



New York State Assembly
2011 ANNUAL REPORT

committee on
INSURANCE

Joseph D. Morelle
Chairman



Sheldon Silver
Speaker



JOSEPH D. MORELLE
Assemblyman 132nd District
Monroe County

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHAIRMAN
Committee on Insurance

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

December 15, 2011

*The Honorable Sheldon Silver
Speaker of the Assembly
Room 932 – Legislative Office Building
Albany, New York 12248*

Dear Speaker Silver:

As Chairman of the Assembly Standing Committee on Insurance I am pleased to submit the Committee's Annual Report for 2011, a landmark year for insurance reform in New York State.

The 2011 legislative session brought noteworthy action by the Legislature in the areas of health insurance benefits and consumer protections. The Committee secured the enactment of historic legislation requiring coverage for autism treatment and screening, as well as coverage for orally-administered chemotherapy treatments. We also took action to ensure consumer choice by requiring insurance policies to provide equal benefits coverage for prescription drugs as well as a similar provision requiring coverage for prescription fertility treatments whether purchased at a mail-order pharmacy or a retail pharmacy.

I am proud to report that the Committee advanced legislation, which was later enacted into law, to implement certain provisions of the landmark federal Patient Protection and Affordable Care Act (ACA) in New York State. Additionally, with the help of my colleagues, we were successful in passing a bill that would have taken the first steps toward making health insurance an affordable option for millions of New Yorkers by establishing a key component of the ACA, the New York State Insurance Benefit Exchange.

In 2012, the Committee will continue to work toward a solution for making health insurance an attainable benefit for more New Yorkers through its continued focus on the New York Health Exchange. The Committee will of course keep apprised of any new information provided by the federal government.

Also, we will turn our attention to the challenges facing the industry's no-fault sector and work toward balanced legislation to ensure that the State's insurance industry remains viable and stable. In addition, the Committee has made it a priority to help New Yorkers recover and rebound from the damages caused by this past year's tropical storm.

Finally, I would like to thank you for your leadership and I want to thank the Insurance Committee members and staff for their support and contribution to the efforts of the 2011 session.

Warmest personal regards,

A handwritten signature in black ink that reads "Joseph D. Morelle". The signature is written in a cursive style with a long, sweeping tail on the final letter.

*Joseph D. Morelle
Chairman
New York State Assembly
Standing Committee on Insurance*

NEW YORK STATE ASSEMBLY

STANDING COMMITTEE ON INSURANCE

Joseph D. Morelle, Chair

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▪ HEALTH INSURANCE ▪

A. Coverage for Autism Spectrum Disorder

A.6305-A and A.8512(Morelle) / S.4005-A and S.5845(Fuschillo)

Chapter 595 and 596 of the Laws of 2011

"Autism spectrum disorder" is a newly designated category for the various developmental disabilities that cause problems with social interaction and communication. According to the latest version of the *Diagnostic and Statistical Manual of Mental Disorders*, a continually revised gold standard reference manual published by the American Psychiatric Association, the range of conditions currently included in the category are: autistic disorder; Asperger syndrome, and; Pervasive developmental disorders not otherwise classified (atypical autism). In 2010, the Centers for Disease Control reported that the number of children diagnosed with an autism spectrum disorder (ASD) average 1 in 110, nationwide. While the New York State Early Intervention Program (EIP) ensures treatment for children under the age of three years, at no cost to the family, these families do not have access to reimbursement for necessary treatments in the commercial insurance markets once their children are no longer eligible for coverage under the EIP.

Chapters 595 and 596 of the Laws of 2011 will expand health insurance coverage for the screening, diagnosis, and treatment of ASD for HMOs, individual and group health insurance policies. In addition to strengthening existing provisions, the chapters require insurance plans to cover the screening, diagnosis and treatment of ASD with cost-sharing equal to other covered benefits including treatment provided on a supplemental basis outside of the educational setting if deemed to be medically necessary.

Covered treatment for ASD now includes behavioral health treatment including applied behavioral analysis up to \$45,000 per year per covered person; psychological care, psychiatric care, and medical care when provided by a licensed health care provider; and therapeutic care including habilitative and non-restorative care, and pharmacy care provided the policy provides coverage for such benefits.

Coverage for such services is subject to utilization review and external appeals as well as case management and other managed care provisions. Such coverage provided on a supplemental basis is prohibited from being affected by an individualized family service plan, an individual education plan, or an individualized service plan.

B. Health Insurance Coverage for Domestic Partners
A.2807 (O'Donnell) / No Same As

This bill would allow employer groups and individuals to request that their health plan provide benefits to qualified domestic partners and would require health insurers to make such coverage available. While current law and regulations permit insurers and HMOs to offer health insurance coverage for domestic partners, many insurers and health plans refuse to provide domestic partner coverage to individuals and smaller employer groups. This bill would require insurers to honor a request for domestic partner coverage by an employer or individual and also includes safeguards to prevent abuses by requiring qualification standards for domestic partners and prohibiting coverage of more than one domestic partner simultaneously.

