

COVID-19 NEWS OF INTEREST

COVID-19: Key New York Insurance Regulatory Measures Affecting Policyholders, Insurers and Producers – Update No. 3

June 12, 2020

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This third update to [our original report](#) highlights recent insurance-related emergency actions taken by New York Governor Andrew Cuomo and the New York State Department of Financial Services (“[DFS](#)”) arising from the COVID-19 pandemic. We previously reported that Governor Cuomo had extended until June 6, 2020, certain COVID-19-related policyholder accommodations such as extended periods for paying premiums or exercising benefits under individual and group life insurance policies and annuities affected by the COVID-19 pandemic; a moratorium on the cancellation, non-renewal or conditional renewal of certain property/casualty insurance policies issued to individuals and small businesses facing financial hardship as a result of the COVID-19 pandemic; and premium payment grace periods for any comprehensive health insurance policyholder or contract holder under an individual policy or contract who is facing financial hardship as a result of the COVID-19 pandemic. Pursuant to Governor Cuomo’s Executive Order 202.38, such policyholder accommodations have been further extended until July 6, 2020. These changes are described in the chart below.

In addition, the DFS recently adopted, on an emergency basis, Insurance Regulation 217 “Paid Family Leave and Risk Adjustment Mechanism.” On March 18, 2020, Governor Cuomo signed into law Chapter 25 of the Laws of New York 2020 (“[Chapter 25](#)”), which provides for the payment of disability and family leave benefits to employees unable to work as a result of a mandatory or precautionary government order of quarantine or isolation in connection with COVID-19. Pursuant to Chapter 25, the Superintendent of the DFS (the “[Superintendent](#)”) was required to create a “risk adjustment pool,” i.e., a process to stabilize the market and protect insurers from disproportionate adverse risks associated with the Chapter 25-mandated disability and family leave benefits. In consultation with the director of the State Insurance Fund and the chair of the Workers’ Compensation Board, the Superintendent determined that claims for disability benefits and family

COVID-19: Key New York Insurance Regulatory Measures Affecting Policyholders, Insurers and Producers – Update No. 3

leave benefits pursuant to Chapter 25 represent a risk that was not factored into policy pricing, present adverse risk to insurers that is disproportionate to the premium they had charged, and that some insurers will need immediate relief to stabilize the impact of these claims. Insurance Regulation 217 implements the directive contained in Chapter 25 and is summarized in Row B below.

In the chart that follows, we describe in reverse chronological order New York's key insurance regulatory responses to the COVID-19 pandemic, which are organized by industry sector and/or insurance licensees.¹ Updates new since our previous report are shaded in blue and/or bolded below.

We anticipate that the DFS and the governor will continue to address changing circumstances and responses to COVID-19 in the coming weeks, and we will continue to update this report as such actions arise.

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters, and CFTC and bank regulation. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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¹ We have used the term "licensees" to refer to companies or individuals licensed by the DFS.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
A.	<p>Executive Order 202.38</p> <p>(Issued June 6, 2020)</p>		<p>Executive Order 202.38 continues, until July 6, 2020, certain policyholder accommodations related to life insurance and annuity contracts as described in Row I (e.g., extended grace periods for the payment of premiums and fees for life insurance policyholders who demonstrate financial hardship as a result of the COVID-19 pandemic); individual comprehensive health insurance as described in Row H; and certain property/casualty insurance policies as described in Row I (e.g., a moratorium on policy cancellations and non-renewals for certain policyholders).</p> <p>The accommodations afforded to small group comprehensive health insurance policies, also described in Row H below, expired June 1, 2020.</p>
B.	<p>Insurance Regulation 217 (New) 11 NYCRR 365</p> <p>(Issued and effective June 1, 2020)</p>	<p><i>Disability Benefits and Family Leave</i></p> <p>Insurers participating in the disability benefits and family leave benefits insurance market</p>	<p>On March 18, 2020, Governor Cuomo signed into law Chapter 25 of the Laws of New York 2020 ("Chapter 25"), regarding disability and family leave benefits payable to employees unable to work due to mandatory or precautionary government quarantine or isolation orders. In consultation with the director of the State Insurance Fund and the chair of the Workers' Compensation Board, the Superintendent determined that claims for disability benefits and family leave benefits pursuant to Chapter 25 ("Chapter 25 Claims") represent a risk that was not factored into disability insurance policy pricing, present adverse risk to insurers that is disproportionate to the premium they had charged, and that some insurers will need immediate relief to stabilize the impact of these claims. The DFS's emergency adoption of Insurance Regulation 217 implements the Chapter 25 directive.</p>

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>Key provisions of Insurance Regulation 217 include:</p> <ul style="list-style-type: none"> • <u>COVID-19 Risk Adjustment Mechanism</u>. Insurance Regulation 217 establishes a risk adjustment mechanism related to Chapter 25 Claims for disability and family leave benefits. All insurers, including the State Insurance Fund, that issued policies covering disability or family leave benefits for any portion of 2020 will be “members” of the risk adjustment mechanism which will provide: <ul style="list-style-type: none"> ○ Immediate relief payments from the COVID-19 Risk Adjustment Pool (described below) for insurers experiencing disproportionate adverse risk due to a high volume of claims relative to the insurers’ surplus; ○ Recoupment of 100% of COVID-19 claims paid by members through an adjustment to family leave benefits premiums in plan year 2021 and following. • <u>COVID-19 Risk Adjustment Pool</u>. The Superintendent will establish an account (the “<u>COVID-19 Risk Adjustment Pool</u>”) to receive funds from insurers that are subject to the COVID-19 risk adjustment mechanism to (i) provide immediate relief payments from the COVID-19 Risk Adjustment Pool and (ii) to redistribute the COVID-19 adjusted premiums according to claims paid by members. In connection with immediate relief payments to

