



## HCFANY on Federal Health Reform: *Senate “Patient Protection and Affordable Health Care Act”* *December 1, 2009*

*Health Care For All New York (HCFANY) is a statewide coalition of over 80 organizations dedicated to winning affordable, comprehensive, high-quality health care for all New York residents through state and federal health reform. For more information about HCFANY, please visit to our website and health reform blog at: [www.hcfany.org](http://www.hcfany.org). The following summary describes HCFANY’s position on the various aspects of the Senate bill, recently introduced by Senate Majority Leader Harry Reid.*

☺ **Affordability.** The affordability provisions of the new Senate bill offer a marked improvement from the former proposal put forth by the Senate Finance Committee. Premium caps have been brought down across the board, making coverage more affordable for low- and middle-income families. However, the amount of total spending on health care that families are expected to cover remains high – particularly for families earning below 200% of the Federal Poverty Level (FPL).

- The Senate bill provides sliding-scale premium subsidies to people earning between 100% and 400% of FPL, which is \$73,240 for a family of three. Premiums are capped at 2% of gross income for lowest income families, rising to 9.8% for the highest income folks. Although the Senate has more progressive subsidies than the House bill at higher income levels, low-wage New Yorkers earning below 250% would still do better under the House proposal. However, New York families will still struggle to make ends meet under either bill. (See Family Budget Chart attached). HCFANY urges lawmakers to ensure more generous subsidies at lower income levels and the continuation of subsidies to families up to 500% of FPL.
- The Senate bill limits out-of-pocket expenses so that the likelihood that New York families will face bankruptcy when a catastrophic health event occurs would be reduced. The bill scales out-of-pocket exposure based on Internal Revenue Service (IRS) limits for high-deductible plans (\$5,900 for an individual/\$11,600 for a family) so that families earning between 100%-200% are responsible for a third of this amount (\$3,867) annually, families earning between 200% -300% FPL are responsible for one half of this amount (\$5,800), families earning between 300%-400% would be responsible for two-thirds this amount (\$7,733). Above 400% FPL, families will be responsible for the full amount of \$11,600.
- The Senate bill’s approach to penalizing people who do not or cannot comply with the insurance coverage mandate is less desirable than that proposed under the House bill. Under the House bill, the penalty is 2.5% of an individual/family’s adjusted gross income per year. By contrast, the Senate bill imposes a regressive tax penalty of \$750 per adult per year, regardless of income.



- The Senate bill forbids people who have employer-sponsored insurance from receiving subsidies unless the employee share of the premium exceeds 9.8% of their income, or the employer plan has an actuarial value of less than 60%. While this is an improvement from the House bill, which places the limit at 12% of income, this requirement may still be burdensome on some low-wage workers.

*HCFANY supports the affordability schedule adopted in the Senate bill, but prefers the affordability schedule in the House bill for lower-income families.*

☺ **Medicaid.** Medicaid is the safety net insurance coverage for poor people and people with disabilities in New York. The Senate bill offers Medicaid to people with incomes up to 133% of the Federal Poverty Level (FPL). The Senate also proposes to change Medicaid's eligibility test to a gross income assessment which will eliminate disregards and make it easier for families to enroll in coverage. However:

- The Senate bill will raise Medicaid eligibility levels to 133% of FPL, and requires the federal government to fully fund the cost of expanding coverage for three years for states who currently have lower eligibility levels. This policy rewards laggard states and penalizes states who already offer Medicaid coverage to families at higher income levels. New York already offers Medicaid to families with incomes up to 150% of the FPL and individuals without children up to 100% of the FPL. Senator Reid's bill offers a modest improvement on the Senate Finance Committee bill in that it would procure 100% federal matching funds for single adults and childless couples between 100%-133% of FPL.
- The House bill, on the other hand, raises Medicaid eligibility levels to 150% of FPL and requires the federal government to fully fund the costs of expanding coverage for the first two years. However, the states will be required to pay 9% of these costs thereafter. Under the House bill, all states would be treated equally.

