



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

**Response to Health Insurer Claims**  
**About Prior Approval of Health Insurance Rates**  
**(February 2010)**

Re: Rate Approvals for Individual and Small Group Health Insurance Policies  
2010-2011 New York State Executive Budget Health and Mental Hygiene  
Article VII Bill (Part D, Sections 1-4) (hereinafter, "prior approval bill")

**I. Introduction**

Health Care for All New York ("HCFANY"), a coalition of consumer and health advocacy organizations<sup>1</sup> dedicated to achieving affordable, comprehensive, and high-quality health care for all New York residents, strongly supports the prior approval proposal in the Executive Budget. HCFANY believes the proposal is a critical step to protect health care consumers against the enormous and often unjustified health insurance rate increases (averaging 14% in the case of the small group market) that have occurred since the rate regulation authority of the State Insurance Department (SID) was fully phased out in 2000,<sup>2</sup> burdening consumers and businesses alike. Moreover, the prior approval bill saves the state money (see Section V).

HCFANY has issued a memo making the case for this critical consumer legislation, which is available at [www.HCFANY.org](http://www.HCFANY.org).<sup>3</sup> This additional memo is written to address the major arguments made by health insurers and their representatives against this proposal and a previous prior approval proposal in memos written by EmblemHealth in 2010 (hereinafter referred to as "EmblemHealth memo") and by the New York State Health Plan Association ("HPA") in 2009 (hereinafter referred to as "HPA memo").<sup>4</sup> (When arguments

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<sup>1</sup> HCFANY, a statewide coalition of 100 organizations, was founded by the American Cancer Society, the Center for Working Families, the Children's Defense Fund, the Community Service Society, the Metro New York Health Care for All Campaign, New Yorkers for Accessible Health Coverage, the New York Immigration Coalition, and the Public Policy and Education Fund.

<sup>2</sup> New York State Insurance Department, Prior Approval of Health Insurance Premiums, Legislative Briefing – January 25, 2010, at 1. (hereinafter, "SID Prior Approval Briefing Memo").

<sup>3</sup> See Health Care for All New York, Memorandum In Support of Restoring Authority to Conduct Prior Approval of Insurance Premium Hikes in Governor Paterson's Article VII Bill (February 8, 2010).

<sup>4</sup> See EmblemHealth, Memorandum in Opposition, Re: Rate approvals for individual and small group health insurance policies. 2010-2011 New York State Executive Budget Health and Mental Hygiene: Article VII – Legislation (Part D. Section 1-4) (January 28, 2010); New York Health Plan Association, Memorandum in Opposition: Re: Price Control on Health Insurance Premium (May 8, 2009).



appear in more than one memo, they are referred to as the “industry memos.”) HCFANY urges the Legislature to reject the self-serving and often conclusory arguments made by industry representatives.

## **II. Myth: Rate Regulation Will Hurt Plan or Provider Solvency or Drive Insurers Out of the Market**

**Plan Solvency and Capital Formation:** The claim by industry representatives that prior approval would drive health insurance companies out of the New York market is not supported by credible evidence. A memorandum prepared by the Health Plan Association merely argues, without actuarial support, that price controls will deprive health plans of the capital needed to grow and compete. In fact, the independent evidence indicates that New York insurers are reasonably profitable: according to an independent study, HMO profits alone totaled \$5.3 billion from 2001 to 2005.<sup>5</sup> According to the Department of Insurance, industry dividends exceeded \$5 billion from 2000 to 2008.<sup>6</sup> In 2008 and 2009, just three large New York insurers sought approval to issue aggregate dividends to out of state parent corporations exceeding \$2 billion.<sup>7</sup>

Most states have prior approval requirements for at least some insurers or specific markets.<sup>8</sup> Families USA, a nationally-recognized health care advocacy organization, has found that prior approval does not have a deterrent effect on health insurer participation.<sup>9</sup> For example, Minnesota insurance regulators said that since prior approval was adopted in 1993, the state has developed a competitive insurance market with numerous carriers and above average enrollment. Interviews with regulators in nine states indicate that prior approval is an effective mechanism to keep premium rate increases reasonable.<sup>10</sup>

**Role of Insurance Department to Protect Solvency:** The EmblemHealth memo argues that prior approval would undermine the “primary objective” of SID to protect the solvency of insurers. Yet one of the principle criteria for Insurance Department determination in the proposed statute is precisely that: assessing whether the proposed increase is “inadequate” to preserve insurer solvency. SID acknowledges and affirms the primacy of this mission, and there is no basis for assuming that it will ignore its responsibilities.

