

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
11 NYCRR CHAPTER XXII, PART 450
(INSURANCE REGULATION 219)**

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 102, 201, 202, 203, 205, 301, 302, 305, and 306 of the Financial Services Law; Sections 110, 111, 202, 301, 306, 308, 316, and 405 the Insurance Law; and Part XX of Chapter 56 of the Laws of 2020, do hereby promulgate Part 450 of new Chapter XXII of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 219), to take effect upon publication of the Notice of Adoption in the State Register to read as follows:

(ALL MATERIAL IS NEW)

CHAPTER XXII: OFFICE OF PHARMACY BENEFITS

Part 450: Office of Pharmacy Benefits

Section 450.1 Definitions

As used in this part:

- (a) *Board* shall mean the Drug Accountability Board established by Section 202 of the Insurance Law.
- (b) *Office* shall mean the Office of Pharmacy Benefits established by this Part.
- (c) *Chair* shall mean the chair of the Drug Accountability Board appointed by the superintendent.

Section 450.2 Office established

There is hereby established within the department an Office of Pharmacy Benefits, which office shall be responsible for conducting investigations with respect to prescription drugs. Except as may be limited by order of the superintendent, the person appointed as director of the Office shall be authorized to take any action that the superintendent is authorized to take under the Insurance Law and any action authorized under any other provision of law with respect to investigations authorized under Insurance Law section 111. All documents submitted to the Office shall be submitted electronically.

Section 450.3 Membership of the board

- (a) No person shall be a member of the board unless appointed by the superintendent to the board.
- (b) No person shall be appointed to the board nor attend any meeting thereof unless the person has reviewed and agreed to be bound by the code of conduct for members of the board and any disclosures required thereunder.
 - (1) If the chair determines that any member of the board is not in compliance with the requirements of the code of conduct or this Part, then the member shall not take any part in any business of the board until the member

comes into compliance.

(c) The superintendent shall appoint an employee of the department to serve as the chair of the board.

(d) The superintendent is not required to wait for the recommendation of the board before taking any related action.

(e) The membership of the board shall be appointed for a three-year term.

(1) All appointments shall expire on the same date three years following the appointment date of the first member of the board.

(2) In the event of any vacancy on the board, the superintendent may appoint a person to fill the remainder of the term.

(f) Members of the board shall exercise their duties and responsibilities in the public interest of the people of New York State, regardless of their affiliation with, or relationship to, any facility, agency or program, category of provider, or interest group.

(g) The board is an advisory board.

Section 450.4 Chair of the board

(a) The chair shall be responsible for calling meetings of the board.

(b) The chair shall be responsible for the conduct of meetings of the board.

(c) The chair shall be responsible, in the chair's sole discretion, for all determinations of recusal.

(d) The chair may adopt by-laws related to the conduct of board operations.

Section 450.5 Board recusals

(a) If a conflict of interest, or appearance of a conflict of interest, arises with a member of the board, the member shall recuse himself or herself from participating in the presentation, discussion or vote for which the conflict arises.

(b) The office shall determine, before any materials are shared with the members of the board, if a conflict of interest, or appearance of a conflict of interest, arises with any member of the board and shall report the conflict to the chair for a determination.

(c) Each member of the board shall review the topics to be discussed at each meeting of the board in advance and shall communicate in writing any real or potential conflict, or the appearance of any conflict, to the chair prior to reviewing any materials or attending any meetings of the board.

(d) The chair shall have final authority to determine whether and when recusal is required, or whether the

conflict of interest can be avoided only by divestiture or resignation from the board.

Section 450.6 Meetings of the board

(a) Meetings of the board shall be held only upon the call of the chair, and the chair, in the chair's sole discretion, may adjourn a meeting of the board for any reason. No quorum is needed to hold a meeting.

(b) Location of meetings. The meetings of the board may be held at any office of the department or may be held virtually.

(1) The location of the meeting shall be determined by the chair.

(c) Notice of meetings. The chair shall provide notice of not less than ten business days of any meeting of the board.

(1) Notwithstanding the requirements of this subdivision, the chair may call a meeting on less than ten business days' notice in the event of unusual or extraordinary circumstances.

(d) Attendance at meetings.

(1) Pursuant to Insurance Law section 202, the meetings of the board shall be private and not subject to disclosure.

(2) No recordings of the meetings of the board shall be made by any person; however, an official set of minutes for the meetings may be recorded by a representative of the office.

(3) No person shall be permitted to attend, view, or listen to any meeting of the board unless the person is:

(i) a member of the board;

(ii) a member of the office; or

(iii) an expert engaged by the office to provide a briefing to the board.

(4) The board may request a presentation on any subject relevant to any inquiry before the board from any state agency or authority. Such request shall be reviewed by the office and if the director approves the request, the office shall arrange an expert briefing to the board.

(e) Adoption of the report of the board. A report of a board may be adopted outside of a meeting of the board provided that all non-recused members of the board are provided the report at least two business days prior to the close of voting on adoption.

(1) Not less than seven days before the board adopts a report, the office may convey to the person that was required to submit a written statement under subsection (a) of Insurance Law section 111 anticipated findings provided by the board. Such person shall keep the proposed findings confidential and, pursuant to Insurance Law

sections 111 and 202, such anticipated findings shall not be subject to disclosure. Such person may convey a response to the anticipated findings, and such response must be received by the board within seven days after the proposed findings are conveyed.

(2) No report of the board shall be adopted except by a majority vote of the non-recused members of the board.

(3) Any adopted report shall be an advisory report.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is a new Part 450 (Insurance Regulation 219) to Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, signed by me on March 19, 2021, pursuant to the authority granted by Sections 102, 201, 202, 203, 205, 301, 302, 305, and 306 of the Financial Services Law; Sections 110, 111, 202, 301, 306, 308, 316, and 405 the Insurance Law; and Part XX of Chapter 56 of the Laws of 2020, to take effect upon publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on November 10, 2020. No other publication or prior notice is required by statute.

Signed copy filed with Department of State
Linda A. Lacewell
Superintendent of Financial Services

Dated: March 19, 2021