*HCFANY supports the Senate's approach to expanding Medicaid coverage and changing the eligibility test to a gross income assessment. However, HCFANY recommends that the Senate move further to adopt the Medicaid eligibility levels put forth by the House bill to expand coverage to those up to 150% of FPL, and provide federal funding fairly across all States.*

☺ **Children's Health Coverage.** Child Health Plus, New York's State Children's Health Insurance Program (SCHIP), offers comprehensive coverage with an affordable sliding-fee premium scale for families up to 400% of the Federal Poverty Level (FPL). The Senate bill will preserve SCHIP and require states to maintain their eligibility levels through 2019. This is an improvement from the House bill, which would eliminate the SCHIP program and force children currently in the program into more expensive coverage through employer-sponsored plans, or the Exchange. The Senate bill also offers increased federal matching (FMAP) funds from 2014 to 2019, which will provide New York with needed federal assistance.



- In addition, Senator Bob Casey (D-PA) has offered an amendment to the Senate floor that will maintain and strengthen CHIP, simplify the enrollment process for parents, guarantee children in SCHIP the same comprehensive benefits that Medicaid children receive, and provide a minimum eligibility level of 250% of poverty so that there is a safety net for children no matter where they live in the United States.

***HCFANY strongly supports the Senate’s approach to children’s health coverage and urges the Senate to adopt the Casey Amendment to maintain and strengthen CHIP.***

☺ **“Do-No-Harm” and Consumer Protections.** New York leads the nation when it comes to consumer protections in health care. For example, New York has “pure community rating,” which bans discrimination by insurance companies based on a person’s age, sex, health status, or race. The Senate bill preserves New York’s right to protect State residents from unfair insurance practices and to provide stronger consumer protections than in federal law. The Senate bill also generally assigns to the states the authority to operate the new health insurance exchanges created under the bill.

- The Senate bill, like the House bill, does not preempt (supersede) state laws designed to protect health insurance consumers unless the state law is totally inconsistent with the new federal law.
- The Senate bill creates insurance exchanges (called “American Health Benefit Exchanges”) to assist consumers and businesses purchase health insurance. These are to be established and run by the states, but must comply with minimum federal standards, as to, for example, the benefits provided.
- States may offer additional benefits above those provided for in the new public health insurance option, but must make payments to defray the costs of these additional benefits for those eligible for premium credits provided under the law.
- Beginning in 2017, states may apply for a renewable waiver of up to 5 years for most of the requirements of the new law, including establishing an Exchange, the individual responsibility requirement, and tax credits. The U.S. Department of Health and Human Services (HHS) must approve this waiver if it determines that the State will provide coverage as comprehensive and affordable and to a comparable number of residents as participation in the regular provisions of the bill would provide. If the waiver application is approved, the tax credits and cost-sharing reductions that otherwise would have been provided to the state’s residents will be provided to the state for the purposes of implementing the plan.
- HHS will award grants to the states for the purpose of establishing consumer assistance programs or an ombudsman to help consumers with such matters as selecting an insurance plan and appealing denials of coverage. The sum of \$30 million is provided nationwide for the first year of this program.
- In addition, as of 2014, state exchanges will sub-contract with “local navigators” to assist consumers with enrolling and using their coverage.



*HCFANY generally supports the provisions in the Senate bill on the relationship between the federal and state government, and prefers the Senate’s approach to that of the House on supporting the establishment of local (preferably not-for-profit) consumer assistance programs to aid in health reform implementation.*

☺ **Insurance Reform.** Insurance companies notoriously engage in practices like rescissions, lifetime benefit limits, and pre-existing coverage limitations that prevent consumers from receiving reimbursement for their medical care. This can lead to serious financial harm and even bankruptcy. Banning or restricting these unfair practices is critical to making health care reform work for consumers. The Senate bill takes a number of steps to improve the private insurance system; however there are some provisions included which will weaken existing consumer protections and state oversight of health plans.

