Regulatory Impact Statement for the Sixty-Seventh Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Statutory authority: Financial Services Law ("FSL") sections 202, 301, and 302 and Insurance Law ("IL") sections 301, 308, 316, 1124, 3216, 3217, 3221, 4235, 4237, 4303, and 4305.

FSL section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

FSL sections 301 and 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 308 authorizes the Superintendent to direct an inquiry to an insurer regarding its transactions or conditions, or any matter connected therewith, and permits the Superintendent to require the filing of quarterly or other statements as the Superintendent shall prescribe.

IL section 316 permits the Superintendent to promulgate regulations to require an insurer or other person or entity to submit a filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause.

IL section 1124 sets forth requirements for student health plans issued by institutions of higher education.

IL Section 3216 sets forth the standard provisions for individual accident and health insurance policies.

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 issuers or corporations organized under IL Articles 32 and 43, and Public Health Law Article 44.

IL Section 3221 sets forth the standard provisions for group and blanket accident and health insurance policies. Subsection (q) of this section also prohibits an insurer from establishing eligibility rules based on certain health-related factors, such as health status, medical condition, and medical history.

IL Section 4235 defines and establishes requirements for group accident and health insurance and the types of groups to which an insurer may issue such insurance.

IL Section 4237 defines and establishes requirements for blanket accident and health insurance and the types of groups to which such insurance may be issued.

IL Section 4303 sets forth benefit requirements for contracts issued by Article 43 corporations.

IL Section 4305 sets forth the standard provisions for group contracts issued by Article 43 corporations. Subsection (k) of this section prohibits a corporation from establishing eligibility rules based on certain health-related factors, such as health status, medical condition, and medical history.

2. Legislative objectives: To grant the Superintendent authority to supervise the business of insurance in New York and to set forth requirements for health insurance delivered or issued for delivery in New York, including requirements relating to eligibility rules.

3. Needs and benefits: The amendment requires insurers licensed to write accident and health insurance in New York State, corporations organized pursuant to Insurance Law Article 43, health maintenance organizations certified pursuant to Public Health Law Article 44, and student health plans certified pursuant to Insurance Law Section 1124 (collectively, "insurers") to ask applicants applying for, or insureds currently insured under, a comprehensive health insurance policy questions regarding their race, ethnicity, preferred language, sexual orientation, and gender identity or expression. Requiring the systematic collection of such demographic data will help enable the Department of Financial Services ("Department") and insurers to identify disparities that exist in the quality and utilization of care experienced by underrepresented populations and inform data-driven public policymaking.

Specifically, the robust and refined data collection fostered by the amendment will allow insurers, as well as regulators who may request the data from insurers, to identify where disparities exist–for example, low incidences of breast cancer screenings, diabetes treatment adherence, or access to culturally responsive behavioral

health services–and better measure insurance benefits used by underrepresented and historically underserved populations. Leveraging this data, insurers, regulators, and policymakers can develop data-driven solutions toward the goal of creating a more equitable health system for New Yorkers.

This kind of data collection is not new. Similar demographic data is already collected by the Centers for Medicare and Medicaid Services ("CMS")-regulated Medicare providers and also by the New York State of Health ("NYSOH") for health plans sold on the insurance exchange to serve a similar goal—identifying health disparities. In addition, providers of other financial services must collect similar data, like mortgage lenders pursuant to the Home Mortgage Disclosure Act. With this amendment, the Department intends for insurers to collect demographic data from applicants and insureds in a manner consistent with best practices and existing CMS and NYSOH demographic data collection.

The regulation is designed to inform and improve program design and policymaking while protecting consumers from discrimination. Specifically, in addition to the protection afforded by New York Insurance Law Section 2606, the regulation prohibits insurers from using any responses they receive in a manner that is unfairly or unlawfully discriminatory, or from using data collected pursuant to the regulation in any underwriting or rating decisions. Insurance Law Sections 3221(q) and 4305(k) already prohibit an insurer from establishing eligibility rules based on certain health-related factors, such as health status, medical condition, and medical history. This proposed amendment conforms the regulation to these sections of the law by prohibiting insurers from including questions regarding the past or present health condition of any person in an application for comprehensive health insurance.

In addition to the limits imposed by state and federal law, the proposed amendment includes limitations on the use and distribution of the data collected by insurers. The regulation restricts an insurer's ability to distribute demographic data by prohibiting an insurer from sharing any demographic data collected pursuant to the amendment, including any information that has been de-identified, unless the third party agrees to keep the

information confidential. The proposed amendment also restricts an insurer's use of demographic information by prohibiting an insurer from soliciting an insured to purchase any product or service, except when such information is used for (i) communication using an insured's preferred language, or (ii) outreach linked specifically to efforts to eliminate health disparities or promote health equity as defined under Public Health Law sections 240(6) and 240(7), respectively.

