



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

**Maria T. Vullo, Superintendent**  
**New York State Department of Financial Services**  
**Testimony Delivered to the Legislative Fiscal Committees on the State Budget - Health**  
**Hearing Room B, LOB**  
**February 12, 2018, 11:00 AM**

Good afternoon Chairpersons Young and Weinstein, Vice Chair Savino, Chairpersons Hannon, Gottfried, Seward and Cahill, Ranking Members, and all distinguished Members of the State Senate and Assembly.

Thank you for inviting me to testify before you today. This is my second appearance before the Legislature in budget hearings, and I am happy to provide an update on DFS's activities and answer your questions. I have now been Superintendent of the Department of Financial Services for two years. Over the last year, DFS has continued to build on our earlier accomplishments, and I am privileged to work for Governor Cuomo and serve all New Yorkers in this important role.

**DFS Health Initiatives**

Before I address DFS's portion of the Health Budget for 2018-19, I want to provide some background about DFS and our healthcare work during the past year.

DFS's mission is to strengthen New York's financial services industries, safeguard our markets from fraud, and protect New York consumers. As you know, DFS's role in New York's health market is to regulate the commercial health insurance market and, in this role, we have supported and carried out many of Governor Cuomo's initiatives to protect and improve the healthcare of all New Yorkers.

At a time when our right to vital healthcare insurance coverage has been under attack in Washington, my team and I have spent a substantial amount of time focusing on ensuring the continued strength of New York's commercial health insurance market. While ensuring the integrity of the market, we also have addressed many consumer protections in healthcare, including the opioid epidemic, women's reproductive rights, early intervention for infants and toddlers with disabilities, and HIV prevention. At all times, DFS continues to work with our commercial health insurers, other stakeholders in healthcare, and our colleagues at other State agencies, to protect New Yorkers in all of their healthcare needs.

#### **Federal Assault on the Affordable Care Act**

New York has been steadfast in vigorously supporting the Affordable Care Act (ACA) as it continues to make more affordable, quality health insurance coverage available to New Yorkers. Due to our efforts, New York's healthcare market continues to remain robust, with 14 issuers offering individual coverage, 20 issuers offering small group coverage, and consumers in every county having a choice of coverage. Moreover, the New York State of Health maintained a longer enrollment period through January 31, 2018, despite the much shorter federal enrollment period, and it paid off: More New Yorkers enrolled in plans than ever before. New York will continue to fight to maintain the gains we have achieved in healthcare coverage: lower rates, better coverage, and a healthier individual market.

One of DFS's tasks is to approve the rates that New Yorkers will pay for healthcare coverage in the individual and small group commercial markets. As part of a transparent process, DFS carefully examines the rates requested by insurers to reduce the burden of excessive health insurance premium increases on New Yorkers, while maintaining competitive markets in the face of rising national healthcare and pharmaceutical costs. These rising costs have been compounded by Congressional attempts to repeal or replace the ACA. Nonetheless, more than one million New Yorkers are enrolled in small group plans and more than 300,000 are enrolled in individual plans.

We are very concerned that healthcare costs for the most vulnerable New Yorkers may rise due to the continued actions of the federal government, including the continued failure to fund the ACA's Cost Sharing Reduction (CSR) subsidies for insurers. I submitted a declaration in support of the New York Attorney General's lawsuit seeking to compel payment of the CSR subsidies. In light of the ongoing uncertainty regarding CSR payments, in August 2017, DFS granted an additional rate factor for 2018 based on information that insurers had provided to DFS that estimated potential funding loss for CSR subsidies.

In short, the integrity of New York's commercial health insurance market was a priority for DFS this past year. DFS also protected that integrity through investigations resulting in the end of certain illegal activities in the New York market, including necessary fines. In addition, in light of the federal government's efforts to roll back access to quality, affordable healthcare, I traveled across the State to moderate healthcare panels and educate the public about the dangers of the efforts on the federal level to strip millions of Americans of their healthcare and destabilize the healthcare market. Such efforts continue, as the federal government has indicated that it may seek to further destabilize state healthcare markets by expanding the definition of "association health plans" and permitting "sales across state lines," two efforts that would permit the cherry-picking of risk and a race to the bottom in consumer protections, further causing increased rates and reduced healthcare coverage.

DFS also promulgated new emergency regulations providing that, regardless of any federal changes, New York law requires that health insurance providers shall not discriminate against New Yorkers with preexisting conditions or based on age or gender, in addition to safeguarding the 10 categories of essential health benefits guaranteed by the ACA.

This past year, DFS also protected women's healthcare by issuing a regulation and guidance requiring that insurers provide coverage for contraceptive drugs and devices and follow-up care at no cost-sharing, including the dispensing of a 12-month supply of contraceptives. This

session, the Governor will advance a program bill, the Comprehensive Contraceptive Coverage Act, to codify access to contraception, including emergency contraception.

In addition, DFS promulgated a regulation to ensure that health insurers cover medically necessary abortions and that such coverage is without cost sharing. We also issued guidance to the insurance industry to ensure coverage for infertility treatment regardless of an individual's sexual orientation, marital status or gender identity, and coverage of 3D mammograms, which was ultimately codified in recent legislation signed by the Governor. And, as part of the New York State Council on Women and Girls, DFS will also be conducting a study regarding appropriate insurance coverage for in vitro fertilization and fertility preservation.

