



American Cancer Society ☿ Children's Defense Fund/New York ☿ Center for Working Families
Community Service Society of New York ☿ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☿ New York Immigration Coalition
Public Policy and Education Fund of New York/Citizen Action of New York

Health Care for All New York
Memorandum in Support
of Restoring Regulatory Authority to Conduct
Prior Approval of Insurance Premium Hikes
in
Governor Paterson's Article VII Bill
(February 2010)

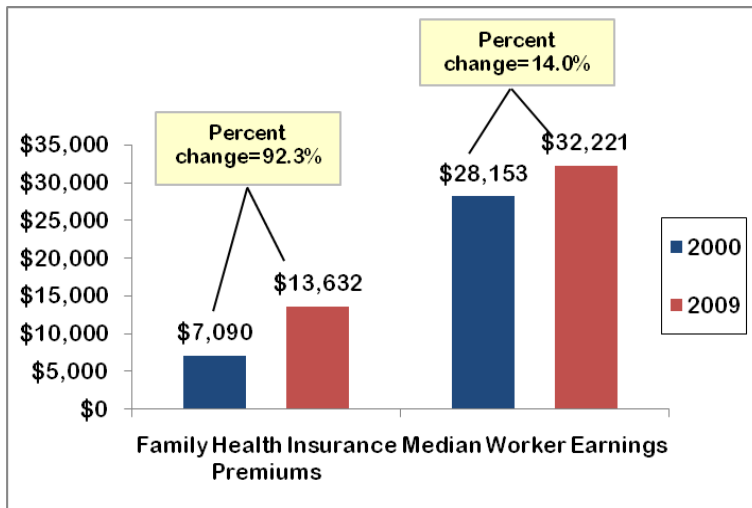
Health Care For All New York (HCFANY) is a statewide coalition of more than 100 organizations dedicated to winning affordable, comprehensive, and high quality health care for all New Yorkers. HCFANY strongly supports and promotes legislation that will protect and improve the rights of health insurance consumers in New York. HCFANY strongly supports the provision of the Governor Paterson's Article VII Budget Bill which seeks to restore to the government the authority to approve or disallow insurance premium hikes prior to their adoption.

In the past decade, New Yorkers have witnessed unprecedented insurance premium increases that have far outpaced inflation and wages. The cost of health insurance for a family on the direct pay market now exceeds \$24,000 annually. These premium increases are directly tied to a precipitous rise in the ranks of the uninsured among moderate-income working families. Absent some regulatory curb on premium hikes, such as those envisioned in this bill, more New Yorkers will be unable to pay for coverage, more New Yorkers will become uninsured, and all New Yorkers will bear the burden of increasing uncompensated care costs and more stress on our already fragile health care system. HCFANY, like most New Yorkers polled, believes that something needs to be done urgently about these skyrocketing insurance premiums.

The Public Believes Insurance Premiums are Unaffordable and Out of Control for New York's Working Families and Businesses

HCFANY understands and represents the real health worries and concerns of New Yorkers who, between 2000 and 2009, they have seen their health insurance premiums increase by 97 percent while, at the same time, have experienced only a 14 percent increase in their median earnings. (See chart below.)

Table One: Growth of Premiums in New York Compared to Median New York Worker Earnings, 2000-2009



Source: Families USA, *Costly Coverage: Premiums Outpace Paychecks in New York*, September 2009.

For low- and moderate-income New Yorkers, health insurance premiums now consume an extraordinary portion of the family budget. As described in the chart below, a low-income family of four earning \$44,000 a year can expect to pay eight percent of its family income on employer-sponsored insurance, an impossible 65 percent of its family income if they seek insurance in the individual direct pay market, and 22 percent of its family income if they try the only public insurance option currently available at that income level—Healthy New York.¹

Table Two: Percent of Pre-Tax New York Family Income Consumed by Health Insurance Options

