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

Thank you for inviting me to testify today. My name is Linda Lacewell, and I am the Superintendent of Financial Services at the Department of Financial Services (DFS). Among other important responsibilities, DFS regulates commercial health insurance for the State of New York. I am privileged to work for Governor Cuomo and to serve all New Yorkers in this important role. I am happy to provide an overview of the health care reforms in the 2020-2021 Executive Budget. Also, given the impact that the COVID-19 pandemic has had on all of our lives, I would first like to quickly review the efforts that the Governor and DFS have undertaken on behalf of New Yorkers to help support the health care delivery system and ensure health insurance coverage during the pandemic. I will do my best to answer your questions today and to follow up after the hearing to respond to those questions I am not immediately able to answer.

As you know 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. DFS's operating expenses are assessed to industry under section 206 of the Financial Services Law. DFS regulates nearly 1,800 insurers with assets of more than $4.7 trillion, and approximately 1,500 banking and other financial institutions with assets of more than $2.6 trillion.

COVID-19 Related Actions

As we all know, 2020 was a year like no other. A year ago, our understanding of the virus was minimal, treatment uncertain, and testing and vaccines non-existent. Hospitals in New York were quickly stretched beyond capacity. Stay-at-home and social distancing requirements impacted the social and economic fabric of our society. All of our lives were changed. Under Governor Cuomo's leadership, and thanks to all of the front-line personnel, medical professionals and essential workers, New York met each challenge. 2021 will present significant challenges, but with robust testing capabilities and expanding vaccine delivery, we are in a better position than a year ago and I am optimistic that better days are ahead.

Over the past year, DFS, as the primary regulator of commercial health insurers in New York, played a major role in protecting New York consumers, helping them keep their insurance coverage, limiting financial barriers to accessing care and making sure that health insurers facilitated the delivery of health care. During this once-in-a-generation crisis, DFS took immediate and decisive action, issuing five emergency regulations, eleven circular letters and numerous FAQs related to health insurance and COVID-19, and answering hundreds of inquiries from consumers, insurers, providers and other stakeholders.

More specifically, DFS took the following actions:

- **COVID-19 Preparation** (Circular Letter No. 3, 3/3/20): In early March, we directed health plans to take action related to the potential impact of COVID-19 in New York to keep New Yorkers informed about COVID-19 testing, telehealth services, network adequacy and access to out-of-network services, utilization review, immunizations, access to prescription drugs, inpatient hospital and emergency care, ambulatory services, and surprise medical billing requirements.

- **Waiver of Cost-Sharing for COVID-19 Testing** (regulation, 3/13/2020): We issued an emergency regulation waiving cost-sharing for COVID-19 testing at in-network providers and facilities, and also issued guidance regarding coverage of COVID-19 testing at pharmacies (Circular Letter No. 12, 5/22/20).
- **Telehealth** (regulation and Circular Letter No. 6, 3/15/20): We promulgated an emergency regulation waiving cost-sharing for all in-network telehealth services during the state of emergency. We also expanded telehealth to telephonic communications to help New Yorkers access the care they needed, especially in underserved and rural communities.
- **Waiver of Mental Health Cost-Sharing for Essential Workers** (regulation and Circular Letter No. 10, 5/2/20): At a time of increased stress and long working hours, we prohibited insurers from imposing cost-sharing for in-network outpatient mental health services provided to essential workers. Removing barriers like cost-sharing for these workers provides them with the access to the mental health services that they need.
- **Prohibition on Charges for Personal Protective Equipment (PPE) by Participating Providers** (Circular Letter No. 14, 8/5/20): In response to consumer complaints about being charged extra fees at dentists' offices and in consultation with insurers, we acted to protect consumers and issued a circular letter to advise insurers to immediately notify their participating providers that insureds should not be charged for PPE fees and instruct those providers to refund any PPE fees.
- **Premium Grace Period Extension** (regulation, 4/7/20): We required insurers to extend the grace period for paying premiums for individuals experiencing financial hardship as a result of the COVID-19 pandemic. Through this measure, health insurance companies

were required to defer over $53 million in premiums for more than 16,000 small group and individual policyholders experiencing financial hardship due to COVID-19.

