2

NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Troy Oechsner, Deputy Superintendent for Health Insurance
New York State Department of Financial Services
Testimony Delivered to the Legislative Fiscal Committees
on the State Budget - Health
Hearing Room B, LOB
February 5, 2019

Good afternoon Chairs Weinstein, Krueger, Rivera, Gottfried, Breslin and Cahill, Ranking Members, and all distinguished Members of the State Senate and Assembly.

Thank you for inviting me to testify before you today. My name is Troy Oechsner and I am the Deputy Superintendent of Health Insurance at the Department of Financial Services (DFS). I oversee the bureau that regulates commercial health insurance for the State of New York. DFS has continued to build on our accomplishments. I am privileged to work for Governor Cuomo and our new Acting Superintendent, Linda Lacewell, and to serve all New Yorkers in this important role. It is an honor to be here. I am happy to provide an overview of the health care reforms in the Governor's Executive Budget and I will do my very best to answer your questions today and to follow up after the hearing to respond to those I am not immediately prepared to answer.

DFS's mission is to protect New York consumers, strengthen New York's financial services industries, and safeguard our markets from fraud or other illegal activity. The Department's operating expenses are assessed to industry, under Section 206 of the Financial Services Law. DFS regulates more than 1,400 insurers with assets of more than $4.3 trillion, and nearly 1,500 banking and other financial institutions with assets of more than $2.6 trillion.

DFS plays a significant role in New York's health insurance market and in supporting and carrying out many of Governor Cuomo's initiatives to protect and improve the healthcare for all New Yorkers. During the past year, at a time when our right to vital health insurance coverage has been under attack in Washington, the DFS team has spent a substantial amount of our time focusing on ensuring the continued strength of New York's health insurance market. While working to preserve the integrity of our market, we also addressed such issues as women's reproductive rights, the opioid epidemic, and mental health parity. We have been working to develop a database to enhance the external appeals process, and we are taking concrete steps to ensure price transparency for consumers, in addition to our important contribution to the rollout and launch of New York's Paid Family Leave program. As I will describe in more detail, DFS continues to work with our commercial health insurers, providers, and consumers along with our sister agencies to protect New Yorkers in all of their healthcare needs.

Let me start talking about this year's health insurance reforms by applauding our early collaboration on contraception coverage. Last year, Governor Cuomo issued an Executive Order ensuring that New York would not only protect, but also expand full, affordable, and timely access to contraception, including emergency contraception, regardless of the decisions being made in Washington. And this year, the Governor, in partnership with this Legislature, should be proud that the Comprehensive Contraception Coverage Act (CCCA) was just passed on the anniversary of the landmark *Roe v. Wade* decision. By enacting the CCCA, we have helped codify affordable access to contraception, including emergency contraception, for New York women.

New York has been steadfast in support of the Affordable Care Act (ACA) as it continues to make more affordable, quality health insurance coverage available to New Yorkers. Since the ACA, New York has cut the uninsured rate in half and premium rates in 2018 for individual coverage are 55 percent lower than they would have been without the ACA. New York's healthcare market continues to remain robust, with 14 issuers offering individual coverage, 19 insurers offering small group coverage, and consumers in every county having a choice of coverage. New York will continue to fight to maintain the gains of the ACA: more people covered, lower premium rate increases, better coverage, and healthier insurance markets.

Unfortunately, the ACA has been under attack by a hostile prior Congress and a current President. Although the previous Congress narrowly failed to fully repeal the ACA, it struck harsh blows through actions such as cutting funding to the risk corridors program meant to stabilize the health insurance markets. And, most notably, Congress repealed the penalty for failing to comply with the individual responsibility requirement to purchase coverage.

In addition to the legislative attacks on the ACA, the Trump administration has taken regulatory actions which threaten the ACA and New York consumers and markets. A partial list of the administration's attacks on the ACA over the last two years include:

First, through regulatory action, the Trump administration is allowing widespread use of short-term plans that do not have to comply with important ACA consumer protections such as essential health benefits or the ban on preexisting conditions limitations. These junk plans are cheap but allow insurers to make big profits while providing fewer benefits and protections for consumers. Moreover, these junk plans draw healthier lives out of the market, making coverage more expensive for everyone else who remain in the comprehensive coverage market and adding instability to that the comprehensive market. DFS acted quickly to instruct insurers that these junk plans are not allowed in New York.

