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

Testimony of the

Health Care for All New York Campaign

Before the Assembly Standing Committee on Insurance

on

Regulatory Approval of Health Insurance Premium Rates

June 8, 2009

Hamilton Hearing Room B
Legislative Office Building, 2nd Floor

Health Care for All New York Campaign
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Good morning, my name is Elisabeth R. Benjamin, of the Health Care for All New York (HCFANY) Campaign. HCFANY thanks Insurance Committee Chair Joseph Morelle for his leadership on health insurance matters and for holding this hearing on the extremely important topic of prior approval of rate increases.

The HCFANY Campaign is a statewide coalition dedicated to winning affordable, comprehensive, and high-quality health care for all New York residents through State and federal health reform. HCFANY seeks to bring New Yorkers' voices to the health reform conversation. The Campaign was founded by eight leadership organizations: The American Cancer Society, The Center for Working Families, The Children's Defense Fund, Citizen Action, The Community Service Society of New York ("CSS"), Metro New York Health Care for All Campaign, New Yorkers for Accessible Health Coverage, and the New York Immigration Coalition, and has now grown its membership to more than 70 organizations statewide. For more information about HCFANY, please visit our website and health reform blog at: **www.hcfany.org.**

The HCFANY Campaign is grateful for the opportunity to submit the following comments about A.8280, introduced by Chairman Morelle at the request of Governor Paterson.

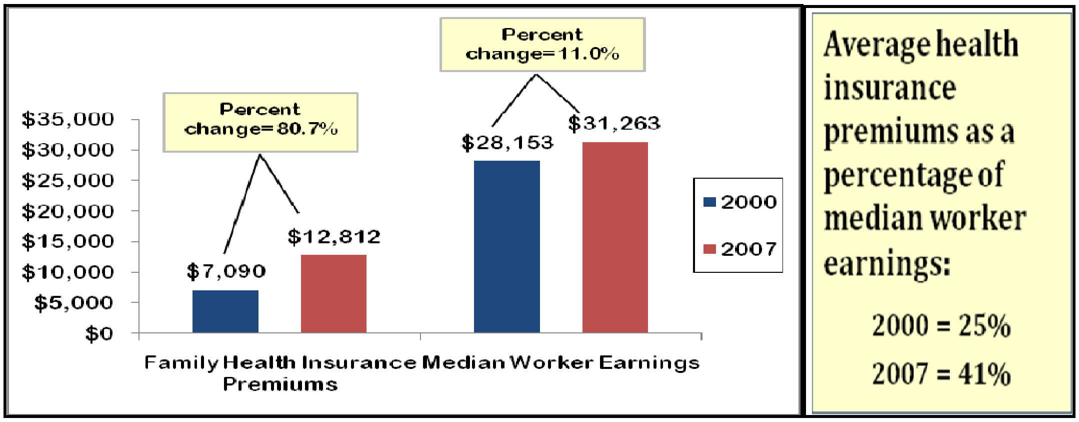
HCFANY strongly supports this bill, and would move even further to strengthen it. HCFANY specifically supports the provision that would restore to the State the ability to review and approve health insurance companies' proposed premium hikes in advance for the small group and direct pay markets and the provision which directly ties this approval to a cap on insurance company profits and administrative costs.

This bill is sorely needed because, as described below, New Yorkers have witnessed unprecedented insurance premium increases over this past decade. 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.

The Problem: Insurance is Unaffordable 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 2007, have seen their health insurance premiums increase by 81% while, at the same time, their real wages have only increased by 11%. (See chart below.) It is no accident that this period of rapid rate increases reflects the same time period when New York fully implemented the "file and use" system which is the subject of today's hearing.

New York: Growth in Premiums Compared to Real Wages, 2000-2007



Source: Families USA, *Premiums vs. Paychecks: A Growing Burden for New York's Familie*s, October 2008.

For low- and moderate-income New Yorkers, health insurance premiums consume an extraordinary portion of their family budget. As described in the chart below, a low-income family of four earning $44,000 a year can expect to pay 8% of its family income on employer-sponsored insurance, an impossible 65% of its family income if they seek insurance in the individual, direct pay market, and 22% of its family income if they try the only public insurance option currently available at that income level—Healthy New York.[1]

