

Regulatory Impact Statement for the Sixty-First Amendment to 11 NYCRR 52 (Insurance Regulation 62)

1. Statutory authority: Financial Services Law (“FSL”) Sections 202 and 302 and Insurance Law (“IL”) Sections 301, 3216, 3217, 3221, and 4303.

FSL Section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”).

FSL Section 302 and IL Section 301 authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL Sections 3216, 3221, and 4303 set forth the standard provisions in individual, small group, large group, and blanket accident and health insurance policies and contracts. Specifically, Insurance Law Sections 3216(i)(17)(B)(ii) and (iii), 3221(l)(8)(B)(ii) and (iii), and 4303(j)(2)(B) and (C) require individual, group, and blanket policies or contracts that provide medical, major medical, or similar comprehensive-type coverage to cover an immunization, at no cost-sharing, for children who are 19 years old or younger if determined to be a necessary immunization by the Superintendent, in consultation with the Commissioner of Health. Insurance Law Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) further require individual, group, and blanket policies or contracts that provide hospital, surgical, or medical care coverage, except for a grandfathered health plan, to cover, at no cost-sharing, preventive care and screenings that have in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Taskforce (“USPSTF”) and immunizations that have in effect a recommendation from the Centers for Disease Control and Prevention’s (“CDC’s”) Advisory Committee on Immunization Practices (“ACIP”) regardless of the age of the recipient.

IL Section 3217(a) authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Articles 32 and 43 and Public Health Law Article 44.

2. Legislative objectives: The statutory sections cited above establish the minimum standards for the form, content, and sale of accident and health insurance, including coverage for certain immunizations with no

cost-sharing. This amendment accords with the public policy objectives that the Legislature sought to advance in the foregoing sections of the IL by requiring coverage for coronavirus disease 2019 (“COVID-19”) immunizations and the administration thereof immediately upon the earliest of the date on which: (1) the ACIP issues a recommendation for the COVID-19 immunization; (2) the USPSTF issues a recommendation with an “A” or “B” rating for the COVID-19 immunization; or (3) the Superintendent determines, in consultation with the Commissioner of Health, that a policy or contract must cover the COVID-19 immunization. This amendment also prohibits copayments, coinsurance, annual deductibles, and any other out-of-pocket costs for such immunizations and the administration thereof.

3. Needs and benefits: New York State has made incredible progress in the fight against COVID-19. The percent of New Yorkers who have completed the COVID-19 vaccine series is approximately 75%. That means that approximately 25% of New Yorkers—almost 5 million people—have not completed the COVID-19 vaccination series.

The Center for Disease Control and Prevention (“CDC”) states that “Getting vaccinated against COVID-19 can lower your risk of getting and spreading the virus that causes COVID-19. Vaccines can also help prevent serious illness and death.” Furthermore, the CDC states that “even as the vaccine’s ability to prevent infection decreases with time, COVID-19 vaccination continues to reduce the risk of hospitalization and death when people become infected with COVID-19.”

It is therefore essential that New Yorkers have coverage for COVID-19 immunizations and the administration thereof, including any visits necessary to obtain the immunization, so that there are no barriers for New Yorkers to expeditiously obtain the immunizations.

This amendment requires authorized insurers and health maintenance organizations (collectively, “health care plans”) that issue a policy or contract that provides hospital, surgical, or medical care coverage, except grandfathered health plans, to provide coverage of COVID-19 immunizations and the administration thereof

immediately upon the earliest of the date on which: (1) the ACIP issues a recommendation for the COVID-19 immunization; (2) the USPSTF issues a recommendation with an “A” or “B” rating for the COVID-19 immunization; or (3) the Superintendent determines, in consultation with the Commissioner of Health, that a policy or contract must cover the COVID-19 immunization. Coverage for COVID-19 immunizations, and the administration thereof, and any visits necessary to obtain the immunizations at a provider’s office, facility, pharmacy, or other setting, including any provider or location authorized by New York State or the federal government to administer or host the administration of the immunization, will not be subject to annual deductibles, coinsurance, copayments, or any other out-of-pocket cost. There will be coverage for COVID-19 immunizations administered by non-participating providers until the expiration of the federally declared public health emergency.