Second, the Trump administration made it easier for states to obtain federal waivers to avoid compliance with all the ACA protections. For example, states may be able to obtain waivers that would result in federal funds that Congress intended to be used for ACA-compliant plans instead to be used for non-ACA-compliant short-term junk plans that cover little and do not meet the minimum protections of the ACA coverage requirements, such as essential health benefits and actuarial value requirements.

Third, the IRS is proposing a new Health Reimbursement Arrangement (HRA) rule to allow employers to get tax advantaged funds for junk coverage, such as the short-term plans mentioned earlier.

Fourth, the Trump administration is encouraging expanded use of Association Health Plans (AHPs) that need not meet all ACA requirements, and which allow associations and insurers to cherry pick healthier individuals and smaller groups out of the community-rated markets, making coverage more expensive for everyone else and undermining the stability of our markets.

Fifth, the President and prior Congress defunded the Cost Sharing Reduction Program, which funds the lowering of out-of-pocket expenses such as copays and deductibles for qualifying consumers. This adds costs for insurers, who in turn will seek to raise rates.

Sixth, a new federal rule gives states more flexibility to reduce the quality of benefits by changing the minimum essential health benefits protected under the ACA.

Seventh, federal rules reduced the minimum actuarial value, or overall amount of coverage, that insurers are required to provide for Bronze plans resulting in shifting more of the costs of coverage on the consumer.

In addition, the Trump administration specifically attacked the ACA's reproductive rights protections. In an effort to roll-back abortion coverage, the administration proposed rules that would: (1) require policyholders to actually write a separate check for abortion coverage, in addition to a check for premium coverage of all other essential health benefits under the ACA, and (2) allow employers (and others not directly engaged in delivery of healthcare services) to deny abortion coverage. And in an initiative to undermine contraceptive coverage, a new Trump rule allows employers and insurers to raise any religious or moral objection and thereby decline to cover contraceptives. This was an immense and unwarranted expansion of the ACA's more limited exception to the requirement to cover contraception for religious employers.

In order to protect New Yorkers and preserve the successes of the ACA, the Governor's Budget proposes to codify key protections of the ACA. This will help ensure these protections survive future attempts to repeal or undermine the ACA. The Budget Bill proposal:

- Guarantees that insurers are prohibited from imposing preexisting condition limitations, regardless of federal interference.
- Ensures that insurance policies sold in New York cover the ten categories of essential health benefits currently provided under the ACA.
- Requires that insurers publish an up-to-date list of all formulary covered drugs accessible to consumers, and create a standard and expedited formulary exception process for prescription drugs on the insurer's formulary.
- Ensures that women have full access to medically necessary abortions without cost-sharing, no matter what actions are taken at the federal level.
- Expands the ACA prohibition on discrimination to expressly include discrimination based on sexual orientation, gender identity or expression, and transgender status to ensure that all consumers are fully protected.
- Bars insurers from evading state law by selling limited benefit or other non-compliant "junk" policies, including association health plans, which fail to provide ACA required coverage and consumer protections.

Codifying the array of protections included in these Budget bills will help ensure New Yorkers are not left out if the ACA is repealed or further undermined by acts of Congress or the Trump administration.

The single largest driver of premium increases is pharmaceutical drug costs. Last year, the Governor signed legislation that banned certain problematic pharmacy gag-clauses in contracts by pharmacy benefit managers, or PBMs. These PBMs, are intermediaries in the drug supply chain that have amassed tremendous power and influence over the sale of pharmaceuticals. Despite playing such an important role in such highly regulated markets, they remain regulatory black boxes. The Governor proposes robust regulatory oversight of PBMs through licensing and examination of these important healthcare industry participants to ensure that PBMs are not engaging in any unfair business practices and to set other minimum standards necessary to take this opaque $100 billion industry into the light. Two of the largest PBMs – CVS Caremark and Express Scripts – have committed to DFS not to oppose our bill.

