



# MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: February 22, 2010

Re: Price Controls on Health Insurance Premiums

## **PRICE CONTROLS ON HEALTH INSURANCE PREMIUMS:**

The Governor's office has included in his Executive Budget a proposal to impose damaging and unwarranted regulation of health insurance premiums. The proposal not only imposes the discredited approach of prior approval — essentially artificial price control that is subjective and easily politicized — but couples that with onerous after-the-fact checks on health plan expenses. This two-pronged approach is vastly more expansive than the authority DOI previously had. Historically, the rate regulation followed either a straight prior approval approach or one that did not require up front approval but utilized year-end reviews of medical loss ratios to ensure the rate was appropriate. New York has never had both approaches in effect simultaneously. Thus, DOI is not seeking restoration of authority; it is seeking unprecedented new authority.

The bill's approach to rate regulation will weaken health plan solvency, hurt providers and undermine innovation and efficiency. At the same time, the proposal ignores the underlying cause of the increase in the cost of health insurance, which is the increase in the actual costs of health care. It also ignores the fiscal realities of the state's severe economic downturn and the imposition of more than \$700 million in new premium taxes. Moreover, the serious health care reform discussions now occurring at the federal level argue against any moves that would destabilize health plans' financial condition. The following outlines the key policy and financial arguments against the proposal.

## **PRICE CONTROL WILL HURT CONSUMERS AND PROVIDERS BY UNDERMINING PLAN SOLVENCY**

- The most important protection the state can provide to insurance consumers is making sure that a consumer's health plan is financially stable and able to provide the coverage for which the consumer is paying. Unfortunately, the bill undermines health plan solvency by imposing artificial and political constraints on prices.
- Many legislators will remember New York's previous experience with prior approval of health insurance rates and the market havoc caused by artificially suppressed rates. For many years, the state suppressed Empire BlueCross and BlueShield's rates, especially in the individual market. Eventually this politically motivated rate suppression contributed to Empire's financial weakness and for a time endangered Empire's ability to continue providing coverage, ultimately putting consumers at risk.
- More recent experience in the medical malpractice insurance market is also relevant. After years of artificially holding down rates, a crisis in medical malpractice insurance forced DOI into action. In its July 7, 2007 press release, DOI said, "After years of artificially low rate increases...this increase is necessary to avoid further financial deterioration of the companies and perhaps an irreversible crisis in an already severely distressed market...As a result of artificially low rates, combined with the failure to effectuate needed reforms to address the root causes of high medical liability costs, insurance companies now face the real prospect of insolvency."
- Health plan solvency has also been of concern to the state's health care providers, particularly the hospitals. In fact, in previous years hospitals supported legislation to ensure plan solvency (e.g., guarantee funds). They are keenly aware of the potential ripple effect of health plan price control on provider reimbursement.

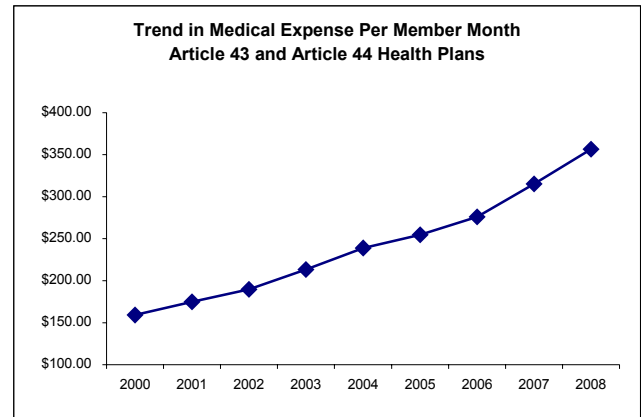
## **RETAINING AND RAISING THE MINIMUM LOSS RATIO REQUIREMENT IS UNWARRANTED AND STACKS THE DECK AGAINST HEALTH PLANS**

- Under this proposal, DOI would not only approve rates prior to their use, but they would also retain and increase the current minimum loss ratio requirements (MLR). The MLR calculation provides the current check on the appropriateness of rates that are not prior approved. If New York's health plans were spending too little on actual health care services in order to bolster their bottom lines, one should be able to verify that is occurring in publicly available financial data. The state's own data show that health plan expenditures for total medical and hospital expenses have increased significantly since 2000. Health plan net income, in contrast, has been more variable and on the decline since 2005.

- Retaining and increasing the MLR test is disingenuous because the state, in the 2009-2010 budget, imposed more than \$700 million in taxes on health plans. Health plans have no choice but to dedicate revenue to meeting these substantial new costs, funds that cannot be spent on health care services and counted toward the increased MLR.
- The two-pronged proposed approach is also flawed because a health plan could exactly follow the proposed process to properly price its products, obtain prior DOI approval, and spend 85% of its revenue on health care services and still be required to issue refunds. This is due to the Insurance Department regulation (called Regulation 146) that retrospectively allocates revenue or expense to health plans. A health plan cannot determine when setting its rates whether it will receive funds or owe funds under this regulation. Thus, the Department has placed plans seeking to establish reasonable rates in a no win situation.

**THE PROPOSAL IGNORES THE REAL REASON FOR THE INCREASE IN HEALTH INSURANCE: INCREASES IN THE UNDERLYING COST OF HEALTH CARE SERVICES**

- Health plan expenditures for total medical and hospital services have increased dramatically over the past years. The chart shows the average amount spent per member per month since 2000 has increased 124%.
- Health experts who have studied rate regulation in all insurance sectors conclude that it is a bad idea. A study for the California HealthCare Foundation concluded that regulation of health insurance premiums would do, "...little to cure the root causes of inflation, thus making [the state] vulnerable to undesirable long term consequences, including greater numbers of uninsured, reduced quality or rationing of medical care, and more limited access to health insurance."



**THE PROPOSAL WILL DEPRIVE HEALTH PLANS OF CAPITAL NEEDED TO GROW AND COMPETE, LESSEN PLANS' ABILITY TO INNOVATE, INVEST AND IMPROVE**

- As policy makers continue to explore ways to increase access to coverage for the uninsured, including through innovative new products, rate regulation would be particularly counterproductive. Introduction of such new products and overall business growth relies upon available capital. Rate regulation would be particularly damaging to not-for-profit health plans that rely on capital to support growth and needed investments in technology.
- Plans have been leaders in investing in information technology (IT) and providing financial support for the IT needs of regional health information organizations. This proposal will impede these efforts.
- The very programs that have significantly improved the quality of care delivered to New Yorkers in commercial and government programs would be imperiled under this bill. These include key quality projects such as comprehensive case and disease management programs and wellness programs — the costs of which have been treated as administrative costs despite the demonstrated impact on the health of members. Moreover, the proposed 85% MLR standard could actually result in health plans doing far less to impact or manage the health of their members, resulting in people obtaining unnecessary and potentially harmful care.

**THE PROPOSAL WILL UNDERMINE PLAN ABILITY TO MAINTAIN PARTICIPATION IN THE STATE'S GOVERNMENT PROGRAMS**

- Some health plans have sustained annual losses in the state's Medicaid Managed Care and Family Health Plus programs. Continued participation has been possible due to the ability of plans to cross-subsidize these programs from surplus generated by commercial insurance. The proposed MLR review would eliminate the very surplus on which the plans rely to support these programs.

For these reasons, we urge you to reject the Governor's proposal.