

**TESTIMONY OF
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CITIZEN ACTION OF NEW YORK**

**ON THE ESTABLISHMENT OF A HEALTH INSURANCE
EXCHANGE IN NEW YORK STATE**

May 16, 2011

(Albany Hearing)

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My name is Bob Cohen. I am the Policy Director of Citizen Action of New York, a statewide membership organization that advocates for racial, social, economic and environmental justice with chapters or affiliates in seven communities throughout New York State. Our organization helped lead the campaign in New York for passage of the Affordable Care Act ("ACA"). Thousands of our members were involved in this effort and we are gratified that New Yorkers are already realizing concrete benefits from the Act. Thank you for holding these hearings around the state on the future of the New York health insurance exchange.

Citizen Action is a leading member of Health Care for All New York ("HCFANY"), a statewide coalition of over 115 organizations that is testifying here today. We of course support the principles laid out in HCFANY's testimony, but wish to focus on a small number of points of our own.

The Need for An Exchange in 2011 and a Pro-Consumer Exchange

Our overarching message is one that we believe you will hear again and again: New York State must pass exchange legislation in 2011. It is critical that the state access the guaranteed multi-year funding that will be made available to states by acting this year. Further, we must begin in 2011 to take numerous steps – from revamping state IT systems to hiring staff – that are dependent on the existence of an exchange. We are hopeful that the Governor will soon propose exchange legislation, and that both houses of the Legislature can then rapidly begin negotiations – through an open process with continued consumer participation – to arrive at an agreement on final legislation by the end of session.

It is critical that this legislation provide for one statewide exchange. As all consumer stakeholders at the administration's Albany April 21st stakeholder roundtable in agreed, one exchange (including a combined individual and "SHOP" small business exchange) will most effectively spread risk and maximize the buying power of consumers and small businesses so that rates are kept down. At the same time, the statewide exchange should have regional offices, and tailor its functions – including navigation and consumer information – to meet the diverse needs of the regions of the state. Merger of the individual and small group markets should be built into the

state's planning process: at a minimum, the legislative intent section of any exchange legislation should declare a legislative presumption that the individual and small group markets be merged.

We strongly believe that the exchange must be a governmental entity. A not-for-profit would simply not be sufficiently accountable to adequately perform the governmental functions assigned to the exchange under the ACA, such as making eligibility determinations for premium credits. Three or four members of the exchange board – roughly half of its members – should represent individual consumers or small businesses.

Our preference is that the exchange be a public authority, given the need to separate the exchange function of promoting a well-functioning health insurance market from the state agency function of holding insurers accountable.¹ As you know, both the existing Massachusetts connector and the new California health care implementation law have adopted this model. A public authority would have much greater operational flexibility than a state agency, which is particularly important given the short period within which an exchange has to begin operation under the ACA.

However, as Citizen Action's education and research affiliate said in a January report: "given the documented abuses of public authorities in New York, the authority would have to be subject to strict oversight to ensure accountability." As the PPEF report recommended, the 2005 and 2009 public authority reform laws should generally apply to the exchange.² The exchange should also be subject to strict conflict of interest rules, including a prohibition on board members that are affiliated with insurers and others contracting with the exchange or their trade groups.³ We agree with HCFANY that an advisory board should instead be created that includes a wide range of insurer and provider interests in addition to representatives of consumers and other stakeholders.

¹ See Public Policy and Education Fund of New York, *A New Pro-Consumer Health System: Enforcing the New Federal Health Care Law in New York State* (January 2011), at 6-7 (hereinafter, "New Pro-Consumer Health System").

² *Id.*, at 7.

³ *Health Care for All New York: Position Paper on Governance for a Consumer-Friendly New York Health Insurance Exchange* (May 2011).

The Need for Strong Consumer Assistance and Navigation Programs and Adequate Consumer Information

We also believe that it is critical to put strong consumer assistance and navigator programs in place to generate enrollment, to help consumers to select health plans that meet their needs, and to assist consumers in disputes with health plans and providers. The New York exchange legislation should also ensure that the successful state consumer assistance program that is in place today, known as “Community Health Advocates,” continues on a permanent basis; since its establishment statewide in the fall, this ACA-funded consortium of community-based organizations has already established a track record of providing high-quality consumer assistance services to thousands of New Yorkers. In addition, the legislation should ensure that the CHA program effectively coordinates its work with the ACA-created navigator program that will start in 2014 and with other entities that currently provide assistance to consumers like state agencies and state-funded “enrollment facilitators.” Health plans and entities receiving direct and indirect compensation from health insurers should be prohibited from receiving navigator grants.

