



# 2018 ANNUAL REPORT

New York State Assembly

**Carl E. Heastie**

*Speaker*

*Committee on*

**Insurance**

**Kevin A. Cahill**

*Chair*





THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

COMMITTEES  
Ways and Means  
Economic Development, Job Creation,  
Commerce & Industry  
Health  
Higher Education

KEVIN A. CAHILL  
Assemblymember 103<sup>rd</sup> District

CHAIR  
Assembly Insurance Committee

The Honorable Carl Heastie  
Speaker of the Assembly  
Room 932 - Legislative Office Building  
Albany, New York 12248

Dear Speaker Heastie:

I hereby submit to you the 2018 Annual Report for the Committee on Insurance. I am pleased to report that the Committee had a productive session under your leadership and thanks to the diligence and dedication of the members.

Each year the Committee examines topics of insurance including health, life, property and casualty, auto and title. The Committee works to ensure that the NYS Insurance law contains appropriate consumer protections. At the same time, the Committee works with insurers and other stakeholders to identify areas where the Insurance law can be modified so that companies doing business in this State remain competitive and innovative.

Throughout the year the Committee strove to ensure that the essential health benefits required by the Affordable Care Act remain available to all policyholders. The Committee reported, and the Assembly passed for the third consecutive year, the Comprehensive Contraception Coverage Act. The act would require health insurance policies to include coverage of contraceptive drugs, devices and products as well as voluntary sterilization procedures, contraceptive education, counseling and related follow-up services. This bill prohibits cost-sharing, restrictions or delays with respect to this coverage. The Assembly also passed legislation which would require health insurers to provide coverage for diagnostic treatment of infertility including procedures for in vitro fertilization and other fertility treatments.

In the area of life insurance, the Assembly passed legislation that would allow life insurers to incorporate their own experiences and assumptions into their reserve calculations instead of basing their calculations entirely on formulas and assumptions

prescribed by law. This new approach should produce reserves more accurately reflective of risks assumed by life insurers and benefit consumers by lowering the costs of life insurance. The legislation contains first-in-the-nation public protections for the principle-based reserving model that include reporting requirements coupled with an expiration date. This will allow the Legislature to examine the impact of this new reserve calculation before the provision becomes permanent.

Over the past several years, New York has been hit by several large storms including Superstorm Sandy and Hurricane Irene that have caused immense damage across the state. In such situations, individuals and businesses rely on their property & casualty and flood insurance to cover damages. The reality was that for many homeowners, their insurance coverage and the adjustment processes were inadequate at a critical time. In response, the Assembly has continued to pass a number of bills to protect New Yorkers from unforeseen catastrophic natural events. Legislation was passed to require the Department of Financial Services (DFS) to establish uniform trigger standards for hurricane windstorm deductibles and promulgate regulations to standardize the definitions of terms and phrases commonly used in homeowners and certain commercial insurance policies. The Assembly also passed a bill to create a task force to examine how insurers respond to disasters; ways in which state and local agencies, such as DFS, can assist claimants in response to disasters; and whether policyholders and communities have adequate insurance. These bills represent a focused effort to ensure adequate coverage in case of disasters and that claims arising from storms are fully and promptly paid to New York's policyholders.

The Committee continued to address the cost and sufficiency of auto coverage in the state through several mechanisms. It reported an "auto sunshine" bill which would require insurers to provide detailed financial data to the DFS, which would be made public, and reported a bill which sunsets a "flex rating" provision which currently allows insurers to increase auto policy premiums by just under five percent per year without seeking approval from the DFS. These bills would provide the Legislature with data on which to assess the relationship between coverages and cost for auto policies while removing an incentive for auto insurers to increase their premiums without justification. Additionally, the Committee supported a study of current minimum coverages and options for private passenger auto policies to assess the impact of increasing such coverages on policy premiums.

The Committee conducted two hearings this year. The first examined title insurance regulations as proposed by the DFS to address certain activities by the industry and purported to reduce costs to consumers when closing a real estate transaction. The other hearing addressed the merger between CVS Health and Aetna Insurance, Inc., which combined an insurer, a pharmacy benefit manager and a retail pharmacy in one integrated entity. These hearings are described in detail within this report.

The 2018 Session brought a number of achievements and we are already preparing for the important work that lies ahead in the coming year. Under your leadership, the

Assembly Insurance Committee stands ready to meet the 2019 Session with a commitment to proposals that will further aid consumers and improve the insurance industry within the state of New York.

I thank the members and staff of the Committee for their hard work during this past session. Furthermore, I again thank you, Mr. Speaker, for your leadership and continued support of legislation that protects New York's consumers.

Sincerely,

A handwritten signature in cursive script that reads "Kevin A. Cahill".

Kevin A. Cahill, Chair  
New York State Assembly  
Standing Committee on Insurance

NEW YORK STATE ASSEMBLY  
STANDING COMMITTEE ON INSURANCE

Kevin A. Cahill, Chair

▪ MEMBERS ▪

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James G. Skoufis  
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Marcos A. Crespo  
Latoya Joyner  
Erik M. Dilan  
Pamela J. Hunter  
Aravella Simotas  
Latrice M. Walker  
Yuh-Line Niou  
Daniel Rosenthal  
Steve Stern

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Stephen M. Hawley  
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Brian F. Curran  
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▪ COMMITTEE STAFF ▪

Jennifer Best, Assistant Secretary for Program and Policy  
Christopher Greenidge, Associate Counsel  
Fletcher Whyland, Analyst  
Laurie Wheelock, Legislative Director  
Joseph Theall, Committee Clerk  
Jeannie Shepler, Program and Counsel Secretary

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## ▪ 2018 - 19 Budget ▪

The Committee worked earnestly during the 2018-19 Budget negotiations to ensure that the New York State of Health insurance exchange remained funded without making it a charge to policyholders. At the same time, the Assembly fought to preserve the transitional Entertainment Workers Health Care Subsidy which provides affordable health care for workers in this important sector of the New York State economy as these workers move into the Health Exchange.