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			members experiencing adverse risk, the Superintendent will first seek funds from the State Insurance Fund.
C.	<p><u>Insurance Circular Letter No. 12 (2020)</u></p> <p>(Issued May 22, 2020)</p> <p><i>Coverage for COVID-19 Testing at a Pharmacy</i></p>	<p><i>Health Insurance</i></p> <p>All insurers authorized to write accident and health insurance in New York, Article 43 corporations, health maintenance organizations (“HMOs”) student health plans certified pursuant to Insurance Law § 1124 (“<u>Student Health Plans</u>”), municipal cooperative health benefit plans, prepaid health services plans, and licensed independent</p>	<ul style="list-style-type: none"> • Insurance Circular Letter No. 12 (2020) directs Issuers to provide in-network and out-of-network coverage for COVID-19 testing without cost-sharing at pharmacies, in a manner consistent with Executive Order 202.24, the federal <u>Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)</u>, the 57th Amendment to 11 NYCRR 52, Department of Health guidance and this circular letter. • Insurance Circular Letter No. 12 (2020) discusses that: <ul style="list-style-type: none"> ○ <u>Executive Order 202.24</u>, issued on April 25, 2020, authorized licensed pharmacists to order and administer approved COVID-19 tests to detect COVID-19 infection or antibodies. ○ The 57th Amendment to 11 NYCRR 52, discussed below in Row N, and the CARES Act prohibit cost-sharing through the imposition of copayments, coinsurance or annual deductibles for COVID-19 infection and antibody testing. This applies for both in-network and out-of-network testing. • The DFS strongly encourages third-party administrators licensed by the DFS as independent adjusters to apply the provisions of Insurance Circular

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
		adjusters (collectively, for purposes of Row C, “ <u>Issuers</u> ”)	Letter No. 12 (2020) to their administrative services arrangements with self-funded plans.
D.	<p><u>Insurance Circular Letter No. 11 (2020)</u></p> <p>(Issued May 19, 2020)</p> <p><i>COVID-19 Testing of Nursing Home and Adult Care Facility Personnel</i></p>	<p><i>Accident and Health Insurance</i></p> <p>All insurers authorized to write accident and health insurance in New York, Article 43 corporations, HMOs, Student Health Plans, municipal cooperative health benefit plans, and prepaid health services plans (collectively, for purposes of Row D, “<u>Issuers</u>”) and</p>	<p><u>Executive Order 202.30</u>, dated May 10, 2020, required all nursing homes and adult care facilities to arrange for twice weekly COVID-19 testing of all personnel. In connection with this testing requirement, Insurance Circular Letter No. 11 (2020) requires Issuers to cover in-network COVID-19 testing of nursing home and adult care facility personnel without cost-sharing.</p> <p><u>COVID-19 Testing of Nursing Home and Adult Care Facility Personnel</u></p> <ul style="list-style-type: none"> • Insurance Circular Letter No. 11 (2020) directs Issuers to provide in-network and out-of-network coverage for COVID-19 testing for twice weekly testing of nursing home and adult care facility personnel, based on provisions of the federal CARES Act, <u>Families First Coronavirus Response Act</u>, New York Executive Order 202.30, guidance from the New York State Department of Health and the New York Insurance Law and regulations promulgated thereunder. <p><u>Cost-Sharing for COVID-19 Testing of Nursing Home and Adult Care Facility Personnel</u></p> <ul style="list-style-type: none"> ▪ Insurance Circular Letter No. 11 (2020) directs Issuers to comply with the requirements of the 57th Amendment to 11 NYCRR 52 (Insurance

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
		licensed independent adjusters	<p>Regulation 62), which prohibits the imposition of cost-sharing for in-network laboratory tests and visits to diagnose COVID-19, as further detailed below in Row N, as well as the cost-sharing prohibitions set forth in the federal CARES Act.</p> <p><i>Third-Party Administrators of Self-Funded Plans</i></p> <ul style="list-style-type: none"> Insurance Circular Letter No. 11 (2020) strongly encourages third-party administrators licensed by the DFS as independent adjusters to apply the provisions of Insurance Circular Letter No. 11 (2020) to their administrative services arrangements with self-funded plans.
E.	<p>Request for Special Report Pursuant to Section 308, New York Insurance Law</p> <p>(Issued May 13, 2020)</p>	<p><i>Life Insurance and Annuities</i></p> <p>All insurers authorized to write life insurance and annuities in New York</p>	<p>The Request for Special Report seeks information regarding recent changes in New York life and annuity insurers' business, sales and underwriting practices related to "recent changes in the equity and other financial markets and the impact of the COVID-19 pandemic." It comprises Section A, regarding a General Business Update, and Section B regarding Accelerated or Algorithmic Underwriting. The following summarizes the COVID-19-related information request.</p> <ul style="list-style-type: none"> Section A seeks responses to questions related to business and underwriting practices; product offerings, suspensions, or discontinuations; pricing; reinsurance; and accelerated underwriting practices. The DFS originally requested responses to Section A by May 19, 2020, but subsequently issued guidance extending this deadline to May 22, 2020.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
F.	<p>Insurance Regulation 62 60th Amendment to 11 NYCRR 52 (Issued and effective May 2, 2020)</p> <p>and</p> <p>Insurance Circular Letter No. 10 (2020) (Issued May 2, 2020)</p> <p><i>Coronavirus and Mental Health Services for Essential Workers</i></p>	<p><i>Health Insurance</i></p> <p>Insurers authorized to write accident and health insurance in New York, Article 43 corporations, HMOs, municipal cooperative health benefit plans, prepaid health services plans (collectively, for purposes of Row F, “Issuers”) and licensed independent adjusters</p>	<p>This 60th amendment to Insurance Regulation 62 requires Issuers to waive, for “essential workers,” cost-sharing provisions in comprehensive hospital, surgical or medical care insurance policies as described below. The DFS promulgated the 60th Amendment to Insurance Regulation 62 on an emergency basis, effective May 2, 2020, for 90 days in recognition of the emotional and psychological toll on first responders and other frontline essential employees arising from the COVID-19 pandemic.</p> <p>Pursuant to the 60th Amendment to Insurance Regulation 62 and Insurance Circular Letter No. 10 (2020):</p> <ul style="list-style-type: none"> • Issuers are prohibited from imposing cost-sharing provisions (deductible, copayment or coinsurance) for mental health services rendered by in-network providers on an outpatient basis for essential workers, regardless of whether the services are provided by telehealth. <ul style="list-style-type: none"> ○ An exception exists if the policy or contract is a high-deductible health plan as defined in Internal Revenue Code section 223(c)(2). In this case, the service may be subject to such plan’s annual deductible if otherwise required by federal law. • An “essential worker” is generally defined as: <ul style="list-style-type: none"> ○ individuals who are, or were, during the current state of emergency, employed as health care workers, first responders, or in any position within a nursing home, long-term care facility, or