This bill passed the Assembly.

C. Surgical Nurse First Assistant Reimbursement
A.178 (Cahill) / S.4138 (Little)

This bill would require health insurance policies to provide reimbursement for services provided by a registered nurse first assistant when acting in the capacity of a non-physician surgical first assistant. Additional provisions would require the registered nurse first assistant to be certified in operating room nursing and be employed by a physician who bills for services. Assuming the policy otherwise provides for such services, those services would be required to be within the scope of practice of a non-physician surgical first assistant. Nothing would prevent an insurer from requiring services be provided through a network of participating providers.

This bill was reported and referred to the Assembly Ways & Means Committee.

D. Coverage for Certain Prescription Eye Drop Refills
A.1219 (Bing) / S.1430 (Saland)
Chapter 589 of the Laws of 2011

Often, prescription eye-drop solution may run out before the end of the prescription period leaving many individuals, especially senior citizens who may have glaucoma or other degenerative eye diseases, without coverage for refills. Chapter 589 of the Laws of 2011 will require coverage for refills of prescription eye drops before the expiration of the prescribed period.

E. Coverage for Baby Formula

A.4492 (Meng) / S.3270 (Hassell-Thompson)

Advanced baby formulas are often prescribed by physicians as part of a treatment regimen for Crohn's disease, gastroesophageal reflux disease, severe food allergies and other conditions that, if left untreated, could lead to malnourishment, mental retardation or death. These formulas are costly and can place an undue burden on parents' ability to adequately provide care for their infant children. This bill would require that coverage by any individual, group or HMO policy that provides coverage for prescription drugs must provide at least \$3000 annual coverage for the cost of prescribed infant and baby formulas that are proven effective as a disease-specific regimen.

This bill passed the Assembly.

F. Early Intervention

A.384-B (Paulin) / S.4013-C (McDonald)

Chapter 406 of the Laws of 2011

The New York State Early Intervention Program (EIP) is part of the national Early Intervention Program for infants and toddlers with disabilities and their families. First created by Congress in 1986 under the Individuals with Disabilities Education Act (IDEA), the EIP is administered by the New York State Department of Health through the Bureau of Early Intervention. In New York State, the Early Intervention Program is established by Article 25 of the Public Health Law and has been in effect since July 1, 1993.

According to the EIP, in order to be eligible for services children must be younger than three years of age and diagnosed with a disability or developmental delay in one or more of the following areas of development: physical, cognitive, communication, social-emotional, and/or adaptive. Services provided through the EIP by local service providers contracted through the municipality, are first billed to the insurance carrier if the individual has private health coverage and then billed to the respective municipality and reimbursed by the state. However, the municipality does not always know what services, if any, are covered under an individual's private insurance and, as a result, facilitating reimbursement from private carriers can be burdensome and may result in lack of payment.

Chapter 406 of the Laws of 2011 requires insurers to provide municipalities with information on the benefits available to a child under their parents' policy upon the insurer's receipt of a written request and notice from the municipality of a subrogation of rights under the policy from the parent. Parents must provide the municipality with

information on any insurance plan if their eligible child has coverage, as well as a written referral from a primary care provider to document the medical necessity for early intervention services. Claims for EIP services shall also be submitted by the municipality within one hundred fifty days from the date of service.

G. Reimbursement for Ambulance Services
A.4093-B (Morelle) / S.2714-B (Seward)

In New York State, ambulance providers are mandatory first-responders. These emergency responders are often unaware if an individual has insurance coverage for emergency transport services or if they have the ability to pay out-of-pocket. Ambulance providers may inquire into the extent of insurance coverage at the time of service, but that does not guarantee payment. When coverage does exist, the insurance carrier is only obligated to reimburse the ambulance provider directly if the provider participates in the insurer's network. Otherwise, the payment is sent directly to the covered person and the ambulance provider must then seek reimbursement from that individual, who may or may not remit the payment to the ambulance provider.

A.4093-B seeks to remedy this system of payment by requiring that payments made to non-participating or non-preferred providers of ambulance services by an HMO, individual or group insurer be submitted directly to the provider or jointly to both the provider and the insured. Such payments would be at the usual and customary rates and shall not be unreasonable or excessive and payment would be contingent upon the insurer receiving a notice of the written assignment of benefits.

This bill was reported to the floor.

H. Mail Order Pharmacy Coverage
A.5502-B (Heastie) / S.3510-B (Maziarz)
Chapter 597 of the Laws of 2011

In an effort to reduce costs, health insurers may require prescriptions to be filled by mail order pharmacies. While this may be an effective cost-control in many instances, certain prescriptions are needed immediately and the individual cannot wait for mail order delivery. Also, many individuals have cultivated relationships with their local pharmacist and use these professionals as a resource for information about their prescriptions and directions for use. These individuals are at an unfair disadvantage when their policies require the use of mail order pharmacies with respect to drug efficacy and access to knowledgeable professionals.