Under Governor Cuomo's leadership, New York was one of the first states in the nation to implement its own health insurance marketplace under the ACA and more than 4.7 million New Yorkers have enrolled in coverage through the marketplace, helping to reduce the number of the uninsured by nearly 1 million. But unfortunately, some New Yorkers are still not covered. Therefore, the Budget includes a bill to establish a Commission on advancing universal access to health care to be supported by Department of Health and DFS. The Commission would be comprised of health policy and insurance experts to develop options for advancing universal access to high-quality, affordable health care in New York, and would report its findings by December 1, 2019.

The Governor's Budget also proposes to increase coverage for fertility services to build upon the Women's Agenda. In 2017, DFS instructed insurers that they must provide fertility services regardless of marital status, sexual orientation, or gender identity. In 2018, the Governor directed DFS to examine approaches for incorporating insurance coverage for in-vitro fertilization (IVF) into the existing infertility coverage requirements. Due to the high cost and lack of insurance coverage, some New Yorkers are unable to access IVF, including same sex couples and single women. In addition to IVF, fertility preservation – the process of saving eggs and sperm – can be important for patients undergoing cancer and other treatments that affect fertility. The Executive Budget proposal expands access to coverage for IVF in large group health plans. The Budget further requires coverage of fertility preservation for women with certain health conditions (including cancer) in large group, small group, and individual health plans. Additionally, the Budget includes robust non-discrimination language to ensure that New Yorkers have access to these vital services, regardless of marital status, sexual orientation or gender identity.

The opioid epidemic has impacted every corner of the state, hurting individuals, families and communities. Under the Governor's leadership, DFS along with our sister agencies have used our regulatory authority – and worked with you in the Legislature – to expand access and remove barriers to treatment and recovery services covered by health insurance.

Just this past year, DFS issued a regulation that requires health insurers to establish a process for consumers or their doctor to request a formulary exception and gain access to clinically appropriate medication not otherwise covered by the insurance policy for the detoxification or maintenance treatment of a substance use disorder. To ensure that New Yorkers have access to less-addictive opioid and non-opioid pain medications, DFS also issued guidance to inform insurers that prescription drug copayments and coinsurance may not be based on cost of the drug alone, and that insurers should consider the addictive or non-addictive qualities of the prescription drug under a safety review.

The Governor's current Budget proposal builds on these past successes. First, the Budget bill codifies the Federal Mental Health Parity and Addiction Equity Act. Like codification of the ACA, this bill ensures that these important federal parity requirements will survive any federal challenge or repeal. In addition, the Budget includes a series of initiatives to further combat opioid addiction by, among other things, eliminating even more insurance barriers to accessing care, including reducing copayments or coinsurance to (1) the amount of a primary care medical visit, even if the patient is going to a specialist and (2) a single visit in one day, even if the patient has multiple visits on the same day for substance use disorder treatment. The idea is to reduce cost-sharing as a barrier to patients who may need to engage in multiple services. In addition, the bill expands the previous limit on insurers ability to conduct pre-authorization or concurrent medical necessity review for substance use disorder services from 14 to 21 days, with the patient held harmless from costs. The bill also prohibits for 14 days any insurer pre-authorization or concurrent review for inpatient psychiatric services for those under 18, with the patient again held harmless from costs. Furthermore, the Parity bill in the Budget increases network adequacy reviews by DFS and DOH, including improved disclosure on providers accepting new patients in the health plan's network. In addition, the bill includes more robust parity disclosure and enforcement requirements. With the additional resources needed to conduct this increased enforcement, DFS – in partnership with our sister agencies – is eager to become a national leader in enforcement of mental health parity and addiction equity.

DFS is proud to be an important part of the Governor's budget initiatives to build on our past successes. We look forward to working with you in the Legislature on reforms to increase access to affordable, quality health insurance coverage. Thank you for the opportunity to outline some of these key proposals in the Budget. I look forward to your questions.