Regulatory Impact Statement for the Proposed Fifty-Sixth 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 sections 3216, 3221, and 4303 set forth requirements for individual, group, and blanket accident and health insurance policies and for subscriber contractors issued by corporations organized under Insurance Law Article 43. Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) require that every policy or contract that provides hospital, surgical or medical care coverage, except for a grandfathered health plan, must provide coverage for certain preventive care and screenings for insureds and subscribers that are not subject to annual deductibles or coinsurance, including evidence-based items or services for preventive care and screenings that have in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force.

Insurance Law section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure and the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under Insurance Law Articles 32 and Article 43 and Public Health Law Article 44.

Subpart D of Part J of Chapter 57 of the Laws of 2019 (“Chapter 57) amended Insurance Law section 2607 and added new Insurance Law sections 3243 and 4330 to prohibit discrimination because of sex or marital status,
including discrimination based on sexual orientation, gender identity or expression, or transgender status, in hospital, surgical or medical expense insurance.

2. Legislative objectives: Chapter 57, which takes effect on January 1, 2020, amended Insurance Law 2607 and added new sections 3243 and 4330 to prohibit discrimination because of sex or marital status, including discrimination based on sexual orientation, gender identity or expression, or transgender status, in hospital, surgical or medical expense insurance.

This proposed amendment accords with the public policy objectives that the Legislature sought to advance in Chapter 57 by clarifying that discrimination prohibited by Insurance Law sections 2607, 3243, and 4330 includes certain activities, such as including a policy clause that purports to deny, limit, or exclude coverage based on an insured’s sexual orientation, gender identity or expression, or transgender status or designating an insured’s sexual orientation, gender identity or expression, or transgender status as a pre-existing condition for the purpose of denying, limiting, or excluding coverage.

Insurance Law sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) require coverage for preventive care and screenings without cost-sharing. This proposed amendment accords with the public policy objectives that the Legislature sought to advance in these Insurance Law sections by clarifying that coverage for preexposure prophylaxis with effective antiretroviral therapy to persons who are at high risk of HIV acquisition is included within preventive care and screenings and by clarifying the timing for coverage of preventive care and screenings.

3. Needs and benefits: It is the policy of New York State to protect lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) New Yorkers’ access to comprehensive health insurance. It is critical that members of the LGBTQ community receive the health insurance coverage that they need and deserve.

Chapter 57 amended Insurance Law section 2607 and added new Insurance Law sections 3243 and 4330 to prohibit discrimination because of sex or marital status, including discrimination based on sexual orientation,
gender identity or expression, or transgender status, in hospital, surgical, or medical expense insurance. This amendment implements the intent of that law in order to protect LGBTQ New Yorkers from discrimination when accessing accident and health insurance coverage by clarifying that discrimination prohibited by Insurance Law sections 2607, 3243, and 4330 includes certain activities, such as including a policy clause that purports to deny, limit, or exclude coverage based on an insured’s sexual orientation, gender identity or expression, or transgender status or designating an insured’s sexual orientation, gender identity or expression, or transgender status as a pre-existing condition for the purpose of denying, limiting, or excluding coverage.

This amendment also implements Insurance Law sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) by clarifying the timing of coverage for preventive care and screenings. In addition, it addresses a specific preventive care service that is required by the federal Affordable Care Act, coverage for preexposure prophylaxis with effective antiretroviral therapy to persons who are at high risk of HIV acquisition, and specifies that cost-sharing may not be imposed on such coverage. This amendment furthers the public policy of this State by advancing the goal to end the AIDS epidemic in New York State by preventing the spread of HIV through preventative services.

Irrespective of whether the federal government rolls back access to health care for members of the LGBTQ community, the State of New York will protect LGBTQ New Yorkers’ access to comprehensive health care services.

4. Costs: Insurers and health maintenance organizations (collectively, “health care plans”) may incur costs because they may need to file new policy and contract forms and rates. However, the cost should be minimal because it was the position of the Department of Financial Services (“Department”) prior to Chapter 57 that health care plans may not discriminate based on sexual orientation, gender identity or expression, or transgender status, and because the amendment also merely clarifies the timing of coverage for preventative care and screenings.
This amendment may impose compliance costs on the 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: Health care plans may need to file new policy and contract forms and rates with the Superintendent.

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.