- The Senate bill bans rescissions, the practice of cancelling a consumer’s health coverage after payments have been made on a policy in order to avoid payment of medical claims, unless the insurance company establishes that the consumer made deliberate misrepresentations to the company. However, HCFANY prefers the House version of this provision, which also provides for an independent third-party review for disputes on rescissions.
- Lifetime benefit limitations and pre-existing coverage limitations are prohibited under the Senate bill. Health insurers are also required to provide coverage to all consumers and employers who request it (known as “guaranteed issue”), subject to the right to restrict applications to certain special or “open” enrollment periods. Insurers are also required to renew policyholders at the request of the consumer or plan sponsor.
- Like the House bill, the Senate bill would limit the ability of insurers to charge more based on age so that older people cannot be charged more than twice the amount charged to the youngest adults. Age can often be used as a proxy for health status or disability, and variations in premiums based on age are prohibited under New York’s “pure community rating” law. Ideally, federal health care reform would follow New York’s lead by not allowing discrimination based on age. Still, the 2:1 ratio specified in the House bill is better than the 3:1 ratio allowed in the Senate leadership bill. The Senate bill allows a 1:5 ratio for tobacco use.
- The Senate bill also authorizes employer groups to charge as much as 30% higher premiums to individuals for participation in “wellness programs.” HCFANY opposes this provision, as it can potentially work against people with chronic illness or disabilities who are most in need of insurance.
- Unlike the House bill, the Senate bill does not define what the “essential benefit” to be included in a health plan, thus limiting its guarantee for comprehensive coverage;
- The Senate bill also allows for a lower actuarial benefit level (60%) than in previous iterations. The bill authorizes the sale of even less comprehensive policies to people under 30 and to people exempted from the obligation to purchase coverage because premiums are unaffordable to them. Such coverage is essentially illusory and its sale to exempt groups will



perpetuate a huge disparity in access to health care among the working population. The better response to unaffordability is more generous subsidies.

- The Senate bill generates a revenue offset by an excise tax on expensive coverage for which individuals eligible to take self-employed health insurance deductions are eligible. This provision will have a particularly deleterious effect on New York's individual market, with its concentration of high-risk individuals, many self-employed, and all of whom would be hurt if the self-employed among them were to leave the market or the excise taxes were passed back to the group as a whole in terms of higher premiums.
- The Senate bill would allow the formation of interstate compacts for the sale of health insurance across state lines, so long as the coverage is as comprehensive as the plans offered through state exchanges, it is as affordable as plans in the exchanges, and HHS determines that it would not weaken enforcement of state consumer protection laws. Consumer protection laws of each of the compacting states would apply to customers living in that state, including for such matters as rating, market conduct, and network adequacy. Health insurers would be required to be licensed in each state. Because of these protections, HCFANY believes the Senate provision providing for interstate compacts to sell insurance is less detrimental than the comparable provision in the House bill, which HCFANY opposes. However, we would prefer that health care legislation not permit interstate sales of insurance at all.
- The Senate bill also allows nationwide insurance plans, though states can "opt out" of this through legislation. Nationwide plans must provide the essential benefits package required by the law for plans in state exchanges. We are concerned that this provision can lead to an erosion of consumer protections, since, among other things, New York consumers enrolling in nationwide plans will not be subject New York State's additional mandated benefits (for nationwide plans issued in states other than New York).

*HCFANY generally supports the provisions in the Senate bill on insurer practices, but recommends that the Senate bill be amended to include an independent third-party review where disputes arise over rescissions, and a removal of the age-rating provisions in the bill (or the adoption of the lower rating used by the House bill). HCFANY also recommends that the bill be amended to remove the provisions of "wellness incentives," low-value products, the excise tax, and the provisions which allow for interstate sales of insurance and nationwide plans. Lastly, we recommend including a defined "essential benefit package" in order to ensure that coverage is comprehensive.*

☺ **Public Health Insurance Option.** The Senate bill includes a public health insurance option (called a "community health insurance option"), although states may choose to opt out. HCFANY strongly supports requirements that consumers have a choice of a national public health insurance option through the state health insurance exchanges. Private insurance companies have high administrative costs, delay approving and paying for health care, and look to their own bottom lines rather than patient needs. A public plan is the best way to control costs, ensure quality, and force private insurance companies to finally put health care before profits.



