

New York

New York Insurance Commission
160 W. Broadway
New York, NY 10013-3393
(212) 602-0429

and

Agency Building Number 1
Empire State Plaza
Albany, NY 12257

Summary of Important Regulations

MEWA Regulations	Yes
TPA Regulations	No
Stop-Loss Regulations	No
UR Regulations	No

NAIC Model Laws or Regulations

<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Health Insurance Reserves Model Regulation	N.Y. Admin. Code tit. 11 § 94.1 to 94.2	None
Comprehensive Health Ins. Cost Containment Model Act	None	None
Standardized Health Claims Form Model Regulation	None	N.Y. Ins. Law § 3224;N.Y. Admin. Code tit. 11 §§ 17.0 to 17.6
Small Employer Health Insurance Availability Model Law	None	N.Y. Ins. Laws §§ 3231 to 3233, 4217 to 4218
Model Regulation To Eliminate Unfair Sex Discrimination	None	N.Y. Ins. Reg. § 52.41; N.Y. Ins. Law § 2607
Health Information Privacy Model Law	None	None
Preferred Provider Arrangements Model Law	None	See N.Y. Bulletin
Utilization Review Model Law	None	N.Y. Ins. Law §§ 4901 to 4907 N.Y. Public Health §§ 4901 to 4907
Managed Care Plan Network Adequacy Model Law	None	N.Y. Ins. Law § 4804
Third Party Administrator Law	None	None

NAIC Model Laws or Regulations

<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Accident and Sickness Insurance Minimum Standards Model Law	None	N.Y. Ins. Law § 3217
Agents and Brokers Licensing Model Law	None	N.Y. Ins. Law §§ 2101 to 2129
MEWA Licensing Model Law	None	Circular Letter 8
Managing General Agents Law	None	N.Y. Admin. Code tit. 11 § 33
Health Maintenance Organization Model Law	None	N.Y. Pub. Health Law §§ 4400 to 4413
Insurance Information and Privacy Protection Law	None	None
Unfair Trade Practices Law	N.Y. Ins. Law §§ 2401 to 2409; 2602 to 2612	None
Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basics of Physical or Mental Impairment	None	None
Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basics of Total or Partial Blindness	None	None

NAIC Model Laws or Regulations

<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Unfair Discrimination against Subjects of Domestic Abuse in Health Benefit Plan Model Law	None	N.Y. Ins. Law § 2612
Unfair Claims Settlement Practices Law	N.Y. Ins. Law § 2601	None
Improper Termination Practices Law	None	None
Employee Leasing Registration Model Law	None	None
Private Employer Workers' Compensation Group Self-Insurance Model Law	N.Y. Ins. Law § 50	None
Public Employee Workers' Compensation Group Self-Insurance Model Law	None	None
Twenty Four Hour Coverage Pilot Project Model Law	None	None

State-Mandates

Benefits That Must Be Covered

- Alcoholism treatment (outpatient care must be covered, inpatient care must be offered)
- Breast reconstruction
- Cervical cancer screening (Pap smear)
- Chiropractic care
- Diabetic supplies, education
- Drug abuse treatment (outpatient care must be covered, inpatient must be offered)
- Emergency services
- Eternal formulas (includes modified solid food products)
- Home health care
- Mammography screening
- Maternity care
- Minimum mastectomy stays
- Minimum maternity stays
- Off-label drug use (cancer patients)
- Prostate cancer screening
- Second medical and surgical opinion

Benefits That Must Be Offered

- Ambulatory care
- Hospice care
- Mental health
- Nursing home care

Persons Who Must Be Offered Coverage

- Adopted children
- Continuation/dependents
- Continuation/employees
- Conversion to non-group
- Handicapped dependents
- Newborns

Providers Who Must Be Covered

- Chiropractors
- Dentists
- Nurses
- Nurse Midwives
- Optometrists
- Physical Therapists

- Podiatrist
- Psychologists
- Social Workers

Coordination of Benefits

- Birthday Rule? Yes
- Divorced/Separated Rule? Yes
- Joint Custody Rule? No
- Active v. Inactive Rule? Yes
- Longer v. Shorter Rule? Yes
- Managed Care Rule? No
- COBRA Rule? No
- Preservation Rule? Yes

Patient's Bill of Rights Legislation

None

High Risk Health Pool

None

External Grievance System

Yes – all health care plans

Basis of Filing Grievance

Medical necessity, investigational, experimental and clinical trials

Status of Decision of Grievance Panel

Binding on both parties

Prompt Payment of Health Claim Requirement

Yes—45 days

Commentary

- Preadmission tests performed in hospital facilities prior to scheduled surgery, where the plan provides coverage for inpatient hospital care.
- A second surgical opinion by a qualified physician on the need for surgery, if the policy provides coverage for inpatient hospital care.
- Emergency medical services provided in hospital facilities, if the policy provides coverage for inpatient hospital care.
- Maternity care, to the same extent as coverage for illness or disease, although maternity care coverage may be limited to reimbursement for only four days of hospital confinement, to persons covered under the policy for a period of ten months, or for a lesser period if the pregnancy began while the insured was covered by the policy; includes services of certified nurse-midwife and not less than two payments for prenatal care and a separate payment for delivery and postnatal care.
- A mammogram for covered women of any age with a prior history of breast cancer, or whose mother or sister has a prior history of breast cancer, on the recommendation of physician; a single baseline mammogram for covered women ages 35 through 39, inclusive; a mammogram every two years or

more frequently on a physician's recommendation, for covered ages 40 through 49, inclusive; and an annual mammogram for covered women age 50 and older. This provision does not apply to policy covering women employed in more than one state, or to plans where the benefit structure was subject to collective bargaining affecting women employed in more than one state. Coverage must not include more than one annual screening and may be subject to annual deductibles and coinsurance.