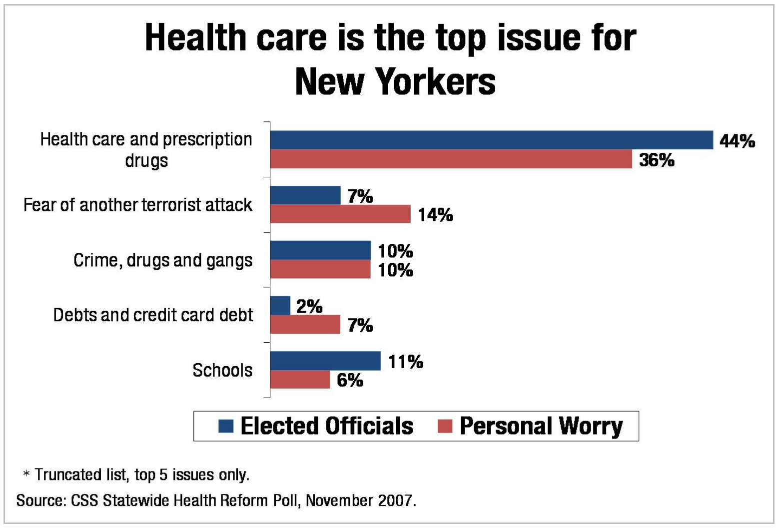
Percent of Pre-Tax Family Income Consumed by Health Insurance Options

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%	15%
400%	$88,200	4%	33%	11%
500%	$110,250	3%	26%	9%
600%	$132,300	3%	22%	7%

Ever-escalating health care costs have profound health consequences for New Yorkers. A statewide poll, conducted by Lake Research Partners for the Community Service Society in late 2007 found that 25% of New Yorkers are forgoing prescriptions and 22% are making do without medical care due to lack of insurance or lack of funds. In that same poll, New Yorkers identified health care

[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).

and prescription drugs as their top personal worry and top issue that they thought their elected officials should address.



For these reasons, the HCFANY campaign not only strongly supports A.8280, but we would also strengthen it in five ways listed at the end of this testimony.

The Solution: Prior Approval and Caps on Medical-loss Ratios

Until 1994, all health plans in New York were required to seek prior approval for premium rate increases. Between 1994 and 2000, health insurers were incrementally allowed to adopt the current "file and use" policy, which consists of informing the Department of Insurance of the intention to raise premiums, and then using those new rates. The Department is without authority to prevent premium increases under the "file and use" system, even if they are excessive, inadequate or unfairly discriminatory.[2]

The costs of this "file and use" policy experiment have been fully borne by individual health care consumers and small businesses. As mentioned at the outset of this testimony, it is the people of New York who pay the price of deregulation in unfettered premium increases.

Premium Increases Doubled for New Yorkers Without Prior Approval Regulation

Period	Prior Approval Required	Large Groups	Small Groups	Direct Pay Plans
1996-99	Over 10%	5.08%	5.22%	7.59%
2000-06	No Limit	13.53%	13.56%	15.99%

Source: New York State Department of Insurance, PowerPoint Presentation of Sup. E. Dinallo (undated).

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[2] *Excellus Health Plan, Inc. v. Serio*, 2 N.Y.3d 166 (2004).

According to the Department of Insurance, the individual direct pay market had 100,000 enrollees in 2000. Since the adoption of "file and use," premiums in this market have skyrocketed and now only 36,000 people remain.[3] During this same period, average monthly HMO premiums rose from less than $300 a month, to nearly $900 per member per month.

Small businesses have also been affected by skyrocketing premiums. According to an analysis of Current Population Survey data provided to HCFANY by the United Hospital Fund, 55% of workers in firms with less than 25 workers had employer-sponsored coverage in the period 2000-2004. By 2004-2007, only 52% of workers in these same firms had coverage.[4] HCFANY believes that state regulation in the form of prior approval can quell this erosion of coverage being experienced in New York's small group market.

> ***"Every year the cost of living goes up and if you get a raise, if there is one, it goes towards the insurance. You never really get a raise to keep up with the cost of living."***
>
> \- Small Business Owner from Rochester, NY
>
> **Source: CSS Focus Group, 3/11/09**

During the past decades, insurance companies have aggressively increased premiums in these vulnerable markets, yet their medical-loss ratios have dropped significantly. The drop in medical-loss ratios indicates that insurers are devoting less of a premium dollar to actually paying medical claims for New Yorkers. Concurrently, carrier profits, net worth, and reserves have soared. As described in the chart below, prior to 2000, the ratio of dividends to premium was almost always below 2%, since the complete elimination of prior approval in 2000, this ratio has nearly doubled.

