needs plans (collectively, "insurers"). Some of these insurers may be small businesses as defined by State Administrative Procedures Act ("SAPA") Section 102(8) because they are both independently owned and operated and have 100 or fewer employees.

New 11 NYCRR 77 requires that, until January 1, 2027, the shares of an exchange traded fund ("ETF"), the portfolio of which consists of fixed income securities, cash, and cash equivalents, be treated as bonds for the purpose of a domestic insurer's risk-based capital ("RBC") report if the ETF meets certain criteria. The amendments to 11 NYCRR 83 adopt the March 2021 edition of the Accounting Practices and Procedures Manual ("Accounting Manual") published by the National Association of Insurance Commissioners ("NAIC"); require a foreign insurer to calculate its RBC consistent with 11 NYCRR 77 and report that RBC in the New York supplement to the annual financial statement; and require that shares of an ETF that meets the criteria set forth in 11 NYCRR Section 77.2(a) be accounted for as set forth in the Accounting Manual, including with respect to the asset valuation reserve and interest maintenance reserve, with the exception that the book adjusted carrying value of such shares must be set equal to fair value (and not systematic value).

An insurer that is a small business may incur additional costs to comply with the rules because the insurer will need to acquire the March 2021 edition of the Accounting Manual. However, most insurers that may be small businesses will purchase, or will have already purchased, the March 2021 edition of the Accounting Manual to comply with other states' requirements.

The rules do not apply to any local government.

2. Compliance requirements: A local government will not have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rules because the rules do not apply to any local government.

An insurer that is a small business will need to acquire the March 2021 edition of the Accounting Manual to comply with the rules. However, most insurers that are small businesses will purchase, or will have already purchased, the March 2021 edition of the Accounting Manual to comply with other states' requirements.

3. Professional services: A local government will not need professional services to comply with the rules because the rules do not apply to any local government. An insurer that is a small business should not need to retain professional services, such as lawyers or auditors, to comply with the rules.

4. Compliance costs: A local government will not incur any costs to comply with the rules because the rules do not apply to any local government.

An insurer that is a small business will need to acquire the March 2021 edition of the Accounting Manual to comply with the rules. The Accounting Manual is available for purchase directly from the NAIC for $500 for an electronic version. Most insurers that are small businesses will purchase, or will have already purchased, the March 2021 edition of the Accounting Manual to comply with other states' requirements.

5. Economic and technological feasibility: The rules do not apply to any local government; therefore, a local government should not experience any economic or technological impact as a result of the rules. An insurer that is a small business should not incur any economic or technological impact as a result of the rules.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rules do not apply to any local government. The rules should not have an adverse impact on an insurer that is a small business because the amendment uniformly affects all insurers.

7. Small business and local government participation: The Department conducted extensive outreach to insurers and other stakeholders. Then, in August 2021, the Department posted the draft regulation on its website for informal outreach and comments and notified trade organizations that represent small businesses of the posting, in compliance with State Administrative Procedures Act Section 202-b(6). Insurers and other stakeholders that are small businesses also will have an opportunity to participate in the rulemaking process when the rules are published in the State Register and posted on the Department's website again.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The rules apply to authorized insurers, accredited reinsurers, and authorized fraternal benefit societies and Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans, and comprehensive HIV special needs plans (collectively, "insurers"). Insurers affected by the rules 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: The rules require insurers, including insurers in rural areas, to acquire the Accounting Practices and Procedures Manual ("Accounting Manual") published by the National Association of Insurance Commissioners ("NAIC") as of March 2021.

An insurer in a rural area should not need to retain professional services, such as lawyers and auditors, to comply with the rules.

3. Costs: Insurers, including insurers in rural areas, will need to acquire the Accounting Manual, which is available for purchase directly from the NAIC for $500 for an electronic copy, in order to comply with the rules. Most insurers, including insurers in rural areas, will purchase, or will have already purchased, the Accounting Manual to comply with other states' requirements.

4. Minimizing adverse impact: The rules uniformly affect insurers that are located in both rural and non-rural areas of New York State. The rules should not have any adverse impact on rural areas.

5. Rural area participation: The Department conducted extensive outreach to insurers. Then, in August 2021, the Department posted the draft regulation on its website for informal outreach and comments and notified the trade organizations that represent insurers in rural areas of the posting. Insurers also will have an opportunity to participate in the rulemaking process when the proposed consolidated rulemaking is published in the State Register and posted on the Department's website again.

Job Impact Statement

The rules require that, until January 1, 2027, the shares of an exchange traded fund ("ETF"), the portfolio of which consists of fixed income securities, cash, and cash equivalents, be treated as bonds for the purpose of a domestic insurer's risk-based capital ("RBC") report if the ETF meets certain criteria. The rules also require that shares of an ETF that meets the criteria set forth in 11 NYCRR Section 77.2(a) be accounted for as set forth in the Accounting Practices and Procedures Manual ("Accounting Manual") published by the National Association of Insurance Commissioners, including with respect to the asset valuation reserve and interest maintenance reserve, with the exception that the book adjusted carrying value of such shares must be set equal to fair value (and not systematic value). The rules further require a foreign insurer to calculate its RBC consistent with 11 NYCRR 77 and to report that RBC in the New York supplement to the annual financial statement. The rules also adopt the March 2021 edition of the Accounting Manual. Therefore, the rules should not have a substantial adverse impact on jobs or employment opportunities in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-38-21-00004-P

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

Proposed Action: Addition of sections 52.17(d) and 52.18(h) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 3216, 3217, 3217-h, 3221, 4303 and 4306-g

Subject: Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: To clarify application of Insurance Law Sections 3217-h and 4306-g.