- HHS is required to establish a national public health insurance option to consumers as a plan choice within the state health insurance exchange. The public plan must offer the same standard benefits as required for private plans in state exchanges. A state can pass a law to “opt out” and not allow the public option to be offered in that state, but this is extraordinarily unlikely to happen in New York. (State exchanges must be established by 2014.)
- HHS is required to establish geographically adjusted premium rates in the public plan to cover payment of claims and administrative costs, and is authorized to treat all enrollees nationally in the public option as members of a single pool. (Start-up funding is provided for the public plan which must be paid back to the taxpayers over a nine-year period.)
- HHS is required to negotiate payment rates with providers for the benefits covered in the public plan. The rates must not be higher than the average reimbursement rates paid by private health insurers that offer health plans through exchanges.

***HCFANY supports the public health insurance provisions in the Senate bill, but strongly recommends that payment rates in the plan be tied to Medicare rates (known as the “robust” public option).***

**Ⓢ Immigrant Health.** Hundreds of thousands of lawfully residing immigrants in New York stand to benefit from the affordability credits included in the Senate bill to make insurance more affordable. However, the Senate bill retains the Senate Finance Committee’s illogical exclusion of undocumented immigrants from being able to buy insurance at full price with their own money in the Exchange. Moreover, significant barriers to affordable health insurance remain for legal immigrants seeking Medicaid and Medicare.

- The Senate bill does not allow undocumented immigrants to use their own money to buy health insurance at full price in the Exchange. This will hurt immigrants and citizens alike as it will encourage the use of expensive emergency care in lieu of primary care, and increase the burden of payment for uncompensated care the American public. Further, this will cost states money to implement and create documentation barriers for eligible citizens and legal immigrants. This is a malevolent move on behalf of the Senate that ultimately results in poor fiscal policy.
- The lowest income legal immigrants are currently forced to wait five years before being able to access the federal Medicaid program, which their taxes help to support. Under the Senate bill, lawful immigrants who are income eligible for Medicaid, but have not yet completed their 5-year waiting period, are eligible for premium credits in the Exchange. This is a welcome measure for New Yorkers. New York currently extends Medicaid coverage to lawfully residing immigrants within their first five years, and will continue to do so with state-only money if the five-year waiting period is not lifted in the final bill.

***HCFANY strongly recommends that the Senate remove the exclusion of undocumented immigrants from purchasing insurance on the Exchange. Further, HCFANY recommends***



*that the removal of the five-year ban for lawful immigrants in Medicaid be included as an amendment.*

☺ **Small Businesses.** The Senate bill takes important steps toward providing more affordable options for quality health coverage for small businesses through the insurance Exchange and possibly a public insurance option (unless their state chooses to opt out). However, the Senate bill does not offer assistance to small businesses who currently offer health insurance to their employees, or those who wish to start.

- The Senate bill promotes transparency and gives small businesses simplified choices through the Exchange, which must develop a rating system to help consumers choose plans. The Senate bill also increases bargaining power and drives down costs through a public health insurance option, though states may choose to opt out.
- Employers with more than 50 employees who do not offer health insurance coverage and have at least one full-time employee who receives a premium tax credit will be required to pay a fee of \$750 per full-time employee. Employers with more than 50 employees who do offer coverage but still have at least one full-time employee receiving premium credits will have the option of paying the lesser of \$3,000 per employee receiving premium credits, or \$750 per full-time employee.
- The Senate bill exempts small businesses with less than 50 employees from providing health coverage. On this provision, HCFANY prefers the House bill, which instead includes tax credits of up to 50% of qualified health coverage expenses to help small, low-wage businesses offset the expense of providing coverage.

