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Andrew M. Cuomo
Governor

**Linda Lacewell, Superintendent of Financial Services
New York State Department of Financial Services
Testimony Delivered to the Legislative Fiscal Committees
on the State Budget - Health
Hearing Room B, LOB
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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 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 Governor's Executive Budget and I will do my 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 \$4.7 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 markets and carries out many of Governor Cuomo's initiatives to protect and improve the healthcare for all New

Yorkers. This year's budget builds on many of the Governor's accomplishments enacted last year, including:

- Expanding Governor Cuomo's landmark legislation that protected patients from surprise bills from hospitals and physicians.
- Combatting the opioid epidemic by, among other things, eliminating insurance barriers to accessing care, including reducing co-payments or co-insurance.
- Requiring insurers to provide coverage for fertility preservation services and, for insurance policies covering large employers (over 100 employees), benefits for in vitro fertilization (IVF).
- Codifying into state law the Federal Mental Health Parity and Addiction Equity Act (MHPAEA).
- Protecting access to health insurance coverage for transgender and gender non-conforming care in commercial health insurance.
- Codifying key Affordable Care Act (ACA) provisions and the New York State of Health Marketplace into law to ensure that no matter what happens at the federal level, these key provisions are protected in New York State.

Governor Cuomo's 2020-2021 budget builds on these successes.

Fighting the High Cost of Prescription Drugs. Prescription drugs are the largest driver of premium rates. Increases in the cost of prescription drugs are staggering, pushing premium rates higher and higher. And as prices rise year after year, the cost of prescription drugs and insurance coverage become less affordable, while drug manufacturers reap larger and larger profits. As

part of this year's budget, Governor Cuomo has introduced a three-prong proposal to combat the high cost of prescription drugs.

First, Governor Cuomo has proposed a cap on co-payments for insulin. The cost of insulin has nearly tripled from 2002 to 2013, making this life-saving drug unaffordable to many who need it most. If patients cannot fill prescriptions or skip treatment, they may face other severe and costly health complications. This cap will help those in need to be able to afford necessary medications and avoid more severe health conditions.

Second, Governor Cuomo proposes to increase DFS's authority to investigate significant increases in prescription drug prices and establish a Drug Advisory Board (DAB) within DFS.

To investigate significant price increases, DFS will be authorized to:

- Issue subpoenas to drug manufacturers to gather information related to drug prices and price increases.
- Demand that drug manufacturers provide a justification for significant price increases.
- Refer investigations to the DAB.
- Hold hearings regarding significant price increases.
- Fine manufacturers for fraud related to drug prices.

In tandem, Governor Cuomo will establish the DAB, which will be empowered to review the costs of high-cost drugs within the New York market. It will be comprised of outside pharmacists, physicians, and other drug price experts to review information gathered by DFS regarding significant price increases and justifications submitted by manufacturers. Similar to the Medicaid Drug Utilization Review Board (DURB), the DAB will have the power to review the pricing of certain high-cost drugs, subject them to review by experts (including an

assessment of the economic and clinical benefits of the drug as compared to its cost), and determine an appropriate price which commercial insurers should be paying for that drug.

Third, the proposal establishes a commission of experts to study the feasibility and benefits of a Canadian drug importation program and requires the commission to submit a plan to the U.S. Department of Health and Human Services for review.

Pharmacy Benefit Managers (PBMs). PBMs are intermediaries in the drug supply chain that have amassed tremendous power and influence over the sale of pharmaceuticals. Despite playing an important role in highly-regulated markets, they remain regulatory black boxes.

Governor Cuomo will require PBMs to immediately register with DFS and, in 2022, to be licensed by DFS. DFS, in consultation with the Department of Health (DOH), will establish by regulation minimum standards for PBM conduct, including: conflicts of interest between PBMs and health plans; deceptive practices; anti-competitive practices; pricing models including spread pricing; unfair claims practices; standards and practices in the creation of pharmacy networks and contracting with network pharmacies and other providers; and protection of consumers. This proposal will add transparency and protect consumers from deceptive, unfair, or abusive business practices by PBMs.

Expanding Protections from Surprise Medical Bills. Governor Cuomo has a long history of protecting consumers from abusive out-of-network billing. As Attorney General, his landmark investigation into the Ingenix database, used for determining out-of-network charges, led to the creation of the FAIR Health website, a nationally recognized consumer and industry tool for determining fair and equitable usual and customary rates. In 2014, Governor Cuomo signed first in the nation legislation to protect consumers from surprise medical bills for out-of-network costs, which included FAIR Health as the industry standard. Through the end of 2018,

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this landmark legislation saved consumers more than \$400 million in emergency services alone and reduced out-of-network billing in New York by 34%.