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>other congregate care setting, including health care personnel, firefighters, police officers, residential care program managers, and others, and</p> <ul style="list-style-type: none"> ○ individuals who are, or were, during the current state of emergency, employed as essential employees who directly interact or interacted with the public while working, including bank tellers, delivery, food service, hotel, funeral, automotive repair and other workers. <ul style="list-style-type: none"> • The emergency regulation is effective for 90 days from May 2, 2020, subject to any further emergency regulations issued by the DFS. • The DFS strongly encourages third-party administrators licensed by the DFS as independent adjusters to apply the provisions of Insurance Circular Letter No. 10 (2020) and the 60th Amendment to Insurance Regulation 62 to their administrative services arrangements with self-funded plans.
G.	<p>Supplement No. 1 to Insurance Circular Letter No. 8 (2020)</p> <p>(Issued April 22, 2020)</p>	<p><i>Health Insurance</i></p> <p>Insurers authorized to write accident and health insurance in New York, Article 43 corporations, HMOs, Student Health</p>	<p>On April 3, 2020, the New York Insurance Law was amended to prohibit Issuers from denying emergency department and inpatient hospital services as not medically necessary on a retrospective review if rendered by hospitals to an insured to treat COVID-19 during a state of emergency. (An apparent drafting error in the legislation made such changes effective on January 1, 2021. The DFS has noted that the date will be changed to April 1, 2020.)</p>

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	<p><i>Coronavirus, Utilization Review Requirements, and Payments to Participating Hospitals</i></p> <p><i>Insurance Circular Letter No. 8 (2020), is described in Row K below.</i></p>	<p>Plans, municipal cooperative health benefit plans, and prepaid health services plans (collectively, for purposes of Row G, “<u>Issuers</u>”), utilization review agents, and licensed independent adjusters</p>	<p>Subsequently, pursuant to Insurance Circular Letter No. 8 (2020) (March 20, 2020), the DFS advised Issuers, and others, that due to the demands for inpatient hospital services for COVID-19 patients, hospitals were shifting staff resources from administrative functions to direct patient care, and acknowledged that hospitals may not have the resources to respond to utilization review requests and preauthorizations. On that basis, the DFS advised Issuers to suspend preauthorization review, concurrent review and retrospective review services for certain hospital services until June 18, 2020. An overview of the DFS’s advice to Issuers pursuant to Insurance Circular Letter No. 8 (2020) is set forth in Row K below.</p> <p>On April 22, 2020, the DFS issued Supplement No. 1 to Insurance Circular Letter No. 8 (2020) directing Issuers to suspend, until June 18, 2020, additional preauthorization, concurrent and retrospective review requirements. Citing the unprecedented demand for inpatient hospital services as a result of the COVID-19 pandemic, as well as the significant adverse impact on some hospitals’ cash flow caused by the suspension of elective surgeries, the DFS directed Issuers to suspend certain utilization review requirements and to expeditiously resolve and pay hospital claims and work with participating hospitals to assist with cash flow issues. The DFS also noted that health insurers are taking steps to work with hospitals during the COVID-19 crisis. Supplement No. 1 to Insurance Circular Letter No. 8 (2020) includes the following directives to Issuers:</p> <ul style="list-style-type: none"> • Suspend all preauthorization and concurrent review for outpatient services provided at hospitals until June 18, 2020.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<ul style="list-style-type: none"> • Suspend retrospective reviews for <u>any</u> services provided at in-network hospitals until June 18, 2020, subject to certain exceptions in the event of evidence of a hospital's fraudulent or abusive billing practices. • Toll the time frames for hospitals to submit internal or external appeals until June 18, 2020. • Immediately process for payment all undisputed, outstanding claims for services that were rendered before March 7, 2020, or on or after March 7, 2020 until June 18, 2020. • Resolve any claims for services rendered before March 7, 2020 and disputed by either party quickly and efficiently. • Work with hospitals facing cash flow issues in their networks to provide assistance where financially feasible and prudent. As soon as possible, and in no event later than five days of Supplement No. 1 to Insurance Circular Letter No. 8 (2020), which was issued on April 22, 2020, Issuers shall contact the DFS, which will collaborate with New York regulatory agencies, Issuers and hospitals to identify hospitals with the greatest liquidity needs. Issuers must then contact the identified hospitals in their network to discuss how assistance can be provided to the hospital. • Third-party administrators are strongly encouraged to apply the provisions above to their administrative services arrangements with self-funded plans.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
H.	<p>Insurance Regulation 62 59th Amendment to 11 NYCRR 52</p> <p>and</p> <p>Executive Order No. 202.14²</p>	<p><i>Health Insurance</i></p> <p>Insurers authorized to write accident and health insurance in New York, Article 43 corporations, HMOs and Student Health Plans</p>	<p>The following applies to a person who is facing financial hardship as a result of the COVID-19 pandemic and is a policyholder or contract holder under any individual comprehensive health insurance policy or small group or student blanket comprehensive health insurance policy:</p> <ul style="list-style-type: none"> • Subject to consideration of its liquidity and solvency by the Superintendent, an insurer, HMO or Student Health Plan must extend the period for payment of premiums to the later of (i) the expiration of the applicable contractual grace period or (ii) 11:59 p.m. on June 1, 2020. <ul style="list-style-type: none"> ○ This extension applies for any policyholder or contract holder who can demonstrate financial hardship as a result of the COVID-19 pandemic.³ An insurer, HMO or Student Health Plan must accept a written attestation from a policyholder or contract holder as proof of financial hardship as a result of the COVID-19 pandemic.⁴ ○ An insurer, HMO or Student Health Plan will be responsible for the payment of claims during this period and may not retroactively

² As noted above, the provisions of Executive Order 202.14 regarding individual comprehensive health insurance policies have been extended until July 6, 2020. Executive Order 202.14 authorized the DFS to establish similar standards for certain small group comprehensive health insurance policies or contracts. Such standards (described in Row H) were promulgated by the DFS in the 59th Amendment to Insurance Regulation 62 (11 NYCRR 52) which expired on June 1, 2020.

