Regulatory Impact Statement for the Revised Proposed Fifty-Fourth Amendment to 11 NYCRR 52 (Insurance Regulation 62).


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

Insurance Law section 3216 sets forth requirements for individual accident and health insurance policies.

Insurance Law 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 corporations organized under Insurance Law Article 32 and Article 43 and Public Health Law Article 44.

Insurance Law section 3221 sets forth requirements for group or blanket accident and health insurance policies.

Insurance Law section 4303 sets forth the mandatory benefits in subscriber contracts issued by corporations organized under Insurance Law Article 43.

Chapter 25 of the Laws of 2019 and Part M of Chapter 57 of the Laws of 2019, which the Governor signed into law on April 12, 2019 and which take effect on January 1, 2020, amended Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc) to require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage, including coverage for all U.S. Food and Drug Administration (“FDA”)-approved contraceptive drugs, devices, and other products. Chapter 25 also requires the Superintendent to promulgate regulations establishing a process, including time-
frames, for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

2. Legislative objectives: Chapter 25 of the Laws of 2019 and Part M of Chapter 57 of the Laws of 2019 amended Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc) to require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and to require the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

This proposed amendment accords with the public policy objectives that the Legislature sought to advance in Chapter 25 and Part M of Chapter 57 by establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

3. Needs and benefits: It is the policy of New York to protect women’s access to comprehensive and affordable contraception. One of the greatest impediments to gender equality is the inability to make justified reproductive health decisions or to decide when and whether to become a parent. Contraception has been a critical tool for women to gain economic and social independence. The use, accessibility, and availability of contraception also reduces the rate of unintended pregnancy and abortion. Since the enactment of the federal Affordable Care Act, women in New York and across the country have enjoyed access to a wide range of contraceptives without cost-sharing. Irrespective of whether the federal government rolls back access to reproductive health care, the State of New York will protect women’s unassailable right to their reproductive freedom.

Chapter 25 and Part M of Chapter 57 amended Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc) to require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage. Chapter 25 also requires the Superintendent to promulgate
regulations establishing a process, including time-frames, for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product. This amendment establishes such a process.

4. Costs: Insurers and health maintenance organizations (“HMOs”) may incur costs because they may need to file new rates and policy and contract forms and amend their formularies to reflect the broad contraceptive coverage mandate and the process for a health care provider to request coverage of a non-covered contraceptive drug, device, or product. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and require the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

This amendment may impose compliance costs on the Department of Financial Services (“Department”) because the Department will need to review amended policy and contract forms and rates. However, any additional costs incurred should be minimal and the Department should be able to absorb the costs in its ordinary budget.

This amendment will not impose compliance costs on any local governments.

5. Local government mandates: This 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: Insurers and HMOs may need to file new policy and contract forms and rates with the Superintendent and amend their formularies to comply with this amendment. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019.
7. Duplication: This amendment, in part, duplicates current federal guidance but does not conflict with any existing state or federal rules or other legal requirements. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019.

8. Alternatives: There were no significant alternatives to consider.

9. Federal standards: The amendment exceeds minimum standards of the federal government for the same or similar subject areas. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019.

10. Compliance schedule: The amendment will take effect on January 1, 2020 and will apply to all policies and contracts issued, renewed, or amended on or after that date.
1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations (“HMOs”) affected by this amendment 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: An insurer or HMO, including an insurer or HMO in a rural area, may be subject to additional reporting, recordkeeping, or other compliance requirements because the insurer or HMO may need to file new policy and contract forms and rates with the Superintendent of Financial Services (“Superintendent”) and may need to amend its formularies to reflect the broad contraceptive coverage mandate and the process for a health care provider to request coverage of a non-covered contraceptive drug, device, or product. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and require the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

An insurer or HMO, including an insurer or HMO in a rural area, should not need to retain professional services, such as lawyers or auditors, to comply with this amendment.

3. Costs: An insurer or HMO, including an insurer or HMO in a rural area, may incur additional compliance costs as it may need to file new policy and contract forms and rates with the Superintendent and may need to amend its formularies. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and require the Superintendent to
promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

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

5. Rural area participation: Insurers and HMOs, including insurers and HMOs in rural areas, will have an opportunity to participate in the rule-making process when the revised proposed amendment is published in the State Register and on the Department of Financial Services’ website.
Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Revised Proposed Fifty-Fourth Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Effect of rule: Chapter 25 of the Laws of 2019 and Part M of Chapter 57 of the Laws of 2019 amended Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc) to require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage, including coverage for all U.S. Food and Drug Administration (“FDA”)-approved contraceptive drugs, devices, and other products. Chapter 25 also requires the Superintendent of Financial Services (“Superintendent”) to promulgate regulations establishing a process, including time-frames, for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product. This amendment establishes a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

Industry asserts that certain insurers and health maintenance organizations (“HMOs”) subject to the amendment are small businesses. However, the law, rather than the amendment, requires that every policy or contract that provides medical, major medical, or similar comprehensive type coverage provide broad contraceptive coverage, including coverage for all FDA-approved contraceptive drugs, devices, and other products, and that the Superintendent promulgate regulations establishing a process, including time-frames, for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product. 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 this amendment because the amendment does not apply to any local government.

An insurer or HMO that is a small business affected by this amendment, if any, may be subject to reporting, recordkeeping, or other compliance requirements as the insurer or HMO may need to file new policy
and contract forms and rates with the Superintendent and may need to amend its formularies to reflect the broad contraceptive coverage mandate and the process for a health care provider to request coverage of a non-covered contraceptive drug, device, or product. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and require the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

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

4. Compliance costs: No local government will incur any costs to comply with this amendment because the amendment does not apply to any local government. Insurers and HMOs may incur costs because they may need to file new rates and policy and contract forms and amend their formularies to reflect the broad contraceptive coverage mandate and the process for a health care provider to request coverage of a non-covered contraceptive drug, device, or product. However, this is a consequence of Chapter 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and require the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

This amendment may impose compliance costs on the Department of Financial Services ("Department") because the Department will need to review amended policy and contract forms and rates. However, any additional costs incurred should be minimal and the Department should be able to absorb the costs in its
ordinary budget.

5. Economic and technological feasibility: This amendment does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the amendment. No insurer or HMO that is a small business affected by this amendment, if any, should experience any economic or technological impact as a result of the amendment. Furthermore, this amendment merely implements Chapter 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

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. This amendment should not have an adverse impact on an insurer or HMO that is a small business affected by the amendment, if any, because the amendment uniformly affects all insurers and HMOS that are subject to it and merely implements Chapters 25 and Part M of Chapter 57 of the Laws of 2019, which require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage and the Superintendent to promulgate regulations establishing a process for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product.

7. Small business and local government participation: The Department will comply with SAPA § 202-b(6) by publishing the revised proposed amendment in the State Register and posting the revised proposed amendment on its website.
Statement Setting Forth the Basis for the Finding that the Revised Proposed Fifty-Fourth Amendment to 11 NYCRR 52 (Insurance Regulation 62) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities.

This amendment should not adversely impact jobs or employment opportunities in New York State. The amendment merely implements Chapter 25 of the Laws of 2019 and Part M of Chapter 57 of the Laws of 2019, which amended Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc) to require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage, including coverage for all U.S. Food and Drug Administration-approved contraceptive drugs, devices, and other products. Chapter 25 also requires the Superintendent to promulgate regulations establishing a process, including time-frames, for an insured, an insured’s designee, or an insured’s health care provider to request coverage of a non-covered contraceptive drug, device, or product. This amendment establishes such a process.