NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
SIXTY-SEVENTH AMENDMENT TO 11 NYCRR 52
(INSURANCE REGULATION 62)

MINIMUM STANDARDS FOR THE FORM, CONTENT AND SALE OF HEALTH INSURANCE, INCLUDING STANDARDS OF FULL AND FAIR DISCLOSURE

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202, 301 and 302 of the Financial Services Law and Sections 301, 308, 316, 1124, 3216, 3217, 3221, 4235, 4237, 4303, and 4305 of the Insurance Law, do hereby promulgate the following Sixty-Seventh Amendment to Part 52 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 62), to take effect 120 days after publication of the Notice of Adoption in the State Register, to read as follows:

(MATTER IN BRACKETS IS DELETED; NEW MATTER IS UNDERLINED)

Subdivision (b) of section 52.51 is amended as follows:

(b) An insurer shall not include questions regarding the past or present health of any person in an application for comprehensive health insurance pursuant to Insurance Law sections 3221(q)(1) and 4305(k)(1). Questions on an application for accident and health insurance, other than comprehensive health insurance, regarding the past or present health of any person phrased with reference to specific diseases or general health shall be asked to the best of the applicant's knowledge and belief. Questions phrased as to factual information, such as doctor visits or hospital confinements, need not be so qualified.

A new section 52.52 is added as follows:

§ 52.52 Demographic information to promote health equity.

(a) An insurer shall request information regarding an insured's and a covered dependent's race, ethnicity, preferred language, sexual orientation, and gender identity or expression for all insureds and dependents covered under a comprehensive health insurance policy, provided that:

(1) an insurer shall request and collect such demographic information via a separate and supplemental questionnaire: (i) after an applicant has completed an application for a comprehensive health insurance policy; and (ii) with respect to insureds and dependents already covered under a policy as of the effective date of this section, at the time of the next policy renewal that is at least 90 days after the effective date of this section and at any later time upon the direction of the superintendent, provided that the superintendent shall not direct an insurer to request and collect demographic information from insureds and dependents more than once every two years;

(2) an insured's or covered dependent's response shall be optional;

(3) an insurer shall not use the demographic information received in a manner that would constitute unfair or unlawful discrimination under the laws of this State, including, but not limited to, Insurance Law sections 2606 and 2607; and

(4) an insurer's use, distribution, or sale of the demographic information shall be consistent with applicable Federal and State statutes and regulations, including 45 C.F.R. Part 160 and Subparts A and E of Part 164 of 45 C.F.R.[1], Insurance Law sections 3221(q)(1) and 4305(k)(1), and Part 420 of this Title, provided that:

(i) an insurer shall not sell to any third-party any demographic information received, including any information that has been de-identified; and

(ii) an insurer shall not share with any third-party, or allow any third party to collect on its behalf, any demographic information, including any information that has been de-identified, unless the third party agrees not to sell or share the information, except when required by law, and the third-party agrees to keep the information confidential.

(b) Limitations on the use of demographic information. No insurer shall use the demographic information received for:

(1) any underwriting determinations, including eligibility determinations, or for rating purposes, and an insurer may not base any decision relating to such underwriting or rating on an individual's refusal to provide a response to a request made pursuant to paragraph (1) of subdivision (a) of this section; or

(2) any effort to solicit an insured or covered dependent to purchase or use any product or service, with the exception of: (i) using the preferred language of an insured or covered dependent to communicate with that insured or covered dependent; (ii) efforts to eliminate health disparities, as defined under Public Health Law section 240(6); and (iii) efforts to promote health equity, as defined under Public Health Law section 240(7).

(c) An insurer shall clearly and conspicuously disclose in the separate supplemental questionnaire required under paragraph (1) of subdivision (a) of this section that:

(1) an insured or a covered dependent may refuse to provide any demographic information requested pursuant to paragraph (1) of subdivision (a) of this section;

(2) the insurer may not use the demographic information for any underwriting determinations, including eligibility determinations, or for rating purposes, and an insurer may not

[1] The Code of Federal Regulations ("C.F.R.") is published jointly by the National Archives and Records Administration's Office of the Federal Register, 7 G Street, NW, Suite A-734, Washington, D.C. 20401 and the Government Publishing Office, 732 N. Capitol Street, NW, Washington, D.C. 20401. 45 C.F.R. Part 160 and Subparts A and E of Part 164 of 45 C.F.R. are available online at https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C. Copies also may be obtained from this department by writing to: New York State Department of Financial Services, Office of General Counsel, One State Street, 20th Floor, New York, NY 10004, or by sending an email to regnotification@dfs.ny.gov.

base any decision relating to such underwriting or rating on an individual's refusal to provide a response to a request made pursuant to paragraph (1) of subdivision (a) of this section;

(3) the insurer is prohibited from using the demographic information provided in response to a request made pursuant to paragraph (1) of subdivision (a) of this section in a manner that would constitute unfair or unlawful discrimination under the laws of this State, including, but not limited to, Insurance Law sections 2606 and 2607;

(4) any demographic information provided in response to a request made pursuant to paragraph (1) of subdivision (a) of this section will be maintained as confidential consistent with applicable Federal and State statutes and regulations; and

(5) the insurer is requesting demographic information from insureds and covered dependents pursuant to this section in order to support efforts to promote health equity, and the insured may receive information from the insurer in connection with an insurer's health equity programs or services.

(d) Reporting. An insurer shall provide to the superintendent, upon the superintendent's request, and in a format specified by the superintendent, all demographic information received.

(e) Signed attestation. An insurer shall electronically file with the superintendent, in connection with any rate filing or rate manual submission, a document signed by the highest-ranking executive responsible for oversight of rates and by a senior officer directly responsible for oversight of rates attesting that the demographic information received is not used in underwriting, including eligibility determinations, for rating, or otherwise used in a manner that would constitute unfair or unlawful discrimination under the laws of this State, including, but not limited to, Insurance Law sections 2606 and 2607, provided, however, that the insurer may apply to the superintendent for an exemption from the electronic filing requirement as set forth in section 6.3 of Part 6 of this Title.

(f) Collection and retention of demographic information. An insurer shall compile and maintain a record of the demographic information provided by an insured or covered dependent pursuant to a request under paragraph (1) of subdivision (a) of this section, or a record that an insured or covered dependent declined to provide such information, in accordance with Part 243 of this Title.

(g) As used in this section, "insurer" means an insurer licensed to write accident and health insurance in this State, a corporation organized pursuant to Insurance Law article 43, a health maintenance organization certified pursuant to Public Health Law article 44, and a student health plan certified pursuant to Insurance Law section 1124.

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the foregoing is the Sixty-Seventh Amendment to Part 52 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 62), signed by me on March 17, 2025 pursuant to the authority granted by Financial Services Law Sections 202, 301 and 302 and Insurance Law Sections 301, 308, 316, 1124, 3216, 3217, 3221, 4235, 4237, 4303, and 4305, to take effect 120 days after 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 December 4, 2024. No other publication or prior notice is required by statute.

Signed copy filed with Department of State
Adrienne A. Harris
Superintendent of Financial Services

Date: March 17, 2025