The industry’s argument that the largely unfettered ability to raise rates through the current “file and use” system is necessary to protect them from insolvency is belied by the recent insolvency of MDNY, which was able under that system to raise rates as high as \$8,700.00 per family per month in the individual market and still could not avert liquidation. Over-reliance on misguided and reckless rate increases can destroy an insurer’s ability to stay in business. A stronger regulatory role for SID would be more likely to save insurers from insolvency by focusing on their real structural problems

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<sup>5</sup> AIS Risk Consultants, Inc., *New York Health Maintenance Organization Profitability: Analysis of HMO Result in New York State From 2001 to 2005* (May 2006), at 4; *see also* United Hospital Fund, “Merging the Markets: Combining New York’s Individual and Small Group Markets into Common Risk Pools,” (2009) at viii (noting small group market profits in 2006 were 4.6%).

<sup>6</sup> SID Prior Approval Briefing Memo, at 1.

<sup>7</sup> SID Press Release, December 10, 2009.

<sup>8</sup> Twenty-eight states have adopted prior approval in their individual markets; 20 states have adopted prior approval for the small group market. Families USA, *The Facts About Prior Approval of Health Insurance Premium Rates* (Health Policy Memo) (June 2008), at 2 (hereinafter, “Families USA Prior Approval Health Policy Memo”).

<sup>9</sup> *Id.*, at 1-2.

<sup>10</sup> *Id.*, at 3.



To be sure, SID also is charged with protecting consumers against increases that are “excessive” or “unreasonable.” But if SID were to act recklessly and prevent legitimate rate increases necessary to protect the financial condition of insurers,<sup>11</sup> the affected insurers have a ready legal remedy in the form of an Article 78 court proceeding. Consumers who may lose coverage and access to life saving care as a result of excessive or unreasonable rate increases have no corresponding remedy, and suffer irreparable harm under current rules.

Hospital Solvency: EmblemHealth also states that “health plan solvency is related to the solvency of [sic] the New York’s hospitals as well as that of other providers of care,” and alleges that the “ripple effect of health plan price control on provider reimbursement is not addressed by the bill.” They appear to be arguing that if they are limited in increasing premiums, they will have to, in turn, squeeze the hospitals and other providers in their compensation arrangements. This is an ironic argument coming from insurers which, we have been told time and again by hospitals and doctors, have long used their considerable bargaining power to lower provider reimbursement rates. Indeed, hospitals already consider themselves to be in a state of financial crisis and many primary care and other doctors are now ready to support single payer systems in order to escape insurer hegemony. We agree that *some* hospitals and other providers in New York State have legitimate concerns in regard to financial solvency right now. We submit that the appropriate response to those concerns is to address them directly through such mechanisms as hospital rate re-regulation, administrative simplification, and recognition of the full range of services for which providers should be reimbursed. There is no basis in past experience to assume that giving insurers carte blanche to raise rates has the effect of protecting provider reimbursements.

### **III. Myth: Prior Approval Will Result in Arbitrary Decisions by the State Insurance Department or “Artificial” Suppression of Rates**

Politicizing the Process: Time and again, health insurer representatives have argued that rate regulation will result in a “politicized” process that would inhibit their ability to receive legitimate rate increases. HPA and EmblemHealth both ignore the obvious point that nothing in the bill assumes SID will reject or modify any proposed rate increase. As with other basic consumer services that have historically been subject to rate regulation in New York State, regulation simply would give SID the authority to consider the reasonableness of a rate proposal and to determine whether to approve or modify it. As previously stated, should SID act in an arbitrary fashion as insurers speculate that it might, an insurer obviously may seek in court to overturn the Department’s decision under Article 78 of the Civil Practice Law and Rules.