The Governor built on that success last year when he signed legislation expanding those protections to bills from hospitals for emergency services. And this year, while the federal government is unable to reach agreement on how to address surprise bills, Governor Cuomo continues to ensure that consumers are not unfairly billed by introducing a three-point plan to protect consumers.

First, the Governor's proposal will close a loophole in the current law that allows out-of-network hospitals and physicians to bill consumers directly for emergency services and inpatient admissions following emergency room visits. This billing practice will be prohibited, insurers will be required to hold consumers harmless, and hospitals, physicians, and insurers will be required to use an Independent Dispute Resolution process to settle billing disputes, holding consumers harmless and thereby taking consumers out of the middle of the fight.

Second, the Governor's proposal will require disclosure of facility fees, when such fees are permissible. These fees are often charged to consumers – to their surprise – by physicians' offices that are owned by or affiliated with a hospital or that are independent physician practices that perform office-based surgery. Insurers, however, do not always pay the facility fee, and insureds end up with surprise bills, often in considerable amounts.

Third, Governor Cuomo proposes to shorten the statute of limitations for medical debt collection from 6 years to 3 years. Many New Yorkers are burdened by medical debt, the most common cause of bankruptcy in the country. New York's current 6-year statute of limitations for the collection of medical debt is longer than many other states, leaving New Yorkers vulnerable to lawsuits for old claims they long thought were paid by their insurance and where they no longer have good records to defend themselves.

Provide Medical Cost Transparency to Empower Consumers. Along with protecting consumers from unfair billing practices, Governor Cuomo is proposing reforms to empower consumers to estimate the cost of medical services before they get those services. The costs of such services can vary widely from provider to provider or hospital to hospital. While some information is available to consumers, it is not centrally located and is often confusing. In order to enable consumers to more easily search and compare the costs of health care services, and building off of the success of FAIR Health, Governor Cuomo will direct DOH, DFS, and the New York State Digital and Media Services Center to create a consumer friendly website, called NYHealthcareCompare, where New Yorkers will easily be able to find health care costs and quality information, as well as information about financial assistance, their rights under the law, and protections against surprise bills, among other things.

Protecting Families and the LGBTQ Community. As the federal government has relentlessly attacked the rights of LGBTQ individuals, Governor Cuomo has been a national leader for LGBTQ rights. Last year, Governor Cuomo signed the Gender Expression Non-Discrimination Act, banning conversion therapy based on gender identity or sexual orientation, and prohibiting the use of "gay and transgender panic" as a legal defense in courts – all key components of Governor Cuomo's 2019 Justice Agenda.

As recently as November 2019, Governor Cuomo directed DFS to issue regulations and take other action to further protect access for transgender and gender non-conforming care in commercial health insurance. DFS was directed to issue regulations to codify current DFS guidance regarding coverage for gender dysphoria, coverage for non-gender specific services, and coverage for pre-exposure prophylaxis (PrEP), and clarify prohibitions of gender identity discrimination in health insurance. Proposed regulations were published on December 18, 2019.

This year, Governor Cuomo continues to fight for the LGBTQ community. He is proposing legislation that will lift the ban on gestational surrogacy. The legislation will also create a Surrogates' Bill of Rights, which will ensure the unfettered right of surrogates to make their own health care decisions, including whether to terminate or continue a pregnancy, and that surrogates have access to comprehensive health insurance and independent legal counsel of their choosing, all paid for by intended parents.

Expanding Fertility Services. In 2019, Governor Cuomo signed legislation to require insurers to provide coverage for medically-necessary fertility preservation services and, for large group employers (over 100 employees), three cycles of IVF. This coverage promotes safe and affordable reproductive health care while removing a costly barrier to family planning. In addition to IVF, fertility preservation – the process of saving eggs and sperm – can be important for patients undergoing cancer or other treatments that affect fertility.

This year, Governor Cuomo will work to expand coverage to even more women and increase awareness of fertility services, encouraging employers to offer fertility coverage and ensure that no one is discriminated against for seeking fertility services.

Mental Health Parity Compliance. The Mental Health Parity and Addiction Equity Act (MHPAEA), in federal and now state law, prohibits insurers from applying financial requirements, quantitative treatment limitations (QTLs) (such as limits on the number of days of treatment or number of visits) and non-quantitative treatment limitations (NQTLs) (such as medical necessity or prior authorization requirements) to mental health or substance use disorder benefits that are more restrictive than the limits that are applied to substantially all medical and surgical benefits covered by the plan.

