

Regulatory Impact Statement for the Sixth Amendment to 11 NYCRR 151 (Insurance Regulation 119) Adding New Subpart 151-7.

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2304(j).

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services (“Superintendent”). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 2304(j) requires the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). This section also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

2. Legislative objectives: In March 2014, Governor Andrew M. Cuomo signed into law Chapter 60 of the Laws of 2014, Part A of which amended the Public Health Law and Insurance Law with regard to safe patient handling programs. Specifically, Part A of Chapter 60 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs. Part A also added a new Insurance Law § 2304(j) requiring the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). It also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 2304(j) by requiring an insurer to provide a credit on each workers’ compensation insurance policy

issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirement prescribed in Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must conform with the approved manual filed by the rate service organization (“RSO”) of which the insurer is a member.

3. Needs and benefits: Part A of Chapter 60 of the Laws of 2014 amended the Public Health Law to require health care facilities to establish safe patient handling programs. Part A also amended the Insurance Law to require the Superintendent to establish, by regulation, requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs, and to require the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule requires an insurer to provide a credit on each workers’ compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must conform with the approved manual filed by the RSO of which the insurer is a member. The rule also requires every workers’ compensation RSO to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in 2018 and 2020.

4. Costs: This rule may impose compliance costs on insurers because an insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers’ compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in Public Health Law § 2997-k(2).

A workers' compensation RSO may incur costs for the implementation and continuation of this rule, because every workers' compensation RSO must submit a report to the Superintendent regarding policies receiving the credit, including providing information on policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require. This report is necessary, however, in order to comply with the statutory mandate that the Superintendent report to the Legislature the effects of the reduced rate.

The Department of Financial Services ("DFS") also may incur costs for the implementation and continuation of this rule, because DFS will need to review the workers' compensation RSO's report, as well as draft its own report for submission to the Legislature. However, any additional costs incurred should be minimal and DFS should be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

5. Local government mandates: This rule 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: Workers' compensation RSOs may incur additional paperwork because this rule requires every workers' compensation RSO to submit a report to the Superintendent regarding policies receiving the credit, including providing information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: DFS considered requiring a workers' compensation RSO to file its annual report electronically but decided that an RSO likely will want to file the report electronically and therefore it is not necessary to require it in the rule.

DFS also considered prescribing the way in which an insurer must verify that a health care facility has implemented and is maintaining a safe patient handling program that meets the requirements of Public Health Law section 2997-k(2) before providing a credit. However, DFS decided it was not necessary to prescribe the method of verification because the insurer is in the best position to determine the ideal way to verify compliance with the law before providing a credit.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: An insurer and workers' compensation RSO must comply with this rule as of July 1, 2016.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Sixth Amendment to 11 NYCRR 151 (Insurance Regulation 119) Adding New Subpart 151-7.

1. Effect of rule: Part A of Chapter 60 of the Laws of 2014 amended the Public Health Law by adding a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs. Part A also added a new Insurance Law § 2304(j), requiring the Superintendent of Financial Services (“Superintendent”) to make rules establishing requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). This section also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule reflects the amendments to the Insurance Law by Chapter 60. The rule also requires every workers’ compensation rate service organization (“RSO”) to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in December 2018 and December 2020. As such, it should not affect local governments.

In addition, this rule is in part directed at workers’ compensation RSOs, which the Department does not believe fall within the definition of a “small business” as defined by State Administrative Procedure Act § 102(8) because in general they are not independently owned and do not have fewer than 100 employees.

Industry asserts that certain domestic insurers, in particular co-op insurers and mutual insurers, subject to the rule are small businesses. However, the law, rather than the rule, requires that an insurer provide a credit to a health care facility that implements and maintains a safe patient handling program. The rule cannot vary a requirement imposed by law.

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An

insurer that is a small business affected by this rule, if any, may be subject to reporting, recordkeeping, or other compliance requirements because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

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

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may incur additional compliance costs because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule. Furthermore, this rule merely implements Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule and merely implements Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

7. Small business and local government participation. The Department of Financial Services ("DFS") will comply with SAPA § 202-b(6) by publishing the proposed rule in the State Register and posting the proposed rule on DFS's website.

Statement Setting Forth The Basis For The Finding That The Sixth Amendment To 11 NYCRR 151 (Insurance Regulation 119) Adding New Subpart 151-7 Will Not Have A Substantial Adverse Impact On Jobs And Employment Opportunities.

This rule should not adversely impact jobs or employment opportunities in New York State. With regard to insurers, the rule merely implements Part A of Chapter 60 of the Laws of 2014 by requiring that for each workers' compensation insurance policy issued or renewed in New York State, an insurer provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2). The amount of the credit and the manner in which it is applied must be in accordance with the approved manual filed by the rate service organization ("RSO") of which the insurer is a member. The rule also requires every workers' compensation RSO to file certain information with the Superintendent of Financial Services ("Superintendent") by June 1 of each year so that the Superintendent may collect information for the statutorily-required reports due to the Legislature in 2018 and 2020.

Rural Area Flexibility Analysis for the Sixth Amendment to 11 NYCRR 151 (Insurance Regulation 119)

Adding New Subpart 151-7.

1. Types and estimated numbers of rural areas: Insurers and workers' compensation rate services organizations ("RSOs") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring workers' compensation RSOs, including RSOs located in rural areas, to submit a report to the Superintendent of Financial Services ("Superintendent") regarding policies receiving the credit, including information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require.

An insurer may be subject to additional reporting, recordkeeping, or other compliance requirements because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2), by requiring an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in the Public Health Law.

An insurer or workers' compensation RSO in a rural area should not need to retain professional services, such as lawyers or auditors, to comply with this rule.

3. Costs: The rule may result in additional costs to workers' compensation RSOs, including RSOs located

in rural areas, because it requires workers' compensation RSOs to submit a report to the Superintendent regarding policies receiving the credit, including information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require. Such costs are difficult to estimate because of several factors, such as the number of policies that will receive the credit. However, this report is necessary in order to implement the statutory mandate that the Superintendent report to the Legislature the effects of the credit. In addition, any additional costs to workers' compensation RSOs in rural areas should be commensurate with costs for workers' compensation RSOs in non-rural areas.

An insurer may incur additional compliance costs because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

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

5. Rural area participation: Insurers and workers' compensation RSOs in rural areas will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and on the Department of Financial Services' website.