federal risk adjustment program on this market, the Superintendent determines that a market stabilization mechanism is a necessary amelioration. This rule prudently ameliorates a possible disproportionate impact that federal risk adjustment may have on insurers and health maintenance organizations, addresses the needs of the small group health insurance market in New York, and prevents unnecessary instability in the health insurance market.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. DFS-39-16-00007-P

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

Proposed Action: Amendment of section 68.6 (Regulation 83) of Title 11 NYCRR.

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

Subject: Charges for Professional Health Services.

Purpose: Limit reimbursement of no-fault health care services provided outside NYS to highest fees in fee schedule for services in NYS.

Text of proposed rule: Section 68.6 is amended to read as follows:

Section 68.6 Health services performed outside New York State.

(a)(1) If a professional health service reimbursable under [section 5102(a)(1) of the] Insurance Law *section 5102(a)(1)* is performed outside [New York] *this* State, the [permissible charge] *amount that the insurer shall reimburse* for [such] *the* service shall be the prevailing fee in the geographic location of the provider *with respect to services:*

(i) that constitute emergency care;

(ii) provided to an eligible injured person that is not a resident of this State, or

(iii) provided to an eligible injured person that is a resident of this State who is outside this State for a continuous period of at least fourteen days for reasons unrelated to the treatment.

(2) For purposes of this subdivision, emergency care means all medically necessary treatment of a traumatic injury or a medical condition manifesting itself by acute symptoms of sufficient severity such that absence of immediate attention could reasonably be expected to result in: death; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part. Emergency care shall include all medically necessary care immediately following an automobile accident, including immediate pre-hospitalization care, transportation to a hospital or trauma center, emergency room care, surgery, critical and acute care. Emergency care extends during the period of initial hospitalization until the patient is discharged from acute care by the attending physician. Emergency care shall be presumed when medical care is initiated at a hospital within 120 hours of the accident.

(b) If a professional health service reimbursable under Insurance Law section 5102(a)(1) is performed outside this State with respect to an eligible injured person that is a resident of this State, the amount that the insurer shall reimburse for the service, except as provided in subdivision (a) of this section, shall be the fee set forth in the region of this State that has the highest value in the fee schedule for such services.

(c) Notwithstanding anything else in this subdivision, an insurer shall not reimburse an amount for a service that exceeds the amount that the provider is legally permitted to charge under the laws of the jurisdiction where the services are provided.

Text of proposed rule and any required statements and analyses may be obtained from: Hoda Nairooz, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov

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

Public comment will be received until: 45 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: Sections 202 and 302 of the Financial Services Law, and Sections 301, 2601, 5221, and Article 51 of the Insurance Law.

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, and Section 5108 specifically authorizes the Superintendent to adopt or promulgate fee schedules for health care benefits payable under the no-fault system.

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 in order to contain the costs of no-fault insurance. To that end, in accordance with Insurance Law section 5108(b), the Superintendent adopted those fee schedules that are promulgated by the Chairman of the Workers' Compensation Board (the "Chairman"). In addition, the Superintendent, after consulting with the Chairman and the Commissioner of Health, established fee schedules for those services for which schedules have not been prepared and established by the Chairman.

3. Needs and benefits: The current rule provides that the maximum permissible charge for health care services rendered outside this State to a person eligible for New York no-fault benefits shall be the prevailing fee in the geographic location of the provider. The proposed rule limits insurers' reimbursement of no-fault health care services provided outside the State at the election of a New York State eligible injured person to the fees set forth in the region of this State that has the highest value in the fee schedule for those services. An exception to the proposed amendment would be when the health care services constitute emergency care, are provided to an eligible injured person who does not reside in this State, or are provided to an eligible injured person who is a resident of this State and who is outside the State for a continuous period of at least 14 days for reasons unrelated to the treatment. In such cases, the current rule will continue to apply.

There has been no uniform interpretation of the prevailing fees outside the State. As a result, no-fault claimants are being referred to certain health care providers outside New York, usually in New Jersey, who take advantage of the absence of specific fee schedules and submit excessive charges under exaggerated claims, well above the corresponding New York State fee schedules applicable to those health care services rendered. Since basic personal injury protection coverage under no-fault is only $50,000, the higher the bills, the sooner the injured person will find coverage exhausted. This results in no-fault benefits available to injured persons being depleted more quickly, to their detriment.