To address this issue, Chapter 597 of the Laws of 2011 permits 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. This chapter applies to policies issued by private insurers, not-for-profits, and HMOs, though not policies as the result of a collective bargaining agreement.

I. Oral Chemotherapy

A.6233-B (Lopez V) / S.3988-B (Lanza)

Chapter 559 of the Laws of 2011

Oral chemotherapy medications may be prescribed as part of a complex cancer treatment, as an alternative cancer treatment program, when all other cancer treatments have failed, or, in some cases, the only cancer treatment option. It is standard practice for traditional intravenous chemotherapy to be covered by health insurance as a medical benefit while oral medication is covered as a pharmacy benefit. As a result, oral medications have more expensive co-payments than intravenous chemotherapy.

Chapter 559 of the Laws of 2011 requires any policy that already provides coverage for prescription drugs and intravenous cancer chemotherapy treatment to provide coverage for a prescribed oral chemotherapy medication at the lower cost-sharing of either the oral or intravenous chemotherapy treatment. Insurers are prohibited from increasing cost sharing for intravenous or injected anticancer medication in order to become compliant with this chapter, varying terms of the policy to avoid compliance, creating incentives to encourage an insured to accept less than the minimum protections available, or penalizing, reducing or limiting compensation of a health care practitioner for recommending or providing care to a covered person including oral chemotherapy.

J. Coverage for Prescription Fertility Drugs

A.7779 (Silver) / S.5799 (Skelos)

Chapter 598 of the Laws of 2011

In an effort to streamline the delivery of prescription drugs while maintaining the affordability of coverage, many health insurance policies require or incentivize the use of a mail order pharmacy. Nevertheless, the effectiveness of many fertility drugs relies on a strict treatment regimen that is often difficult or impossible to maintain when using a mail order pharmacy. Shipping and processing delays may impair the ability of these drugs to produce the desired effect, a consequence that is costly to both policyholders and insurance companies. This chapter ensures that individuals with prescription drug coverage benefits have an equal opportunity to purchase fertility drugs from either a mail order or non-mail order pharmacy without any additional cost-sharing.

*K. Coverage for Sole Proprietors
A.8133 (Latimer) / S.5561 (Seward)
Chapter 183 of the Laws of 2011*

In New York, insurers that issue coverage to an association group must also issue the same coverage to individual proprietors that purchase coverage through the association group. Current law permits insurers to charge proprietors up to 115% of the group rate. This cap is necessary to ensure that our individual proprietors are afforded premium rates that are similar to those charged to other groups. By extending this cap, this chapter ensures that sole proprietors continue to have access to affordable health insurance.

*L. New York State Health Insurance Exchange
A.8514 (Morelle) / S.5849 (Seward)*

The federal Patient Protection and Affordable Care Act (ACA) was enacted on March 23rd, 2010. One of the key features enacted by the ACA is the requirement for state-based health insurance exchange that offers a variety of health plans to individuals and small businesses. While states may participate in a federally-operated exchange, they were also given the option to establish their own. This bill would create a state-wide Health Insurance Exchange, taking into consideration New York's unique and robust health care reimbursement system.

New York's Health Insurance Exchange would be established as a public benefit corporation comprised of a board of directors. If enacted into law, the Exchange would dictate that this board of directors, its officers and employees would have to adhere to a strict conflict of interest provision that would prohibit them from having a financial interest in the operations of the Exchange. Further, this bill establishes standards for business and professional activities.

The Exchange would be charged with the following responsibilities: determining eligibility of qualified individuals and small businesses, making qualified health and dental plans available to individuals and small businesses, presenting comparative health plan information to consumers; ensuring compliance with federal standards, establishing a navigator grant program in order to provide funds to organizations to conduct public education and awareness programs, enrolling those eligible in public health coverage, and any other duties required by the Secretary of Health and Human Services.

The bill would establish Regional Advisory Committees that would represent the interests of health care consumers, small businesses, the medical community and insurers, who would provide guidance to the Exchange. The Exchange would be

required to conduct studies on various aspects of operating the exchange, to necessary policy decisions not made within the bill, as well as to provide recommendations that would ensure the Exchange would be self-sustaining.

This bill passed the Assembly.

*M. Implementation of the Patient Protection and Affordable Care Act
A.8460 (Stevenson) / S.5800 (Seward)
Chapter 219 of the Laws of 2011*

The federal Patient Protection and Affordable Care Act (ACA) was signed by President Obama on March 23rd, 2010. Among the many provisions the law contains, there were many important policyholder rights and protections that went into effect six months following enactment. Though these rights and protections are already the law of the United States and have been the law for over nine months, this chapter ensures that New York State Law is compliant and consistent with the ACA.

Under the provisions of Chapter 219 of the Laws of 2011, a dependent is eligible for coverage under their parents' health insurance policy until the age of 26, coverage for emergency care will no longer require the need for pre-authorization, covered individuals can choose their primary care providers, lifetime limits on essential benefits are prohibited, insurers are prohibited from denying coverage to an individual under the age of 19 due to a pre-existing conditions, charges for an external appeal will be limited to \$25 per appeal, per covered person, and a covered person will have up to 4 months to appeal a denial of a claim.