The exchange should of course have a well-functioning web page and toll-free number as required by the ACA. However, that is not enough: many consumers also need significant “one-on-one” assistance to navigate the complex health insurance market and to resolve disputes with health insurers and providers. In addition, materials distributed by the exchange and consumer assistance programs must be easy to understand, available in multiple languages and accessible to people with disabilities.

The need for strong enforcement of laws that protect consumers against abuses by health plans has often been neglected in the discussion over health care implementation in New York. We urge the administration to develop legislation that incorporates the proposals on enforcement and consumer information made in the January PPEF report.⁴

⁴ See New Pro-Consumer Health System.

Steps Must Be Taken to Reduce Health Care Disparities

As a major 2009 report prepared for the State Department of Health began: “[h]ealth disparities are deep and pervasive in New York State, as they are in almost every state in the nation.” However, as former Health Commissioner Daines has recognized, a comprehensive state strategy to eliminate disparities as to health outcomes by race, gender and other factors coupled with agreed on action steps is sorely lacking.⁵

The Affordable Care Act has numerous provisions aimed at addressing health equity. New York should use the opportunity presented by the ACA to become a leader in addressing this urgent priority. At least three steps can be taken in this area. We recommend a broad stakeholder process as the exchange gets established to examine what other steps should be taken.

First, the exchange and state agencies should cooperate as to the creation of a uniform data collection system in the state by race, ethnicity and other factors, consistent with the ACA data collection provisions. The data collected should be made available to the public at no charge to help consumers to make informed health care decisions. Citizen Action is drafting data collection legislation incorporating these principles which we believe should be considered as part of the broader discussion of the implementation of the ACA in New York State. New York should also consider incentivizing health plans with outstanding records in the reduction of disparities and penalizing plans which significantly fall short in meeting this critical goal.

Second, the exchange should do broad outreach to enroll people in underserved communities and create a seamless transfer of children and adults between public health programs and exchange products as their eligibility changes.

Third, the exchange and state agencies should ensure that New Yorkers whose primary language is not English have access to navigators and consumer assistance

⁵ Brian D. Smedley, Ph.D., Moving Toward Health Equity in New York: Strategies to Eliminate Health Disparities (January 2009) (a report for the Minority Health Council, New York State Department of Health), at 3-4.

personnel that speak their language. Navigators and consumer assistance staff should also have cultural competency training.

**The Administration and the Legislature Should
Reject Any Attempt to Weaken the ACA Through State Legislation**

In closing, I wish to briefly highlight why health care consumers so urgently needed the ACA in the first place. In a 2009 report, Health Care for America Now (HCAN), a national reform coalition of more than 1,000 organizations that led the fight for the ACA, documented many of the major anti-consumer practices of health insurers nationwide. A short selection of these practices includes: high out-of-pocket costs for medical services; denials of coverage for medically necessary care; rescissions; and, of course, skyrocketing health insurance premium rates.⁶

To ensure that these practices are vastly curtailed, New York must create a “pro-consumer exchange”: one that stands up for the interests of consumers and “changes the game” so that consumers can stand up to insurance companies. A strong pro-consumer exchange and the enactment of other pro-consumer enforcement provisions are both vital to ensure that consumers can receive the health care they need.

While building this pro-consumer exchange, we urge both the Executive and the Legislature to reject any attempts by industry or conservative organizations to weaken existing consumer protections and the ACA under the guise of misleading justifications like increasing consumer choice and relieving regulatory burdens. I refer in particular to a recent report calling for, among other things, the expansion of Health Savings Accounts in New York,⁷ and to recent public statements by industry representatives suggesting that New York’s landmark “prior approval” law⁸ should be reexamined.

Thank you once again for scheduling these hearings and for the opportunity to testify.

⁶ See Health Care for America Now, Health Insurance Company Abuses: How the Relentless Drive for Profit Endangers Americans (June 2009).

⁷ Paul Howard, Manhattan Institute, Building a Market-Based Health-Insurance Exchange in New York (April 2011).

⁸ Chapter 107, Laws of 2010.