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HOWARD MILLS
SUPERINTENDENT

March 17, 2006

Honorable John M. McHugh
U.S. House of Representatives
2333 Rayburn Office Building
Washington, DC 20515

Dear Congressman McHugh:

As you know, the Senate Committee on Health, Education, Labor and Pensions recently approved S. 1955, the Health Insurance Marketplace Modernization and Affordability Act of 2006. This action, in conjunction with the House's passage of HR 525 (the Small Business Health Fairness Act of 2005) is clear evidence of Congress' commitment to expanding access to quality health insurance for small businesses and their employees at affordable prices. While the Insurance Department shares that commitment and commends Congress for addressing this critical issue, I must express my deep concern that both pieces of legislation, though laudable in intent, share a number of provisions that could create serious unintended consequences in New York.

Unlike other states, New York's health maintenance organizations (HMOs) and insurers are required to offer individual direct payment coverage and small group coverage that is open enrolled and community rated. New York law does not permit modified community rating; as individual and small group coverage must be rated without regard to age, sex, health status or occupation. Both bills, S. 1955 and HR 525, as they are currently drafted, will preempt New York law and open the door to "cherry-picking" by insurance groups as they offer coverage only to healthy, low risk individuals. Other individuals would then be grouped into higher premium plans and face the unenviable choice of either paying far more for coverage or forgoing health insurance altogether.

In addition to community rating requirements, New York has comprehensive mandated benefit requirements for direct payment coverage, small group coverage and large group coverage that include many primary and preventive care services as well as inpatient treatment. Small groups in New York could be adversely impacted if benefits like maternity care, preventive and primary care for children, prostate cancer screening and second opinions were reduced or eliminated from coverage.

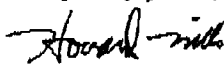
New York is also unique in that all HMOs must offer standardized direct payment coverage in the individual market that is community rated and provides a comprehensive benefit package, with an out-of-network option. If preemption provisions contained in both bills become law, small groups with healthier lives may opt for Small Business Health Plan coverage, while small groups with unfavorable experience may opt to forgo coverage so that employees could purchase direct payment coverage, which could further destabilize the New York direct payment market and cause premiums to rise in this market. This is troublesome because the current New York direct payment population may then be unable to afford the comprehensive health coverage they need.

Indeed, Governor Pataki and the Insurance Department have been national leaders in the effort to give small businesses and their employees access to affordable quality health insurance. In 2000, New York began an innovative program called Healthy New York that provides partially funded health insurance with a set benefit package to qualifying small employers, sole proprietors and individuals. The Healthy New York program has expanded the availability and accessibility of health insurance in New York. Currently, the Healthy New York program covers 110,000 lives and is being used as a model in other states. But this program can only work if it covers a diverse population. If either of these bills is enacted, I am concerned that the Healthy New York program would be subject to adverse risk selection, with healthier individuals opting for coverage through Small Business Health Plans. I am concerned that premiums could rise under Healthy New York, policies that are currently a lower cost health insurance option for uninsured individuals, sole proprietors and small businesses.

Finally, I am concerned that federal legislation could undo much of the progress we have made in New York regarding consumer protection. In 1996, managed care reform legislation was passed in New York which was the result of a remarkable process that brought together numerous consumer, provider, business and managed care organizations and following months of negotiations produced a consensus proposal that included utilization review, grievance and access to care protections. In addition, New York has an external appeal program that provides an independent review of a health plan's medical necessity, experimental or investigational treatment denial. New York's external appeal program has been used as a model in other states and has one of the highest volumes of external appeal requests. New York also has a prompt payment law which requires insurers to pay claims within certain timeframes. Since this law became effective in 1998, the Insurance Department has levied over \$6 million in fines against health plans that failed to pay claims within the time allotted.

I remain committed to improving access to affordable health insurance for small businesses and their employees. Federal legislation that would undermine the innovations we have developed in New York, such as the Healthy New York program and our external appeal process, could have a significant impact on communities throughout New York. I urge you to work with your colleagues in both chambers to ensure that critical protections and programs offered by New York State remain intact. As always, I stand ready to work with you.

Very truly yours,



Howard Mills
Superintendent