In order to protect medical providers and keep health care affordable for New Yorkers, the Assembly also supported provisions that facilitate access for providers to medical malpractice coverage. The Enacted Budget extended the Hospital Excess Liability Pool for an additional year and continued eligibility for all providers in the pool for coverage until June 30, 2019.

The Assembly also passed legislation that requires health insurers to provide coverage for pasteurized donor human milk (PDHM) for inpatient use for an infant when a licensed medical practitioner issues an order for an infant who is medically or physically unable to receive maternal breast milk or participate in breast feeding or whose mother is medically or physically unable to produce maternal breast milk. This new law will ensure that infants with very low birth weights or who are at a high risk for development of necrotizing enterocolitis receive donor breast milk regardless of a mother's ability.

In 2016, the Assembly Standing Committee on Insurance worked with the Committees on Alcoholism & Substance Abuse and Health to facilitate the implementation of a package of bills that empower the Office of Alcoholism and Substance Abuse Services (OASAS) to approve one or more diagnostic tools for the assessment of individuals with substance use disorder in order to ensure that all tools utilized by providers and insurance companies are consistent with treatment service levels defined by OASAS. These bills also provide that individuals receive up to 14 days of inpatient medically necessary treatment for substance use disorder without prior authorization. In the Assembly's continued efforts to combat heroin and opioid addiction, the 2018-19 Enacted Budget adds that protections previously applicable to inpatient substance abuse services now apply to outpatient substance abuse services. The Insurance law now specifically indicates that health insurers are prohibited from requiring prior authorization for outpatient substance abuse services and that such coverage shall not be subject to concurrent review for the first two weeks of continuous treatment.

The Assembly also rejected a proposal increasing the penalty from \$1,000 to \$10,000 per offense for violations of New York State Insurance Law, and allowing the enforcement of New York Insurance Laws against unlicensed entities as if the entity were actually licensed by the Department of Financial Services.

▪ HEALTH INSURANCE ▪

A. 90 Days of Inpatient Rehabilitation

*A.492 Stirpe / S.2099 Ritchie*

This bill would require health insurers to provide coverage for at least ninety days of inpatient rehabilitation services for substance abuse disorders upon the prescription of a doctor.

This bill was reported to the Ways & Means Committee.

B. Coverage for Concurrent Symptoms

*A.1129 Hunter / S.3568 Hannon*

This bill would expand the current prior authorization exception for surgical and invasive procedures to include concurrent symptoms and side effects.

This bill passed the Assembly.

C. Mental Health Practitioners

*A.2163 Bronson / S.3952 Young*

This bill would require health insurers to provide coverage for outpatient treatment by licensed mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts.

This bill passed the Assembly.

D. Midyear Drug Formulary Changes

*A.2317-C Peoples-Stokes / S.5022-C Serino*

This bill would restrict health care plans with a drug formulary containing two or more tiers of drug benefits with different deductibles, copayments or coinsurance from moving a drug to a tier with higher patient cost sharing or adding new formulary restrictions during the enrollment year. Plans could move a prescription drug to a tier with a larger copayment, coinsurance or deductible only if an AB-rated generic equivalent is added to the formulary at the same time. An insurer could remove a prescription drug from a formulary if the federal Food and Drug Administration determines that it should be removed from the market.

This bill passed the Assembly.

E. *In-Vitro Fertilization*

*A.2646-A Simotas / S.3148-A Savino*

This bill would require health insurers to provide coverage for diagnostic treatment of infertility including procedures for in-vitro fertilization and other fertility preservation treatments. It also would repeal age requirements and provisions exempting in-vitro fertilization, gamete intrafallopian tube transfers or zygote intrafallopian tube transfers from coverage requirements.

This bill passed the Assembly.

F. *Mail Order Pharmacies*

*A.3119 Joyner / S.1743 Golden*

New York's Insurance Law currently allows consumers to purchase medication at participating local retail pharmacies at the same cost-sharing amount as mail order pharmacy coverage under their health insurance policies. Insureds may purchase their prescription drugs at an in-network non-mail order retail pharmacy without any additional cost-sharing provided that the pharmacy agrees to the same contractual terms and conditions that the insurer has established with in-network mail order and non-retail specialty pharmacies.

This bill would clarify that a health insurer cannot force an insured to use a mail order pharmacy if the local retail pharmacy agrees to the same reimbursement amount as the mail order pharmacies. Recognizing that retail and mail order vendors operate differently, this bill would also remove the existing requirement that the local retail pharmacy also agree to the same terms and conditions as the mail order pharmacies before an insured can use that delivery method

This bill passed the Assembly.

G. *Mental Health and Substance Use Disorder Parity Report*

*A.3694-C Gunther / S.1156-C Ortt*

*Chapter 455 of 2018*

This bill would require the Superintendent of the DFS to issue a mental health and substance use disorder parity report detailing state regulated health insurer compliance with federal and state mental health and substance use disorder parity laws based on each company's record during the preceding calendar year. Insurers would be required to submit certain data to the DFS annually. This bill would provide a mechanism for legislators and the general public to evaluate whether health insurers in New York State are complying with state and federal parity laws, and would also ensure that consumers are making informed decisions when choosing a healthcare plan.