Text of proposed rule: Section 52.17(d) is added as follows:

(d) Telehealth.

(1) Telehealth has the meaning set forth in Insurance Law sections 3217-h and 4306-g and includes audio-only visits.

(2) For the purposes of Insurance Law sections 3217-h and 4306-g, an insurer may engage in reasonable fraud, waste and abuse detection efforts, including to prevent payments for services that do not warrant separate reimbursement.

Section 52.18(h) is added as follows:

(h) Telehealth.

(1) Telehealth has the meaning set forth in Insurance Law sections 3217-h and 4306-g and includes audio-only visits.

(2) For the purposes of Insurance Law sections 3217-h and 4306-g, an insurer may engage in reasonable fraud, waste and abuse detection efforts, including to prevent payments for services that do not warrant separate reimbursement.

Text of proposed rule and any required statements and analyses may be obtained from: Tobias Len, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-8975, email: Tobias.Len@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, 3216, 3217, 3217-h, 3221, 4303, and 4306-g.

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 sections 3217-h and 4306-g provide that an insurer or corporation may not exclude from coverage a service that is otherwise covered under a policy or contract that provides comprehensive coverage for hospital, medical or surgical care because the service is delivered via telehealth.

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: The statutory sections cited above establish the minimum standards for the form, content, and sale of health insurance, including standards of full and fair disclosure and standards for telehealth services. This proposed amendment accords with the public policy objectives that the Legislature sought to advance in the foregoing sections of the Insurance Law by clarifying that telehealth services include audio-only visits.

3. Needs and benefits: Telehealth played an indispensable role in providing quality care to those persons who needed health care services during the COVID-19 pandemic but could not visit their providers in person. As made evident by the COVID-19 pandemic, access to these services should not be limited to in-person or visual requirements. When clinically appropriate, an audio-only visit, such as by telephone, provides an essential form of access for New Yorkers. The availability of audio-only visits allows for more widespread access, particularly for mental health and substance use disorder services, because no visual component is required. Additionally, encouraging people who do not need emergency care to use audio-only telehealth services may alleviate the stress that in-person visits put on our health care system. Failure to continue to enable the use of telehealth services through audio-only visits could result in New Yorkers losing access to care they have come to rely on throughout the COVID-19 pandemic, potentially disrupting the health and safety of the people of New York. Further, coverage of audio-only telehealth services is important because some New Yorkers, such as senior citizens, are not able to use video-enabled technology, like Zoom. Given the public health experience throughout the COVID-19 pandemic, it is essential that insureds continue to have access to health care services through audio-only telehealth visits. Thus, this amendment clarifies that an audio-only visit falls within the meaning of telehealth.

This amendment also clarifies that for the purposes of telehealth, an insurer may engage in reasonable fraud, waste, and abuse detection efforts, including efforts to prevent payments for services that do not warrant separate reimbursement. This amendment is not intended to require coverage of services for which no charge is normally made consistent with 11 NYCRR section 52.16(c)(8).

The Department of Financial Services ("Department") expects every health care plan to reimburse a provider offering telehealth services for audio-only visits when medically necessary.

4. Costs: Health care plans may incur additional costs to comply with the amendment if they need to file new policy and contract forms and rates with the Department to clarify that audio-only visits fall within the meaning of telehealth. However, any costs should be minimal because health care plans submit policy and contract form and rate filings as a part of the normal course of business. In addition, the Department had previously issued an emergency regulation clarifying that telehealth includes services rendered by telephone; thus, health care plans already should have updated their forms and rates, accordingly.

Health care providers ("providers") should not incur any additional costs as a result of this amendment.

This amendment may impose compliance costs on the Department because the Department may 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 Department.

Providers and local governments 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: The Department considered referencing telephone visits in the definition of telehealth. However, the Department decided to use broader language by referencing audio-only visits for consistency with the federal Centers for Medicare & Medicaid Services and in the event technology changes.

In June, the Department posted the regulation on its website for comment by interested parties and the public. One comment made by the health insurance industry suggested that the word "encounter" in the phrase "do not warrant a separate billable encounter" be changed to "event". The Department considered each of these words and decided to revise the language to "do not warrant separate reimbursement" due to the potential for confusion as the terms "encounter" and "event" are undefined.

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The rule will take effect immediately upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule: This rule affects health maintenance organizations and authorized insurers (collectively, "health care plans") and health care providers ("providers"). This amendment clarifies that telehealth includes audio-only visits (e.g., telephone calls) and that, for the purpose of telehealth, an insurer may engage in reasonable fraud, waste, and abuse detection efforts, including efforts to prevent payments for services that do not warrant separate reimbursement. This amendment is not intended to cover services for which no charge is normally made consistent with 11 NYCRR section 52.16(c)(8).

