

Regulatory Impact Statement for the Sixtieth Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 3216, 3217, 3221, and 4303.

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 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 policies and subscriber contracts of corporations organized under Insurance Law Articles 32 and 43 and Public Health Law Article 44.

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

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

2. Legislative objectives: Insurance Law Sections 3216, 3217, 3221, and 4303 establish the minimum standards for the form, content, and sale of health insurance, including standards of full and fair disclosure. This amendment accords with the public policy objectives that the Legislature sought to advance in the foregoing Insurance Law provisions by prohibiting copayments, coinsurance, or annual deductibles, unless required by federal law for a high deductible health plan, for an in-network outpatient mental health service otherwise covered under the policy for an essential worker.

3. Needs and benefits: While the COVID-19 pandemic has had an immeasurable impact on all New Yorkers, the impact on essential workers, including health care workers, first responders and other frontline essential workers, has been especially difficult as they have been required to directly interact with the public while working during this public health emergency, exposing themselves and their families to incremental risks, to ensure that essential services continue to be available for all New Yorkers. For health care workers and first responders, in particular, witnessing the devastating effects of COVID-19 firsthand can take an emotional and psychological toll. The emotional and psychological well-being of essential workers is extremely important in the continuing fight against COVID-19. It is critical that these workers receive the mental health services they need.

This amendment provides that no policy or contract delivered or issued for delivery in this State that provides comprehensive coverage for hospital, surgical, or medical care shall impose, and no essential worker shall be required to pay, copayments, coinsurance, or annual deductibles, unless required by federal law for a high deductible health plan, for an in-network outpatient mental health service.

The amendment requires every health care plan to provide written notification of the requirements of the amendment to its in-network health care providers (“providers”) in order to ensure that the providers do not require an insured to pay a copayment, coinsurance, or annual deductible that is prohibited from being imposed pursuant to the amendment.

The Department of Financial Services (“Department”) expects every health care plan to reimburse a provider, including reimbursement for the insured’s waived copayment, coinsurance, or annual deductible, with respect to any affected claims.

Given the continued toll that this crisis has had on essential workers, including health care workers, first responders and other frontline essential employees, it is essential that these workers have access to mental health services. The waiver of copayments, coinsurance, and annual deductibles for mental health services

rendered by in-network providers on an outpatient basis is necessary to ensure that these workers have no barriers to the care they need.

4. Costs: A health care plan subject to this amendment will have to assume the cost of copayments, coinsurance or permissible annual deductibles that the amendment waives for essential workers that obtain in-network outpatient mental health services.

A health care plan also may incur costs associated with providing written notification of the amendment to its in-network providers, as required by the amendment. In addition, a health care plan may incur costs if it needs to file new policy and contract forms and rates with the Department to comply with the amendment. However, such costs should be minimal because health care plans submit policy or contract form and rate filings, and provide written notifications to providers, as a part of the normal course of business.

Providers may incur costs to comply with the amendment because no essential worker shall be required to pay a copayment, coinsurance, or annual deductible, except as otherwise required by federal law with respect to a high deductible plan, for the provision of any in-network outpatient mental health services. However, any such costs should be minimal because a provider should receive reimbursement, including the insured's copayment, coinsurance, or annual deductible, from the health care plan with respect to any affected claims.

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 by the Department should be minimal, and the Department should be able to absorb the costs in its ordinary budget.

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

6. Paperwork: Health care plans are required to provide written notification to their in-network providers that the providers may not collect any deductible, copayment, or coinsurance for outpatient mental health services for essential workers. This notification may be provided electronically as part of existing

communications that occur between health care plans and in-network providers. Health care plans may also need to file new policy and contract forms and rates with the Superintendent.

Providers should not incur additional paperwork to comply with this amendment.

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

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

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. If the policy or contract is a high deductible health plan as defined in Internal Revenue Code Section 223(c)(2), in-network outpatient mental health services may be subject to the annual deductible, if otherwise required by federal law.

10. Compliance schedule: The rule will take effect immediately upon filing of the Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Sixtieth Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Effect of the rule: The amendment affects health maintenance organizations and authorized insurers (collectively, “health care plans”) and health care providers (“providers”). The amendment provides that no policy or contract delivered or issued for delivery in this State that provides comprehensive coverage for hospital, surgical, or medical care shall impose, and no essential worker, as defined by the amendment, shall be required to pay, copayments, coinsurance, or annual deductibles, unless required by federal law for a high deductible health plan, for an in-network outpatient mental health service. The amendment requires every health care plan to provide written notification of the requirements of the amendment to its in-network providers to ensure that the providers do not require an insured essential worker to pay a copayment, coinsurance, or annual deductible that is prohibited from being imposed pursuant to the amendment. This notification should ensure that providers do not collect a copayment, coinsurance, or annual deductible for outpatient mental health services as prohibited by this amendment.

