

Bulletin No. 2022-13

June 23, 2022

**RE: DFS REQUIREMENTS REGARDING
WORKPLACE VIOLENCE/ACTIVE SHOOTER POLICIES**

Following extensive review and discussion, the New York State Department of Financial Services (DFS) has advised ELANY to suspend any excess line workplace violence/active shooter insurance policy or transaction that does not meet the following requirements.

First, a policy may contain medical payment and death benefit provisions only if the policy is a liability policy. In order for a policy to be a liability policy, it must provide a limit of coverage for losses for which the insured is, or may be, held legally liable and that the insurer will pay on behalf of the insured.

Second, defense costs must be included in liability coverage and paid by the insurer on behalf of the insured. Defense cost reimbursement coverage is prohibited except in the case of directors and officers liability insurance. However, liability coverage can be excess of underlying insurance and contain a defense within limits offset provision.

Third, any business interruption and additional expense coverage must be triggered by physical property damage or loss. Therefore, triggers such as closing an insured's premises due to a credible stalker or active shooter threat, or an actual active shooter event that causes loss of rents or use of premises, are not permitted in the absence of physical damage or loss to property.

Fourth, insureds under the policy must be limited to the actual named insured and legally affiliated entities. Insureds that are unrelated to the named insured and share no insurable interest with the group are impermissible. For example, including entities "for which the Named Insured has the responsibility of placing insurance" is an example of language the DFS considers to be unacceptable. Employees, guests and other unrelated parties may not be insureds as this constitutes an impermissible group. However, employees, guests, customers or other invitees to the insured's premises can be the recipients of medical payments and death benefits.

The DFS cited Insurance Law [§1113\(a\)\(7\)\(D\)](#) and [§3450](#) as the applicable statutes.

Although ELANY is engaging in further discussions with the DFS on some of these issues, members are currently advised to ensure that all workplace violence/active shooter policies or endorsements meet each of these requirements prior to filing. Policies that are non-compliant with any of these requirements must be suspended as per the DFS's interpretations.