DFS and other agencies have found that insurers do not have adequate policies and procedures in place to ensure MHPAEA compliance, particularly in regard to NQTLs.

To ensure compliance, Governor Cuomo has directed DFS and DOH to issue regulations to specify MH/SUD parity compliance program requirements. Governor Cuomo has also introduced legislation to establish the Behavioral Health Parity Compliance Fund so that fines from parity violations will be used to provide support for initiatives related to parity implementation and enforcement on behalf of consumers, including the behavioral health ombudsman program.

Increasing Administrative Efficiencies. Governor Cuomo has also introduced a series of proposals to increase efficiencies – thereby saving on administrative costs – for insurers’ and providers’ claims processing procedures. This bill will reduce friction between payers and certain providers by eliminating administrative denials for medically necessary services, shorten utilization review timeframes, and streamline provider credentialing processes, among other things. The bill also directs DFS, in conjunction with DOH, to convene a health care administrative simplification workgroup. The workgroup will consist of stakeholders including insurers, providers and consumers, and will study mechanisms to reduce health care administrative costs and complexities through standardization, simplification and technology.

Early Intervention. The New York State Early Intervention Program (EIP), administered by DOH, offers therapeutic and support services, such as speech therapy, occupational therapy, physical therapy, and nutritional services to eligible infants and toddlers with disabilities. Some EIP services can be reimbursed by health insurers, but insurance reimbursement still only accounts for approximately 2% of all EIP expenditures. Medicaid accounts for approximately 42% of the program, with the State and municipalities jointly responsible for the majority of the cost. Also, the number of physical therapists, occupational therapists, and speech-language pathologists in insurers’ networks has been found to be low for serving infants and toddlers with disabilities and their families.

To encourage more EIP providers to join insurers' networks and make claims processing more efficient, Governor Cuomo's budget requires insurers to pay participating EIP providers before determining medical necessity of EIP claims. If an insurer wants to challenge a claim, it can use the existing external appeal process under the Insurance Law. DFS and DOH will also work together to enhance network adequacy standards to ensure that insurers include a sufficient number of EIP providers in their networks. Finally, DFS and DOH will expand market conduct examinations to ensure that insurers are following current rules and regulations and that providers are complying with current requirements.

As a regulatory agency, DFS is responsible for overseeing the many financial products and services that New Yorkers use each day. An important proposal that the Governor included in this year's budget is a consumer protection agenda that, among other objectives, will bring much needed oversight of New York's debt collection industry, expand financial inclusion in every community in the state, and reform New York's laws to help DFS better prevent abusive and deceptive practices. This last proposal is particularly important: DFS lags far behind our federal counterparts and other states in our ability to protect New Yorkers from predatory and unscrupulous financial products and services - a disparity that is more distinct today given the federal government's retreat from its duty to enforce consumer protection laws.

Next week, it will be one year since I have been at DFS. It has been an honor to travel to all corners of the state, meet with many of you and your colleagues in the Legislature, and hear the concerns that keep many New Yorkers - your constituents - up at night.

As each of you know, these concerns are real and too often involve deception and unfair practices: property owners in Brooklyn and Harlem losing their homes they have owned for decades because of deed theft. A teacher on Long Island paying thousands of dollars more than she should in fees for her retirement plan while an insurer reaps millions in profit. A young graduate in Buffalo paying more than they should on their student loan. A family in the Bronx being deceived into paying fees to file their taxes when they are eligible for free-file. A soldier at Fort Drum being preyed on by subprime, predatory auto-lenders.

Constituents in your communities are facing a barrage of new, untested and unregulated financial products like never before, consumer debt is at record levels, students loan default rates are at a historic high. Most troubling yet not surprising, many predatory and deceptive practices target and disproportionately impact New York's most vulnerable communities – underscoring the urgent need and importance of the Governor's consumer protection agenda.

Last week I was honored to join Assembly Member Tremaine Wright on an op-ed where we wrote “This agenda is more than just a consumer protection agenda — it is an economic and racial justice agenda that focuses on alleviating historical disparities and injustices that for too many years have resulted in communities of color being denied access to our financial system, targeted by predatory lenders and victimized by perpetrators of deed and mortgage fraud, and holding a disproportionate share of student loan debt.”

Thank you for the opportunity to outline some of these key proposals in the Budget. I look forward to your questions.