Chapter 219 of the Laws of 2011 also prohibits co-payments or deductibles from being charged for preventative care including breast cancer screenings, cervical cancer screenings, necessary immunizations, bone marrow density measurements, well-child visits, OB-GYN services, and pre-natal and post-natal care.

▪ PROPERTY / CASUALTY INSURANCE ▪

A. Homeowners Insurance Deductibles: Trigger Standards

A.3283 (Weisenberg) / S.3387 (Lavalley)

Though windstorm damage is a frequent occurrence in many areas of the state, the insurance deductible triggers for these claims are often inconsistent between various types of policies and can be confusing to the detriment of consumers who rely on this coverage to insulate them from the financial burden of a damaged home. This bill would direct the Superintendent of Insurance to establish uniform standards for these deductible triggers.

This bill passed the Assembly.

B. Prohibition of Discrimination Based on Inquiries

A.1921 (Peoples-Stokes) / No Same As

This bill would prohibit insurers from reporting inquiries about coverage to any insurance support organization or company that maintains insurance claim history or data. The bill would also prohibit insurers from refusing to issue or renew a policy, charging a higher premium, or assigning an insured to a more expensive affiliate based on policy inquiries to the current or previous insurer, or based on insurer reports to any insurance support organization or company that maintains a claims history database.

This bill passed the Assembly.

C. Insurance Required for Public Vessels

A.6699 (Schimminger) / No Same As

Boat outings on public vessels are an increasingly popular New York tourist attraction. It is important that such vessels are adequately insured. This bill would provide that no certificate of inspection or temporary permit shall be issued unless the owner of the public vessel produces proof of marine protection and liability insurance to the inspector. This type of coverage, which may take the form of a surety bond, may be purchased in the commercial market or the excess lines market as long as the requirements for such coverage are satisfied and the bonds are equal to at least one million dollars per occurrence.

This bill was reported and referred to the Assembly Codes Committee.

D. Reimbursement for Lost Property

A.4601 (Englebright) / S.4689 (Flanagan)

This bill is intended to protect individuals who file legitimate claims for lost property and incidentally recover the property after the claim has been paid. Despite reporting the recovered property to the insurer and returning the amount of the claim, the claim may be documented and can be considered in the formulation of higher premium rates. This causes a disincentive to report the recovery or return the claim payout which ultimately results in higher premiums for everyone else. This bill would prevent insurers from maintaining the original claims record in the event the aforementioned events occur.

This bill was reported and referred to the Assembly Rules Committee.

E. Discrimination Against Dog Breeds

A.3507-A (Glick) / No Same As

In some instances, insurers will refuse to issue or renew a homeowners' insurance policy or will increase premiums due to the breed of any domesticated dogs living in the home. This bill would prohibit insurers from discriminating against homeowners' insurance policies with respect to issuance, renewal or premiums based on the breed of dog if such breed has not been designated as "dangerous," pursuant to the Agriculture and Markets Law.

This bill was reported and referred to the Assembly Codes Committee.

F. Auto and Property / Casualty Policy Extensions

A.7430 (Morelle) / S.4426 (Seward)

Chapter 102 of the Laws of 2011

Chapter 102 of the Laws of 2011 extends for three years numerous insurance provisions set to expire with respect to automobile and other property/casualty rate requirements including: the authority for the Superintendent to require the New York Property Insurance Underwriting Association to write property/casualty insurance in underserved markets, prior approval of "for-hire" auto policies such as commercial and school buses, requirements for auto insurers to create a plan for refunding excess profits to policyholders, the authority for the Superintendent to waive the 90/30 day approval/filing requirement for policies or rates that are not subject to prior approval, the prohibition on anti-competitive behavior including monopolization, collusion and anti-competitive agreements, and the requirement that insurers annually submit a report to the Superintendent concerning profitability and rates of return.

G. Insurance Policy Form Approval Flexibility
A.8464 (Morelle) / S.5811 (Seward)
Chapter 490 of the Laws of 2011

There are businesses in New York State that have unique insurance needs and may seek insurance policies in other states, countries or in the un-regulated excess-lines market, largely because forms for these unique insurance policies take a long time for the New York Department of Financial Services to review and approve. Chapter 490 of the Laws of 2011 would expand the Superintendent's authority to grant special licenses for exemption from approval requirements with respect to policy forms for certain lines of commercial insurance placed by special risk managers. The policy form must be filed with the Superintendent, who has the authority to recall the form if he or she determines that the policy form is contrary to public policy. This Chapter will sunset in two years.

▪ AUTO INSURANCE ▪

A. Coverage for Vehicles Used for Volunteer Firefighting
A.1007 (Weisenberg) / S.928 (Marcellino)

This bill would prohibit insurers from denying auto coverage or renewal of auto coverage for an individually-owned vehicle based solely upon that vehicle being used for volunteer firefighting.

This bill passed the Assembly.

