



## **MEMORANDUM IN OPPOSITION**

**S.6667 (Valesky)**

**A.9311 (Gottfried)**

**AN ACT** An act to amend the insurance law and the state finance law, in relation to creating the health insurance guaranty fund

This bill would establish the New York health insurance consumer protection security fund, to be administered by the Department of Taxation & Finance (DTF) and funded by a special assessment on each health insurer doing business in the State proportional to premiums it received for the most recent calendar year, as determined by the Department of Financial Services (DFS) upon the insolvency of a health insurer.

The **New York State Association of Health Underwriters (NYSAHU)**, comprised of licensed health insurance brokers and employee benefits consultants, which support universal health coverage by integrating existing public plans with market-based solutions to improve the availability and affordability of health insurance plans for all, hereby **OPPOSES** S.6667 / A.9311.

The bill provides that guaranty fund special assessments would be set by the Superintendent of Financial Services at levels sufficient to fully pay all unpaid claims of an impaired health insurer, formally placed in rehabilitation or liquidation by DFS under Article 74 of the insurance law. If the Superintendent makes a determination that any such assessment would endanger the ability of a health insurer to fulfill its contractual obligations or otherwise render such insurer financially unsound, then the Superintendent may exempt, abate or defer such assessment in whole or in part, and shall recoup such assessment proportionally against other health insurers. A “health insurer” is defined under the bill to mean any entity providing expense reimbursement for covered benefits under an individual, group or blanket accident and health (A&H) policy, contract or plan issued under applicable provisions of the insurance law or public health law.

Upon a determination that disbursement of monies from the guaranty fund are necessary, the Superintendent would direct the Commissioner of Taxation & Finance to make payments from such fund to health care providers for services provided, or indemnity payments to covered individuals, within 30 days of receipt of claims. In the event insufficient monies are available in the guaranty fund, the Superintendent shall certify to the Director of the Division of Budget that a transfer of monies from the State general fund to the guaranty fund is needed and warranted. Any such transfer must be repaid to the general fund with interest, from the special assessments made to the guaranty fund.

The bill also directs the Superintendent to ensure that the costs of any such special assessments are not included in premium rates by any health insurer.

The Sponsors' Introductory Memorandum correctly states that New York consumers and healthcare providers were harmed, as were licensed insurance producers, by the failure of the Health Republic Insurance of New York last year. Health Republic was the only Consumer Operated and Oriented Plan (CO-OP) created under the federal Patient Protection and Affordable Care Act (ACA) in New York, and its collapse was precipitated by a number of factors, including but not limited to, overutilization of healthcare services by subscribers, inadequate premium rates under the "prior approval" law, lack of access to capital markets, Congressional withdrawal of "risk corridor" payments, federal loans and subsidies, possible organizational mismanagement and a potential lapse in regulatory oversight.

But the Sponsors' Memo incorrectly asserts that New York has no system of protection for consumers and providers with respect to carrier insolvencies, when in fact it does. Health insurance policies issued by licensed life insurers are covered by the Life Insurance Guaranty Corporation of New York, established under Article 77 of the insurance law, in the event of a life company insolvency.

More globally, Section 307 of the insurance law requires all insurers to file an annual statement with DFS certified as accurate by two principal officers of such insurer, showing its condition at last year end. Section 309 of such law permits DFS to make an examination into the affairs of any insurer as often as may be expedient to protect the interests of consumers. Section 1303 of such law requires all insurers to maintain reserves in an aggregate amount to cover all unpaid losses or claims, including those incurred but not reported. Section 1322 of such law requires all health insurers to submit a risk based capital (RBC) report to DFS that measures its risk according to a specific formula, with respect to such insurer's assets, adverse experience in its liabilities and obligations, interest rate risk, and all other business risks. (At the recent Senate Roundtable on the Demise of Health Republic, DFS representatives stated that the usual RBC level for health insurers is about 300%, whereas Health Republic's was 500%.) And Section 4310 of such law prescribes minimum statutory reserve fund requirements for certain health insurers, together with restrictions on the types of permissible securities investments that can be made and requires annual financial condition reports to be filed with DFS that are certified by at least two of the insurer's principal officers.

*Ipso facto*, if health insurers maintain their statutory reserve fund requirements, stay within applicable RBC limits, and file and obtain adequate premium rates to ensure short and long-term solvency, there is no need to create a health insurance guaranty fund since robust statutory and regulatory protections already exist. DFS has all of the reporting, investigative and auditing tools that it needs to effectively oversee health insurers. Section 308 of the insurance law even confers *carte blanche* power to the Superintendent to conduct an inquiry into the transactions or conditions of any insurer or health maintenance organization (HMO) or any matter connected therewith. Responses must be promptly made in writing and affirmed as true under penalties of perjury. Thus, the Department simply needs to exercise its existing regulatory authority to avoid any future health insurer insolvencies.

Establishing a guaranty fund will simply increase costs to consumers by virtue of levying the special assessments on health insurers. (And this would be on top of the existing Health Care Reform Act (HCRA) taxes on hospital and medical bills that total over \$5 billion annually for bad debt and charity pools for indigent care, subsidies for graduate medical education at teaching hospitals, and other charges.) While insurers would be proscribed from directly including such assessments in existing premium rates, the laws of economics dictate that the assessments would be recouped by being “baked into” future premium rate requests.

Two of the fundamental tasks that DFS is charged with are to ensure that New York consumers are protected and that insurers remain solvent in order to meet their contractual obligations. We submit that maintaining insurer solvency is the highest form of consumer protection.

A guaranty fund that shifts risk from irresponsible health insurers to other carriers, will force good insurers from the marketplace further exacerbating the lack of competition in New York. This will reduce innovation in product design, restrict consumer choice of health plans, increase the cost of insurance products, and heighten risk to providers and producers alike. Forcing such an outcome would be insane.

It is interesting to note that since DFS has not formally placed Health Republic into rehabilitation or liquidation, it would not fit the definition of “impaired health insurer” under this bill and thus consumers and providers would not be eligible for payments from the New York health insurance consumer protection security fund created thereunder.

For the reasons set forth herein, and on behalf of the members of the New York State Association of Health Underwriters we remain **OPPOSED TO S.6667 / A.9311 and URGE ITS DEFEAT.**

Respectfully submitted,

James D. Schutzer  
President  
(914) 644-9232

Daniel E. Colacino  
Legislative Chair  
(518) 244-4334

Thomas W. Faist, Esq.  
Legislative Counsel  
(518) 573-4508