³ 11 NYCRR 52.63(a).

⁴ 11 NYCRR 52.63(e).

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>terminate the insurance policy for non-payment of premiums during such period.⁵</p> <ul style="list-style-type: none"> ○ The extension of time to pay premiums “shall not constitute a waiver or forgiveness of the premium.”⁶ ○ This period applies only to terminations due to a failure to pay premiums, whereas statutory notice requirements should be followed for terminations for other reasons permitted by law.⁷ <ul style="list-style-type: none"> • Where the policyholder or contract holder fails to make a timely premium payment, the applicable insurer, HMO or Student Health Plan may not impose any late fees relating to such premium payment or report the policyholder or contract holder to a credit reporting agency or debt collection agency with respect to such premium payment.⁸ • The emergency regulation requires certain related notices as follows: <ul style="list-style-type: none"> ○ An insurer, HMO or Student Health Plan must provide information about alternate policies available and contact information for the NY

⁵ 11 NYCRR 52.63(a).

⁶ 11 NYCRR 52.63(g).

⁷ 11 NYCRR 52.63(h).

⁸ 11 NYCRR 52.63(b)(1) and (2).

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>State of Health (New York’s health insurance marketplace) to the policyholder or contract holder.⁹</p> <ul style="list-style-type: none"> ○ Subject to consideration by the Superintendent of the liquidity and solvency of the applicable insurer, HMO or Student Health Plan, and within 10 business days following the promulgation of the 59th Amendment to 11 NYCRR 52: <ul style="list-style-type: none"> ▪ An insurer, HMO or Student Health Plan shall provide written notice of the provisions of 11 NYCRR 52.63 to every policyholder and contract holder¹⁰ and provide notice of the same to insurance producers and any third-party administrators with whom or which the insurer does business.¹¹ ▪ An insurer, HMO or Student Health Plan shall provide to every policyholder and contract holder a toll-free number that the policyholder or contract holder may call to discuss billing and alternate payment arrangements.¹²

⁹ 11 NYCRR 52.63(b)(3).

¹⁰ 11 NYCRR 52.63(c)(1).

¹¹ 11 NYCRR 52.63(c)(2).

¹² 11 NYCRR 52.63(c)(1).

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<ul style="list-style-type: none"> <i>Child Health Insurance Plans.</i> The above requirements also apply to any child health insurance plan policy where the policyholder or contract holder pays the entire premium.¹³
		<p><i>Health Insurance</i></p> <p>Licensed insurance producers who procured an individual, small group, or student blanket comprehensive health insurance policy</p>	<ul style="list-style-type: none"> A licensed insurance producer who procured the individual, small group, or student blanket comprehensive health insurance policy for the policyholder or contract holder must notify the policyholder or contract holder of the provisions of 11 NYCRR 52.63 within 10 business days following the promulgation of the 59th Amendment to 11 NYCRR 52.¹⁴ <i>Child Health Insurance Plans.</i> This requirement also applies to any child health insurance plan policy where the policyholder or contract holder pays the entire premium.¹⁵
I.	<p><i>Consolidated Emergency Regulation issued March 30, 2020.</i> On March 30, 2020 the DFS issued a consolidated emergency regulation that amends three separate insurance regulations relating to credit life insurance and credit accident and health insurance, credit unemployment insurance, and premium finance agencies, and also adds a new Insurance Regulation 216 regarding certain life and property/casualty coverages and policyholders (the “<u>Consolidated Emergency Regulation</u>”). The provisions of the Consolidated Emergency Regulation are effective March 30, 2020, and are intended to provide specified relief to certain policyholders, contract holders, and insureds who can demonstrate financial hardship</p>		

¹³ 11 NYCRR 52.63(i).

¹⁴ 11 NYCRR 52.63(d).

¹⁵ 11 NYCRR 52.63(j).

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	<p>as a result of the COVID-19 pandemic. Importantly, where proof of financial hardship resulting from the COVID-19 pandemic is required, insurers and premium finance agencies must accept a written attestation from an insured as proof of hardship resulting from the COVID-19 pandemic. We understand that the Consolidated Emergency Regulation, which was originally due to expire June 28, 2020, has been extended through July 6, 2020.</p>		
	<p>Consolidated Emergency Regulation: Insurance Regulation 216 (New) (11 NYCRR 229) <i>Insurer Practices During the COVID-19 Pandemic</i></p>	<p><i>Life Insurance and Annuities</i></p> <p>Insurers authorized to write life insurance or annuities and authorized fraternal benefit societies (“Life Insurers”)</p>	<ul style="list-style-type: none"> • Grace periods for the payment of premiums and fees set forth in group life insurance policies and certificates shall be extended to 90 days for group life insurance policyholders and certificate holders who demonstrate financial hardship as a result of the COVID-19 pandemic.
		<p><i>Property and Casualty Insurance</i></p>	<ul style="list-style-type: none"> • Executive Order 202.13 modified, on a temporary basis, several provisions of the New York Insurance Law in order to impose a moratorium on cancelling, non-renewing, or conditionally renewing any Property/Casualty Insurance Policy (defined below) for a period of 60 days for any Property Policyholder (defined below) facing financial hardship as a result of the COVID-19 pandemic. As modified by Executive Order 202.38, these amendments are extended through July 6, 2020. • Subsequent DFS guidance explains that this 60-day moratorium period begins on the day on which an Insurer could have canceled, non-renewed, or

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>conditionally renewed a policy for any reason under the terms of an insurance policy. It also states that the moratorium defers the effective date of an otherwise permitted termination or conditional renewal, but does not prescribe the creation of a new full policy term.¹⁶</p>
		<p><i>Life Insurance, Annuities, Property and Casualty Insurance</i></p> <p>All Life Insurers and property and casualty insurers, including excess line insurers¹⁷ (“Insurers”)</p>	<ul style="list-style-type: none"> • In the event that a Policyholder, as defined below, who can demonstrate financial hardship as a result of COVID-19 fails to make a timely premium payment, Insurers are prohibited from imposing any late fees or reporting the Policyholder to a credit reporting agency or debt collection agency with respect to such payment. • An Insurer shall permit Policyholders who did not make timely premium payments due to financial hardship resulting from the COVID-19 pandemic, and who can still demonstrate such hardship, to pay the premium over a 12-month period.