B. Auto Claim Disputes
A.2744 (Perry) / No Same-as

This bill would prohibit insurance companies from canceling or refusing to renew automobile policies solely due to a pending dispute or complaint against the carrier.

This bill was reported and referred to the Assembly Rules Committee.

C. Retroactive Cancellation of Spurious Auto Policies
A.6346-C (Heastie) / S.4507-B (Golden)

Auto insurance premiums have risen dramatically in the past 10 years due, in part, to the rising incidences of insurance fraud. Millions of dollars in claims have been paid to individuals who fraudulently procure a policy then stage an automobile accident to reap the claims. In an attempt to ferret out the fraudulent policies, this bill would permit insurers to retroactively cancel auto insurance policies within the first 60 days

in the event of illegitimate payment due to non-sufficient funds, the non-existence of a bank account, or the unauthorized use of the account. To protect individuals who are harmed during a staged accident but were not participating in any fraudulent activity, there will be recourse offered by his or her policy or by the Motor Vehicle Accident Indemnification Corporation.

This bill was reported and referred to the Assembly Codes Committee.

D. Multiple Rating Plans

A.6881-A (Morelle) / S.2705-A (Seward)

Chapter 457 of the Laws of 2011

Personal lines such as auto insurance and homeowners are big businesses and highly competitive. One of the main areas of competition is price, especially for low-risk drivers and homeowners. Domestic insurers, however, are at a disadvantage to national carriers with respect to price competition because insurers are only allowed to have a single rating plan in place at any one time. National carriers often get around this requirement by creating a new subsidiary with a different rating plan which smaller domestic carriers cannot afford to do.

Chapter 457 of the Laws of 2011 seeks to remove this unfair advantage by authorizing the Superintendent of Financial Services to permit and approve multiple rating plans for insurance carriers provided that each rating program applies only to new policies on or after the effective date of the rating program but prior to the effective date of subsequently approved rating programs.

▪ MISCELLANEOUS ▪

E. Claims Denial Quotas

A.2204-A (Zebrowski) / No Same As

This bill would prohibit and penalize any insurer from establishing a quota for the denial of claims or cancellation of insurance policies. Insurance companies have the right to deny expensive claims or cancel unprofitable policies, in an effort to keep the cost of insurance affordable. Denials and cancellations must be legal and based on the merits of a claim or policy and not on the desire to satisfy an arbitrary and often unreasonable quota.

This bill was reported and referred to the Assembly Third Reading Calendar.

*F. Qualified Financial Contracts
A.6603-A (Morelle) / S.2713-A (Seward)
Chapter 600 of the Laws of 2011*

Chapter 600 of the Laws of 2011 removes burdens placed on insurers due to antiquated proceedings with respect to qualified financial transactions during insolvencies by: providing for the enforcement, netting and settlement of qualified financial transactions between counterparties in accordance with their contractual obligations in the event of an insolvency; permitting the Superintendent to facilitate the accelerated settlement of such qualified financial contracts in his or her capacity prior to such proceeding; and restricting such accelerated settlement for secured qualified financial contracts supported separate and distinct collateral without secondary claims by other creditors.

*G. State Insurance Fund Audits
A.7908 (Morelle) / S.5540 (Seward)
Chapter 445 of the Laws of 2011*

According to the Government Accounting Standards Board, the State Insurance Fund (SIF) is a component unit of the State of New York reporting entity and is required to present its audited financial information in the New York State Comprehensive Annual Financial Report (CAFR). This entity is not currently required by statute to file audited financial reports with the Office of the State Comptroller (OSC). Chapter 445 of the Laws of 2011 requires SIF to annually file their financial statements audited by an independent auditor with OSC.

*H. Health Insurance Fraud
A.8365 (Weprin) / S.5562 (Seward)
Chapter 211 of the Laws of 2011*

Chapter 221 of the Laws of 2011 would combine the definitions of "fraudulent health care insurance act" with the definition of "fraudulent insurance act" for the purposes of applying consistent penalties to such fraudulent health care insurance acts to those currently applied to fraudulent insurance acts, in general.

▪ PUBLIC FORUMS ▪

Bond Insurance

On February 16, 2011 the Committee held a public hearing on Financial Guaranty Insurance and Representations and Warranties in Securitized Debt Transactions. The purpose of this hearing was to discuss representations and warranties made by mortgage originators on residential mortgage backed securities (RMBS) and other securitized debt transactions and to investigate whether legislation is needed to ensure or enhance protections of third parties who insured or have direct exposure to such securities.

The recent financial crisis resulting from the collapse of the housing bubble exposed a number of issues within the securitization process of the financial system. Among the issues uncovered were representations and warranties made by mortgage originators and other financial entities with respect to insurance agreements with monolines (financial guaranty insurers). In many financial transactions in a typical securitization process, loans or pools of loans, were either directly or indirectly (through special purpose vehicles) sold that included representations and warranties for the underlying loan attributes. Often times these representations and warranties were subsequently extended to insurance agreements made with monolines.

