

Regulatory Impact Statement for the Addition of New Part 365 to 11 NYCRR (Insurance Regulation 217).

1. Statutory authority: Chapter 25 of the Laws of 2020; Sections 202 and 302 of the Financial Services Law; Sections 301, 3201, 3217, 3221 and 4235 of the Insurance Law; and Sections 204(2)(a), 208(2), and 209(3)(b) of the Workers' Compensation Law.

Chapter 25 of the Laws of 2020 requires that employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 are given full job protection during the time of absence. The law further enables employees to qualify for paid family leave to care for themselves or a minor dependent child who is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. Section 15 of Chapter 25 requires the Superintendent of Financial Services ("Superintendent"), in consultation with the director of the State Insurance Fund and the chair of the Workers Compensation Board, to implement a risk adjustment pool to assist in the stabilization of markets related to paid family leave and temporary disability benefits.

Financial Services Law Section 202 establishes the office of the Superintendent. Financial Services Law Section 302 and Insurance Law Section 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 Section 3201 requires that for any policy, contract, certificate, or evidence of insurance and any application affording the benefits of insurance under the Insurance Law to be delivered or issued for delivery in New York State it must first be approved by the Superintendent.

Insurance Law Section 3217 authorizes the Superintendent to issue regulations "deemed necessary or desirable to establish minimum standards, including standards of full fair disclosure, for the form, content and sale of accident and health insurance policies."

Insurance Law Section 3221 sets forth the standard provisions for group, including small group, and blanket accident and health insurance policies.

Insurance Law Section 4235 authorizes the Superintendent, by regulation and in consultation with the chair of the Workers' Compensation Board of this state, to determine whether the family leave benefit coverage of a group accident and health insurance policy providing disability and family leave benefits shall be experience rated or community rated, which may include subjecting the family leave benefit coverage of the policy to a risk adjustment mechanism. Furthermore, if the policy is subjected to a risk adjustment mechanism, the Superintendent is authorized to promulgate regulations necessary for the implementation of such risk adjustment mechanism and directly administer the mechanism, in consultation with the chair of the Workers' Compensation Board.

Workers Compensation Law Sections 204(2)(a) and 208(2) set forth criteria for disability and family leave payments and can require any insurer to submit any information deemed necessary by the Superintendent for the purpose of administering benefits. Section 209(3)(b) of the Workers Compensation Law authorizes the Superintendent to set the maximum employee contribution, using sound actuarial principles and any reports provided in accordance with Section (208)(2).

2. Legislative objectives: Section 15 of Chapter 25 of the Laws of 2020 requires the Superintendent, in consultation with the State Insurance Fund and Workers Compensation Board, to promulgate regulations necessary for the implementation of a risk adjustment pool to protect insurers from disproportionate adverse risks. This law forecasts an increase of claims for disability benefits and family leave benefits that were not taken into account when the premiums for 2020 were set, thus resulting in financial hardship for many insurers.

This regulation implements the law by establishing a risk adjustment mechanism to offer immediate relief payments to insurers that experience disproportionate risk relative to their surplus. The regulation provides that insurers that experience COVID-19 claims reaching a threshold level of greater than twenty percent of the

company's surplus are eligible to apply for immediate relief payments. Contributions into the pool to fund the relief payments during year 2020 are, to the extent possible, to be provided by the State Insurance Fund. If, the State Insurance Fund is unable to make contributions necessary to cover the entire amount needed in relief, other insurers participating in the disability benefits and family leave benefits insurance market may be directed to contribute to the pool with a guarantee that any contributions made will be repaid with interest.

The regulation provides that 100 percent of COVID-19 claims paid will be recouped over a period of time to be determined by the Superintendent. This is accomplished by the pooling of a portion of the premiums associated with providing family leave benefits, which will then be redistributed to insurers proportionately, based on the actual COVID-19 claims experience. Each insurer participating in the mechanism is entitled to payment from the pool until it has received an amount equal to 100 percent of the actual COVID-19 claims paid.

3. Needs and benefits: On March 11, 2020, the World Health Organization declared COVID-19 a pandemic, referencing the sustained risk of its further spread across the globe. As the virus continued to spread at a dramatic rate, Governor Andrew Cuomo declared a state of emergency in New York in order to slow the spread of COVID-19. As part of this effort to protect the public health thousands of employees have been subject to either a mandatory or precautionary order of quarantine, rendering it impossible for the employees to return to work. Chapter 25 of the Laws of 2020 was enacted to ensure that workers under quarantine are afforded disability and family leave benefits.

As a result, there is an anticipated high-volume number of claims for disability benefits and family leave benefits that represent risk that was not factored into the 2020 pricing policies covering disability or family leave benefits and thus present adverse risk disproportionate to the premium charged. Without this mechanism insurers who received an influx of unforeseen claims due to mandatory or precautionary quarantine will face financial distress. This mechanism will alleviate that unforeseen cost and prevent market disruption.

4. Costs: This rule imposes no costs on insurers subject to it. This rule is designed to alleviate any financial hardship faced by insurers with disproportional adverse risks as a result of COVID-19 claims. This rule provides for a mechanism by which insurers are able to apply for immediate relief payments to recoup the costs related to paying disability and family leave benefits for quarantine claims under Chapter 25 of the Laws of 2020. The rule additionally includes a mechanism by which any funds used for immediate relief will be repaid in full with interest to be determined by the Superintendent. Therefore, any short-term cost issues are overcome by the repayment mechanism. Only those insurers that voluntarily elect to receive relief payments will be subject to an interest fee.