The proposed amendment protects consumers who are uncomfortable or unwilling to share their demographic information, making clear that applicants and insureds are not required to respond to any of the demographic questions, and insurers may not use an applicant's or insured's refusal to respond to any demographic question as a basis for any underwriting, rating, or eligibility decision. At the same time, there is consensus among experts in academia, government, and the insurance industry that self-reporting is the gold standard for data collection.

4. Costs: Insurers may incur additional costs to electronically file certifications attesting to their compliance with the amended regulation when making a rate filing and to develop questionnaires that include questions about a person's race, ethnicity, preferred language, sexual orientation, and gender identity or expression. Insurers also may incur costs to pose these questions to insureds and dependents covered under policies as of the effective date of the amendment, and for any subsequent request for demographic information made at the direction of the Superintendent. Compliance with the Department's request for demographic information or reports on such information, at a time and in a format prescribed by the Department, also may create additional costs. However, any costs should be minimal, because insurers already submit rate filings for review by the Department and pose questions to current insureds and covered dependents as a part of the normal course of business on a regular basis.

Some insurers may incur costs related to technological updates for data collection and storage as part of systematically collecting and maintaining data, including updates for demographic information received via a

supplemental questionnaire. Insurance producers that collect the data on behalf of an insurer also may incur costs to update their systems.

The amendment may impose costs on the Department because the Department will need to oversee insurer compliance with the requirements in the amendment. The Department also may incur costs related to technological updates necessary to receive and analyze data from insurers to identify gaps in care experienced by insureds. However, any additional costs incurred should be minimal because existing personnel are already available, and the Department should be able to absorb the costs in its ordinary budget.

5. Local government mandates: The amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The amendment requires insurers to electronically attest that the demographic data collected as a result of the amendment will not be used for any unfair or unlawful purposes and requires insurers to certify that such data is not used in connection with any rate setting activity. Insurers will need to develop questionnaires to comply with the amendment to the regulation. Insurers also will be subject to additional paperwork in order to pose these questions to applicants, insureds, and dependents covered under policies as of the effective date of the amendment. Compliance with the Department's request for demographic information or reports related to such information also may incur additional paperwork for insurers. Insurance producers that collect the data on behalf of an insurer also may incur additional paperwork in order to update their systems.

7. Duplication: The amendment's requirements partially overlap with NYSOH's demographic data collection efforts on enrollment applications for health plans authorized to participate in NYSOH's health insurance exchange marketplace. However, the partial overlap of data collection efforts is minimized, since such overlap would occur only for a small subset of applicants, insureds, and dependents seeking coverage on the marketplace. Additionally, insurers will not have to collect data twice from applicants, insureds, and dependents since data collected on marketplace applications is collected by NYSOH.

8. Alternatives: The Department considered not amending the regulation. However, the Department decided to amend the regulation to require insurers to request information regarding a person's race, ethnicity, preferred language, sexual orientation, and gender identity or expression because more robust and refined data collection will allow insurers, as well as regulators who may request the data from insurers, to identify where disparities exist. Additionally, the Department considered requiring that insurers ask for demographic information on an application for insurance coverage. However, after review of several data collection methodologies, the Department determined that insurer requests on a separate form was best to detach such questions from the application process to avoid any suggestion that such data could negatively impact a consumer's eligibility for a health plan. Lastly, the Department considered exempting data collection for commercial health plans that participate on NYSOH's health insurance exchange marketplace. However, the Department determined that requiring all insurers to collect all the information required under the amendments would not only provide a comprehensive and standard set of data that insurers may use for health equity efforts, but also would allow the Department to collect demographic data from insurers directly, unencumbered by any potential administrative barriers connected to NYSOH's data collection processes and rules relating to data sharing.

9. Federal standards: The amendment does not conflict with any minimum standards of the Federal government for the same or similar subject areas.

10. Compliance schedule: Insurers will need to comply with the amendment 120 days after publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Sixty-Seventh Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Effect of rule: The amendment to the regulation applies to insurers licensed to write accident and health insurance in New York State, corporations organized pursuant to Insurance Law Article 43, health maintenance organizations certified pursuant to Public Health Law Article 44, and student health plans certified pursuant to Insurance Law Section 1124 (collectively, "insurers"). Although most insurers do not come within the definition of "small business" as defined in State Administrative Procedure Act ("SAPA") Section 102(8) because they generally are not both independently owned and have fewer than 100 employees, the 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: Insurers that are small businesses, if any, that are affected by the amendment will need to develop a demographic data questionnaire that includes questions about a person's race, ethnicity, preferred language, sexual orientation, and gender identity or expression. Insurers will also need to pose these questions to applicants and insureds as of the effective date of the amendment. In addition, insurers will need to electronically certify that the demographic data collected as a result of the amendment will not be used for any unfair or unlawful purposes and must certify that such data is not used in connection with any rate setting activity.

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

3. Professional services: An insurer that is a small business affected by the amendment will not need to retain professional services, such as lawyers or auditors, to comply with the amendment. No local government will have to retain professional services to comply with the amendment because it does not apply to any local government.