When the housing market collapsed, monolines incurred massive financial obligations for the loans they insured. As a result, the monolines suffered significant downgrades by rating agencies and many have ceased writing new business and continue to struggle to maintain solvency. In light of these events, there are ongoing investigations and lawsuits addressing potential breaches of agreements made between financial entities and monolines during many of these financial transactions.

The Committee heard from seven witnesses: MBIA Inc., Assured Guaranty Ltd., the New York Bankers Association, the American Securitization Forum, Author/Attorney Talcott J. Franklin, SIFMA, and Attorney George Zelcs. These witnesses shed light on the nature of these representations and warranties, explored the legal and financial impact these misrepresentations had on monolines and other third parties, and evaluated what is being done by the mortgage originators and other financial entities, their parent companies, investors and monolines to address these issues. The Committee will continue to monitor this issue in conjunction with the Department of Financial Services, the Attorney General, and all other relevant regulatory bodies.

Department of Financial Services

In the enacted budget for SFY 2011-12, the Legislature approved a proposal to merge the New York State Department of Insurance and the New York State Banking Department into a single regulatory agency. On October 3, 2011, the two departments were merged to create the new Department of Financial Services (DFS). Given the sizeable efforts that were undertaken to effectuate this merger, the Assembly Standing Committees on Insurance, Banks and Oversight, Analysis and Investigations held a joint public hearing on December 1, 2011 to obtain a status update on the transition. Attendees included Benjamin M. Lawsky, Superintendent of DFS; Jason Carballo, President of Financial Service Centers of New York, and; Saima Akhtar, representing the Empire Justice Center.

Superintendent Lawsky presented testimony on the Department's mission to bridge the previous gaps in New York's regulation of various financial services and help restore consumer confidence in the financial sector. In doing so, the Department will seek to encourage economic growth and attract more jobs to the state. Additionally, the Superintendent provided the committees with an overview of the new organizational structure that has been employed within the Department, notably, the inclusion of three new divisions which combine units from the former Insurance and Banking Departments: Financial Frauds and Consumer Protection Division; Real Estate and Finance Division, and; a Capital Markets Division. The Superintendent's testimony included a status update on the Department's activities since opening in October. There was focus on new reforms that have been implemented to correct business practices in the mortgage industry as well as their efforts to apply the recently enacted prior approval law to prevent uncontrolled increases in health insurance premiums.

Other witnesses presenting testimony addressed the importance of strong regulation of the State's banking service providers as a means of protecting consumers from adverse and unfair lending practices.

▪ OUTLOOK FOR 2012 ▪

In 2012, the Committee will continue its obligation to propose and review legislation that will strengthen the insurance market in this state by increasing consumer protections and allowing more products to be made available. Our focus will include, but not be limited to:

No Fault Insurance

No-fault insurance fraud is a serious issue that the Assembly Insurance Committee approached in 2010 and 2011. Stimulated by a productive and meaningful round table meeting on the subject in 2010, A.3787 (Morelle), the Automobile Fraud Prevention Act of 2011 was created and reintroduced in 2011. The committee will continue to work to develop effective policy addressing these issues and protecting consumers against fraud and abuse in the no-fault system.

Title Insurance

Individuals buying, selling, or refinancing their homes or other real estate generally purchase title insurance guaranteeing clear ownership by the seller of a property that is being sold and insuring buyers and lenders against any claims that may exist on the property. Effective regulation of the title insurance industry protects consumers and ensures the use of fair and equitable business practices. While title insurance corporations are currently regulated under the Insurance Law, title insurance agents are not required to be licensed as insurance agents under the Insurance Law. Our committee will be looking at an array of suggestions to shore up oversight in 2012.

Patient Protection and Affordable Care Act

In New York, the lack of available and affordable health insurance is a serious issue that affects many across the state. This past year the Patient Protection and Affordable Care Act (PPACA) was passed at the federal level with the intent to provide major health care reform to Americans nationwide. The PPACA reforms certain aspects of both private and public health insurance programs, expands insurance access to 30 million more Americans, and increases coverage of pre-existing conditions. The Committee will be focusing on this issue as it will provide insurance coverage to more New Yorkers.

Flood Coverage

In August, New York State was hit by a tropical storm that caused damage from New York City to the North Country. In particular, the storm resulted in floods that overwhelmed much of this area. As a result, many New Yorkers were reliant upon their catastrophe and flood insurance to cover damages if such coverage was in place. For many people, their insurance coverage simply wasn't enough to cover the resulting costs. This committee will review whether current flood insurance policies provide adequate coverage and what can be done to better protect New Yorkers from any unforeseen catastrophic natural events in the future.