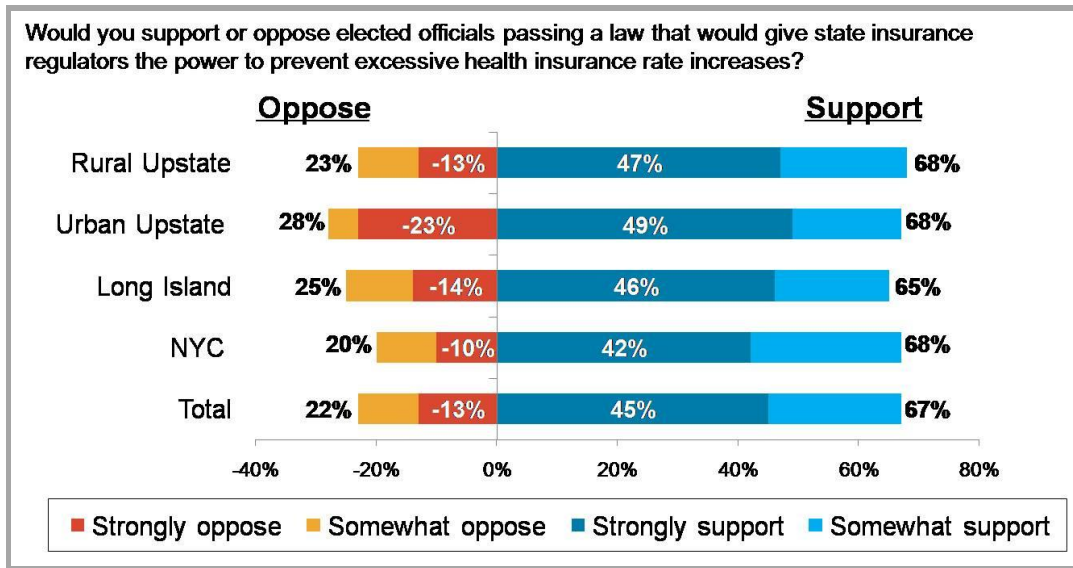
Federal Poverty Level	Annual Income	Family of Four (2 Adults 2 Children)		
		Employer Sponsored Insurance	Individual Direct Pay	Healthy New York
100%	\$22,050	17%	131%	45%
200%	\$44,100	8%	65%	22%
300%	\$66,150	6%	44%	NA
400%	\$88,200	4%	33%	NA
500%	\$110,250	3%	26%	NA
600%	\$132,300	3%	22%	NA

¹ The sources for this data are as follows: Employer Sponsored Insurance data is from the Medical Expenditure Panel Survey/IC (2006); Direct Pay data calculated based on NYSDOI Premium Rates Index (April 2008); Healthy New York data derived from NYSDOI - 2007 Annual Report on Healthy New York. All costs adjusted to 2009 dollars based on observed premium cost growth in each program (ESI, Direct Pay and Healthy NY).



These ever-escalating health care costs have profound political consequences. A statewide poll, conducted by Lake Research Partners for the Community Service Society in late 2009, found that two out of three New Yorkers support a proposal similar to the Governor’s. (See chart below). Notably, intensity of support for the restoration of prior approval was strongest in Upstate New York.

Table Three: 2009 Poll Reveals that New Yorkers Strongly Support Passage of Prior Approval Legislation



Given these economic and political realities, HCFANY enthusiastically supports the section of the Governor’s Article VII bill which seeks to restore prior approval to the Superintendent of Insurance.

How the Prior Approval Proposal Addresses New Yorkers’ Concerns

The Governor’s Bill would achieve two fundamental benefits: (1) restoring the Superintendent’s ability to approve insurance rates hikes in advance, thereby eliminating the current authorization for health plans to simply file a premium rate increase and use it (“file and use”); and (2) improved regulation of health plan profits by setting a minimum “medical loss ratio” (“MLR”) for individual direct pay and small group markets at 85 percent. HCFANY supports the Governor’s Bill for three reasons.

