

Pursuant to the authority vested in the Commissioner of Health by section 4403(2) of the Public Health Law, subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of the Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 is amended to read as follows:

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care, Health and Recovery Plans (HARPs) and HIV SNP programs shall be:

- (a) 7.25 percent of net premium income for 2011;
- (b) 7.25 percent of net premium income for 2012;
- (c) 7.25 percent of net premium income for 2013;
- (d) 7.25 percent of net premium income for 2014;
- (e) 7.25 percent of net premium income for 2015;
- (f) 7.25 percent of net premium income for 2016;
- (g) 7.25 percent of net premium income for 2017;
- (h) 7.25 percent of net premium income for 2018;
- (i) 7.25 percent of net premium income for 2019;
- (j) 7.25 percent of net premium income for 2020;
- (k) [8.25] 7.25 percent of net premium income for 2021;
- (l) [9.25] 7.25 percent of net premium income for 2022;
- (m) [10.25] 8.25 percent of net premium income for 2023.

(n) [11.25] 9.25 percent of net premium income for 2024.

(o) [12.5] 10.25 percent of net premium income for 2025.

(p) [12.5] 11.25 percent of net premium income for [calendar years after 2025]

2026.

(q) 12.5 percent of net premium income for 2027.

(r) 12.5 percent of net premium income for calendar years after 2027.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005, and has been amended consistently thereafter, to implement the Medicaid Redesign Team (MRT) initiatives consistent with Article 44 of the Public Health Law. These amendments included the temporary reduction of the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC) and HIV Special Needs Plan (SNP) programs due to inclusion of various new benefits and populations into Medicaid Managed Care, the addition of the Health and Recovery Plans (HARPs) and the 2% reduction in premium (pursuant to the MRT initiative #6). These changes necessitated maintaining the reserves at the current level as the premium rates were not adequate to allow for a planned increase in the contingent reserve requirements. This proposed amendment will allow the contingent reserve for the Medicaid, HARP and HIV SNP lines of business to remain at 7.25% for an additional two years (2021 and 2022) to reflect additional reductions in premium.

Needs and Benefits:

The approved SFY 2011-2012 and SFY 2012-2013 NYS Budgets incorporated a proposal from the MRT that reduced the premium rates of MMC and HIV SNP managed

care plans by 2%. This was accomplished by lowering the rate component for surplus/reserves from 3% to 1% effective April 1, 2011.

The independent actuarial firm engaged by the Department of Health (DOH) must certify the actuarial soundness of the premium rates to Centers for Medicare and Medicaid Services (CMS). The prior reduction of the rate component for surplus/reserves by 2% would have resulted in rates that were not actuarially sound, as such rates would have been insufficient to support the contingent reserve requirement specified in §98-1.11(e)(1). As a result, the contingent reserve requirement for Medicaid product lines was reduced from 10.5% to 7.25% of premium revenue. This change was implemented in regulations promulgated on an emergency basis effective July 7, 2011 and adopted permanently on February 15, 2012.

Effective for dates of service on or after January 1, 2020, in accordance with the authority in Chapter 53 of the Laws of 2019, enacted by the SFY 2019-20 NYS Budget, premium rates were reduced by 1.0% as part of a uniform reduction of Medicaid payments.

The new proposed revision to 98-1.11(e) maintains the 7.25% contingent reserve requirement through calendar year 2022. This revision will permit DOH to maintain the reductions in the premium rates and allow the State's independent actuary to certify the actuarial soundness of the premium rates to CMS, in light of the recent premium rate reductions.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by DOH or by the MCOs.

Local Government Mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

Paperwork:

Paperwork associated with filings to DOH or Department of Financial Services should be minimal and would be no more substantial than the current regulation requires.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

Revisions to §98-1.11(e) are needed to ensure the actuarial soundness of Medicaid Managed Care premium rates. The alternative would be to not implement these regulations; however, this alternative was rejected because Medicaid premium rates are set by the State actuary and with a built-in profit of 1% which is not sufficient to accommodate reserve increases without jeopardizing the soundness of the rates.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

Managed care organizations should be able to comply with the proposed regulations upon publication of the Notice of Adoption.

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STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.