Representatives of both the insurance industry and the medical profession have conveyed to the Department that amending the current regulation is necessary in order to close these loopholes that have resulted in increased no-fault claim bills. In addition, numerous arbitrators that serve on the Department's no-fault arbitration panel have indicated that this issue has generated a significant number of disputes due to the significant disparity between the excessive fees being charged by out of state health care providers and those permitted under the current rule. By setting a maximum fee that out-of-state health care providers may receive as reimbursement for no-fault-related health services, this amendment should lead to reduced arbitration and litigation costs for insurers and self-insurers, which are typically passed to consumers in the form of higher premiums, as well as help to stem the rapid depletion of no-fault benefits available to eligible injured persons.

4. Costs: This rule imposes no compliance costs upon state or local governments. However, the rule will impact out-of-state health care providers who will now be reimbursed for health services pursuant to the applicable fee schedule prescribed in the proposed rule.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district. However, local governments who are self-insurers for no-fault coverage shall only be required to reimburse out-of-state health care providers at the rates prescribed in the proposed rule, rather than the subjective prevailing rate in the geographic location of the out-of-state provider.

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: In order to effectuate the cost savings goals of New York's no-fault laws, the Department has determined that there are no other viable alternatives to this rule.

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: The rule will be effective 90 days after publication of the notice of adoption in the State Register, so as to provide enough lead time for insurers, self-insurers and out-of-state licensed health care providers to obtain copies of the applicable fee schedule and implement the rule.

Regulatory Flexibility Analysis

The Department of Financial Services finds that this rule will not impose any adverse economic impact or compliance requirements on small businesses in this State. This rule impacts all no-fault insurers authorized to do business in New York State, self-insurers of no-fault benefits, and the Motor Vehicle Accident Indemnification Corporation, none of which falls within the definition of "small business" as defined in State Administrative Procedure Act Section 102(8) as being both independently owned and having less than one hundred employees. Likewise, this rule will not impose any adverse economic impact or compliance requirements on local governments that are self-insurers. Instead, the rule will limit the amount that those local governments will reimburse for no-fault-related health care services provided outside the State at the election of a New York State eligible injured person, and therefore is likely to reduce arbitration and litigation costs, which are typically passed to consumers in the form of higher premiums, as well as help to stem the rapid depletion of no-fault benefits available to eligible injured persons.

Rural Area Flexibility Analysis

The Department of Financial Services (the "Department") finds that this rule does not impose any additional burden on persons located in rural areas, and that it will not have an adverse impact on rural areas in New York State. This rule serves to limit the amount that insurers and self-insurers in New York State will reimburse for no-fault-related health care services provided outside the State at the election of a New York State eligible injured person, and therefore is likely to reduce arbitration and litigation costs, which are typically passed to consumers in the form of higher premiums, as well as help to stem the rapid depletion of no-fault benefits available to eligible injured persons.

Job Impact Statement

The Department of Financial Services finds that this rule should have no adverse impact on jobs and employment opportunities. This proposed rule limits reimbursement of no-fault health care services provided outside New York State to the fees set forth in the region of this State that has the highest value in the fee schedule for such services. This amendment should lead to reduced arbitration and litigation costs for insurers and self-insurers, which are typically passed to consumers in the form of higher premiums, as well as help to stem the rapid depletion of no-fault benefits available to eligible injured persons.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Cybersecurity Requirements For Financial Services Companies

I.D. No. DFS-39-16-00008-P

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

Proposed Action: Addition of Part 500 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, 302 and 408

Subject: Cybersecurity Requirements For Financial Services Companies.

Purpose: To require effective cybersecurity to protect consumers and ensure the safe and sound operation of Department-regulated entities.

Substance of proposed rule (Full text is posted at the following State website:http://www.dfs.ny.gov): The following is a summary of the proposed rule:

Section 500.0, "Introduction," introduces the proposed rule.

Section 500.01, "Definitions," defines terms used throughout the proposed rule.

Section 500.02, "Cybersecurity Program," requires that each Covered Entity establish and maintain a cybersecurity program designed to ensure the confidentiality, integrity and availability of its Information Systems.

Section 500.03, "Cybersecurity Policy," requires each Covered Entity to implement and maintain a written cybersecurity policy addressing specified areas and also sets forth the requirements for internal review and approval of that policy.

