I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301, 3216, 3217, 3221, and 4303 of the Insurance Law, Chapter 25 of the Laws of 2019, and Part M of Chapter 57 of the Laws of 2019, do hereby promulgate the 54th 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 on January 1, 2020, and to apply to all policies and contracts issued, renewed, or amended on or after that date, to read as follows:

Paragraphs (36) and (37) of Sections 52.17(a) and paragraphs (11) and (12) of Sections 52.18(a) are repealed.

(ALL MATERIAL IS NEW)

Section 52.1(s) is added as follows:

(s) It is the policy of the State 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 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. 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 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 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. Section 52.74 of this Part establishes such a process.

Section 52.74 is added as follows:

§ 52.74 Coverage of contraceptive drugs, devices, or products.

(a) Pursuant to Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc), every policy that provides medical, major medical, or similar comprehensive type coverage shall provide coverage for all FDA-approved contraceptive drugs, devices, and other products. Where the FDA has approved one or more therapeutic and pharmaceutical equivalent, as defined by the FDA, versions of a contraceptive drug, device, or product, an insurer shall not be required to include all such therapeutic and pharmaceutical equivalent versions in its formulary, as long as at least one is included and covered without cost-sharing. If the covered therapeutic and
pharmaceutical equivalent versions of a drug, device, or product are not available or are deemed medically
inadvisable, an insurer shall provide coverage for an alternate therapeutic and pharmaceutical equivalent version
of the contraceptive drug, device, or product without cost-sharing.

(b)(1) Pursuant to Insurance Law sections 3216(i)(17)(E), 3221(l)(16), and 4303(cc), an insured, an
insured’s designee, or an insured’s health care provider may submit a request to an insurer for coverage of a non-
covered contraceptive drug, device, or product. Such request shall indicate whether the covered contraceptive
drug, device, or product is not available or is medically inadvisable for the insured. An insurer may require that
the request for coverage be in writing. The insurer shall use the exception form promulgated by the
superintendent if the insurer requires a written request.

(2) If the attending health care provider, in his or her reasonable professional judgment, determines that the use of a non-covered therapeutic or pharmaceutical equivalent of a drug, device, or product is warranted, the health care provider’s determination shall be final.

(3)(i) The insurer shall provide coverage of the non-covered contraceptive drug, device, or product within
72 hours of receipt of a standard request not based on exigent circumstances. The insurer shall provide coverage
of the non-covered contraceptive drug, device, or product within 24 hours of receipt of an expedited request based
on exigent circumstances. In both situations, the insurer shall provide such coverage without cost-sharing.

(ii) For purposes of this paragraph, “exigent circumstances” means a circumstance under which an insured is suffering from a health condition that may seriously jeopardize the insured’s life, health, or ability to regain maximum function or is undergoing a current course of treatment using a non-covered contraceptive drug, device, or product.