Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impact:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Reporting, Recordkeeping and Other Complaince Requirements; and Professional Services: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

NOTICE OF WITHDRAWAL

Charges for Professional Health Services

I.D. No. DFS-26-18-00002-W

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Notice of proposed rule making, I.D. No. DFS-26-18-00002-EP, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 27, 2018.

Subject: Charges for Professional Health Services.

Reason(s) for withdrawal of the proposed rule: The Department intends to submit a new proposed rule because of dramatic changes made to the current proposed rule.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. DFS-08-19-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Part 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 2601, 5221 and art. 51

Subject: Charges for Professional Health Services.

Purpose: To delay the effective date of the Workers' Compensation fee schedule increases for no-fault reimbursement.

Text of proposed rule: Section 68.1 is amended to read as follows:

§ 68.1 Adoption of certain workers' compensation schedules

(a)*(1)* The existing fee schedules prepared and established by the [chairman] *chair* of the Workers' Compensation Board for industrial accidents are hereby adopted by the Superintendent of Financial Services with appropriate modification so as to adapt such schedules for use pursuant to the provisions of [section 5108 of the] Insurance Law *section 5108*.

(2)(i) Notwithstanding paragraph (1) of this subdivision, and except as provided in subparagraph (ii) of this paragraph, the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on October 1, 2020, and shall only apply to all charges for health services performed on or after October 1, 2020.

(ii) The following ground rules in the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on April 1, 2019, and shall apply to all charges for health services performed on or after April 1, 2019:

(a) General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule set forth in 12 NYCRR 348;

(b) General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule set forth in 12 NYCRR 329;

(c) General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule (formerly the Psychology Fee Schedule) set forth in 12 NYCRR 333, and;

(d) General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule set forth in 12 NYCRR 343.

(b)(1) The charges for services specified in [paragraph one of subsection (a) of section 5102 of the] Insurance Law *section 5102(a)(1)* and any further health service charges [which] *that* are incurred as a result of the injury and [which] *that* are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents *that are in effect for purposes of no-fault at the time the charges are incurred*. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply *to no-fault*, e.g., requirements that provide for authorization to perform surgical procedures[, is not applicable to no-fault]. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules [which] *that* refer to workers' compensation claim forms, preauthorization approval, *time limitations within which health services must be performed, enhanced reimbursement for providers of certain designated services,* and dispute resolution guidelines do not apply, unless specified in this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Camielle Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: Camielle.Barclay@dfs.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 2601, 5221, and Article 51.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents. Section 5108(b) specifically authorizes the Superintendent to adopt the fee schedules prepared and established by the Chairman of the Workers' Compensation Board (the "Chair") or to promulgate fee schedules for health care benefits payable under the no-fault system for any services for which the Chair has not prepared and established; and subsection (c) prohibits a provider of health services, as defined in Article 51, in addition to the amount authorized pursuant to Insurance Law Section 5108.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and pursuant to Insurance Law Section 5108(b), the Superintendent adopted those fee schedules promulgated by the Chair. In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

Since 1977, the workers' compensation fee schedules underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83, which prescribed that any changes the Chair made to the workers' compensation fee schedules automatically would apply to no-fault, and therefore, no longer necessitated adoption of the workers' compensation fee schedules as changes were made to them.

3. Needs and benefits: In December 2018, The Chair adopted expansive amendments to its fee schedules for medical, chiropractic, behavioral health (otherwise known as the psychological fee schedule), and podiatric services (collectively the "medical fee schedules") to take effect on April 1, 2019. The Chair contended, in its Regulatory Impact Statement in the December 26, 2018 issue of the New York State Register, that such changes were necessary to ensure that treating providers are paid a reasonable fee for their services so that injured workers may receive high quality medical care in the workers' compensation system.

Although the expansive changes to the fee schedules may be necessary to maintain quality health services for the workers' compensation system, the automatic adoption of such sweeping changes for use in the no-fault system within a relatively short period (April 1, 2019) would have a significant adverse impact on insurers' ability to absorb the health-service-related costs resulting from those changes within that timeframe. Those changes will result in a substantial overall increase (at least a 10% increase has been reported) in total loss payments for no-fault-related health services, which insurers could not have anticipated. Because health service payments account for more than 90% of the total loss costs in no-fault, insurers will need time to carefully study the impact of the changes in the medical fee schedules on no-fault to appropriately adjust no-fault premium rates to absorb the noticeable increase in no-fault claims costs.

Furthermore, pursuant to Insurance Law Sections 3425 and 3426, there is a one-year "required policy period" for automobile policies, which may not be canceled during that period unless as prescribed in the statutes; therefore, policies that are already in effect could not be altered to reflect the sudden increase in loss costs. The Superintendent therefore, deems it necessary to delay for 18 months the adoption of the medical fee schedules that the Chair has prepared and established to take effect on April 1, 2019, and so those fee schedules will take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law 5108.

However, this amendment to Insurance Regulation 83 will exclude certain workers' compensation ground rules from the 18-month delay, to wit: General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule, General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule, and General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule, which prohibit providers to whom these fee schedules apply from billing under current procedural terminology ("CPT") codes not listed in their respective fee schedules; and General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule, which prohibits any chiropractor, podiatrist or provider of behavioral health services from billing under CPT codes in the medical fee schedule. Per the Chair, these rules are not new but clarification of existing rules; therefore, the Superintendent determined it was not necessary to delay their implementation.