APPENDIX A
2011 SUMMARY SHEET

Summary of Action on all bills
referred to the Insurance Committee

| | <u>ASSEMBLY BILLS</u> | <u>SENATE BILLS</u> | <u>TOTAL BILLS</u> |
|---|---------------------------|-------------------------|------------------------|
| BILLS REPORTED WITH OR WITHOUT AMENDMENT | | | |
| TO FLOOR; NOT RETURNING TO COMMITTEE | 10 | 0 | 10 |
| TO FLOOR; RECOMMITTED AND DIED | | | |
| TO WAYS AND MEANS | 4 | 0 | 4 |
| TO CODES | 7 | 0 | 7 |
| TO RULES | 11 | 0 | 11 |
| TO JUDICIARY | 0 | 0 | 0 |
| TOTAL | 32 | 0 | 32 |
| BILLS HAVING COMMITTEE REFERENCE CHANGED | | | |
| TO <u>Ways and Means</u> COMMITTEE | 1 | 0 | 1 |
| TO <u>JUDICIARY</u> COMMITTEE | 0 | 0 | 0 |
| TO _____ COMMITTEE | | | |
| TO _____ COMMITTEE | | | |
| TOTAL | 1 | 0 | 1 |
| SENATE BILLS SUBSTITUTED OR RECALLED | | | |
| SUBSTITUTED | | 8 | 8 |
| RECALLED | | | |
| TOTAL | | 8 | 8 |
| BILLS DEFEATED IN COMMITTEE | 0 | 0 | 0 |
| BILLS HELD FOR CONSIDERATION with a roll-call vote | | 0 | |
| BILLS NEVER REPORTED, HELD IN COMMITTEE | 286 | 23 | 309 |
| BILLS HAVING ENACTING CLAUSES STRICKEN | 6 | 0 | 6 |
| MOTIONS TO DISCHARGE LOST | | | |
| TOTAL BILLS IN COMMITTEE | 325 | 31 | 356 |
| TOTAL NUMBER OF COMMITTEE MEETINGS HELD | 8 | | |

APPENDIX B
CHAPTERS OF 2011

| Bill/Sponsor | Description | Action |
|--|---|-------------|
| A.384-B Paulin S.4013-C McDonald | Facilitates the payment of claims by health insurers to municipalities for early intervention services. | Chapter 406 |
| A.1007 Weisenberg S.928 Marcellino | Prohibits insurance companies from refusing to issue or renew an automobile insurance policy when the motor vehicle to be insured is used for firefighting. | Chapter 408 |
| A.1219 Bing S.1430 Saland | Requires coverage for the authorized refill of any prescription eye drop medication under certain circumstances. | Chapter 589 |
| A.4102 Morelle S.5704 Hannon | Extends for two years, until December 31, 2013, certain provisions of law relating to contracts with managed care organizations. | Chapter 216 |
| A.5502-B Heastie S.3510-B Maziarz | Would prohibit insurers from requiring that insureds purchase their prescription drugs from a mail order pharmacy and establish provisions related thereto. | Chapter 597 |
| A.6233-B Lopez V. S.3988-B Lanza | Requires health insurance policies to provide coverage for orally administered oral chemotherapy treatments. | Chapter 559 |
| A.6305-A Morelle S.4005-A Fuschillo | Relates to coverage for the screening, diagnosis and treatment of autism spectrum disorder. | Chapter 595 |
| A.6881-A Morelle S.2705-A Seward | Permits insurers to make available multiple ratings plans for personal lines of insurance within the same company. | Chapter 457 |
| A.7430 Morelle S.4426 Seward | Extends for three years, until 2014, certain provisions of law relating to the New York Property Insurance Underwriting Association. | Chapter 102 |

| | | |
|-----------------------------------|--|-------------|
| A.7779 Silver S.5799 Skelos | Requires same insurance coverage for prescription fertility drugs purchased at non-mail order pharmacies as those purchased through mail order pharmacies. | Chapter 598 |
| A.7908 Morelle S.5540 Seward | Requires the State Insurance Fund to file annual audited financial statements with the office of the state comptroller. | Chapter 445 |
| A.8133 Latimer S.5561 Seward | Extends for three years, until December 2014, certain provisions of law relating to health insurance coverage for sole proprietors. | Chapter 183 |
| A.8365 Weprin S.5562 Seward | Amends the definition of "insurance fraud." | Chapter 211 |
| A.8460 Stevenson S.5800 Seward | Relates to implementation of the Affordable Health Care Act. | Chapter 219 |
| A.8464 Morelle S.5811 Seward | Exempts large commercial insured from certain rate and policy form approval requirements. | Chapter 490 |
| A.8512 Morelle S.5845 RULES | Relates to coverage for the screening, diagnosis and treatment of autism spectrum disorder. | Chapter 596 |

APPENDIX C
BILLS THAT PASSED THE ASSEMBLY IN 2011

| BILL/SPONSOR | DESCRIPTION |
|--|---|
| A.1921 Peoples-Stokes No Same As | Would prohibit discrimination in the issuance of certain insurance policies based upon inquiries in which loss or damage is revealed. |
| A.2807 O'Donnell No Same As | Would require insurers providing family health insurance coverage to offer coverage for the domestic partner of an insured person according to qualification standards to be adopted by the superintendent. |
| A.3283 Weisenberg S.3387 LaValle | Would establish provisions of law relating to trigger standards for hurricane windstorm deductibles. |
| A.4492 Meng S.3270 Hassell-Thompson | Would require certain health insurance policies to include coverage for the cost of certain infant and baby formulas. |
| A.4601 Englebright No Same As | Would require the removal of certain information relating to lost property claims from an insured's record of claims. |
| A.8495 Morelle No Same As | Would establish provisions of law relating to the screening, diagnosis and treatment of autism spectrum disorder. |