Industry asserts that certain health care plans subject to the amendment are small businesses. Providers also may be small businesses. As a result, certain health care plans and providers that are small businesses may be affected by this amendment.

This amendment does not affect 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, if any, affected by this amendment may be subject to reporting, recordkeeping, or other compliance requirements as it will be required to provide written notification

of the amendment to its in-network providers, and may need to file new policy and contract forms and rates with the Department of Financial Services (“Department”) to comply with the amendment.

A provider that is a small business may be subject to reporting, recordkeeping, or other compliance requirements because no essential worker shall be required to pay a copayment, coinsurance, or annual deductible, except as otherwise required by federal law with respect to a high deductible plan, for the provision of any in-network outpatient mental health services.

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 or provider that is a small business affected by this amendment 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. A health care plan that is a small business, if any, will incur costs to comply with the amendment because it will have to assume the cost of copayments, coinsurance or permissible annual deductibles that the amendment waives for essential workers who obtain in-network outpatient mental health services.

A health care plan that is a small business, if any, also may incur costs associated with providing written notification of the amendment to its in-network providers, as required by the amendment. In addition, a health care plan may incur costs if it needs to file new policy and contract forms and rates with the Department to comply with the amendment. However, such costs should be minimal because health care plans submit policy or contract form and rate filings, and provide written notifications to providers, as a part of the normal course of business.

A provider that is a small business may incur costs to comply with the amendment because no essential worker shall be required to pay a copayment, coinsurance, or annual deductible, except as otherwise required by

federal law with respect to a high deductible plan, for the provision of any in-network outpatient mental health services. However, any such costs should be minimal because a provider should receive reimbursement, including the insured's copayment, coinsurance, or annual deductible, from the health care plan with respect to any affected claims.

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. A health care plan and a provider that is a small business should not incur any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: There will be no 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 or provider that is a small business because the amendment affects all health care plans and providers uniformly. In addition, a provider that is a small business should receive reimbursement, including the insured's copayment, coinsurance, or annual deductible, from the health care plan with respect to any affected claims.

7. Small business and local government participation: The Department of Financial Services ("Department") had notified trade associations representing health care plans that are small businesses that it intended to promulgate the amendment. Health care plans and providers that are small businesses also will have an opportunity to participate in the rulemaking process when the amendment is published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis for the Sixtieth Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Types and estimated numbers of rural areas: Authorized insurers and health maintenance organizations (collectively, “health care plans”) and health care providers (“providers”) 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 will be required to provide written notification of the amendment to its in-network providers, and may need to file new policy and contract forms and rates with the Department of Financial Services (“Department”) to comply with the amendment.

A provider, including a provider in a rural area, may be subject to reporting, recordkeeping, or other compliance requirements because no essential worker, as defined in the amendment, shall be required to pay a copayment, coinsurance, or annual deductible, except as otherwise required by federal law with respect to a high deductible plan, for the provision of any in-network outpatient mental health services.

A health care plan or provider, including a health care plan or provider 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, will have to assume the cost of copayments, coinsurance or permissible annual deductibles that the amendment waives for essential workers that obtain in-network outpatient mental health services.

A health care plan may also incur costs associated with providing written notification of the amendment to its in-network providers, as required by the amendment. In addition, a health care plan may incur costs if it needs to file new policy and contract forms and rates with the Department to comply with the amendment.

However, such costs should be minimal because health care plans submit policy or contract form and rate filings, and provide written notifications to providers, as a part of the normal course of business.

Providers, including those in rural areas, may incur costs to comply with the amendment, because no essential worker shall be required to pay a copayment, coinsurance, or annual deductible, except as otherwise required by federal law with respect to a high deductible plan, for the provision of any in-network outpatient mental health services. However, any such costs should be minimal because a provider should receive reimbursement, including the insured's copayment, coinsurance, or annual deductible, from the health care plan with respect to any affected claims.

4. **Minimizing adverse impact:** This amendment uniformly affects health care plans and providers 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:** The Department had notified trade associations representing health care plans that are in rural areas that it intended to promulgate the amendment. Health care plans and providers in rural areas will also have an opportunity to participate in the rulemaking process when the amendment is published in the State Register and posted on the Department's website.

Statement Setting Forth the Basis for the Finding that the Sixtieth 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 provides that no policy or contract delivered or issued for delivery in this State that provides comprehensive coverage for hospital, surgical, or medical care shall impose, and no essential worker, as defined in the amendment, shall be required to pay, copayments, coinsurance, or annual deductibles, unless required by federal law for a high deductible health plan, for an in-network outpatient mental health service. As a result, there should be no impact on jobs or employment opportunities.