- **Approval of Premium Rebate Programs**: In 2020, dental insurers and health insurers had a significant decrease in claims due to stay-at-home requirements and postponement of elective medical procedures. Consequently, those insurers had a surplus of unspent premiums. DFS collaborated with dental and health insurers to return some of those premiums to policyholders. Dental carriers issued over $80 million in premium rebates to policyholders, and health insurers issued approximately $123 million.
- **Extended Enrollment Periods**: To help expand health insurance coverage, NY State of Health, New York's official health plan Marketplace, together with DFS, made a special enrollment period available to New Yorkers. During this period, eligible individuals could enroll in insurance coverage through NY State of Health and directly through insurers without having to wait to apply for insurance during the normal open enrollment period from November to January. In addition, NY State of Health and DFS extended the normal open enrollment period through May 15, 2021.
- **COVID-19 Immunization Coverage** (regulation and Circular Letter No.16, 12/16/20): DFS issued an emergency regulation and a Circular Letter to require immediate coverage, without cost-sharing, of the COVID-19 immunization and administration and any necessary visits for the immunization in any setting. Coverage is also required for out-of-network providers, with protections from balance billing and excessive provider charges during the public health emergency. We continue to work with the Governor's office and DOH to ensure smooth distribution, administration and insurance coverage for the vaccine.

In addition, DFS took action to ensure that all regulated financial institutions had plans to manage the operational and financial risks of the pandemic, provide mortgage forbearance to New York homeowners, and assist consumers, through the tireless work of our consumer assistance unit, with a variety of new and urgent issues brought on by the pandemic. 2020 was a difficult and challenging year, but I am extremely proud of the work of the entire DFS team who contributed so positively during this crisis.

Before I discuss this year's health-related budget proposals related to DFS, I want to briefly review a few of the accomplishments enacted last year: ensuring mental health parity compliance, lifting the ban on gestational surrogacy, further protecting consumers from surprise medical bills, the establishment of the Administrative Simplification Workgroup and the establishment of the Drug Accountability Board at DFS. These actions are already creating positive results for New Yorkers.

One of the greatest accomplishments during the pandemic was ensuring mental health and substance use disorder treatment parity through regulations by DFS and DOH to specify mental health/substance use disorder parity compliance program requirements. We worked closely with the Legislature on this and appreciated partnering with Senator Liz Krueger and Assembly Member Nily Rozic to make sure that consumers are aware of this important initiative.

Actions enacted last year are also benefiting New York families. Those in the LGBT community are benefiting from the lift of the ban on gestational surrogacy and legislation ensuring that surrogates have access to comprehensive health insurance and independent legal counsel of their own choosing. Families with infants and toddlers with disabilities will be further protected by the enhanced network adequacy standards and expanded market conduct examinations within the Early Intervention Program to ensure that insurers are following current rules and regulations and that providers are complying with current requirements.

Closing the loophole that allowed out-of-network hospitals and doctors to bill consumers amounts in excess of their in-network cost-sharing for emergency services and inpatient admissions following emergency room visits is further protecting New York consumers from surprise medical bills.

DFS is also convening our various stakeholders. As an example, the Administrative Simplification Workgroup comprised of insurers, providers and consumer representatives has already met several times to evaluate mechanisms to reduce health care administrative costs and complexities through standardization, simplification and technology, and will issue a report with innovative recommendations by October of this year.

The new Office of Pharmacy Benefits, which was created to implement the authority granted to DFS in last year's budget to review and investigate significant increases in drug prices, recently initiated investigations into significant price spikes for six drugs that were connected to the COVID-19 pandemic. DFS also announced the formation of the Drug Accountability Board, a panel of experts that will provide guidance and advice to DFS in carrying out its new statutory power over drug price spikes.

The 2020-2021 Executive Budget builds upon these successes and includes proposals related to PBMs, telehealth and a restructuring of the State's excess medical malpractice program.

