1. Statutory authority: The authority of the Superintendent of Financial Services (“Superintendent”) for the proposed First Amendment to 11 NYCRR 58 (Insurance Regulation 193) derives from Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 3201, 3216, 3217, 3218, 3221, 3231, and 4235, and Article 43, and is subject to 42 U.S.C. Section 1395ss of the federal Social Security Act.

42 U.S.C. Section 1395ss of the federal Social Security Act provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that a state’s regulatory program provides for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (“NAIC”) Model Regulation. If the Secretary of Health and Human Services determines that a state’s program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, then the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

Financial Services Law Section 202 establishes the office of the Superintendent.

Financial Services Law Section 302 and Insurance Law Section 301 authorize the Superintendent to effectuate any power accorded by the Financial Services Law, Banking Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law Section 3201 authorizes the Superintendent to approve accident and health insurance policies for delivery or issuance for delivery in this state.

Insurance Section 3216 sets forth the standard provisions in individual accident and health insurance policies.

Insurance Law Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance.
Insurance Law Section 3218 authorizes the Superintendent to promulgate rules and regulations to establish minimum standards for the form, content and sale of Medicare supplement insurance.

Insurance Law Section 3221 sets forth the standard provisions in group and blanket accident and health insurance policies.

Insurance Law Section 3231 sets forth the requirement that individual and small group health insurance policies and Medicare supplement insurance policies be issued on a community rated and open enrollment basis.

Insurance Law Section 4235 establishes the types of permissible groups to which a group accident and health policy may be issued.

Insurance Law Article 43 sets forth requirements for non-profit medical and dental indemnity corporations and non-profit health or hospital corporations.

2. Legislative objectives: The statutory sections cited above establish a framework for the form, content and sale of Medicare supplement insurance. States must have a regulatory program that provides a minimum level of coverage as established by 42 U.S.C. Section 1395ss. If the U.S. Secretary of Health and Human Services determines that a state’s program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, then the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services. The Superintendent is empowered by state law to promulgate regulations implementing the standards required by federal law, and to provide additional protections and benefits as appropriate.

3. Needs and benefits: In 1992, the federal Omnibus Budget Reconciliation Act of 1990 (“OBRA”) became effective, establishing uniform requirements to govern Medicare supplement insurance. That federal law charged the NAIC with developing a model for the regulation and standardization of Medicare supplement insurance. The NAIC model (the “Model Regulation”) was incorporated by reference into the federal statutory
requirements. In 1992, New York amended provisions pertaining to the rules for the regulation of Medicare supplement insurance in 11 NYCRR 52 (Insurance Regulation 62) to ensure compliance with federal standards.

The federal Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”) included a number of changes to the standardized Medicare supplement insurance plans. On August 29, 2016, the NAIC adopted a revised model regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. Federal law provides that a state will lose its ability to regulate Medicare supplement insurance unless it amends its regulatory programs to implement all new federal statutory requirements and applicable changes to the NAIC Model standards. On or after January 1, 2020, insurers may not offer Plans C or F to newly eligible Medicare beneficiaries. Existing insureds covered under Plans C or F prior to January 1, 2020 may continue to renew their coverage pursuant to guaranteed renewability. “Newly eligible” is defined as those individuals who first become eligible for Medicare due to age, disability or end-stage renal disease on or after January 1, 2020. On or after January 1, 2020, insurers offering Medicare supplement plans must offer either Plan D or G in addition to Plans A and B. A new High Deductible Plan G has been created and may be offered starting January 1, 2020. The changes required by MACRA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York’s Medicare supplement insurance regulatory program.

4. Costs: Insurers (including Article 43 corporations) issuing Medicare supplement insurance in New York have been aware of the new requirements since the 2016 federal incorporation of the revised NAIC Model Regulation. Health maintenance organizations (“HMOs”) are not impacted by this amendment because HMOs are not authorized to write Medicare supplement insurance coverage in New York. The changes required by MACRA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York’s Medicare supplement insurance regulatory program.

The changes to the benefit structure, and the addition and elimination of plans, will necessitate changes to the requirements for Medicare supplement insurance applications and disclosure notices. Any additional cost to
insurers and Article 43 corporations to comply with MACRA should be minimal. The insurers and Article 43 corporations in the Medicare supplement insurance market are staffed with existing salaried personnel tasked with compliance. Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the amendment. The amendment will not impose any compliance costs on state or local governments or health care providers.

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

6. Paperwork: The amendment will not impose any new reporting requirements. However, insurers will need to revise policy form filings to comply with the regulation.

7. Duplication: The amendment will not duplicate any existing state or federal rule for insurers that write accident and health insurance; rather, it will implement federal requirements.

8. Alternatives: There are no viable alternatives to this amendment. In order for the state to regulate Medicare supplement insurance, federal law requires that it adopt, at a minimum, the standards set forth in the NAIC model regulation. The NAIC model regulation was revised in 2016 to include the requirements of one additional federal Act, MACRA. Failure to adopt, at a minimum, the NAIC model regulation standards would result in the regulation of Medicare supplement insurance in New York reverting to the federal U.S. Secretary of Health and Human Services. The changes required by MACRA, as set forth in the NAIC model regulation, are the only substantive changes being made to New York’s Medicare supplement insurance regulatory program.

9. Federal standards: The existing New York standards exceed the federal minimum standards set forth in the NAIC model regulation in order to offer longstanding additional protections, not imposed by federal law, for residents of the state. The existing provisions of 11 NYCRR 58 (Insurance Regulation 193) require insurers to (1) utilize community rating, (2) offer continuous open enrollment to individuals enrolled in Medicare by reason
of age or disability, and (3) offer Medicare supplement insurance plan B. Federal law specifically permits states to establish more stringent standards for insurers offering Medicare supplement insurance, and since 1993 New York residents have benefited from the security of these extra protections. With this amendment, New York substantially adopts the federal changes required by MACRA while maintaining all existing protections currently afforded New York residents.

10. Compliance schedule: The amendment will take effect upon publication of the Notice of Adoption in the State Register.
Statement setting forth the basis for the finding that the Proposed First Amendment to 11 NYCRR 58 (Insurance Regulation 193) will not impose any adverse economic impact or compliance requirements on rural areas.

The Department of Financial Services (“Department”) finds that this amendment, which requires insurers issuing Medicare supplement insurance policies to conform with the revised National Association of Insurance Commissioners’ model regulation for Medicare supplement insurance, as required by 42 U.S.C. Section 1395ss of the federal Social Security Act, will not impose any additional burden on persons located in rural areas, and will not have any adverse impact on rural areas because this amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.
Statement setting forth the basis for the finding that the Proposed First Amendment to 11 NYCRR 58 (Insurance Regulation 193) will not impose any adverse economic impact or compliance requirements on small businesses or local governments.

1. Small businesses: The Department of Financial Services (“Department”) finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that the amendment is directed at insurers that sell Medicare supplement insurance in New York State, none of which falls within the definition of a “small business” as defined by State Administrative Procedure Act section 102(8). The Department reviewed filed reports on examination and annual statements of these entities and believes that there are none that are both independently owned and employ fewer than 100 persons.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers, which are not local governments.
Job Impact Statement for the Proposed First Amendment to 11 NYCRR 58 (Insurance Regulation 193).

This amendment will not adversely impact job or employment opportunities in New York. The amendment requires insurers issuing Medicare supplement insurance policies to conform with the revised National Association of Insurance Commissioners’ model regulation for Medicare supplement insurance, as required by 42 U.S.C. Section 1395ss of the federal Social Security Act, which will not have any negative affect on jobs or employment opportunities.