#### H. Synchronization of Multiple Prescriptions

*A.4306-B Quart / S.5196-B Lanza*

The bill would provide coverage for a pharmaceutical claim for less than a 30-day supply for patients enrolling in medication synchronization programs. It would create a pro-rated cost-sharing rate for prescriptions of less than 30-day's supply to synchronize the refills of an individual's chronic medication. Drug coverage would not be denied for a partial fill of any drug prescribed for the treatment of a chronic illness made in accordance with a medication synchronization plan among the insured, a health care practitioner and a pharmacist.

This bill passed the Assembly.

#### I. Lyme Disease Study

*A.4863-A Barrett / No Same As*

This bill would require the DFS, in consultation with the Department of Health, to study and report upon the adequacy of insurance coverage for the treatment of Lyme disease and other tick-borne related diseases. The study would include the prevailing reasons for the denial of insurance coverage for the treatment of Lyme and other tick-borne related diseases, the number of insureds in need of long-term care because of such diseases and recommendations to ensure that there is adequate coverage, including for long-term care of Lyme and other tick-borne related diseases.

This bill passed the Assembly.

#### J. Prior Authorization of Substance Use Disorder Medications

*A.4899-C Rosenthal L. / S.7905-A Griffo*

This bill would require health insurers to provide coverage for an initial or renewal prescription of medications prescribed for the detoxification or maintenance treatment of substance use disorder without prior authorization.

This bill was advanced to the Third Reading Calendar.

#### K. Eating Disorders

*A.6396-C Rozic / S.6045-C Marchione*

This bill would clarify that health insurers are required to provide coverage for eating disorders including pica, rumination disorder, avoidant/restrictive food intake disorder, anorexia nervosa, bulimia nervosa, binge eating disorder, other specified feeding or eating disorder and any other eating disorder contained in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

This bill passed the Assembly.

L. Annual Mammograms

A.6731-C Jean-Pierre / S.6586-A Boyle

This bill would require health insurers to provide coverage for an annual mammogram for covered persons aged thirty-five through thirty-nine upon the recommendation of a physician.

This bill passed the Assembly.

M. Utilization Review Determinations for Nursing Home Care

A.7108 Gottfried / S.7871 Hannon

This bill would require utilization review agents to issue a utilization review determination for nursing home care within twenty-four hours of receipt of the request for services when the request is made at least twenty-four hours prior to discharge from an inpatient admission. This bill would also prohibit utilization review agents from denying nursing home care on the basis of medical necessity or lack of prior authorization while the determination is pending.

This bill passed the Assembly.

N. Medications for the Prevention of HIV

A.7153-A O'Donnell / S.43-A Hoylman

This bill would require health insurers to provide coverage for the cost of pre-exposure prophylaxis (PrEP) for the prevention of HIV and post-exposure prophylaxis to prevent HIV infection.

This bill was advanced to the Third Reading Calendar.

O. Substance Use Disorder Medications

A.7979-A Quart / S.6674 Amedore

This bill would repeal the requirement that health insurers provide coverage for a five-day emergency supply of medication without prior authorization to address symptoms related to withdrawal and add that health insurers shall be required to provide coverage for an initial or renewal prescription of buprenorphine products, long-acting injectable naltrexone, or methadone without prior authorization for the detoxification or maintenance treatment of a substance use disorder.

This bill passed the Assembly.

P. Health Savings Account Pilot Program  
A.8176-A Woerner / S.5890-B Seward  
Chapter 264 of the Laws of 2018

This law extends for three years a provision of the Insurance Law which allows HMOs to offer to certain municipalities a group high deductible health plan in conjunction with a health reimbursement account or a health savings account, provided that the plan is offered pursuant to an existing collective bargaining agreement between the municipality and its employees and that the municipality pays the deductible on behalf of its employees.

Q. Prostate Cancer Screenings  
A.8683-A Gottfried / S.6882-A Tedisco  
Chapter 335 of the Laws of 2018

This law requires the inclusion of information regarding the availability of insurance coverage for prostate cancer screening without cost sharing in the standardized written summary prepared by the Commissioner of Health. It also prohibits health insurers from imposing annual deductibles or coinsurance on prostate cancer screenings.

R. The Comprehensive Contraception Coverage Act  
A.9957 Cahill / No Same As

In conformity with the Affordable Care Act, this bill would require health insurance policies to include coverage of contraceptive drugs, devices and products as well as voluntary sterilization procedures, contraceptive education and counseling and related follow up services and would prohibit any cost-sharing requirements, restrictions or delays with respect to this coverage. Additionally, this bill would allow a pharmacist to dispense a non-patient-specific regimen to a patient for the self-administration of emergency contraception.

This bill passed the Assembly.

S. Stop-Loss, Catastrophic, and Reinsurance Policies  
A.11014 Cook / S.8995 Seward  
Chapter 457 of 2018

This law extends provisions of law which allow small groups with between 51 and 100 members, who had re-insurance policies in effect on 1/1/2015, to renew such policy for five more years. The law also continues an exemption for municipal corporations with member employers with 100 or fewer employees from small group rating standards.

T. Enteral Formula

*A.11043 Stern / S.8924 Seward*

*Chapter 469 of 2018*

This clarifies and enumerates diseases and disorders for which enteral formulas have proven effective as treatment, and for which health insurers are required to provide coverage.

## ▪ PROPERTY / CASUALTY INSURANCE ▪

### A. Adjusters

*A.808 Perry / S.2746 Golden  
Chapter 458 of 2018*

This law establishes that insurers and all independent adjusters that are issued a temporary permit to adjust claims within New York State must use cost data that is regionally appropriate for the area of the state where the loss or damage occurred. The law makes it an unfair claims settlement practice for insurers to artificially lower cost data used for adjusted claims or use cost data that is not appropriate for the region of the state where the loss occurred.