Insurance Profits Have Increased Substantially Without Prior Approval

Year	Dividends Paid	Premiums	Dividends as Percentage of Premiums	Companies Paying Dividends
1996	$160,000,000	$8,292,972,872	1.93%	1
1997	$27,800,000	$9,492,009,090	0.29%	1
1998	$47,200,000	$9,277,686,938	0.51%	1
1999	$40,000,000	$9,821,986,243	0.41%	1
2000	$290,600,000	$10,147,569,666	2.86%	2
2001	$286,900,000	$11,161,358,265	2.57%	2
2002	$262,000,000	$9,795,716,895	2.67%	2
2003	$405,613,966	$9,976,566,316	4.07%	2
2004	$472,094,351	$9,749,788,071	4.80%	4
2005	$308,600,000	$9,749,788,071	3.17%	3
1999-1999	**$275,000,000**	**$36,884,655,143**	**0.75%**	
2000-2005	**$2,025,808,317**	**$60,672,309,621**	**3.34%**	

Source: NYS Department of Insurance PowerPoint Presentation to the Business Council (1/27/09)

[3] Personal communication with a New York State Department of Insurance official on June 4, 2009.

[4] Analysis graciously provided to HCFANY by the United Hospital Fund on June 4, 2009. Analysis based on data from the 2001, 2005, and 2008 Annual Social and Economic Supplement to the Current Population Survey, published by the U.S. Census Bureau.

The insurance industry's allegation that prior approval would somehow drive health insurance companies out of the New York market is specious. Most states have prior approval requirements for at least some insurers or specific markets.[5] In short, insurance companies have no place left to hide from prior approval. In fact, the evidence from other states points to the opposite conclusion. For example, Minnesota insurance regulators told one set of investigators that since prior approval was adopted in 1993, it has developed a competitive insurance market with plenty of carriers and above average enrollment has flourished.[6] Interviews with regulators in nine states indicate that prior approval is an effective mechanism to keep premium rate increases reasonable.[7]

HCFANY's Recommendations for Strengthening the Bill

First, while the bill restores power to the Superintendent of Insurance to approve or disapprove health insurance premium hikes, it does not provide for a public process to engage in this review. Prior to 1996, when the "file and use" system was adopted, health insurance beneficiaries and the general public were allowed to comment on rate increases through a public hearing process. In fact, it was only through this process that many insurance reforms—such as community rating—were won. Public hearings will allow for an open review of actuarial and other data that could lead to an independent analysis of whether rates should be raised. In addition, public hearings will provide customers an opportunity to express their concerns about rate increases and other matters, such as how premiums are actually being spent (e.g. network adequacy). Superintendents of Insurance come and go, displaying varying levels of commitment to the public. The only way to guarantee that the public interest is truly served is through an open and public hearing process. HCFANY urges the Legislature to restore the public hearing process for insurance rate increases. We commend the approach in the bill introduced by Assembly Member Bradley (A. 3122).

Second, HCFANY urges the legislature to adopt a higher medical-loss ratio than the one proposed by A.8280. HCFANY recommends capping profits and administrative expenses at 10%, with a 90% medical-loss ratio.

Third, HCFANY is concerned that the language of A. 8280, as currently written, permits the Superintendent to waive the minimum medical-loss ratio if he or she determines that it is "in the interest of the people of this state." We are concerned that this provision gives too much discretion to a potentially pro-insurance industry superintendent in some future administration. We urge the legislature to eliminate this language.

Fourth, the program bill allows Medicare supplemental policies to set a lower medical-loss ratio of 80%. HCFANY is unclear why these policies should be subject to lower medical-loss ratios

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[5] 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*, June 2008 at 2.
[6] Families USA, *Facts About Prior Approval of Health Insurance Premium Rates*, June 2008.
[7] Id.

than other policies. In fact, our understanding of federal regulations is that any federal rules on Medicare supplemental policies should serve as a floor for State regulation, not a ceiling. Accordingly, HCFANY urges the legislature to eliminate this language, provided there is no specific federal rule or other reason to require a lower medical-loss ratio for these policies.

Finally, HCFANY is concerned about A. 8280's "aggregation of policy forms" language. While we understand the need to resolve contradictions within the current statutory scheme regarding how rates are set, we believe that this provision could undermine the protections of community rating for people with more comprehensive policies. Under this language, insurers could aggregate comprehensive and less comprehensive policies in a way that those with comprehensive policies could end up experiencing lower medical-loss ratios than those with less comprehensive policies. HCFANY believes that this bill should be amended to specify that the aggregation process shall not permit comprehensive policies to be used to subsidize less comprehensive policies.

Insurance reform could form a solid foundation for the achievement of quality, affordable health coverage for all New Yorkers. We urge the Assembly to strengthen and pass A. 8280 this Legislative Session.

Thank you for the opportunity to submit this testimony. Should you have any questions about HCFANY or our testimony, please contact Elisabeth Benjamin at: 212-614-5461.