- Coverage for supplemental home care visits, up to 365 per policy year, if requested by the policyholder.
- Ambulatory health care in the hospital outpatient facilities, if requested by the policyholder, if the policy provides coverage for inpatient hospital care.
- Hospice service, if requested by the policyholder.
- Every group health insurance policy that provides hospital, surgical, or medical coverage must provide coverage for an annual pap smear for women age 18 and older. Coverage may be subject to annual deductibles and coinsurance.
- Certain insurers must accept all applicants and not vary rates because of age or sickness. The bill affects commercial insurers who sell health insurance to individuals and companies with 50 or fewer people who will now be required to have open enrollment. New York is one of the few state that requires open enrollment for commercial insurers, but it is the first to coordinate open enrollment with a community rating system that will require consistent health insurance prices by geographic region and no discrimination based on the age and health status of customers.
- A plan of accident or health insurance that covers the state program of early intervention services for enhancing the development of a child is prohibited from applying payments for individualized family plan services against any maximum annual or lifetime limits specified in the policy.
- Group insurance policies may not exclude coverage for hospital, surgical, or medical care for the diagnosis and treatment of correctable medical conditions that are otherwise covered by the policy solely because the medical condition results in fertility. In addition, such coverage may not be excluded by hospital service corporations, health service corporations, or medical expense indemnity policies.
- Group insurance policies that cover prescribed drugs approved by the U.S. FDA for treating certain cancer may not exclude coverage of any drug on the basis that it has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the FDA. However, the drug must have been recognized for the treatment of the specific type of cancer for which it is prescribed in the American Medical Association Drug Evaluations, The American Hospital Formulary Service Drug Information, The U.S. Pharmacopeia Drug Information, or recommended by a review of article or editorial comment in a major peer-reviewed professional journal. However, coverage is not required for any experimental or investigational drugs, or any drugs which the FDA has determined to be contraindicated for the treatment of specific type of cancer for which the drug has been prescribed. These provisions apply only to cancer drugs and do not affect reimbursement for drugs used to treat any other disease or conditions. The same provisions apply to policies issued by medical expense indemnity corporations, hospital service corporations, and health service corporations providing coverage for such drugs.

MEWA Regulation

The New York Insurance Department has taken the position that the placement of health insurance

coverage with unlicensed and unauthorized multiple employer welfare arrangements constitute the doing of an insurance business in the state under New York insurance Law.¹ The Department of Insurance asserts that only a licensed insurer or an organization specifically exempt from licensing may offer such insurance coverage or benefits.

The Department recognizes that certain self-funded multiple employers programs which are established or maintained pursuant to one or more collective bargaining agreements, rural electric cooperatives, or by trades or businesses uncommon control may be exempt from the requirements of obtaining a license and other provisions of the Insurance Law by virtue of ERISA preemption. The Insurance Department requires insurance agents or brokers to submit all relevant documents to the agents or brokers to submit all relevant documents to the Department of Insurance prior to doing business with a self-funded MEWA pending review as to whether a license is required by the state. The Insurance Department also requires that licensees who provide services to self-funded ERISA exempt plans must take full and complete disclosure in writing when they are not acting within the scope of their license. Written disclosure must include that the self-funded ERISA exempt plan does not operate under the supervision nor jurisdiction of the New York State Insurance Department and that the insurance-type benefits are not provided or guaranteed by a licensed insurer and are not subject to the minimum standards or mandated benefits provision of the Insurance Law.

TPA Regulations

New York does not have a TPA licensing statute. However, as a general rule, to the extent that such a person engaged in an activity coming within the scope of one or more of the licenses issued by the Insurance Department (i.e., claims adjusting, insurers, reinsurers, brokers, consultants, etc.), the individual would have to be licensed.

New York has formally acquiesced to the legal reality that ERISA preempts the state insurance statute.² This took the form of an opinion by the New York Attorney General to both the Superintendent of Insurance and the Superintendent of Banks.

Stop-Loss Regulation

Stop-loss regulation is indirectly involved with other state statute which are being litigated.

Utilization Firm Regulations

Not regulated.

Miscellaneous

State Premium Taxes

Commercial insurers are taxed at 1%, Blue Cross and HMOs are not taxed.

Small Group Reform

Prohibits experience rating. May not have renewal rate more than 50% higher than new business rate.³
Requires that individuals and small group coverage be made available on an open enrollment basis;

provides for community rating.⁴

Implements above law regarding open enrollment and community rating.⁵

MSA Legislation

No Action

Endnotes

- ¹ N.Y. Ins. Dept. Circular Letter 8, dated July 11, 1991.
 - ² N.Y. Atty Genl Opinion, dated January 21, 1979.
 - ³ N.Y. Admin. Code, tit. 11, Regulation 62.
 - ⁴ N.Y. Ins. Code §§ 3231 to 3233; 4317 to 4318.
 - ⁵ N.Y. Admin Code, tit. 11, Regulation 146.
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