### B. Prompt Investigation and Settlement of Claims

*A.1568 Skoufis / S.1476 Carlucci*

This bill would require insurers that write homeowners and certain commercial property and casualty insurance policies to begin investigating a claim arising from a declared disaster or emergency in accordance with regulations promulgated by the Superintendent of the DFS.

Furthermore, the bill would require that within fifteen business days upon receiving all items that the insurer requested from the claimant, the insurer must accept or reject the claim and issue their decision in writing to the claimant. An insurer would be allowed a one-time extension of an additional fifteen business days to continue its investigation. An insurer would be required to pay the claim no later than three business days from the settlement of the claim.

This bill was advanced to the Third Reading Calendar.

### C. Disasters Task Force

*A.1643-A Skoufis / S.7246 Brooks*

This bill would create a 23-member task force to examine: how insurers that write homeowners and commercial insurance policies respond to disasters; ways in which state and local agencies, such as DFS, can assist claimants in response to disasters; and whether policyholders and communities have adequate insurance. The members of the task force would include state and local government officials, as well as representatives from the insurance industry and consumer advocacy groups. The task force would be required to submit a report to the Governor and the Legislature on its findings and recommendations one year after the effective date.

This bill passed the Assembly.

D. Electronic Delivery of Notices

*A.1683-B Hevesi / S.2526-B Seward  
Veto 271 of 2018*

This bill would permit insurers to deliver insurance notices and documents electronically with the consent of the policyholder. The insurer would have to secure the explicit consent of the policyholder before suspending paper notices, and such paper copies must be made available to the policyholder at no cost upon request.

E. Boating Safety Courses

*A.2336 Thiele / S.2985 Lavalle*

This bill would authorize the Superintendent of the DFS to provide rate reductions to liability insurance policies upon the completion of a boating safety course or an advanced boating safety course which has been approved by the Commissioner of Parks, Recreation, and Historic Preservation.

This bill passed the Assembly.

F. Hurricane Windstorm Deductibles

*A.6665-A Pheffer Amato / S.2062-A LaValle*

This bill would require the Superintendent of the DFS to promulgate regulations providing uniform standards for hurricane windstorm deductibles and triggering events, within 180 days.

This bill passed the Assembly.

G. Lead Paint Exclusion

*A.7786 Ryan / No Same As*

This bill would prohibit insurers licensed to provide liability coverage to rental property owners from excluding coverage for losses caused by exposure to lead-based paint. This prohibition would take effect 26 months following the immediate effective date. The bill also would provide that all previously approved exclusions for losses caused by exposure to lead-based paint shall be terminated 26 months after the effective date.

This bill passed the Assembly.

▪ AUTO INSURANCE ▪

A. Auto Sunshine

*A.1228 Weinstein / S.5510 Funke*

This bill would provide lawmakers, regulators, and the public with a source of reliable and accessible data that would allow them to evaluate automobile insurance and insurance companies by requiring insurers writing private passenger auto insurance to report detailed financial information to the DFS, who shall make the information public.

This bill was advanced to the Third Reading Calendar

B. Flex Rating Sunset

*A.3090 Cymbrowitz / S.4128 Larkin*

This bill would strengthen consumer protections and oversight of private passenger auto insurance premiums by allowing the law that authorizes flexible rating to sunset on June 30, 2020. Flexible rating is a provision of the insurance law that allows auto insurers to raise rates up to twice per year as long as the total year-over-year increase does not exceed five percent, without approval from the DFS.

This bill was advanced to the Third Reading Calendar.

C. Supplementary Uninsured/Underinsured Motorist (SUM) Coverage

*A.8933 Morelle / S.7288 Seward*

*Chapter 15 of the Laws of 2018*

This law amends Chapter 490 of the Laws of 2017 by clarifying that a form shall be provided to an auto policyholder advising that their policy will include uninsured/underinsured motorist (SUM) coverage equal to the level of bodily injury liability coverage unless lower SUM limits are requested or the coverage is rejected. The law exempts policies of commercial risk insurance from SUM notification requirements.

C. Minimum Coverage Study

*A.3787 Cahill / S.5883 Seward*

This bill would require the DFS to conduct a study of the current mandatory minimum coverage amounts and coverage options for private passenger auto insurance and to assess the impact on premiums of increasing such amounts.

This bill passed the Assembly.

## ▪ LIFE INSURANCE ▪

### A. Living Donor Protection Act

*A.297-C Gunther / S.2496-B Hannon*

*Chapter 331 of the Laws 2018*

This law prohibits life insurers and health maintenance organizations from declining or limiting coverage based solely upon the status of an insured being a living organ or tissue donor. This law also adds transplantation preparation and recovery from surgery related to organ or tissue donation to the definition of serious health condition within the Workers' Compensation Law. Furthermore, this law requires the Commissioner of the DOH to develop and distribute materials relating to live donation of organs and tissue.

### B. Unclaimed Life Insurance Benefits

*A.10211 Hunter / S.7393 Seward*

This bill would increase the time period in which a life insurer is required to complete a lost policy search from 30 days or 45 days if the insurer contracts with another entity to maintain the insurer's records, up to 60 days.

This bill was reported to the Rules Committee.

### C. Principle-Based Reserving

*A.11116-A Cahill / S.8978-A Seward*

*Chapter 394 of the Laws of 2018*

This law requires life insurance companies to calculate reserves for individual and group life insurance policies and annuity contracts using a principle-based methodology established by the valuation manual adopted by the National Association of Insurance Commissioners, as modified and approved by the Superintendent of the DFS. Additionally, this legislation authorizes the Superintendent to deviate from the reserve standards and methods in the valuation manual, while also requiring life insurers to establish internal procedures for corporate governance and oversight of the reserve calculating process. The law directs the Superintendent to study the impact of the implementation of the valuation manual on the New York State life insurance industry and consumers and submit a report of the department's findings to the legislature in the second, fifth and seventh years after the operative date of the valuation manual. This law shall expire and be deemed repealed 10 years after it shall take effect.