The Fallacy of the Empire Example: Among the most objectionable arguments made by EmblemHealth (and suggested by health insurers at past legislative hearings) is that Empire Blue Cross and Blue Shield’s well-publicized financial difficulties in the 1990s were due to prior approval. Specifically, EmblemHealth claims that “prior approval ... almost caused the collapse of Empire BlueCross BlueShield,” citing Empire’s own legislative testimony. In fact, in the 1990s, Empire did not attribute its financial difficulties to artificial rate suppression, but rather to the ability of commercial carriers to “cherry-pick” the health insurance market. Empire’s commercial competitors, on the other hand, attributed its problems then

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<sup>11</sup> As an aside, the industry arguments against this bill are fraught with attacks on the State Insurance Department as an honest regulatory agency, a claim we believe lacks merit should not be given credence by the Legislature.



to mismanagement and failure to enter into the managed care market. Empire's management failings were exemplified by the jailing of Jerry Weisman, the company's chief financial officer. Convenient as it now may be for Empire (now a successful for-profit company) and its competitors to now agree to rewrite history, Empire's past problems were simply not attributable to prior approval.

#### **IV. Myth: Rate Regulation Will Hurt Efforts to Expand Coverage and Improve the Quality of Care**

Expansion of Coverage for the Insured: There is no evidence to support EmblemHealth's claim that price controls would "damage the state's ability to meaningfully address the problem of the uninsured." On the contrary, a study has shown that each 1% increase in premiums in the state would result in roughly 30,000 additional individuals losing insurance coverage.<sup>12</sup> Rate regulation would be a positive step in preventing people from becoming uninsured.

Quality of Care and Care Management Initiatives: HPA argues that prior approval will lessen the ability of health plans to innovate and invest in quality initiatives. Yet as SID points out, the huge industry dividends achieved from 2000 to 2008 were not invested in the health care system.<sup>13</sup> The industry is asserting virtues for the current system for which there is no empirical evidence. Quality, moreover, can be enhanced in various ways. An analysis by Families USA indicates that prior approval promotes quality by preventing insurers from "gaming the market" through such practices as charging lower than average premiums to attract new policyholders and then significantly raising prices on these products.<sup>14</sup>

Otherwise put, rate regulation provides oversight over insurer practices to ensure that premiums and products are sustainable, which enhances the quality of care and promotes both the interests of consumer protection and the long-term viability of insurers alike.<sup>15</sup> In this period of the collapse of major insurance industry giants like AIG due to mismanagement, it should be clearer than ever that greater governmental oversight over the insurance and financial services industries are essential.

EmblemHealth makes a related argument, that under prior approval, the costs of quality improvement projects such as "comprehensive case and disease management and wellness programs provided by health plans, are treated as administrative costs despite the demonstrated impact on the health of members." HCFANY does not object to examining whether specific beneficial programs and services that are currently treated as non-reimbursable administrative costs, such as case management services, should be reclassified as medical expenses for purposes of both provider reimbursement and medical loss ratio computation. . However, these same issues exist in our current "file and use" system, where presumably insurers are not free to classify such services as medical expenses either. We should address restructuring of our medical reimbursement system, but that issue is entirely separate from the issue of prior approval. .

#### **V. Myth: Prior Approval Will Place Administrative Burdens on the State**

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<sup>12</sup> *Id.*, at 2.

<sup>13</sup> SID Prior Approval Briefing Memo, at 1.

<sup>14</sup> Families USA Prior Approval Health Policy Memo, at 4.

<sup>15</sup> *Id.*, at 4.



EmblemHealth's argument that this proposal would produce unreasonable administrative burdens on the state is disputed by SID itself, which states that it would not significantly affect its administrative workload. Further, SID estimates that this proposal will prevent roughly 45,000 individuals from losing their coverage annually (22,500 in the first year), resulting in a savings to the state of \$70 million in Fiscal Year 2010-11 and \$151 million in FY 2011-12.<sup>16</sup> In this time of huge state deficits, this positive impact on the state fiscal situation and on consumers alike makes a powerful case for passage of prior approval legislation.

## **VI. Conclusion**

**In summary, the Legislature should reject the unsupported arguments made by health insurers against rate regulation.** The Governor's Bill proposal will address the escalating cost of health insurance to consumers and small business alike. Even if national health insurance reform is passed, which we hope and expect, none of the bills before Congress adequately address the increasing unaffordability of health insurance, especially in the short term. Additional state action is and will be necessary. This proposal is an extremely necessary step for consumers, and, as indicated, will save the state money. It therefore deserves passage this year.

*For more information, please contact Bob Cohen, Policy Director, Citizen Action of New York (518-465-4600 x104), Elisabeth R. Benjamin, Vice President of Health Initiatives, Community Service Society (212-614-5461), or Mark Scherzer, Legislative Counsel, New Yorkers for Accessible Health Coverage (212-406-9606).*

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<sup>16</sup> SID Prior Approval Briefing Memo, at 2.