4. Compliance costs: No local government will incur any costs to comply with the amendment because the amendment does not apply to any local government.

Insurers that are small businesses, if any, may incur additional costs to comply with the amendment, because they will need to electronically file certifications attesting to their compliance with the amended regulation when making a rate filing, and will need to develop questionnaires that include questions about a person's race, ethnicity, preferred language, sexual orientation, and gender identity or expression. Insurers also may incur costs to pose these questions to applicants and insureds as of the effective date of the amendment, and for any subsequent request for demographic information made at the direction of the Superintendent of Financial Services. Compliance with a request by the Department for demographic information or reports on such information, at a time and in a format prescribed by the Department, may also create additional costs. However, any costs should be minimal because insurers already submit rate filings for review by the Department and pose questions to applicants and insureds as a part of the normal course of business on a regular basis. Some insurers may incur costs related to technological updates for data collection and storage as part of systematically collecting and maintaining data, including updates for demographic information received via a questionnaire. Insurance producers that collect the data on behalf of an insurer may incur costs to update their systems.

5. Economic and technological feasibility: Insurers that are small businesses, if any, affected by the amendment may experience some economic or technological impact, because such insurers may incur costs related to technological updates for data collection and storage as part of systematically collecting and maintaining data, including updates for demographic information received. Insurance producers that collect the data on behalf of an insurer may need to update their systems.

No local government will experience any economic or technological impact because of the amendment because it does not apply to any local government.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the

amendment does not apply to any local government. The amendment should not have an adverse impact on an insurer that is a small business because the amendment uniformly affects all insurers.

7. Small business and local government participation: The Department posted the amendment on its website on September 10, 2024, for pre-proposed outreach and notified insurers that may be small businesses and insurance associations that represent such insurers, of the posting. Interested parties, including insurers that may be small businesses, that are affected by the amendment also had an opportunity to participate in the rulemaking process when the amendment was published in the State Register on December 4, 2024, and posted on the Department's website during the formal proposal comment period.

Rural Area Flexibility Analysis for the Sixty-Seventh Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Types and estimated numbers of rural areas: Insurers licensed to write accident and health insurance in New York State, corporations organized pursuant to Insurance Law Article 43, health maintenance organizations certified pursuant to Public Health Law Article 44, and student health plans certified pursuant to Insurance Law Section 1124 (collectively, "insurers") that are affected by these amendments operate in every county in New York State, including rural areas as defined by State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping, and other compliance requirements; and professional services: Insurers, including those located in a rural area, will need to develop questionnaires for demographic data, as well as submit a certification with rate filings, in order to comply with the amendment to the regulation. Insurers, including those located in a rural area, also will need to pose questions to applicants and insureds as of the effective date of the amendment regarding their race, ethnicity, preferred language, sexual orientation, and gender identity or expression.

Insurers, including those in a rural area, should not need to retain professional services, such as lawyers or auditors, to comply with the amendment.

3. Costs: The amendment may impose compliance costs on insurers, including those in rural areas, as they will need to develop questionnaires for demographic data and an electronic certification with rate filings to comply with the amendment to the regulation. Insurers, including those in rural areas, also may incur costs to pose questions to applicants and insureds as of the effective date of the amendment, and for any subsequent request for demographic information made at the direction of the Superintendent of Financial Services, regarding their race, ethnicity, preferred language, sexual orientation, and gender identity or expression. Compliance with the Department of Financial Service's ("Department's") request for demographic information or reports on such information, at a time and in a format prescribed by the Department, may also create additional costs. However,

any costs should be minimal because insurers already pose questions to applicants and insureds as a part of the normal course of business on a regular basis.

Some insurers may incur costs related to technological updates for data collection and storage as part of systematically collecting and maintaining data, including updates for demographic information received via a questionnaire. Insurance producers that collect the data on behalf of an insurer also may incur costs to update their systems.

4. Minimizing adverse impact: The amendment uniformly affects insurers that are located both in rural and non-rural areas of New York State. The amendment should not have an adverse impact on rural areas.

5. Rural area participation: The Department posted the amendment on its website on September 10, 2024, for pre-proposed outreach and notified insurers that may be located in rural areas and insurance associations that may represent such insurers, of the posting. Interested parties, including insurers located in rural areas, also had an opportunity to participate in the rulemaking process when the amendment was published in the State Register on December 4, 2024, and posted on the Department's website during the formal proposal comment period.

Statement as to Why a Revised Job Impact Statement ("JIS") is Not Required for the Final Adoption of the Sixty-Seventh Amendment to 11 NYCRR 52 (Insurance Regulation 62**)**

A revised JIS is not required for the adoption of the Sixty-Seventh Amendment to 11 NYCRR 52 (Insurance Regulation 62) because the non-substantive revision to the regulation does not require a change to the previously published JIS.