▪ MISCELLANEOUS ▪

A. Domestic Violence Victims

*A.4060 Cymbrowitz / S.5396 Robach*

This bill would allow a domestic violence victim covered by an insurance policy where another person is the policyholder to designate alternative contact information for the purpose of receiving insurance claim or billing information. The insurance company would be prohibited from disclosing to the policyholder the victim's contact information and the contact information of any person providing health care services to the victim or from mailing any information to any address other than the address provided by the victim. This prohibition would remain in effect until a written request is made by the victim to cancel the withholding of information.

This bill passed the Assembly.

B. Continuing Education Credits

*A.7012-B Hunter / S.3960-A Seward  
Veto 309 of 2018*

This bill would direct the Superintendent of the DFS to grant an insurance producer six continuing education credit hours per biennial period upon certification that the insurance producer is an active member in a statewide professional insurance producer association. This bill provides that in order to qualify as an active member, an insurance producer must certify to the Superintendent that they have attended at least one course, program of instruction or seminar sponsored by the professional insurance producer association that meets the requirements of the Superintendent each year during the previous biennial period.

C. Business Entity Renewal Dates

*A.8484-A Cahill / S.6445-A Seward  
Chapter 402 of the Laws of 2018*

This law provides that the expiration date for producer business entity licenses shall be June 30 of odd numbered years. It permits the Superintendent of the DFS to issue rules and regulations necessary to implement the legislation.

*D. Personal Lines Pre-Licensing Coursework  
A.9527-A Woerner / S.7634-A Marchione  
Chapter 365 of the Laws of 2018*

This bill would permit personal lines pre-licensing coursework to be completed through means of an approved correspondence course, a course offered over the internet or other institution.

*E. Continuing Care Retirement Communities  
A.10486-B Cahill / S.7940-B Seward  
Veto 293 of 2018*

This bill would allow continuing care retirement communities (CCRCs) to adopt a written cybersecurity policy that is designed to protect the confidentiality of nonpublic information and is in compliance with all applicable cybersecurity and privacy laws and protections governing nursing homes, adult care facilities and assisted living residences. It would also require CCRCs to self-certify their cybersecurity policies and file such self-certification with the DFS. Finally, this bill would require the DFS to review the accuracy and reasonableness of the self-certification.

*F. Statutory Authority of the Excess Line Association of New York  
A.10584 Rosenthal D. / S.7626 Seward  
Chapter 488 of 2018*

This law extends the statutory authority of Excess Line Association of New York (ELANY) from July 1, 2019, to July 1, 2024.

*G. Medical Malpractice Insurance Pool Excess Coverage  
A.10613 Cymbrowitz / S.8499 Seward  
Chapter 99 of the Laws of 2018*

This law extends for five years the provisions of Chapter 673 of 2005, clarifying that the Medical Malpractice Insurance Pool is not required to write a secondary layer of excess malpractice coverage, from July 1, 2018, through July 1, 2023.

*H. Special Risk Insurance Exemption  
A.10634 Steck / S.7746-A Seward  
Chapter 438 of 2018*

This law extends from December 31, 2018, to December 31, 2020, the minimum surplus-to-policyholder ratio required of domestic property and casualty insurers and extends the current provision which permits certain qualified insurers to write insurance without the DFS' prior approval of rates and forms, from June 30, 2019, to June 30, 2023.

## ▪ PUBLIC FORUMS ▪

### *“Hearing on the Proposed Plan by CVS Health to Acquire Aetna, Inc.”*

In December of 2017, CVS Health announced plans to acquire Aetna, Inc., a move that could establish one of the largest health insurance mergers in history and a create a conglomerate consisting of a for-profit retail pharmacy, retail health clinics, a pharmacy benefit manager and a health insurance company. The Department of Justice approved the merger on October 10, 2018, however, because the transaction involved the acquisition of a New York domestic insurer by an entity that is not an authorized insurer in New York, approval by the Superintendent of the DFS was required pursuant to existing law. After holding a public hearing in New York City and receiving public comments, the DFS formally approved the transaction on November 26, 2018. The final decision and order contained certain conditions including limiting the increase of health insurance rates and requiring CVS to invest \$40 million in New York State to support insurance education and enrollment activities.

On June 4, 2018, prior to federal and DFS approval, the Assembly held a hearing in Albany, New York, to evaluate the proposed plan by CVS Health to acquire Aetna, Inc. and the potential impacts on the delivery of health care and the health insurance market in New York State. Representatives of CVS and Aetna testified that the combination will increase efficiency, lower costs and offer more consumer products. To achieve these goals, the companies asserted that they planned to create a patient-centric model. However, neither CVS nor Aetna explained to the committee exactly what this model entails, or how it will produce “efficiency,” or how the savings that would purportedly result from integration will necessarily result in lower costs for consumers.

Meanwhile, consumer advocacy groups and medical professionals who testified at the Assembly hearing raised serious concerns about potential harm to consumer choice as a result of reduced competition and the potential for Aetna to steer patients to CVS-owned pharmacies and clinics. Additionally, there was expressed increased concern over an increased potential of violations of patient privacy when a single company, that pays claims, provides goods and services and administers plans has access to the personal data of millions of consumers. Those concerns multiply when that entity has irrefutable commercial interests that would benefit from sharing such information between internal divisions.