First, the Governor’s Bill would squarely address New Yorkers’ concerns that insurance company premiums are rising at an egregious pace and require government regulation. The ten-year period when insurance premiums increased seven times faster than wages (see Table One) was the same ten-year period during which New York fully implemented the “file and use” system, which this Bill would rescind. In the years in which the Insurance Department utilized prior approval (1990-1995), 24 percent of rate increases proposed by insurance companies were found to be



excessive and were consequently reduced.² Under file and use (1996-2007), only three percent of rate increases were self-reported by insurance companies as excessive.

The dangers of inadequate regulatory approval mechanisms were vividly illustrated just this month as a California insurer, Anthem Blue Cross (a sister corporation to New York's Empire Blue Cross and Blue Shield), having enjoyed an eight-fold increase in profits in the last quarter of 2009, announced a 39% rate hike for individual policies at the beginning of 2010. California regulators could only ask the insurer to postpone the rate hikes to allow them to study them, while the U.S. Secretary of Health and Human Services could only ask the company to clarify its rationale for the hikes.³

Second, New Yorkers have paid a steep price under this deregulatory regime. Subsequent investigations by the Insurance Department found that in the period between 2000-2007 insurance companies have overcharged policyholders by at least \$105 million more than they have self-reported.⁴ For many consumers, these refunds come far too late—they have already had to give up their coverage because they could not afford the inflated premiums. While insurers under a prior approval system have the remedy of challenging inadequate rate increases in court through an accelerated special proceeding, consumers who have been charged what turn out to be excessive premiums under a “file and use” system have no similar remedy. When they lose coverage because they cannot pay an excessive premium, their loss is often irreparable.

Third, the rise in the MLR is necessary because the small group and direct pay insurance markets are eroding faster than large group coverage in New York, and we therefore must demand maximum efficiency from insurers in those segments of the market. Absent some regulatory curb on premium hikes, such as those envisioned in this bill, more New Yorkers will be unable to pay for coverage, more New Yorkers will become uninsured, and all New Yorkers will bear the burden of increasing uncompensated care costs and more stress on our already fragile health care system.

That being said, HCFANY believes the bill could be improved to enhance protections for New York consumers in three ways. First, HCFANY believes that the discretion allowed the Superintendent of Insurance to deviate from the statutory MLR standards if he or she “determines the modification to be in the interests of the people of the state” should be more strictly delineated. (*See, e.g.*, Article VII Bill proposed amendment to 3231(e)(1)(C)). The fact of the matter is, Superintendents of Insurance come and go, displaying varying levels of commitment to the public. Standards should limit the Superintendent's discretion to waive MLR ratio to circumstances such as

² New York State Insurance Department, “The Price of Deregulation: How ‘File and Use’ Has Undermined New York State’s Ability to Protect Consumers from Excessive **Health Insurance Premiums.**” **June 2009.**

³ “**Obama official 'very disturbed' by Anthem Blue Cross rate hikes**
The insurer should give a 'detailed justification' for its plan to raise premiums on individual policies by as much as 39%, Health and Human Services Secretary Kathleen Sebelius says.” **Los Angeles Times, February 9, 2010**

⁴ **Ibid.**



those cases in which a carrier is determined to have a credible claim of fiscal insolvency, to avoid giving future Superintendents of Insurance the ability to undermine the intent of the statute. Second, we believe that since the time frames for public notice are relatively short, the legislation should require specific notification to patient advocacy groups of any proposed premium increases higher than five percent. In this way the public interest is more likely to be defended against egregious premium increases. Third, HCFANY believes that the Bill could be improved if it afforded subscribers who face less than a ten percent increase an opportunity to seek a public hearing.

Thank you for your consideration of HCFANY's Memorandum of Support for the Governor's Proposed Article VII Bill concerning the restoration of Prior Approval of insurance premium increases. Should you like additional information about HCFANY, please visit our website at: www.hcfany.org. For more information about HCFANY's position on the proposed prior approval bill, please contact Elisabeth R. Benjamin, Vice President of Health Initiatives at the Community Service Society at: 212-614-5461; Robert Cohen, Policy Director, Citizen Action of New York at (518) 645-4600; or Mark Scherzer, Legislative Counsel, New Yorkers for Accessible Health Coverage at (212) 604-9606.