¹⁶ On May 13, 2020, the Excess Line Association of New York (“ELANY”) issued [Bulletin 2020-24](#) referencing this guidance and explaining that the issuance of cancellation, nonrenewal and conditional renewal notices is not prohibited by the moratorium. Rather, such notices “can be issued but the insured has the right to assert a financial hardship due to the COVID-19 virus.” If such hardship is asserted, then the notice cannot be effective until 60 days from the effective date of the cancellation, nonrenewal or conditional renewal.

¹⁷ We previously reported that as per guidance issued by ELANY, [DFS had confirmed](#) that the Consolidated Emergency Regulation’s moratorium on cancellations, non-renewals and conditional non-renewals; premium payment grace period; and notice requirements applies to personal excess line policies and policyholders, but does not apply to commercial excess line policies and policyholders, regardless of the policyholder’s size. However, the DFS has since issued guidance adding a caveat to this exception for excess line commercial fire insurance policies, as discussed [here](#). Referencing the DFS guidance, [ELANY Bulletin 2020-24](#), issued on May 13, 2020, further explains that the Consolidated Emergency Regulation applies to personal lines policies and small business commercial lines policies that include coverage for damage to real property against the peril of fire.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<ul style="list-style-type: none"> • An Insurer shall provide certain notices related to new Insurance Regulation 216 as follows: <ul style="list-style-type: none"> ○ An Insurer shall provide notice with each premium bill of the provisions of new Insurance Regulation 216 and a toll-free number that the Policyholder may call to discuss billing and make alternative payment arrangements within 10 business days of March 30, 2020; and ○ An Insurer shall notify insurance producers and third-party administrators with whom or which the Insurer does business of the provisions of new Insurance Regulation 216. • Subsequent DFS guidance instructs that Insurers may satisfy the notice requirements by emailing notices to the consumers for which they have email addresses, even if the consumers have not consented to receiving this notice via email. For policyholders for whom Insurers do not have email addresses, Insurers should mail or deliver through U.S. Postal mail or otherwise the notice “as soon as reasonably practicable.” The DFS emphasizes that Insurers must send the appropriate notice only to the appropriate consumers to avoid confusion, and has provided on its website both a Model Notice for Notifying Holders of Life Insurance Policies, Annuity Contracts, or Fraternal Benefit Society Certificates and a Model Notice for Notifying Holders of Certain Property/Casualty Insurance Policies that Insurers can use to satisfy the notice requirements. The DFS’s subsequent guidance also states that Insurers should

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>post the information on their websites as soon as possible, and should maintain records of their communications that satisfy the above notice requirement.</p> <ul style="list-style-type: none"> • As used herein, “<u>Policyholder</u>” includes: <ul style="list-style-type: none"> ○ “<u>Life Policyholder</u>,” which means the person to whom a life insurance policy, annuity contract, or fraternal benefit society certificate is issued, including a certificate holder under a group insurance policy or annuity contract; and ○ “<u>Property Policyholder</u>,” which means the individual or any business that is a resident of New York, is independently owned and operated, and employs 100 or fewer individuals to whom a Property/Casualty Insurance Policy is issued, including a certificate holder under a group insurance policy. <ul style="list-style-type: none"> ▪ “<u>Property/Casualty Insurance Policy</u>.” For purposes of the Consolidated Emergency Regulation, a “Property/Casualty Insurance Policy” is defined as an insurance policy, excluding commercial excess line insurance policies, that provides the following kinds of insurance as set forth in Section 1113(a) of the New York Insurance Law: fidelity and surety insurance, credit insurance, marine and inland marine insurance, marine protection and indemnity insurance, credit unemployment insurance, gap insurance, or involuntary unemployment insurance; or that is subject to New York Insurance Law section 1116 (prepaid legal services plans and legal services insurance) or articles 34 (addressing property/casualty insurance

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>contracts), 53 (addressing motor vehicle assigned risk plans), 54 (New York Property Insurance Underwriting Association), or 55 (Medical Malpractice Insurance Association) or Workers' Compensation Law section 54 or 226.</p>
		<p><i>Life Insurance and Annuities</i></p> <p>Licensed insurance producers who service in-force life and annuity contracts or fraternal benefit society certificates</p>	<ul style="list-style-type: none"> • The Consolidated Emergency Regulation requires that licensed insurance producers who service in-force life and annuity contracts or fraternal benefit society certificates shall mail or deliver notice to Life Policyholders of new provisions under the consolidated emergency regulation within 10 business days following March 30, 2020. • Subsequent DFS guidance instructs that producers may satisfy the notice requirements by emailing notices to the consumers for which they have email addresses, even if the consumers have not consented to receiving this notice via email. The DFS emphasizes that producers must send the appropriate notice only to the appropriate consumers to avoid confusion, and has provided on its website a Model Notice for Notifying Holders of Life Insurance Policies or Annuity Contracts that will satisfy the notice requirements referenced above. • The DFS's subsequent guidance also states that producers should post the information on their websites as soon as possible, and should maintain records of their communications that satisfy the above notice requirement.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
		<p><i>Property and Casualty Insurance</i></p> <p>Licensed insurance producers who procured the Property/Casualty Insurance Policy</p>	<ul style="list-style-type: none"> • Licensed insurance producers who procured the Property/Casualty Insurance Policy for a Property Policyholder shall mail or deliver notice to Property Policyholders of new provisions under the consolidated emergency regulation within 10 business days following March 30, 2020. • Subsequent DFS guidance instructs that producers may satisfy the notice requirements by emailing notices to the consumers for which they have email addresses, even if the consumers have not consented to receiving this notice via email. The DFS emphasizes that producers must send the appropriate notice only to the appropriate consumers to avoid confusion, and has provided on its website a Model Notice for Notifying Holders of Certain Property/Casualty Insurance Policies that will satisfy the notice requirements referenced above. • The DFS’s subsequent guidance also states that producers should post the information on their websites as soon as possible, and should maintain records of their communications that satisfy the above notice requirement.
	<p>Consolidated Emergency Regulation: Insurance Regulation 216 (New) and Amendment to 3 NYCRR 405</p>	<p><i>Life Insurance, Property and Casualty Insurance</i></p> <p>Premium finance agencies; licensed insurance producers that service in-force</p>	<p><u>Policy Cancellation:</u></p> <ul style="list-style-type: none"> • Where a premium finance agency (i) is authorized by a power of attorney or other authority to cancel an insurance contract(s) specified in the premium finance contract, (ii) the insured does not make an installment payment, and (iii) the insured can demonstrate financial hardship as a result of COVID-19, the premium finance agency shall not cancel such insurance contract for at least: 60