## *“Hearing on Title Insurance Regulations in New York State”*

In 2017, as part of proposed rulemaking to clarify and enforce sections of the Insurance law specific to title insurance, the DFS adopted new regulations intended to address ethical issues in the industry and to purportedly reduce costs for consumers when closing a real estate transaction. Since the final adoption of these regulations, members of the title insurance industry brought several concerns to the Committee’s attention over the impact of the rules on everyday business practices. The Assembly Insurance Committee conducted a hearing on January 12, 2018, in Albany to determine whether the regulations would indeed lower consumer costs, while ensuring that the New York title insurance market remains stable, healthy and competitive.

The Committee heard directly from the Superintendent of the Department of Financial Services, who argued that the new regulations provide necessary consumer protections while allowing title insurance companies and agents to market themselves. Consumer protection advocates outlined previous actions by the title industry which they believe were damaging to consumers. The Title Insurance Rate Service Association, Inc., as a statistical agent of DFS, explained the data collection and rate-making process.

The hearing was an opportunity for members in the title insurance industry to explain how the regulations impacted or would impact title and related companies, especially small businesses, many of which already struggle to cover costs. The insurers and agents provided real life examples of the experience of industry operations and the negative effect of these regulations on the fees upon which the industry relies.

There was a consensus among the title insurance companies, title agents, the New York State Land Title Association and the independent title closers, that aspects of regulation or governance were appropriate. There was an acknowledgement that the practices of a few actors went beyond traditional and widely accepted norms. However, there was also uniform concern that the regulations did and would go too far and result in destabilizing the title insurance industry and could result in compromising the certainty of real property titles in New York State.

## ▪ OUTLOOK FOR 2019 ▪

For the 2019 legislative session, the Assembly Insurance Committee will continue its role as New York's advocate of progressive legislation to protect New York's consumers while strengthening the insurance market in this state. Given the change in the composition of the New York State Senate, new possibilities exist to enact measures long-championed by the Assembly that previously failed to pass or be considered in that house. Much of this legislation is pro-consumer and would benefit millions of New Yorkers across the state.

The Committee will continue the fight to ensure that New Yorkers have access to quality affordable health insurance coverage in light of federal actions intended to weaken the ACA and threaten the health insurance coverage of millions of New Yorkers. Recently, the federal Departments of Health and Human Services, Labor and Treasury have proposed a rule that would significantly expand the policy term for limited duration policies offered in the individual health insurance marketplace. This action by the federal government is an attempt to undermine the ACA by expanding the availability of plans that are exempt from essential health benefit requirements and would deny coverage for preexisting conditions as well as impose annual and lifetime benefit limits. While our current state insurance laws already prohibit these plans from being sold in New York, this proposed rule is another reminder that the Legislature needs to remain vigilant at the state level to ensure that the 2.8 million individuals enrolled through the state health insurance marketplace retain their coverage.

The committee will once again support access to mental health and rehabilitation care, access to preventative care for the early detection of costly and devastating illness, examination of the adequacy of coverage for the Lyme disease epidemic, access to fertility treatments and family planning, protections from mid-year formulary changes and innovations in prescription synchronization. These are the progressive policies that the Insurance Committee and the Assembly have supported every year. The coming session presents an opportunity to enact these consumer-centric proposals and protect every New Yorker's right to quality health care.

The committee will also refocus its examination of the auto insurance market. Currently, auto insurers do not need to seek the approval of the DFS in order to increase their rates up to two times within one year, as long as the sum of the increases is not above five percent. The Committee will continue to evaluate whether changes are needed to this authorization to ensure that rate increases are fair and appropriate. Additionally, it has been a number of years since New York's minimum auto insurance coverage amounts were originally enacted in law and the question of whether these minimum coverage amounts adequately protect policyholders and accident victims is one that the Committee has attended to on an ongoing basis. As such, the Committee will continue to advance legislation aimed at evaluating the sufficiency of these coverage amounts. Finally, in order to make sound public policy decisions and properly

evaluate complex auto insurance issues such as fraud, legislators need independent, objective and accurate data. Given this, the Committee will continue to examine approaches that will provide transparency in the realm of auto insurance.

On June 6, 2018, the Workers' Compensation Board proposed amendments to its existing medical fee schedule regulations in order to update the fees paid for medical treatment in workers' compensation claims. As the same fee schedule, by law, is used for reimbursing medical providers under the no-fault automobile insurance system, these proposals would impact claims under auto insurance, as well. Shortly thereafter, the Department of Financial Services adopted emergency regulations to delay the adoption of these proposed changes by no-fault insurers for 18 months. Given that these proposed amendments would impact no-fault claim reimbursement, the Committee will continue to monitor this issue to ensure that there is adequate access to services by accident victims and reimbursement for no-fault claim providers.

The Committee will also be following the long-term care insurance market. At the inception of long-term care insurance, policies were priced using actuarial assumptions that proved to be inaccurate. Nationwide, long-term care insurers have drastically increased policy premiums to cover these underestimated costs. Skyrocketing premiums are forcing many middle-income elderly residents to make the difficult decision either to pay a significantly higher premium, diminish their long planned-upon benefits, or give up their Long-Term Care coverage altogether. New York State needs to continue studying alternatives including the development of new products and incentives and protections for existing subscribers.

The proposed acquisition of Aetna Health Insurance Company by CVS Health recently received approvals from both the United States Department of Justice and the DFS. The acquisition is not just between two major companies, but multiple key stakeholders in the health care industry. CVS is already one of the largest retail pharmacy chains in the United States and the company currently owns Caremark, the second largest pharmacy benefit manager (PBM) in the country. They also operate retail health clinics in many jurisdictions. Aetna is the third-largest health insurance company in America. The magnitude of this restructuring is likely the biggest in health care and perhaps in the history of commerce in our nation. Given the potential for this transaction to fully transform the health care landscape, the Committee will continue to monitor this issue and its impact on the delivery of health care, the health insurance market and consumers in New York State.