Section 500.04, "Chief Information Security Officer," requires that each Covered Entity designate a qualified individual to serve as CISO, and that the CISO develop a report, at least bi-annually, which shall be reviewed internally and which shall address specified cybersecurity issues.

Section 500.05, "Penetration Testing and Vulnerability Assessments," requires each Covered Entity's cybersecurity program to include annual penetration testing and a quarterly vulnerability assessment of the Covered Entity's Information Systems.

Section 500.06, "Audit Trail," requires that the cybersecurity program for each Covered Entity shall include implementing and maintaining audit trail systems that meet specified requirements.

Section 500.07, "Access Privileges," requires that each Covered Entity shall limit access privileges to Information Systems that provide access to Nonpublic Information solely to those individuals who require such access and that the Covered Entity shall periodically review such privileges.

Section 500.08, "Application Security," requires that each Covered Entity's cybersecurity program include written procedures and standards designed to ensure the use of secure development practices for in-house developed applications, and procedures for assessing and testing the security of externally developed applications, and also requires that such procedures and standards be reviewed, assessed and updated at least annually.

Section 500.09, "Risk Assessment," requires each Covered Entity to perform, at least annually, a risk assessment encompassing, among other things, evaluation, categorization and mitigation of risks, and to document the risk assessment in writing.

Section 500.10, "Cybersecurity Personnel and Intelligence," requires each Covered Entity to employ sufficient cybersecurity personnel, provide for and require such personnel to attend regular cybersecurity training, and require key cybersecurity personnel to stay abreast of changing cybersecurity threats and countermeasures.

Section 500.11, "Third Party Information Security Policy," requires each Covered Entity to develop policies and procedures designed to ensure the security of its Information Systems and Nonpublic Information accessible to, or held by, third parties doing business with the Covered Entity.

Section 500.12, "Multi-Factor Authentication," enumerates the circumstances in which a Covered Entity shall require Multi-Factor Authentication and in which a Covered Entity shall support Multi-Factor Authentication.

Section 500.13, "Limitations on Data Retention," requires each Covered Entity to have policies and procedures for the timely destruction of specified categories of Nonpublic Information.

Section 500.14, "Training and Monitoring," requires each Covered Entity to implement risk-based policies to monitor the activity of Authorized Users and detect unauthorized access or use of Nonpublic Information, and to provide for and require all personnel to attend regular cybersecurity awareness training sessions.

Section 500.15, "Encryption of Nonpublic Information," requires each Covered Entity to encrypt all Nonpublic Information held or transmitted by the Covered Entity both in transit and at rest; allows for the use of compensating controls for one year for Nonpublic Information in transit, if encryption of such is infeasible; and allows for the use of compensating controls for five years for Nonpublic Information at rest, if encryption of such is infeasible.

Section 500.16, "Incident Response Plan," requires each Covered Entity to establish a written incident response plan designed to promptly respond to, and recover from, a Cybersecurity Event.

Section 500.17, "Notices to Superintendent," requires each Covered Entity to submit to the Superintendent a written statement by January 15, certifying that the Covered Entity is in compliance with the requirements set forth in the proposed rule; to maintain for examination by the Department all records, schedules and data supporting the certificate for a period of five years; to notify the superintendent of any Cybersecurity Event that has a reasonable likelihood of materially affecting the normal operation of the Covered Entity or that affects Nonpublic Information; and to document the identification of areas that require material improvement, updating or redesign, as well as planned remedial efforts; in addition, to the extent that a Covered Entity has identified any material risk of imminent harm to its Information System from a Cybersecurity Event, the Covered Entity should notify the Superintendent within 72 hours and include such event in its annual report filed pursuant to this section.

Section 500.18, "Limited Exemption," provides that Covered Entities that have less than the specified number of customers, gross annual revenue, and year-end total assets shall be exempt from the requirements of the proposed rule other than the requirements enumerated in Section 500.18; and that a Covered Entity that ceases to qualify for the limited exemption must comply with all requirements of the proposed rule.

Section 500.19, "Enforcement," provides that the proposed rule will be enforced pursuant to, and is not intended to limit, the Superintendent's authority under any applicable laws.

Section 500.20, "Effective Date," provides that the proposed rule will be effective January 1, 2017, and that Covered Entities will be required to annually prepare and submit a certification of compliance pursuant to Section 500.17 commencing January 15, 2018.