- **PBMs.** As we have seen with the important work of the Drug Accountability Board, pharmaceutical drug costs are the single largest driver of health insurance premium increases. As you well know, pharmacy benefit managers are intermediaries in the distribution chain of prescription drugs, yet they remain regulatory black boxes. Decades ago, when PBMs first became active, they were the contractual agents of insurers, handling the complexities of the insurer's pharmacy benefits by establishing formularies and processing pharmacy claims. The PBM industry evolved and, today, PBMs have tremendous power and influence over the sale of pharmaceutical products. PBMs now "negotiate" both the price insurers will pay for a drug and the amount the PBM will reimburse the pharmacy, and then keep the difference between those two prices. PBMs also negotiate rebates from drug manufacturers and then decide what portion, if any, of those rebates should be passed on to their client-insurers, who actually pay for the drugs. It is an industry rife with potential conflicts of interest and one which has vigorously opposed regulation, preferring to reap huge profits in the shadows.

Our proposal represents what we believe will be the most robust regulatory regime in the nation. DFS will bring its experience as the premier state regulator of financial services to a highly complex market which has traditionally operated without any regulatory scrutiny. PBMs will be required to immediately register with DFS and, by 2023, to be licensed by DFS. Our code of conduct requirements will permit the active and dynamic regulation of the PBM market, a market which is no stranger to innovations in the way they do business. DFS will also be empowered to conduct full examinations of PBMs registered or licensed by DFS. This proposal will add transparency and protect consumers from abusive business practices by PBMs.

- **Telehealth**. The pandemic has changed almost every aspect of our lives, including the delivery of health care services. As people sheltered at home, visits to doctor's offices became more difficult, if not impossible, for many people. DFS took a series of actions to alleviate this situation by facilitating the use of telehealth by permitting audio-only telehealth visits and requiring health insurers to waive copayments, coinsurance and deductibles for in-network telehealth services. Telehealth services increased dramatically and have allowed people in underserved and rural areas to access high quality health care services. Nationwide, health analysts found an increase of 50 to 175 times in the number of telehealth visits in 2020. Governor Cuomo's 2020-21 Executive Budget proposes to continue many of these important reforms. Working with the Reimagine New York Commission, this year's budget includes several innovative approaches to expanding telehealth. Many of the proposals were addressed in Dr. Zucker's testimony. DFS will be working on the following proposals:

- Permanently adopt a regulation providing that the definition of "telehealth" includes telephonic communications and video modalities (including technology commonly available on smart phones and other devices).
- Ensure that New Yorkers have access to telehealth by requiring health insurers to have providers in their networks who offer telehealth. Current state law only requires coverage of telehealth services if participating providers are willing to render such services. This proposal will affirmatively require insurers to have an adequate network of providers who offer telehealth services.
- Require health insurers to provide up-to-date information about which providers offer telehealth services in their provider directories.

These proposals will strengthen telehealth by ensuring that consumers can access telehealth services and obtain up-to-date, readily available and consistent information about telehealth services.

- **Excess Medical Malpractice Restructuring.** Excess medical malpractice insurance funded by New York State provides an additional layer of malpractice coverage to doctors practicing throughout the State, mitigating the burden of high medical malpractice costs for doctors. Since the program's creation in 1986, the medical malpractice insurance market has stabilized and strengthened considerably, thereby reducing the need for the State to pay for this supplemental insurance. Additionally, since policy year 2015, enrollment in the program has decreased by 24 percent. This year's budget includes a proposal initiated by DOH that will require a restructuring of the program expected to result in $51 million in savings to the State in the first year.

In addition to these critical proposals, DFS remains laser focused on the other important challenges we face as a State and as a nation. We all know that the days of ignoring the crisis of climate change are well and truly over. DFS continues to use every tool available to support New York's nation-leading actions on climate change and became the first U.S. financial regulator, state or federal, to create a comprehensive climate program that includes supervision, consumer protection, and economic development.

We also continue to put New York's consumers first and are reminded every day that our actions have real consequences on people's lives. Last summer, we alerted New Yorkers that they should not be charged for Personal Protective Equipment (PPE) by in-network healthcare providers under their State-regulated health and dental insurance coverage. This action resulted in the refund of $414,727 of PPE-related charges to more than 14,000 consumers since the start of the pandemic.

The problems we face are complex, and no one actor can resolve them alone—it takes all of government, industry and the people to address these problems effectively and pragmatically. That has been the approach of DFS and we are committed to continuing to work together with the Legislature, all parts of government, industry and the people, especially consumers, to ensure we build back better.