New Yorkers for Accessible Health Coverage
Testimony of Mark Scherzer, Legislative Counsel
on the Establishment of a Health Insurance Exchange in New York State

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New Yorkers for Accessible Health Coverage (NYFAHC) is a coalition of over 50 voluntary health organizations advocating for the interests of seriously and chronically ill, disabled and elderly consumers in our insurance system. We appreciate the opportunity to present our views on the establishment of the a State-run Health Insurance Exchange under the Patient Protection and Affordable Care Act of 2010.

NYFAHC is a member of Health Care For All New York (HCFANY). We join in HCFANY's testimony, as it was presented earlier this week in Albany, and endorse the five standards for an Exchange that HCFANY has enunciated:

- that there be a single statewide exchange creating a single large risk pool with substantial bargaining power;
- that the Exchange use its bargaining power to obtain the most affordable, high quality coverage it can for the individuals and small businesses that enroll through it;
- that the Exchange be consumer friendly and easy to navigate, with substantial navigational assistance;
- that the Exchange build on the success of New York's public programs and provide for seemless transition between public and private coverage, serving as a portal for all; and
- that the Exchange include in its mission the promotion of health equity and eradication of health disparities affecting disabled consumers, members of racial, ethnic and sexual minorities, older consumers, and others whose relative lack of power in society is reflected in their state of health.

We will not dwell in detail on these principles about which you will undoubtedly have already heard a great deal. We concur with those who say that the most important immediate task is for the State to establish a governance structure that will qualify the State for substantial multi-year federal grants to develop the Exchange. The Exchange should be a government-controlled entity (whether a public benefit corporation or an agency) rather than a private non-profit organization. It should have broad based financing and not be financed solely by assessments on products sold in the Exchange. Its governing board should be mandated to have a substantial representation of the sorts of consumers who will purchase coverage through the Exchange.

We would like in this testimony to focus attention on the issues which are unlikely to be able to be resolved in a deliberate manner in time for inclusion in Exchange legislation that can be accomplished this legislative session. We do so in order to suggest that the legislation enacted this year must allow enough flexibility in the Exchange structure to permit various resolutions of the issues, and must set up the mechanisms for addressing these issues so that they have been resolved prior to the opening of the Exchange on January 1, 2014. We describe some the most important of these issues here:

1. Market Merger: Long before the ACA was enacted, NYFAHC advocated for merger of the individual and small group markets in New York. The individual insurance market in New York, which serves as a critical resource for our constituents with illness and disability who have no employer subsidized insurance coverage available to them, has been in an accelerating state of collapse for the last half decade, largely the result of our failure to fund the reinsurance system set up to stabilize premiums in the market. High premiums lead consumers with lower health needs to drop out and leading to a spiral of adverse selection and ever higher premiums.

We agree with those from all parts of the political spectrum who have said that individuals should have a full range of choices of policies, from bronze to platinum, and that the policies available to them should not depend on whether they are employed and their employer provides them with coverage. We believe that that only way consumers are likely to have a meaningful option to purchase the most comprehensive policies, the ones most needed by those with serious and chronic illness, will be if they are purchasing those products along with small groups. Most subsidized purchasers of coverage will be buying the most basic insurance plans.

Merger of the markets was accomplished as part of the Massachusetts health care reform law. The ACA explicitly permits such merger. One study, by United Hospital Fund, estimated that individual premiums would drop nearly 30% as a result of market merger, with minimum effect on small group premiums. We believe that if the size of the employers participating in the small group market were raised from 50 to 100, as also permitted by the ACA, even that effect on premiums of current small groups could be averted.

We propose that the Exchange statute should (a) not commit to having SHOP (small group) and individual exchanges as separate entities, but rather provide for alternative possibilities of separate or merged exchanges and separate or merged markets, to be determined by the Legislature; (b) mandate an actuarial study to be completed by mid 2012, preferably with federal Exchange funding, to assess the actuarial effect of choice of various options; and (c) require that the Exchange itself report on the actuarial study and make recommendations to the Legislature no later than December 31, 2012.

2. Mandated Benefits: NYFAHC's constituents are actively engaged in advocating to the federal government that the essential benefit package established under the ACA be as comprehensive as necessary to provide all services necessary to maintain people with serious and chronic illnesses and disabilities in optimum health. We are concerned, however, that not every benefit that New York has required to be included in insured health plans issued in this state will be included in the federal essential benefit package. Under the ACA, a state which requires policies sold in the exchange to include benefits beyond the federal essential benefit package must pay for such benefits itself.

NYFAHC strongly suggests that the Exchange legislation passed this year set up a mechanism for consideration of maintenance of any mandated benefits beyond the essential benefit package. We need a deliberate process, not an automatic mechanism like one contained in the California Exchange law which implicitly repeals all state-only mandates in the Exchange by prohibiting any state revenues from being spent on the Exchange. The process should be under the auspices of a commission that includes medical personal as well as consumers affected by the mandates, and which should be required to report to the Legislature regarding mandates no later than April 1, 2012, so that any legislation regarding the imposition of mandates may be undertaken in time for the design of products and opening of the Exchange as of January, 2014.

3. Risk Adjustment: Having suffered the consequences of adverse selection for years, NYFAHC's constituents are anxious that any Exchange set up have robust risk adjustment not only among plans being sold in the Exhange but between plans sold inside and outside the Exchange. We note that our current marketplace includes the entire universe of insured small group and individual plans in a risk adjustment system via Regulation 146 and the stop-loss reinsurance system for the direct pay market.

The ACA sets out to mandate certain types of risk adjustment, but some are only transitional while others are longer term. How they will mesh with or supplant existing state systems is unclear; it seems likely they would preempt most state risk adjustment mechanisms. This may seem like an obscure technical issue but it has enormous practical consequences for people who buy insurance. NYFAHC recommends that the State set up a Technical Advisory Committee to the Exchange, including representatives of all major stakeholders, and that based on the report of the Technical Advisory Committee, the Exchange, no later than April 1, 2012, recommend to the Legislature appropriate approaches to risk adjustment, so that any implementing legislation required may be enacted and any necessary federal waivers sought in time for the opening of the Exchange in 2014.

4. Role of Brokers and Navigators: An Exchange which is truly consumer friendly and efficient will have 'no wrong door" for consumers to enter. Whether they are ultimately entitled to buy small group or individual coverage, or to enroll in a public health

plan, they will get to their coverage through a single entity that helps them figure out what is best for them.

This model represents a radical break with tradition. Small groups very often now get coverage through a broker or insurance agent. Individuals in the direct pay market, in contrast, go directly to the health insurers issuing their coverage, sometimes with the advice or help of a consumer advocate, or navigator. Individuals often enter public coverage through facilitated enrollers. Whether to maintain all of these entry facilitators, how to integrate them with one another, and how to compensate present an enormous thicket of problems which requires deliberate study. Again the model of a Technical Advisory Committee reporting to the Exchange, with the Exchange in turn recommending legislation to the Legislature, would seem a productive approach.

CONCLUSION

NYFAHC recognizes that the urgent need to enact legislation this legislative session does not permit resolution of the complex issues set forth above. We believe, however, that legislation that does not set in motion a deliberate decision making process regarding the issues described above would not serve the public interest. We urge you to include provisions to make the process of further decision making open, equitable and fair. Thank you for the opportunity to testify today.