



American Cancer Society ☯ Children's Defense Fund/New York ☯ Community Service Society of New York ☯  
Make The Road 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 ☯ Raising Women's Voices ☯  
Schuyler Center for Analysis and Advocacy

August 6, 2012

Ms. Danielle Holahan  
New York State Health Benefit Exchange  
New York State Department of Health

[Submitted electronically to [exchange@health.state.ny.us](mailto:exchange@health.state.ny.us)]

RE: Benchmark Options for Essential Health Benefits

Dear Ms. Holahan:

Health Care for All New York (HCFANY) submits these comments on New York's selection of an Essential Health Benefits (EHB) benchmark plan for use in the individual and small group insurance markets. HCFANY is a statewide coalition of over 130 organizations seeking to achieve affordable, quality health care for all New Yorkers. We thank you for the opportunity to provide our comments on this fundamental step in implementing the Affordable Care Act in New York State.

In general, we commend New York State for the thorough and considered study of the potential EHB benchmark plans. We recognize that the selected benchmark EHB will apply to non-grandfathered plans both inside and outside the State Health Insurance Exchange (the Exchange), as well as the benefits included in a Basic Health Plan, if New York implements such a plan. We also recognize that the EHB benchmark plan could serve as the basis for Medicaid Benchmark and Benchmark Equivalent Populations.

The EHB decision is thus critically important for New York's individuals, families, and small businesses, who are desperately in need of affordable, comprehensive insurance coverage. It is especially important for people with serious illness and disability who are at risk if the essential health benefit package is insufficient to meet their medical needs. The package that New York decides upon must meet the needs of all diverse segments of the state's population. New York's choice should allow an easy transition for consumers moving to Exchange-



subsidized coverage upon losing eligibility for public programs, and it should reflect New York's insurance philosophy and strong consumer protections already in place.

To ensure that consumer voices are heard in the state implementation of health reform, HCFANY has been conducting listening sessions across the state with diverse constituencies. At these listening sessions, we have collected health care stories and have asked consumers about their values and priorities regarding the types of health care plans to be sold in New York. We have also asked consumers to comment on the potential changes that will occur in our insurance markets. These comments support the need for health care plans to provide comprehensive coverage in the ten EHB categories, and are included below.

With these principles in mind, we strongly urge adoption of the New York State Employee Plans' Empire Plan as the best benchmark option for EHB in New York.

#### The Empire Plan provides the comprehensive coverage New Yorkers need

Come 2014, the EHB benchmark plan will cover a much more diverse population than many small group plans currently cover. In addition to employees of small businesses, the benchmark EHB plan will determine the coverage for individuals purchasing coverage on their own; these individual purchasers are more likely to have complex health needs. This benchmark benefits must be adequate to cover consumers of all ages, from infants to workers close to retirement, and people with a range of health needs.

We agree with the conclusion of the United Hospital Fund's report analyzing the benchmark options:

The Empire Plan would bring more certainty as a benchmark in terms of identifiable benefits, would avoid state defrayal costs, and also would have value as a bridge during a transition period when New York will be implementing the Exchange and federal reforms, reevaluating state public programs for individuals, subsidies for commercial products like the standardized direct pay plans and Healthy New York, and making decisions on whether to enact a Basic Health Program. Its broader benefit package might also ease transitions for those New Yorkers who will turn to Exchange-subsidized coverage upon losing eligibility for New York public programs.<sup>1</sup>

The Empire Plan currently covers over one million active employees and retirees (a population roughly two-thirds the size of the entire small group market).<sup>2</sup> For the following reasons, the Empire Plan is the most comprehensive of the 10 benchmark options reviewed by Milliman:



- The Empire Plan is the only benchmark option that meets or exceeds almost all of New York’s individual and small group benefit mandates.<sup>3</sup>
- It includes dental coverage for adults as well as children.<sup>4</sup>
  - When S.F., a resident of Brooklyn who works with people with HIV, was asked which plan she would choose as a benchmark plan, she responded, “I would pick the State plans. Dental is huge ... People with HIV do have a lot of dental issues.”
  - Additionally, at listening sessions conducted at the True Colors residence in Manhattan, which houses formerly homeless LGBT youth, and at the Westchester-Putnam Access Coalition in Westchester County, attendees spoke strongly about the need for adult dental coverage.
- The Empire Plan has more generous service limits on a long list of services that are restricted by other benchmark options, such as: (mental health, orthotics, chemical dependence, skilled nursing facilities, home health care, physical therapy, rehabilitation therapy, occupational therapy, and speech therapy).<sup>5</sup>
  - The above services are extremely important to consumers, and were specifically identified as services needed to be covered by health care plans in New York.
    - “I have Blue Cross Blue Shield HMO. It costs \$400 a month for poor coverage. It does not include mental health, hospice, physical therapy, [orthotics]... I can only receive physical therapy and occupational therapy after surgery; it does not cover overuse injuries!” *L.B., Manhattan, NY*
    - “I have an orthotic insert in my shoe. I needed a new one and [my insurance company] refused. They gave me one ten years ago, and they won’t give me another one.” *B.N., East Flatbush, Brooklyn, NY*
    - “My mother has cancer, and in order for her to get physical therapy, she has to be discharged from the hospital and it is limited to 4 weeks. She uses a walker; her bones are collapsing. She can’t stand. She also needs a home care attendant. Now I have to go and assist her, which I of course want to do, but I believe she needs a physical therapist and home care attendant too.” *TC, Manhattan, NY*
- It covers both medically necessary and elective abortions, infertility services, and contraception.<sup>6</sup>
  - Many consumers identified the need for comprehensive reproductive care to be included in the benchmark plan. Specific mention was made of infertility services. B.S., a Manhattan resident, noted that her insurance did not cover infertility treatment at all. And while she was able to save up some of her \$25,000 salary and borrow additional funds, she could only afford to purchase her fertility medications on the unregulated underground market.