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 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 affected by this amendment, if any, may be subject to reporting, recordkeeping, or other compliance requirements as the health care plan may need to file new policy and contract forms and rates with the Superintendent of Financial Services.

A provider that is a small business should not be subject to additional 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 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 affected by this amendment, if any, may incur costs 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 or contract form and rate filings as a part of the normal course of business. In addition, the Department had previously issued an emergency regulation clarifying that telehealth includes services rendered by telephone; thus, health care plans already should have updated their forms and rates, accordingly.

A provider that is a small business should not incur additional costs as a result of the amendment.

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. The Department of Financial Services ("Department") considered the approaches suggested in State Administrative Procedure Act ("SAPA") section 202-b(1) for minimizing adverse impacts but did not find them applicable.

7. Small business and local government participation: The Department complied with SAPA section 202-b(6) by notifying representatives of health care plans that are small businesses that it intended to promulgate this amendment. The Department also posted the regulation on its website for comment by interested parties, such as health care plans and providers that are small businesses, and the public. Health care plans and providers that are small businesses will have a further opportunity to participate in the rulemaking process when the amendment is published in the State Register and posted on the Department's website again.

Rural Area Flexibility Analysis

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 may need to file new policy and 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 any additional reporting, recordkeeping, or other compliance requirements.

A health care plan and a 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 form and rate filings as a part of the normal course of business. In addition, the Department had previously issued an emergency regulation clarifying that telehealth includes services rendered by telephone; thus, health care plans already should have updated their forms and rates, accordingly.

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 representatives of health care plans in rural areas that it intended to promulgate this amendment. The Department also posted the regulation on its website for comment by interested parties, including health care plans and providers in rural areas, and the public.

Health care plans and providers in rural areas will have a further opportunity to participate in the rulemaking process when the amendment is published in the State Register and posted on the Department's website again.

Job Impact Statement

This amendment should not adversely impact jobs or employment opportunities in New York State because the amendment simply clarifies that the meaning of "telehealth" includes audio-only visits (e.g., telephone calls) and that, for the purpose of telehealth, an insurer may engage in reasonable fraud, waste, and abuse detection efforts, including efforts to prevent payments for services that do not warrant separate reimbursement. This amendment is not intended to require coverage for services for which no charge is normally made, consistent with 11 NYCRR section 52.16(c)(8). As a result, there should be no impact on jobs or employment opportunities.

Department of Health

EMERGENCY RULE MAKING

COVID-19 Reporting and Testing

I.D. No. HLT-38-21-00002-E
Filing No. 954
Filing Date: 2021-09-02
Effective Date: 2021-09-02

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

Action taken: Addition of sections 2.9 and 2.62 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206 and 225

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

Specific reasons underlying the finding of necessity: The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are substantially similar to a common cold to severe pneumonia requiring medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July of 2021, cases nationwide have risen 10-fold compared to statistics from the previous 30 days, and 95 percent of the sequenced recent positives in New York State were the Delta variant.

In response to this significant public health threat, the Department of Health seeks to empower the Commissioner through this emergency regulation to issue determinations requiring the immediate implementation of heightened COVID-19 testing protocols for population segments that may be at increased risk of transmission due, in part, to their employment or residential circumstances. Regular COVID-19 testing enables the immediate identification of COVID-19-positive individuals, even if they are not symptomatic, so that they can isolate and prevent further transmission. Additionally, the reporting of positive COVID-19 test results to public health authorities facilitates the rapid initiation of contact tracing to ensure close contacts are quarantined, tested, and isolated as needed.

These regulations also permit the Department to require reporting of testing and diagnoses among school students, teaching staff, and any other employees or volunteers. It is important for the Department to monitor COVID-19 testing and diagnoses in schools, given the number of students that are currently unvaccinated. Currently, children under the age of 12 are not eligible to receive COVID-19 vaccinations. Further, the percent fully vaccinated in the 12-17 age group is estimated to be 41.6%. By carrying forward the reporting requirements that were in place for the 2020-2021 school year, the Department will be able to track COVID-19 incidence and prevalence in school settings for the upcoming school year. This will allow the Department to work with school districts and local health departments to implement targeted prevention strategies, where needed to limit the spread of the virus.

Based on the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Subject: COVID-19 Reporting and Testing.

Purpose: To require COVID reporting in schools and to permit the commissioner to issue testing determinations in certain settings.

Text of emergency rule: Section 2.9 is added to read as follows:

2.9. COVID-19 Reporting in Schools. In addition to all other reporting requirements in this Part, every kindergarten, elementary, intermediate, or secondary school as well as any pre-kindergarten programs and school districts, as identified by the Department, shall report to the Department of Health, on a daily basis, in a form and manner to be determined by the Commissioner, all COVID-19 testing, positive test results reported in any manner to the school, and related information among students, teaching staff, and any other employees or volunteers. Such daily report shall include any other data elements as the Commissioner determines to be ap-