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	<i>Premium Finance Companies</i> ¹⁸	insurance contracts listed in a premium finance agreement; and Insurers other than Life Insurers	<p>days for a property/casualty insurance contract, and 90 days for a life insurance contract.</p> <ul style="list-style-type: none"> • These accommodations are subject to the safety and soundness of the premium finance agency. • If a premium finance agency cancels a Property/Casualty Insurance Policy¹⁹ based on the failure of the insured to pay the first installment payment following the 60-day grace period, the Insurer (other than a Life Insurer) shall return to the premium finance agency for the benefit of the Property Policyholder the gross unearned premiums due on a pro rata basis no later than 60 days after the effective date of such cancellation, calculated as if the policy had been canceled 60 days prior to the effective date. <p><u>Installment Payments:</u></p> <ul style="list-style-type: none"> • Where an insured fails to make timely installment payments and can demonstrate financial hardship as a result of COVID-19, premium finance agencies shall extend due dates for (i) Property/Casualty Insurance Policy installment payments by at least 60 days and (ii) life insurance contracts by at least 90 days. Premium finance agencies may not impose late fees or report the

¹⁸ As per guidance issued by ELANY, [DFS has confirmed](#) that the premium finance requirements of the regulation do not apply to transactions regarding commercial excess line policies and policyholders. However, the DFS has since issued guidance adding a caveat to this exception for excess line commercial fire insurance policies, as discussed [here](#).

¹⁹ Amendment No. 3 to 3 NYCRR 405 (Premium Finance Companies) uses the term “property/casualty insurance contract” which has the same meaning as “Property/Casualty Insurance Policy” defined in new Insurance Regulation 216 and described above. For clarity and consistency, we have used the term “Property/Casualty Insurance Policy” throughout this summary.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>insured to credit reporting agencies or debt collection agencies with respect to such payments.</p> <ul style="list-style-type: none"> • A premium finance agency shall, subject to the safety and soundness of the premium finance agency, permit insureds who did not make timely installment payments due to financial hardships resulting from COVID-19 to pay such installment payments over a 12-month period. <p><u>Notice Requirements:</u></p> <ul style="list-style-type: none"> • Premium finance agencies shall provide certain notices about the provisions of the amended regulation to insureds, insurance producers, and third-party administrators as detailed in the consolidated emergency regulation. • Licensed insurance producers that service in-force insurance contracts listed in a premium finance agreement must provide notices to insureds within 10 business days of March 30, 2020 regarding the provisions of Amendment No. 3 to the Premium Finance Agencies Regulation. <ul style="list-style-type: none"> ○ <u>Subsequent DFS guidance</u> instructs that producers may satisfy the notice requirements by emailing notices to the consumers for which they have email addresses, even if the consumers have not consented to receiving this notice via email. The DFS emphasizes that producers must send the appropriate notice only to the appropriate consumers to avoid confusion, and has provided on its website model notices that will satisfy the notice requirements referenced above. The DFS’s subsequent guidance also

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<p>states that producers should post the information on their websites as soon as possible, and should maintain records of their communications that satisfy the above notice requirement.</p> <p><u>Other:</u></p> <ul style="list-style-type: none"> The policy cancellation moratorium, premium payment accommodations and notice requirements set forth above shall not apply to a policy that at any time has been acquired by a life settlement provider pursuant to a life settlement contract.
	<p>Consolidated Emergency Regulation: Third Amendment to 11 NYCRR 187 Insurance Regulation 27-C</p> <p><i>Credit Unemployment Insurance</i></p>	<p><i>Credit Unemployment Insurance</i></p> <p>Insurers writing credit unemployment insurance in New York</p>	<ul style="list-style-type: none"> 11 NYCRR 187.6(f)(4) provides that under a credit unemployment insurance policy, the total premium remitted by the creditor shall be assumed to provide coverage for the insured debtor whose payments are not more than two months overdue (even if the debtor has not paid a charge for such two months' coverage). The consolidated emergency regulation extends this period from two months to three months for an insured debtor who can demonstrate financial hardship as a result of the COVID-19 pandemic.
	<p>Consolidated Emergency Regulation: Third Amendment to 11 NYCRR 185 Insurance Regulation 27-A</p>	<p><i>Credit Life Insurance, Credit Accident and Health Insurance</i></p>	<ul style="list-style-type: none"> 11 NYCRR 185(m)(4) provides that under a credit life or credit accident and health insurance policy, the total premium remitted by the creditor shall be assumed to provide coverage for the insured debtor whose payments are not more than two months overdue (even if the debtor has not paid a charge for such two months' coverage). The consolidated emergency regulation extends