**APPENDIX A  
2018 SUMMARY SHEET**

**SUMMARY OF ACTION ON ALL BILLS  
REFERRED TO THE COMMITTEE ON**

**INSURANCE**

**TOTAL NUMBER OF COMMITTEE MEETINGS HELD: 7**

	<u>ASSEMBLY BILLS</u>	<u>SENATE BILLS</u>	<u>TOTAL BILLS</u>
<b>BILLS REPORTED FAVORABLE TO:</b>			
CODES	13	0	13
JUDICIARY	0	0	0
WAYS AND MEANS	0	0	0
RULES	4	0	4
FLOOR	9	0	9
TOTAL	26	0	26
<b>COMMITTEE ACTION</b>			
HELD FOR CONSIDERATION	17	0	17
DEFEATED	0	0	0
ENACTING CLAUSE STRICKEN	8	0	8
<b>REMAINING IN COMMITTEE</b>	264	19	283
<b>BILLS REFERENCE CHANGED TO:</b>			
TOTAL	0	0	0

**APPENDIX B  
CHAPTERS OF 2018**

<b>Bill/ Sponsor</b>	<b>Description</b>	<b>Final Action</b>
A.8933/Morelle S.7288/Seward	Clarifies that a form to be provided to an insured shall advise that uninsured/underinsured motorist (SUM) coverage shall be equal to the level of bodily injury liability coverage unless lower SUM limits are requested or rejected.	Chapter 15
A.10613/Cymbrowitz S.8499/Seward	Extends for five years provisions clarifying that the MMIP is not required to write a secondary layer of excess malpractice coverage.	Chapter 99
A.8176-A/Woerner S.5890-B/Seward	Allows HMOs to offer to certain municipalities a group high-deductible health plan in conjunction with a health savings account.	Chapter 264
A.297-C/Gunther S.2496-B/Hannon	Prohibits life insurers from declining to provide or limiting coverage based upon the status of an insured being a living organ donor.	Chapter 331
A.8683-A/Gottfried S.6882-A/Tedisco	Prohibits health insurers from imposing annual deductibles or coinsurance on prostate cancer screenings.	Chapter 335
A.9527-A/Woerner S.7634-A/Marchione	Allows personal lines pre-licensing coursework electronically.	Chapter 365
A.11116-A/Cahill S.8978-A/Seward	Authorizes principle-based reserving for individual and group life insurance policies and annuity contracts.	Chapter 394
A.8484-A/Cahill S.6445-A/Seward	Combines insurance producer business entity license expiration dates into one common date.	Chapter 402
A.10634/Steck S.7746-A/Seward	Relates to extending authorization for certain exemptions from filing requirements.	Chapter 438
A.3694-C/Gunther S.1156-C/Ortt	Relates to establishing the mental health and substance parity report act.	Chapter 455
A.11014/Cook S.8995/Seward	Extends provisions of law relating to catastrophic or reinsurance coverage for small groups.	Chapter 457
A.808/Perry S.2746/Golden	Relates to the use of local cost data when adjusting claims.	Chapter 458
A.11043/Stern S.8924/Seward	Relates to insurance coverage for enteral formula.	Chapter 469
A.10584/Rosenthal, D. S.7626/Seward	Extends the effectiveness of provisions of law establishing an excess line advisory organization until 2024.	Chapter 488

**APPENDIX C**  
**BILLS THAT WERE ACTED UPON IN 2018**

Bill/ Sponsor	Description	Action
A.297-C/Gunther S.2496-B/Hannon	Prohibits life insurers from declining to provide or limit coverage based upon the status of an insured being a living organ donor.	Chapter 331
A.492/Stirpe S.2099/Ritchie	Would require health insurers to provide coverage for at least 90 days of inpatient rehabilitation services for substance abuse disorders upon the prescription of a doctor.	Reported to Ways & Means
A.808/Perry S.2746/Golden	Establishes that all independent adjusters that are issued a temporary permit to adjust claims within NYS must utilize cost data that is regionally appropriate.	Chapter 458
A.1129/Hunter S.3568/Hannon	Would expand the current prior authorization exception for surgical and invasive procedures to include concurrent symptoms and side effects.	Passed Assembly
A.1228/Weinstein S.5510/Funke	Would require significant disclosure of and public access to claims, financial, and compensation data from auto insurers.	Advanced to Third Reading
A.1568 /Skoufis S.1476/Carlucci	Would prevent delays in the processing of insurance claims by establishing claim investigation and settlement standards for insurance companies to follow in the event of a disaster.	Advanced to Third Reading
A.1643-A/Skoufis S.7246/Brooks	Would create a task force to examine and report on how insurers respond to disasters.	Passed Assembly
A.1683-B/Hevesi S.2526-B/Seward	Would permit insurers to deliver insurance notices and documents electronically with the consent of the policyholder.	Veto Memo 271
A.2163/Bronson S.3952/Young	Would require blanket health insurance policies to provide coverage for outpatient treatment by mental health practitioners.	Passed Assembly
A.2317-C/Peoples-Stokes S.5022-C/Serino	Would protect consumers from the adverse effects of mid-year formulary changes.	Passed Assembly
A.2336/Thiele S.2985/LaValle	Would provide rate reductions to liability insurance policies upon the completion of a boating safety course or an advanced boating safety course.	Passed Assembly
A.2646-A/Simotas S.3148-A/Savino	Would require health insurers to provide coverage for in-vitro fertilization and other fertility preservation treatments.	Passed Assembly
A.3090/Cymbrowitz S.4128/Larkin	Would sunset the section of law that allows for flex rating for non-commercial auto policies on June 30, 2020.	Advanced to Third Reading