APPENDIX D
BILLS THAT WERE REPORTED IN 2011

| BILL/SPONSOR | DESCRIPTION |
|---------------------------------------|---|
| A.178 Cahill S.4138 Little | Would require reimbursement for surgical first assistant services. |
| A.384-B Paulin S.4013-C McDonald | Would facilitate the payment of claims by health insurers to municipalities for early intervention services. |
| A.1007 Weisenberg S.928 Marcellino | Would prohibit insurance companies from refusing to issue or renew an automobile insurance policy when the motor vehicle to be insured is used for firefighting. |
| A.1219 Bing S.1430 Saland | Would require coverage for the authorized refill of any prescription eye drop medication under certain circumstances. |
| A.1921 Peoples-Stokes No Same As | Would prohibit discrimination in the issuance of certain insurance policies based upon inquiries in which loss or damage is revealed. |
| A.2204-A Zebrowski No Same As | Would expand the description of unfair insurance claim settlement practices. |
| A.2744 Perry No Same As | Would prohibit the cancellation, non-renewal or conditional renewal of automobile insurance policies when dispute as to pending claims exists. |
| A.2807 O'Donnell No Same As | Would require insurers providing family health insurance coverage to offer coverage for the domestic partner of an insured person according to qualification standards to be adopted by the superintendent. |
| A.3283 Weisenberg S.3387 LaValle | Would establish provisions of law relating to trigger standards for hurricane windstorm deductibles. |

| | |
|--|---|
| A.3507-A Glick No Same As | Would prohibit insurers that provide homeowner's insurance coverage from certain adverse actions against a insured, which are based solely on the breed of dog owned by the policyholder. |
| A.4093-B Morelle S.2714-B Seward | Would authorize direct payments to non-participating or non-preferred providers of ambulance services licensed under Article 30 of the Public Health Law. |
| A.4102 Morelle S.5704 Hannon | Would extend for two years, until December 31, 2013, certain provisions of law relating to enhanced consumer and provider protections. |
| A.4492 Meng S.3270 Hassell-Thompson | Would require certain health insurance policies to include coverage for the cost of certain infant and baby formulas. |
| A.4601 Englebright No Same As | Would require the removal of certain information relating to lost property claims from an insured's record of claims. |
| A.5502-B Heastie S.3510-B Maziarz | Would prohibit insurers from requiring that insureds purchase their prescription drugs from a mail order pharmacy and establish provisions related thereto. |
| A.6233-B Lopez V. S.3988-B Lanza | Requires health insurance policies to provide coverage for orally administered oral chemotherapy treatments. |
| A.6305-A Morelle S.4005-A Fuschillo | Relates to coverage for the screening, diagnosis and treatment of autism spectrum disorder. |
| A.6346-C Heastie S.4507-B Golden | Would permit an insurer to rescind or retroactively cancel a policy in certain circumstances. |
| A.6603-A Morelle S.2713-A Seward | Relates to treatment of qualified financial contracts in an insurance insolvency proceeding affecting a domestic, foreign or alien insurer. |
| A.6699 Schimminger No Same As | Would require public vessels operated on the navigable waters of the state to carry marine protection and indemnity insurance and would establish new provisions of law relating thereto. |

| | |
|-------------------------------------|--|
| A.6881-A Morelle S.2705-A Seward | Would permit insurers to make available multiple ratings plans for private passenger motor vehicle insurance within the same company. |
| A.7430 Morelle S.4426 Seward | Would extend certain provisions of law relating to the New York Property Insurance Underwriting Association. |
| A. 7779 Silver S.5799 Skelos | Would require the insurance coverage for prescription fertility drugs purchased at non-mail order pharmacies to be the same as the coverage for prescription fertility drugs purchased at mail order pharmacies. |
| A.7908 Morelle S.5540 Seward | Would require the State Insurance Fund to file annual audited financial statements with the office of the state comptroller. |
| A.8133 Latimer S.5561 Seward | Relates to health insurance coverage for sole proprietors. |
| A.8251 Braunstein S.5747 Libous | Would provide that for wireless communications equipment insurance, the only disclosures and materials required in the provision of such insurance shall be items required by section 2131 of the Insurance Law. |
| A.8365 Weprin S.5562 Seward | Would amend the definition of "insurance fraud." |
| A.8460 Stevenson S.5800 Seward | Would provide for the implementation of the Affordable Health Care Act. |
| A.8464 Morelle S.5811 Seward | Exempts large commercial insured from certain rate and policy form approval requirements. |
| A.8512 Morelle S.5845 RULES | Relates to coverage for the screening, diagnosis and treatment of autism spectrum disorder. |

END OF REPORT