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: This regulation requires an insurer that voluntarily elects to apply for immediate relief to detail in its application the amount requested, a statement that the insurer meets the threshold for relief payments, a statement as to how the insurer intends to pay the required interest charge, a statement that relief funds will be used only for COVID-19 claims, instructions on the manner of receiving the relief funds and any other information that the Superintendent deems necessary. The regulation also provides that if relief funds are approved, then the insurer that opted to take those funds must submit a report by April 1, 2021 detailing how the funds were utilized.

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

8. Alternatives: This rule is required under Chapter 25 of the Laws of 2020. In determining the number of years over which recoupment will occur the Superintendent considered a single year time frame. However, anything less than two years would likely not be a sufficient amount of time for a proper calculation of COVID-19 claims. A multi-year recoupment would allow the Superintendent sufficient time to collect and distribute

funds in an efficient, accurate and effective manner. This time frame also will spread the premium adjustment over a longer period instead of making one large adjustment.

The Superintendent also considered establishing a fixed percentage rate of interest on the immediate relief payments. However, given the unprecedented nature of COVID-19 it is difficult to determine the actual amount of claims experience that will be reported. Therefore, the Superintendent found it prudent to set an interest rate based on actual data once it is reported instead of fixing the rate in the regulation.

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: The Department is promulgating this rule on an emergency basis. The regulation will take effect immediately upon filling the Notice of Emergency Adoption with the Secretary of State. The regulation sets forth the various dates by which insurers subject to it must take action. The regulation was designed to avoid any immediate compliance requirements on insurers while allowing immediate relief for those insurers that need it. For insurers that do not opt to take immediate relief payments impacts are unlikely until 2021.

Statement setting forth the basis for the finding that the addition of new Part 365 to 11 NYCRR (Insurance Regulation 217) will not have a substantial adverse impact on small businesses and local governments.

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. Rather, the intent of this rule is to provide economic relief to those insurers that are disproportionately affected by an influx of COVID-19 claims. The Department believes that such insurers do not fall within the definition of “small business” as defined by State Administrative Procedure Act Section 102(8), because it is unaware of any that is independently owned and operated and has fewer than 100 employees. This rule provides a two-part mechanism by which insurers may elect to apply for immediate relief funding if they meet certain criteria. The mechanism includes a procedure that requires any funding of the relief payments is to be repaid in full and with interest. Thus, no insurer, even if a small business, will experience any adverse impact under this mechanism.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. This regulation applies to only insurers that participate in the disability and family leave insurance market, including those insurers that voluntarily elect to receive immediate relief payments.

Rural Area Flexibility Analysis for the Addition of New Part 365 to 11 NYCRR (Insurance Regulation 217).

1. Types and estimated numbers of rural areas: Insurers affected by this rule 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: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring insurers that elect to obtain immediate relief to provide an application consisting of the amount requested, a statement that the insurer meets the threshold for relief payments, a statement as to how the insurer intends to pay the required interest charge, a statement that relief funds will be used only for COVID-19 claims, instructions on the manner of receiving the relief funds and any other information that the Superintendent deems necessary. The rule also provides that if relief funds are approved the insurer must submit reports detailing how the funds were utilized. The rule will also build upon existing reporting with respect to total premium collected for family leave benefits coverage, as this will be required when the recoupment process begins.

3. Costs: This rule imposes no costs on insurers that are subject to it, including those in rural areas. Instead, the rule provides a mechanism by which insurers will be able to recoup the costs related to paying disability and family leave benefits for quarantine claims under Chapter 25 of the Laws of 2020. To the extent that funding any immediate relief payment under the rule cannot be covered by the State Insurance Fund, other insurers may be required to advance funds in the short term. However, the funds advanced must be repaid in full and with interest that will be calculated to cover the investment income lost. Therefore, any perceived short-term costs are rendered moot by the application of the mechanism set forth in this rule. To the extent the potential loss of access to liquid assets is itself a cost, the Department considers this to be the least costly means of implementing Chapter 25 that also fulfills its purpose.

Any additional costs to carriers in rural areas will be the same as for carriers in non-rural areas.

4. Minimizing adverse impact: This rule uniformly affects carriers 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: The Department is promulgating this rule on an emergency basis because of the rapid spreading of COVID-19. Insurers 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 posted on the Department's website. Furthermore, the Department consulted with trade groups representing the majority of insurers impacted by this rule.

Statement setting forth the basis for the finding that the addition of new Part 365 to 11 NYCRR (Insurance Regulation 217) will not have a substantial adverse impact on jobs and employment opportunities.

The Department of Financial Services has determined that the rule will not adversely impact jobs or employment opportunities in New York State. This rule authorizes the Superintendent of Financial Services (“Superintendent”) to create a risk adjustment pool in order to stabilize the market and protect insurers from disproportionate adverse risks associated with claims for disability benefits and family leave benefits as a result of coronavirus disease 2019 (“COVID-19”).

This rule considers a possible disproportionate impact that COVID-19 claims may have on insurers and prevents unnecessary instability in the disability and family leave insurance market. To the extent there is any impact on jobs or employment opportunities it is likely positive, as protection of the market provides employees with continued access to the benefits they are entitled, and ensures insurers have funds necessary to continue to pay claims.