Continuing New York's battle against the opioid epidemic, we issued new, statewide guidance and regulations reducing barriers to insurance coverage for addiction treatment. We also encouraged insurers to broaden their coverage of non-opioid pain-management alternatives, and issued guidance stating that insurers must cover the overdose-reversal drug Naloxone when medically necessary and that they must not place arbitrary annual limits on Naloxone coverage as two or more doses may be required to reverse the effects of fentanyl overdoses. We are working on other initiatives to assist with statewide efforts to address the opioid epidemic.

As you know, New York's Paid Family Leave program was launched last month. As New York's insurance regulator, DFS is proud to have worked with colleagues at other State agencies to provide the framework to ensure the successful implementation of this important and nation-leading program, which is a disability insurance program that provides important protections to New York workers and families.

### **The Executive Budget**

Looking forward, DFS is proud to support the Governor's State of the State initiatives.

First, as you well know, the recent federal tax bill reduced the federal corporate tax rate from 35 percent to 21 percent. As health insurance rates were set within the context of the higher

tax regime, we believe that the unexpected gain received by for-profit insurers writing health insurance coverage should be captured by New York State to fund healthcare programs that are being drastically reduced by the federal government. Therefore, the Governor is proposing a tax law amendment that will impose a 14 percent fee on for-profit insurers on net underwriting gain from health insurance products, so that those funds can be reinvested in vital healthcare services for New Yorkers.

Second, in an effort to protect and support some of our most vulnerable New Yorkers, we must protect the services provided through the Early Intervention Program (EIP). DFS has already taken action to ensure that insurers cover early intervention services for infants and toddlers with disabilities, reminding insurers that they must provide a municipality or its designees and service coordinators with information on health insurance benefits for children participating in the EIP upon receipt of a request for such information. This information is essential to enable municipalities to administer the program cost-effectively so that covered children have full access to services.

The Governor's Budget also proposes to increase penalties to support DFS's efforts to ensure that: (1) insurers pay claims for all covered early intervention services; and (2) insurers do not deny claims because neither the provider nor the insured will challenge denials given the guaranteed coverage provided through the State's EIP. This proposal strengthens EIP and closes the loop on the statute to ensure that penalties are applied fairly in the same manner to both licensed and unlicensed entities.

Even beyond the EIP, we firmly believe that the willful failure to pay claims and the willful making of false statements to DFS are the two most destructive violations of the insurance law that an insurer or agent can commit. To better deter such conduct — and also to punish the rare few that do commit such acts — the proposal increases the penalties for both categories of violations with respect to all insurance products — in any area of insurance. This proposal will also level

the playing field between unlicensed insurers and agents, who are not currently subject to a penalty provision, and our authorized insurers and agents who are licensed. We believe — and I'm sure our licensed insurers and agents will agree — that they should both be treated equally.

#### **Other State of the State Initiatives**

DFS is also honored to support additional State of the State initiatives of the Governor, including strengthening New York's external appeals program and improving transparency of healthcare costs.

New York has one of the most robust external appeals programs of all states to assist New Yorkers who are wrongfully denied healthcare coverage. Under the New York external appeals program, consumers and providers can appeal health plan denials involving medical necessity, experimental or investigational treatment, access to clinical trials, treatment for rare diseases, and access to out-of-network providers or services. DFS receives more than 10,000 external appeals each year. To assist consumers who are preparing an appeal, under this new initiative, DFS will create a searchable database of external appeal decisions, with personal information redacted, so that consumers, providers and insurers can easily access external appeal decisions. Prospectively, DFS will discuss and negotiate with external appeal agents to require them to publish an additional summary decision that contains no protected health information for DFS to publish. Retrospectively, DFS will contract with a third party to review and redact prior external appeal decisions and construct a searchable database for those prior decisions.

This significant effort will require funding for an IT build and staff to amend external appeal contracts, review summaries, redact information, maintain the database and answer questions from consumers. This initiative will provide great benefits to providers and consumers and reduce inefficiencies and inconsistencies in coverage determinations.

DFS is also working to promote greater price transparency in the healthcare market by assessing requirements that health plans provide their members with information such as cost-

estimator tools and quality ratings about healthcare providers in their network so consumers can make more intelligent decisions regarding their choice of provider. To accomplish this, DFS will consider minimum standards for insurer disclosure on price, including functions for price estimator tools, with the ultimate goal of giving real-time estimates on specific provider costs and consumers' share of the cost, as well as improved price disclosure for physicians and hospitals.

DFS, in partnership with the Department of Health, will also provide specific recommendations to simplify medical bills so that consumers can more readily understand them.

Lastly, DFS is supporting the Governor's efforts to reduce the costs of local governments. The Governor has directed DFS to publish guidance and provide technical assistance to local governments in order to ease the process of creating health consortia. We have already been working with a number of municipalities around the state, including Otsego, Saratoga and Suffolk counties. In fact, we just approved a new Muni Co-op in Rochester that started last month.

### **Conclusion**

My team at DFS is working hard every day to build on our successes and make New York's financial services industries work even better for both industry and consumers.

As we do this important work, I employ my authority based on substantive analysis, and a deliberative and consistent process. To keep all channels of communication open, I continue to engage with the Department's stakeholders through outreach with industry, consumers and the public at large. And, as you are aware by now, my team is responsive to legislative inquiries, and we are ready and willing to assist your constituents. I will continue to be candid and transparent in my approach, and hope you have found my testimony informative.

Thank you for the opportunity to outline the work DFS is doing and our role in the Governor's priorities of 2018-19 relating to healthcare. I look forward to your questions.