- The Empire Plan does not contain any explicit exclusion of transgender-specific services.<sup>7</sup>

The Empire Plan offers stability and a high level of certainty in addition to its comprehensiveness, due to its large size and clearly identifiable benefits.<sup>8</sup> These comprehensive benefits will better serve New York’s diverse consumers than the more limited Oxford small group plans, designed for a more narrowly defined consumer base than will be served by plans using the EHB in 2014.

The Empire Plan offers other important benefits that are important to the needs of New York consumers and small business. For example, the Empire Plan offers out-of-network benefits, and covers domestic partners and same sex spouses.

#### The Empire Plan’s marginal cost increase should not be a barrier

New York should not reject the Empire plan as the EHB benchmark merely because of the slightly higher predicted effect on premium cost. According to Milliman, utilizing the Empire Plan as the benchmark for EHB would result in marginally larger increases in medical costs for insurance when compared to the largest commercial small group products (a difference of 3.2 percent from the lowest priced Oxford small group plan and 1.2 percent over the Federal Employee Health Benefit Plan).<sup>9</sup>

While affordability of coverage is extremely important to HCFANY’s members, we believe the marginally higher price of the Empire Plan will be significantly offset by the significant changes in the marketplace achieved by the full implementation of the Affordable Care Act. As the State’s consultants have noted, New York’s individual consumers should expect to see savings of up to 70 percent in the individual market and between 5-22 percent in the small group market.<sup>10</sup> These savings result from other Exchange implementation factors that will increase the pool of covered lives, including: merging the small group and individual markets; individual mandate penalties on uninsured consumers who can afford coverage; small business tax credits; and premium tax credits and cost-sharing subsidies for individuals purchasing coverage on the Exchange.

Additionally, the “Impact on Gross Medical Costs for Small Group Insurance” figures do not take into account the cost to the State of covering state mandates. If New York selects an EHB benchmark that does not cover State mandates, New York will have to pay the cost of these mandated benefits or revoke these critical consumer protections. The Empire plan does more than the other options to relieve the State of this financial burden.<sup>11</sup>



More information should be made available to the public

Finally, HCFANY respectfully submits that the information provided to the public on the Federal Health Care Reform in New York State site should be supplemented to help consumers better evaluate the benchmark options. While the spreadsheets provided show the existing benefits offered by the various plans, they do not show which of these benefits must be supplemented to meet federal requirements. It is difficult to compare the value of the benefits that are obtained by choosing one benchmark plan over another based only on the information provided. For example, HCFANY is unable to ascertain whether federal mandates for mental health parity were included in treatment of visit limits. We urge the Exchange to provide access to the Evidence of Coverage documents for each plan and to release more information about how the Impact on Gross Medical Costs for Small Group Insurance figures were calculated.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at [ebenjamin@cssny.org](mailto:ebenjamin@cssny.org) or at (212) 614-5461 or Carrie Tracy at [ctracy@cssny.org](mailto:ctracy@cssny.org) or (212) 614-5401.

Sincerely,

Elisabeth Benjamin, MSPH, JD  
Vice President of Health Initiatives  
Community Service Society of New York

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<sup>1</sup> P. Newell, “Defining Essential Health Benefits: Federal Guidance and New York Options,” United Hospital Fund, 2012, page 22.

<sup>2</sup> *Id.* at 21.

<sup>3</sup> *Id.* at 15.

<sup>4</sup> Appendix A, New York State Essential Health Benefits Study, Summary of Covered Services for Potential Benchmark Plans, Prepared for New York State Department of Health by Milliman, page 5.

<sup>5</sup> *Id.*, *supra* n. 1.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> According to an analysis by the Center for American Progress LGBT State Exchanges Project, there are possible transgender-specific exclusions in the three FEHBP plans, the three Oxford small group plans, and Emblem Health HIP Prime. However, the Empire Plan does not contain an explicit exclusion targeting transgender enrollees.

<sup>8</sup> *Id.* at 22.

<sup>9</sup> Harris, T. and Muller, S., “Essential Health Benefits Overview,” Slide Presentation, Milliman, August 2, 2012.

<sup>10</sup> “ACA Implementation in NY: Using the Health Insurance Policy Simulation Model (HIPSM) to Estimate Coverage and Cost Implications,” PowerPoint presentation, The Urban Institute, February 2, 2012

<sup>11</sup> *Supra* n. 1 at 15.