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	<i>Credit Life Insurance and Credit Accident and Health Insurance</i>	Insurers writing credit life insurance and credit accident and health insurance in New York	this period from two months to three months for an insured debtor who can demonstrate financial hardship as a result of the COVID-19 pandemic.
J.	<p><u>Insurance Circular Letter No. 9 (2020)</u></p> <p>(Issued March 25, 2020)</p> <p><i>Coronavirus and Insurance Producer Licensing Requirements</i></p> <p>As supplemented by <u>Supplement No. 1 to Insurance Circular Letter No. 9 (2020)</u> (Issued May 21, 2020)</p>	<p><i>All Lines of Insurance</i></p> <p>All New York licensed insurance producers (i.e., agents, brokers, adjusters, consultants and intermediaries)</p>	<ul style="list-style-type: none"> • The DFS has suspended license expirations for individual producers for 60 days beginning March 25, 2020, and waived any late fees resulting from or accruing during that period. • The DFS has suspended the requirement that a monitor be present to complete producer continuing education and pre-licensing course exams online during the 60-day period. • Subsequently, the DFS issued Supplement No. 1 to Insurance Circular Letter No. 9 (2020) on May 21, 2020, which extends the above relief until July 8, 2020, at which time any licenses that would have expired but for the extensions will automatically expire unless the producer has submitted a renewal application and completed all necessary continuing education credits.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
K.	<p><u>Insurance Circular Letter No. 8 (2020)</u> (Issued March 20, 2020)</p> <p><i>Coronavirus, Utilization Review, and Emergency Admission Notification Requirements</i></p> <p><i>As supplemented by Supplement No. 1 to Insurance Circular Letter No. 8 (2020) (Issued April 22, 2020) and described above in Row G.</i></p>	<p><i>Health Insurance</i></p> <p>Insurers authorized to write accident and health insurance in New York, Article 43 corporations, HMOs, Student Health Plans, municipal cooperative health benefit plans, prepaid health services plans, utilization review agents, and licensed independent adjusters (for purposes of Row K, “<u>Issuers</u>”), and independent agents performing utilization review under contract with such Issuers, and licensed</p>	<p>Insurance Circular Letter No. 8 (2020) (March 20, 2020) suspends certain utilization review and notification requirements for 90 days from March 20, 2020, including that:</p> <ul style="list-style-type: none"> • For 90 days from March 20, 2020, the DFS advises Issuers to suspend (i) preauthorization review requirements for scheduled surgeries or admissions at hospitals; and (ii) concurrent review for inpatient hospital services provided. Insurers are permitted to retrospectively review these services upon resumption of retrospective review. • For 90 days from March 20, 2020, the DFS advises Issuers to suspend retrospective review for inpatient hospital services and emergency services provided at in-network hospitals. Issuers should pay claims from in-network hospitals that are otherwise eligible for payment without first reviewing the claims for medical necessity. Issuers may, to the extent necessary, request information to perform a retrospective review, reconcile claims, and make payment adjustments beginning after 90 days from March 20, 2020. An in-network hospital that accepts payment for such claims is advised to not enforce any contractual limitations regarding the permissibility of retrospective review or overpayment recovery. • For 90 days from March 20, 2020, the DFS advises Issuers to suspend (i) preauthorization requirements for home health care services following an inpatient hospital admission and preauthorization requirements for inpatient rehabilitation services following a hospital admission; and (ii) preauthorization for

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
		independent adjusters	<p>in-patient rehabilitation services for mental health or substance use disorder, to the extent that it is required.²⁰</p> <ul style="list-style-type: none"> • With respect to requirements that hospitals notify Issuers about hospital admissions of insureds, Issuers should not require the submission of medical records as a part of such notification for 90 days from March 20, 2020. Insurance Circular Letter No. 8 (2020) (March 20, 2020) provides additional guidance about notification arrangements between hospitals and Issuers. • The DFS advises that the time frames during which a hospital may submit internal or external appeals of adverse determinations and the 24-month time limit on overpayment recovery by Issuers from hospitals should be considered tolled for 90 days from March 20, 2020. Further, Issuers are directed to suspend non-essential audits of hospital payments during the state of emergency for COVID-19. • The DFS strongly encourages third-party administrators (licensed as independent adjusters by the DFS) to comply with Insurance Circular Letter No. 8 (2020) (March 20, 2020) in their services arrangements with self-funded plans.
L.	<u>Insurance Circular Letter No. 7 (2020)</u>	<i>All Lines of Insurance</i>	<ul style="list-style-type: none"> • The DFS urges all regulated entities to provide accommodations to consumers and small businesses that can demonstrate financial hardship caused by COVID-19, such as offering payment accommodations, working with consumers

²⁰ Insurance Circular Letter No. 8 (2020) (March 20, 2020) also sets forth guidelines established by the New York State Department of Health pertaining to procedures to be followed by the Issuers, rehabilitation facilities and skilled nursing facilities for inpatient rehabilitation services following a hospital admission if an in-network provider is not able to accept the insured.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	<p>(Issued March 19, 2020)</p> <p><i>Guidance to DFS-Regulated Insurance Entities Regarding Support for Consumers and Businesses Impacted by Novel Coronavirus (COVID-19)</i></p>	All DFS-regulated insurance entities	<p>to avoid cancellation or non-renewal of policies, and providing clear descriptions of coverage.</p> <ul style="list-style-type: none"> The DFS also urges all regulated entities, in their capacity as creditors to businesses of all sizes, to provide accommodations to their borrowers to the extent reasonable and prudent (e.g., by refraining from exercising rights and remedies based on potential technical defaults under material adverse change and other contractual provisions that the COVID-19 pandemic could trigger).
M.	<p>Insurance Regulation 62 58th Amendment to 11 NYCRR 52</p> <p>(Issued and effective March 16, 2020)</p>	<p><i>Health Insurance</i></p> <p>Authorized insurers and HMOs</p>	<ul style="list-style-type: none"> During the state of emergency, no insured will be required to pay copayments, coinsurance or deductibles for in-network services delivered via telehealth, if the service would have been covered if delivered in person. New York authorized insurers and HMOs (“Health Care Plans”) shall notify in-network providers in writing that they must not collect any such payment for such services. This emergency regulation gives effect to Insurance Circular Letter No. 6 (2020) (March 15, 2020), in which the DFS advises that during the state of emergency for COVID-19, technologies that must be covered as “telehealth” include “telephonic or video modalities (including technology commonly available on smart phones and other devices) when medically appropriate to deliver health care services for the assessment, diagnosis, consultation, treatment, care management, and self-management of a patient,” provided that all other requirements for a covered health care service are satisfied.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			<ul style="list-style-type: none"> On June 11, 2020, the 58th Amendment to 11 NYCRR 52 was again filed with the Secretary of State, making the above provisions effective until September 9, 2020.
N.	<p>Insurance Regulation 62 57th Amendment to 11 NYCRR 52 (Issued and effective March 13, 2020)</p>	<p><i>Health Insurance</i> Authorized insurers and HMOs</p>	<ul style="list-style-type: none"> The issuance or delivery of policies in New York that provide comprehensive coverage for hospital, surgical or medical care shall not require insureds to pay for in-network laboratory tests to diagnose COVID-19, or related visits to an in-network provider's office, urgent care center or outpatient provider or to a hospital's emergency department. Health Care Plans shall notify their in-network providers in writing that such providers may not collect any deductibles, copayments or coinsurance for these tests or services. On June 11, 2020, the 57th Amendment to 11 NYCRR 52 was again filed with the Secretary of State, making the above provisions effective until September 9, 2020.
O.	<p>Call for Special Report Pursuant to Section 308, New York Insurance Law: Business Interruption and Related Coverage Written in New York</p>	<p><i>Property and Casualty Insurance</i> New York-licensed property and casualty insurers</p>	<ul style="list-style-type: none"> The DFS instructs New York-licensed property and casualty insurers to provide to the DFS by March 18, 2020 information regarding the commercial property insurance they have written in New York and details regarding the business interruption coverage for which the insurer has ongoing exposure.