A.3119/Joyner S.1743/Golden	Would clarify that a health insurer cannot require an insured to use a mail order pharmacy if the local retail pharmacy agrees to the same reimbursement amount as the mail order pharmacies.	Passed Assembly
A.3694-C/Gunther S.1156-C/Ortt	Requires the DFS to issue a report detailing state-regulated health insurer compliance with federal and state mental health and substance use disorder parity laws.	Chapter 455
A.3787/Cahill S.5883/Seward	Would require the DFS to conduct a study of the current mandatory minimum coverage amounts and coverage options for private passenger auto insurance and to assess the impact on premiums of increasing such amounts.	Passed Assembly
A.4060/Cymbrowitz S.5396/Robach	Would allow domestic violence victims covered by an insurance policy where another person is the policyholder to designate alternative contact information for the purpose of receiving insurance claim or billing information.	Passed Assembly
A.4306-B/Quart S.5196-B/Lanza	Would allow patients to synchronize the refills of their prescriptions.	Passed Assembly
A.4863-A/Barrett No Same As	Would require the DFS and DOH to study and report upon the adequacy of insurance coverage for the treatment of Lyme disease and other tick-borne related diseases.	Passed Assembly
A.4899-C/Rosenthal L. S.7905-A/Griffo	Would require health insurers to provide coverage for an initial or renewal prescription of substance use disorder medications without prior authorization.	Advanced to Third Reading
A.6396-C/Rozic S. 6045-C/Marchione	Would clarify that health insurers are required to provide coverage for the treatment of eating disorders.	Passed Assembly
A.6665-A/Pheffer Amato S.2062-A/LaValle	Would require the Superintendent of the DFS to establish uniform trigger standards for hurricane windstorm deductibles.	Passed Assembly
A.6731-C/Jean-Pierre S.6586-A/Boyle	Would require health insurers to provide coverage for an annual mammogram for covered persons aged thirty-five through thirty-nine upon the recommendation of a physician.	Passed Assembly
A.7012-B/Hunter S.3960-A/Seward	Would permit insurance producers to receive six continuing education credits for being active members of a professional insurance producer association.	Veto Memo 309
A.7108/Gottfried S.7871/Hannon	Would require health insurers to issue utilization review determinations for nursing home care within twenty-four hours of receipt of the request for services.	Passed Assembly
A.7153-A/O'Donnell S.43-A/Hoylman	Would require health insurers to provide coverage for the cost of medications for the prevention of HIV.	Advanced to Third Reading

A.7786/Ryan No Same As	Would prohibit insurers from excluding coverage for losses caused by exposure to lead paint.	Passed Assembly
A.7979-A/Quart S.6674/Amedore	Would require health insurers to provide coverage for certain medications without prior authorization for the detoxification or maintenance treatment of a substance use disorder.	Passed Assembly
A.8176-A/Woerner S.5890-B/Seward	Allows HMOs to offer to certain municipalities a group high-deductible health plan in conjunction with a health savings account.	Chapter 264
A.8484-A/Cahill S.6445-A/Seward	Combines insurance producer business entity license expiration dates into one common date.	Chapter 402
A.8683-A/Gottfried S.6882-A/Tedisco	Would prohibit health insurers from imposing annual deductibles or coinsurance on prostate cancer screenings.	Chapter 335
A.8933/Morelle S.7288/Seward	Clarifies that a form to be provided to an insured shall advise that uninsured/underinsured motorist (SUM) coverage shall be equal to the level of bodily injury liability coverage unless lower SUM limits are requested or rejected.	Chapter 15
A.9527-A/Woerner S.7634-A/Marchione	Allows personal lines pre-licensing coursework electronically.	Chapter 365
A.9957/Cahill No Same As	Would require health insurance policies to provide coverage for contraceptives and prohibit restrictions of such coverage.	Passed Assembly
A.10211/Hunter S.7393/Seward	Would increase the time period in which a life insurer is required to complete a lost policy search.	Reported to Rules
A.10486-B/Cahill S.7940-B/Seward	Would allow CCRCs to self-certify a cybersecurity policy and file such self-certification with the DFS.	Veto Memo 293
A.10584/Rosenthal D. S.7626/Seward	Extends the statutory authority of Excess Line Association of New York (ELANY).	Chapter 488
A.10613/Cymbrowitz S.8499/Seward	Extends for five years provisions clarifying that the MMIP is not required to write a secondary layer of excess malpractice coverage.	Chapter 99
A.10634/Steck S.7746-A/Seward	Extends authorization for certain exemptions from filing requirements for certain specialty risk insurers.	Chapter 438
A.11014/Cook S.8995/Seward	Extends for five years, provisions allowing for the sale of stop-loss coverage to certain small groups and exempting certain municipal corporations from small group rating standards.	Chapter 457
A.11043/Stern S.8924/Seward	Requires health insurers to provide coverage for medically necessary enteral formulas.	Chapter 469
A.11116-A/Cahill	Authorizes principle-based reserving for individual	



**APPENDIX D  
BILLS THAT WERE VETOED IN 2018**

<b>Bill / Sponsor</b>	<b>Description</b>	<b>Final Action</b>
A.1683-B/Hevesi S.2526-B/Seward	Would permit insurers to deliver insurance notices and documents electronically with the consent of the policyholder.	Veto Memo 271
A.10486-B/Cahill S.7940-B/Seward	Would allow CCRCs to self-certify a cybersecurity policy and file such self-certification with the DFS.	Veto Memo 293
A.7012-B/Hunter S.3960-A/Seward	Would permit insurance producers to receive six continuing education credits for being active members of a professional insurance producer association.	Veto Memo 309

**- END OF REPORT -**