

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
SIXTY-SEVENTH AMENDMENT TO 11 NYCRR 52
(INSURANCE REGULATION 62)**

**MINIMUM STANDARDS FOR THE FORM, CONTENT AND SALE OF HEALTH
INSURANCE, INCLUDING STANDARDS OF FULL AND FAIR DISCLOSURE**

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202, 301 and 302 of the Financial Services Law and Sections 301, 308, 316, 1124, 3216, 3217, 3221, 4235, 4237, 4303, and 4305 of the Insurance Law, do hereby promulgate the following Sixty-Seventh 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 120 days after publication of the Notice of Adoption in the State Register, to read as follows:

(MATTER IN BRACKETS IS DELETED; NEW MATTER IS UNDERLINED)

Subdivision (b) of section 52.51 is amended as follows:

The following provisions shall apply to applications for insurance:

(b) An insurer shall not include questions regarding the past or present health of any person in an application for comprehensive health insurance pursuant to Insurance Law sections 3221(q)(1) and 4305(k)(1). Questions on an application for accident and health insurance, other than comprehensive health insurance, regarding the past or present health of any person phrased with reference to specific diseases or general health shall be asked to the best of the applicant's knowledge and belief. Questions phrased as to factual information, such as doctor visits or hospital confinements, need not be so qualified.

A new section 52.52 is added as follows:

§ 52.52 Demographic information to promote health equity.

(a) An insurer shall request information regarding an insured's and a covered dependent's race, ethnicity, preferred language, sexual orientation, and gender identity or expression for all insureds and dependents covered under a comprehensive health insurance policy, provided that:

(1) an insurer shall request such information via a separate and supplemental questionnaire:
(i) after an applicant has completed an application for a comprehensive health insurance policy;
and (ii) with respect to insureds and dependents already covered under a policy for whom the insurer does not have such information, at the time of the next policy renewal that is at least 90 days after the effective date of this section;

(2) an insured's or covered dependent's response shall be optional;

(3) an insurer shall not use the information provided by the insured or covered dependent in a manner that would constitute unfair or unlawful discrimination under the laws of this State, including, but not limited to, Insurance Law sections 2606 and 2607; and

(4) an insurer's use, distribution, or sale of the information shall be consistent with applicable Federal and State statutes and regulations, including 45 C.F.R. Part 160 and Subparts A and E of Part 164 of 45 C.F.R.¹, Insurance Law sections 3221(q)(1) and 4305(k)(1), and Part 420 of this Title, provided that,

(i) an insurer shall not sell to any third-party any information requested pursuant to paragraph (1) of subdivision (a) of this section, including any information that has been de-identified; and

(ii) an insurer shall not share with any third-party, or allow any third party to collect on its behalf, any information requested pursuant to paragraph (1) of subdivision (a) of this section, including any information that has been de-identified, unless the third party agrees not to sell or share the information, except when required by law, and the third-party agrees to keep the information confidential.

(b) Limitations on the use of demographic information. No insurer shall use the demographic information requested pursuant to paragraph (1) of subdivision (a) of this section for:

(1) any underwriting determinations, including eligibility determinations, or for rating purposes, and an insurer may not base any decision relating to such underwriting or rating on an individual's refusal to provide a response to a request made pursuant to paragraph (1) of subdivision (a) of this section; or

(2) marketing purposes, with the exception of preferred language.

(c) An insurer shall clearly and conspicuously disclose in the separate supplemental questionnaire required under paragraph (1) of subdivision (a) of this section that:

(1) an insured or a covered dependent may refuse to provide any information requested pursuant to paragraph (1) of subdivision (a) of this section;

(2) the insurer may not use the information for any underwriting determinations, including eligibility determinations, or for rating purposes, and an insurer may not base any decision relating

¹ The Code of Federal Regulations ("C.F.R.") is published jointly by the National Archives and Records Administration's Office of the Federal Register, 7 G Street, NW, Suite A-734, Washington, D.C. 20401 and the Government Publishing Office, 732 N. Capitol Street, NW, Washington, D.C. 20401. 45 C.F.R. Part 160 and Subparts A and E of Part 164 of 45 C.F.R. are available online at <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C>. Copies also may be obtained from this department by writing to: New York State Department of Financial Services, Office of General Counsel, One State Street, 20th Floor, New York, NY 10004, or by sending an email to regnotification@dfs.ny.gov.

to such underwriting or rating on an individual's refusal to provide a response to a request made pursuant to paragraph (1) of subdivision (a) of this section;

(3) the insurer is prohibited from using the information provided in response to a request made pursuant to paragraph (1) of subdivision (a) of this section in a manner that would constitute unfair or unlawful discrimination under the laws of this State, including, but not limited to, Insurance Law sections 2606 and 2607;

(4) any information provided in response to a request made pursuant to paragraph (1) of subdivision (a) of this section will be maintained as confidential consistent with applicable Federal and State statutes and regulations; and

(5) the insurer is requesting information from insureds and covered dependents pursuant to this section in order to support efforts to promote health equity.

(d) Reporting. An insurer shall provide to the superintendent, upon the superintendent's request, and in a format specified by the superintendent, all demographic information collected under paragraph (1) of subdivision (a) of this section.

(e) Signed attestation. An insurer shall electronically file with the superintendent, in connection with any rate filing or rate manual submission, a document signed by an actuary or other executive having responsibility for oversight of rates attesting that the information collected pursuant to paragraph (1) of subdivision (a) of this section is not used in underwriting, including eligibility determinations, for rating, or otherwise used in a manner that would constitute unfair or unlawful discrimination under the laws of this State, including, but not limited to, Insurance Law sections 2606 and 2607, provided, however, that the insurer may apply to the superintendent for an exemption from the electronic filing requirement as set forth in section 6.3 of Part 6 of this Title.

(f) Collection and retention of demographic information. An insurer shall compile and maintain a record of the demographic information provided by an insured or covered dependent pursuant to a request under paragraph (1) of subdivision (a) of this section, or a record that an insured or covered dependent declined to provide such information, in accordance with Part 243 of this Title.

(g) As used in this section, "insurer" means an insurer licensed to write accident and health insurance in this State, a corporation organized pursuant to Insurance Law article 43, a health maintenance organization certified pursuant to Public Health Law article 44, and a student health plan certified pursuant to Insurance Law section 1124.