The federal Departments of Health and Human Services, Treasury, and Labor (“federal Departments”) have issued Interim Final Rule 85 Fed. Reg. 71142 (November 6, 2020) (“federal rules”) that address coverage for COVID-19 immunizations and their administration. The federal rules require COVID-19 immunizations and their administration to be covered when provided by out-of-network providers for the duration of the federal public health emergency for COVID-19. The federal rules state that reimbursement for out-of-network providers must be made in an amount that is reasonable, as determined by comparison to prevailing market rates for such services. The preamble to the federal rules indicates that the federal Departments will consider the amount of payment to be reasonable if the health care plan pays the provider the amount that would be paid under Medicare for the service, although the federal Departments are seeking comments on this approach. The Department of Financial Services (“Department”) may address out-of-network provider reimbursement for COVID-19 immunizations and their administration in future rulemaking if the federal rules are finalized.

4. Costs: Health care plans may incur additional costs to comply with the amendment because they may need to file new policy and contract forms and rates. However, any costs should be minimal because health care plans submit policy and contract forms and rates as a part of the normal course of business.

This amendment does not impose any costs on providers.

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.

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

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 may need to file new policy and contract forms and rates with the Superintendent.

Providers and local governments should not incur any additional paperwork to comply with this amendment.

7. Duplication: The federal Departments have issued federal rules interpreting the immunization requirements of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), codified at 15 U.S.C. Section 9001 et seq. The federal rules require issuers to cover COVID-19 immunizations and their administration with no cost-sharing under all non-grandfathered group and individual comprehensive health insurance policies and contracts when administered by providers enrolled in the CDC COVID-19 Vaccination Program.

The federal rules also require COVID-19 immunizations and their administration to be covered when provided by out-of-network providers for the duration of the federally declared public health emergency for COVID-19. The federal requirement for out-of-network coverage ends when the federally declared public health emergency is terminated.

Furthermore, the CARES Act requires coverage of any COVID-19 immunizations and their administration within 15 business days after the immunization has been recommended by ACIP.

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

9. Federal standards: The amendment exceeds the minimum standards of the federal government for this subject area. This amendment requires: (1) coverage for COVID-19 immunizations and the administration thereof at a provider's office, facility, pharmacy, or other setting, including any provider or location authorized by New York State or the federal government to administer or host the administration of the immunization; (2) coverage immediately upon certain triggering events; and (3) coverage for COVID-19 immunizations administered by non-participating providers until the expiration of the federally declared public health emergency.

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

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

1. Effect of the rule: This rule affects authorized insurers and health maintenance organizations (collectively, “health care plans”) and providers. This amendment requires a policy or contract that provides hospital, surgical, or medical care coverage, excluding grandfathered health plans, to provide immediate coverage, without cost sharing, of COVID-19 immunizations and the administration thereof at a provider’s office, facility, pharmacy, or other setting, including any provider or location authorized by New York State or the federal government to administer or host the administration of the immunization.

Industry has asserted 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 will 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 may be subject to reporting, recordkeeping, or other compliance requirements as the health care plan may need to file new policy or contract forms and rates with the Superintendent of Financial Services.

A provider that is a small business should not be subject to reporting, recordkeeping, or other compliance requirements.

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 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 may incur costs to comply with this amendment because it may need to file new policy or contract forms and rates. However, any costs should be minimal because health care plans submit policy and contract forms and rates as a part of the normal course of business.

This amendment does not impose any additional costs on a provider that is a small business.

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 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 or provider that is a small business because the amendment uniformly affects all health care plans and providers.

7. Small business and local government participation: The Department of Financial Services (“Department”) notified trade associations representing health care plans that are small businesses that it intended to promulgate this 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 Sixty-First 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 providers affected by this amendment operate in every county in New York 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 or contract forms and rates with the Department of Financial Services (“Department”).

A provider, including a provider in a rural area, should not be subject to reporting, recordkeeping, or other compliance requirements.

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

3. Costs: Health care plans, including those in rural areas, may incur additional costs to comply with the amendment because they may need to file new policy and contract forms and rates with the Department. However, any costs should be minimal because health care plans submit policy and contract forms and rates as a part of the normal course of business.

Providers, including those in rural areas, should not incur additional costs to comply with the amendment.

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 notified trade associations representing health care plans that are in rural areas that it intended to promulgate this 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 Sixty-First 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 requires a policy or contract that provides hospital, surgical, or medical care coverage, excluding grandfathered health plans, to provide immediate coverage, without cost sharing, of COVID-19 immunizations and the administration thereof at a provider's office, facility, pharmacy, or other setting, including any provider or location authorized by New York State or the federal government to administer or host the administration of the immunization. As a result, there should be no impact on jobs or employment opportunities.