on the ID card. The commenter also stated that the insured has no need to know the plan name.

Response: The Department disagrees with the comment. The name of the plan should be disclosed on the ID card so that the insured and provider have the information readily available at the time appointments are scheduled or services are provided. Additionally, issuers may determine the plan name placed on the ID card, choosing a marketing name or other plan name that identifies the plan to the insured. If the issuer uses a long or complex plan name, the issuer may shorten it to something meaningful that would fit on the ID card. Thus, the Department did not change the regulation in response to this comment.

Comment: In its prior response to public comments, the Department stated that consent for electronic delivery of ID cards may be included in a broader request to consent to electronic communications. However, that request must clearly indicate that ID cards are included in the request along with notice of an option to receive a physical ID card. A commenter stated that issuers already request consent for electronic communications and requests that the broader consent for electronic communications be valid even if it does not specifically mention

providing ID cards electronically. Furthermore, the commenter stated that issuers presume that if an insured provides an email address on an application form, it signifies consent to receive documents electronically.

Response: 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 provide an option for the insured or dependent to consent to receiving electronic communications but to receive a physical, rather than electronic, ID card. An issuer must obtain the insured's specific consent before transmitting the ID card electronically. Simply providing an email address does not signify consent to receive documents electronically. The consent should explain which documents are to be received electronically and provide the insured the option to receive physical documents, including the ID card. Therefore, the Department did not change the regulation in response to this comment.

Comment: One commenter requested that the Department require issuers to make all the newly required information for ID cards available in digital format and extend these requirements to electronic eligibility verification systems. The commenter 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 ID cards with them. In the case of telehealth visits, patients never physically present their ID cards.

Response: This regulation addresses the requirements for ID cards. Issuers may provide ID cards electronically if the insured consents in advance to receiving an ID card electronically. The requirements for electronic eligibility verification systems goes beyond the scope of this regulation. Therefore, the Department made no changes in response to the comment.