Insurance Regulation 83 also is being amended to provide that any references in any workers' compensation ground rules regarding time limitations within which health services must be performed, as well as any enhanced reimbursement for providers of certain designated services, are inapplicable to no-fault. Insurance Law Section 5102(a) specifically prescribes any time limitations on receiving necessary health-related services. With respect to enhanced reimbursement for providers (20% in addition the fee schedule rate), the Chair, in General Ground Rule 17 of the Workers' Compensation Medical Fee Schedule, stated that this enhancement was necessary to increase the number of Board-authorized providers in the general medicine specialties. There is no requirement that providers be authorized by the Department to treat no-fault patients, nor is there a shortage of no-fault treating providers in general medicine specialties. Therefore, the Superintendent determined an additional 20% reimbursement increase solely for general medicine specialty providers of no-fault-related health services is unwarranted, and will not be adopted for use pursuant to Insurance Law Section 5108.

4. Costs: This amendment should have no compliance cost impact on applicants for no-fault benefits, insurers, self-insurers, or state and local governments. With respect to any cost impact to health service providers not regulated by the Department, participation in the no-fault system is optional, and the Department has imposed no preauthorization or reporting requirements on these applicants for no-fault benefits. Notwithstanding, this rule only delays the adoption of changes that the Chair has made to the workers' compensation fee schedules, which the Department is required to adopt pursuant to Insurance Law Section 5108.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork on any persons affected by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent carefully evaluated alternatives to the 18-month delay in adopting the workers' compensation medical fee schedules. The Superintendent determined that delaying only increases and not decreases in the fee schedules would cause significant systems issues for both insurers and health service providers, from having to utilize separate fee schedules and apply different ground rules. The Superintendent also considered a shorter implementation delay period, but determined, based on the Superintendent's expertise as insurance regulator, that an 18-month delay was most appropriate to permit insurers sufficient time to study the cost impact of the fee schedule changes to determine when and how to adjust their rates.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: This amendment shall take effect upon publication of the notice of adoption in the State Register. However, the 18-month delay in adopting the Chair's amended medical fee schedules shall commence on April 1, 2019, the effective date of those fee schedules.

Regulatory Flexibility Analysis

1. Effect of rule: This rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" as defined in State Administrative Procedure Act Section 102(8), because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department of Financial Services (the "Department") does not have any information to indicate that any self-insurers are small businesses.

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no requirements under the State's financial security laws requiring local governments to report to the Department or the Department of Motor Vehicles that they are self-insured. Therefore, the Department has no way of estimating how many local government units are self-insured for no-fault benefits.

The types of small businesses affected by this rule are applicants for no-fault benefits, who are typically health service providers not regulated by the Department. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108. Although this amendment may have a temporary impact on small businesses in that they may not bill at the higher fee schedule rate for their services until October 1, 2020, such an impact is outweighed by the need to give no-fault insurers time to study the impact the fee schedule changes will have on loss costs so they may appropriately adjust premiums to cover those costs.

2. Compliance requirements: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on any small businesses or self-insured local governments affected by this rule.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This amendment does not impose any additional compliance costs on small businesses or self-insured local governments.

5. Economic and technological feasibility: There should not be any issues pertaining to economic or technological feasibility because this rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use in no-fault pursuant to Insurance Law Section 5108.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments affected by this amendment because the amendment only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108. The Department anticipates that no small businesses subject to the rule, if any, or self-insured local governments will experience any cost increase because of this amendment.

7. Small business and local government participation: Interested parties, including small businesses and local governments, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(10). Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on insurers, self-insurers, self-insured local governments, and health service providers affected by this rule.

Insurers, self-insurers, self-insured local governments, and health service providers affected by this rule should not need to retain professional services to comply with this rule. This rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

3. Costs: This amendment does not impose any additional costs on no-fault insurers, self-insurers, self-insured local governments, and health service providers, because this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

4. Minimizing adverse impact: This rule uniformly affects insurers, self-insurers, self-insured local governments, and health service providers throughout New York State. Therefore, it does not impose any adverse impact on rural areas.

5. Rural area participation: Interested parties, including those located in rural areas, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. The amendment only delays for 18 months the adoption of the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108.

Department of Health

EMERGENCY RULE MAKING

Medical Use of Marihuana

I.D. No. HLT-31-18-00005-E
Filing No. 108
Filing Date: 2019-02-05
Effective Date: 2019-02-05

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 1004.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3369-a

Finding of necessity for emergency rule: Preservation of public health and public safety.

Specific reasons underlying the finding of necessity: In New York State, the number of overdose deaths involving opioids has increased from over 1,000 deaths in 2010, to over 3,000 deaths in 2016. The opioid epidemic is an unprecedented crisis and practitioners should have as many treatment options available to them as possible.

Medical marihuana has been demonstrated to be an effective treatment option for pain, thereby reducing the chance of dependence and the risk of fatal overdose as compared to opioid-based medications. Studies of some states with medical marihuana programs have found notable associations of reductions in opioid deaths and opioid prescribing with the availability of cannabis products. States with medical marihuana programs have also been found to have less opioid overdose deaths than other states by as much as 25 percent. Studies of opioid prescribing in some states with medical marihuana programs have noted a 5.88 percent lower rate of opioid prescribing.

The regulations are necessary to immediately conform the regulations to recent amendments to Section 3360(7) of the PHL that added post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, and substance use disorder, as serious conditions for which patients may be certified to use medical marihuana. In doing so, the regulations will help prevent patients from relying on prescription opioids for severe pain that