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	(Issued March 10, 2020)		<ul style="list-style-type: none"> The DFS requires insurers that have written such business to explain to policyholders the benefits under their policies related to COVID-19, and to provide the DFS with copies of explanations sent to policyholders. We have previously reported on this 308 Letter here.
P.	<p>Call for Special Report Pursuant to Section 308, New York Insurance Law: Travel Insurance Direct Premiums Written in New York</p> <p>(Issued March 10, 2020)</p>	<p><i>Property and Casualty Insurance</i></p> <p>New York-licensed property and casualty insurers</p>	<ul style="list-style-type: none"> The DFS instructs New York-licensed property and casualty insurers to provide to the DFS by March 18, 2020 information regarding the travel insurance they have written in New York and details regarding the coverage provided in the types of policies for which they have ongoing exposure. The DFS requires insurers to explain to policyholders the benefits under their policies in connection with COVID-19, and to send copies of such explanations to the DFS.
Q.	<p>Insurance Circular Letter No. 5 (2020)</p> <p>(Issued March 10, 2020)</p> <p><i>Guidance to DFS Regulated Insurance Entities and Request for Assurance Relating to Operational and Financial Risk Arising from the</i></p>	<p><i>All Lines of Insurance</i></p> <p>New York-licensed insurers, and certain insurance producers that were specifically notified by the DFS</p>	<ul style="list-style-type: none"> The DFS requires New York-licensed insurers and certain insurance producers that were specifically notified by the DFS to submit to the DFS a description of “[the entity’s] plans of preparedness to manage the risk of disruption to its operations and the financial risk arising from COVID-19,” and details the requirements of such plans and such entity’s risk management programs as they relate to COVID-19. The original submission deadline was April 9, 2020, which the DFS has extended to April 17, 2020. The DFS emphasizes that the entity’s board of directors is responsible for “ensuring that appropriate plans are in place, and that sufficient resources are

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
	<p><i>Outbreak of the Novel Coronavirus (COVID-19)</i></p>		<p>allocated to implement such plans,” and that senior management is responsible for ensuring that effective policies and procedures are in place to execute the plan and for “communicating the plan throughout the entity to ensure consistency in approach so that employees understand their roles and responsibilities.”</p> <ul style="list-style-type: none"> • Subsequently, the DFS authorized foreign insurers to submit any report that they are required to submit in their home state/lead state pursuant to the National Association of Insurance Commissioners COVID-19 data submission template. • We have previously reported on Insurance Circular Letter No. 5 here.
R.	<p><u>Insurance Circular Letter No. 4 (2020)</u></p> <p>(Issued March 6, 2020)</p> <p><i>Cancel For Any Reason Travel Benefits</i></p>	<p><i>Property and Casualty/Travel Insurance</i></p> <p>All authorized property and casualty insurers and licensed travel insurance producers</p>	<ul style="list-style-type: none"> • “Cancel for any reason” benefits are not technically insurance under New York law, but may be sold in New York by an insurer if necessary or incidental to its travel insurance business. Non-insurers may provide such benefits if they are not sold as an insurance product. • The DFS advises that COVID-19 “may be a covered peril under a travel insurance policy,” and that nothing in the New York Insurance Law or regulations requires travel insurance to exclude coverage for an epidemic or pandemic. • The DFS expects all authorized property and casualty insurers and licensed travel insurance producers to “affirmatively provide clear guidance and information to their policyholders about their travel insurance policies, and to cooperate fully with anticipated specific requests from DFS in this regard.”

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
S.	<p><u>Insurance Circular Letter No. 3 (2020)</u></p> <p>(Issued March 3, 2020)</p> <p><i>Preparedness for Coronavirus (COVID-19)</i></p>	<p><i>Health Insurance</i></p> <p>Insurers authorized to write accident and health insurance in New York, Article 43 corporations, HMOs, Student Health Plans, and municipal cooperative health benefit plans (collectively for purposes of Row S, “<u>Issuers</u>”)</p>	<p>The DFS instructs all Issuers to take actions to prepare for COVID-19 in New York, including that:</p> <ul style="list-style-type: none"> • Issuers should inform insureds of available benefits, respond quickly to their inquiries, make “all necessary and useful information” available on their websites and staff nurse-help lines accordingly. • Issuers should waive cost-sharing for COVID-19 laboratory tests and for in-network provider office visits, in-network urgent care center visits and emergency room visits when testing for COVID-19. • Issuers are directed to ensure that their telehealth programs with participating providers are robust and can meet increased demand. • Issuers are directed to verify that their provider networks are adequate to handle an increase in the need for health care services. • Issuers are directed to not use utilization review preauthorization requirements as a barrier to access necessary treatment for COVID-19 and are advised to be prepared to expedite utilization review and appeal processes for COVID-19-related services when medically appropriate. • If an immunization for COVID-19 becomes available and is recommended for children through the attainment of 19 years-of-age, Issuers will be required to cover such immunization at no cost-sharing for children through the attainment of 19 years-of-age. Likewise, if an immunization is developed and is

**COVID-19: Key New York Insurance Regulatory Measures
Affecting Policyholders, Insurers and Producers – Update No. 3**

	Circular Letters, Emergency Regulations and Other Guidance	Line of Business/Licensee	Summary Description
			recommended for COVID-19 for adults 19 and older, Issuers should cover the immunization immediately at no cost-sharing.