8. Alternatives: There are no significant alternatives to consider except to not enact this amendment. As this amendment accords with the legislative intent to prohibit discrimination based on sexual orientation, gender identity or expression, or transgender status and provide preventive care and screenings, the Superintendent has determined that the amendment is necessary to ensure that health care plans comply with state and federal law.

9. Federal standards: The amendment exceeds minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The amendment will take effect 90 days after publication of the Notice of Adoption in the State Register and will apply to all policies and contracts issued, renewed, or amended on or after that date.
Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Proposed Fifty-Sixth Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Effect of rule: This rule affects all health maintenance organizations and insurers authorized to do business in New York State (collectively, “health care plans”). Subpart D of Part J of Chapter 57 of the Laws of 2019 amended Insurance Law section 2607 and added new Insurance Law sections 3243 and 4330, prohibiting discrimination on the basis of sex or marital status, including discrimination based on sexual orientation, gender identity or expression, or transgender status, in hospital, surgical or medical expense insurance. This amendment clarifies that discrimination prohibited by Insurance Law sections 2607, 3243, and 4330 includes certain activities, such as including a policy clause that purports to deny, limit, or exclude coverage based on an insured’s sexual orientation, gender identity or expression, or transgender status or designating an insured’s sexual orientation, gender identity or expression, or transgender status as a pre-existing condition for the purpose of denying, limiting, or excluding coverage. It also clarifies that coverage for preexposure prophylaxis with effective antiretroviral therapy to persons who are at high risk of HIV acquisition is included within preventive care and screenings and sets forth the timing for coverage of preventive care and screenings.

Industry asserts that certain health care plans subject to the amendment are small businesses but has not provided the Department of Financial Services (“Department”) with specific insurers or the number of such entities. The amendment does not apply to local governments.

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.

A health care plan that is a small business affected by this amendment, if any, may be subject to reporting, recordkeeping, or other compliance requirements as the health care plan may need to file new policy and
contract forms and rates with the Superintendent.

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 health care plan 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. However, any costs should be minimal because it was the position of the Department prior to Chapter 57 that health care plans may not discriminate based on sexual orientation, gender identity or expression, or transgender status, and because the amendment also merely clarifies the timing of coverage for preventative care and screenings.

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 health care plan that is a small business affected by this amendment, if any, should experience any economic or technological impact as a result of the amendment.

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 a health care plan that is a small business affected by the amendment because the amendment uniformly affects all health care plans.

7. Small business and local government participation: The Department will comply with State Administrative Procedure Act section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on its website.
Rural Area Flexibility Analysis for the Proposed Fifty-Sixth Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations (collectively, “health care plans”) affected by this amendment operate in every county in this state, including rural areas as defined by State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: A health care plan, including a health care plan in a rural area, may be subject to additional reporting, recordkeeping, or other compliance requirements because the health care plan may need to file new policy and contract forms and rates with the Department of Financial Services (“Department”).

A health care plan, including a health care plan in a rural area, should not need to retain professional services, such as lawyers or auditors, to comply with this amendment.

3. Costs: A health care plan, including a health care plan in a rural area, may incur additional compliance costs as it may need to file new policy and contract forms and rates with the Department. However, any additional costs should be minimal because it was the position of the Department prior to Chapter 57 that health care plans may not discriminate based on sexual orientation, gender identity or expression, or transgender status, and because the amendment also merely clarifies the timing of coverage for preventative care and screenings.

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: Health care plans, including health care plans in rural areas, will have an opportunity to participate in the rule-making process when the proposed amendment is published in the State Register and on the Department’s website.
Statement Setting Forth the Basis for the Finding that the Proposed Fifty-Sixth 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 implements Subpart D of Part J of Chapter 57 of the Laws of 2019, which amended Insurance Law section 2607 and added Insurance Law sections 3243 and 4330, by clarifying that discrimination prohibited by Insurance Law sections 2607, 3243, and 4330 includes certain activities, such as including a policy clause that purports to deny, limit, or exclude coverage based on an insured’s sexual orientation, gender identity or expression, or transgender status or designating an insured’s sexual orientation, gender identity or expression, or transgender status as a pre-existing condition for the purpose of denying, limiting, or excluding coverage. This amendment also implements Insurance Law sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) by clarifying that coverage for preexposure prophylaxis with effective antiretroviral therapy to persons who are at high risk of HIV acquisition is included within preventive care and screenings and specifying the timing for coverage of preventive care and screenings.