*HCFANY supports the provisions in the Senate bill which improve the affordability and transparency of health plans for business owners. However, we recommend that the Senate bill be amended with provisions to encourage all employers to participate, such as a minimum contribution requirement, or tax credits for small businesses on qualified health coverage expenses.*

☺ **Women's Health.** Women and girls of all ages have much to gain from the provisions in the Senate bill, and HCFANY appreciates Senator Reid's decision to reject the radical abortion restrictions added to the House bill through the Stupak-Pitts amendment. HCFANY believes that any decision to accept additional abortion restrictions beyond the language now in the Senate bill would gravely endanger a woman's ability to obtain comprehensive health care.

There are several women's health provisions we would like to see improved:

- The Senate bill does not include family planning services in the group of preventive services exempted from cost-sharing. This omission should be rectified by de-linking the list of exempted preventive services from the recommendations put forth by the U.S. Preventive



Services Task Force.<sup>1</sup> It would be especially cruel to both deny millions of women abortion coverage (which would be the case even under the compromise language included in Senator Reid's bill) *and* enact a barrier to the ability of these women to afford birth control.

- De-linking from the U.S. Preventive Services Task Force recommendations list would also serve to calm the fears of millions of women about being denied mammograms because of the Task Force's recently released guidance on that subject, which recommends less-frequent screenings.
- Presently, the ban on “gender rating,” the practice by which insurers in some states are permitted to charge women more than men for the same policy in the individual insurance market, does not extend to large group employers (with more than 100 employees). This is a problem because some employers in this group have predominantly female work forces and suffer higher-than-would-be-expected premium costs. We would like to see the ban on gender rating extended to this employer group.

***HCFANY urges the Senate to maintain women's access to coverage for abortion services. We further recommend an amendment to ensure that women do not face co-pays for family planning services or denials of coverage for mammograms recommended by their physicians, and that the gender rating ban be extended to large group employers.***

☺ **People with Disabilities and Seniors:** The Senate bill makes comprehensive changes to Medicare, takes a new patient-centered approach to health care, and includes improvements for long-term care that will benefit people with disabilities and older people. However, the Senate bill does not address the Medicare Part D coverage gap as well as the House bill.

- The Senate bill provides a 50% discount on brand name drugs for people falling into the Medicare Part D coverage gap, known as the “doughnut hole,” and provides for an increase of \$500 in Part D coverage before beneficiaries will fall into the doughnut hole beginning after December 31, 2011. This is an improvement over the Senate Finance bill and good first step on drug coverage reform, but the bill needs to go further and completely close the doughnut hole so that fewer individuals will struggle to afford the medication they need.
- The bill also waives the deductible and cost-sharing for preventive benefits in Medicare, exactly the kind of care people with Medicare need in order to remain active members in their communities. With this new provision, more people with Medicare will have access to vaccines, as well as preventive care, such as screenings for diabetes and glaucoma. Currently, Medicare pays 80% of these costs, leaving the remaining 20% to be paid by the consumer. The Senate bill would change this so that Medicare pays for these services in full.
- The bill includes a version of the CLASS Act (Community Living Assistance and Supports Act), a voluntary public insurance plan which helps adults with severe functional impairments obtain the services and supports then need to stay functional and independent.

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<sup>1</sup> The U.S. Preventative Services Task Force (sponsored by the Agency for Healthcare Research and Quality (AHRQ)), is an independent panel of experts in primary care and prevention that systematically reviews the evidence of effectiveness and develops recommendations for clinical preventive services.



- The bill also supports the Community First Choice Option. This option promotes coverage of community-based attendant services and supports furnished in homes and communities, at an individual's choice, to individuals who would otherwise qualify for institutional coverage under Medicaid. This is done by enhancing the Federal matching assistance (FMAP) those supports and services.

*HCFANY supports provisions of the Senate bill which improve Medicare and long-term care for older people and people with disabilities, but urges the Senate to close the Medicare prescription drug coverage gap.*

☺ **Transitional Funding.** While the Senate bill takes an important step in ensuring affordability by creating a transitional reinsurance system for high claims costs, it does not go as far as the House bill on its delivery of transitional funding. In addition, the Senate's provisions on medical-loss ratios are weak in comparison to the House bill.

- The bill restricts transitional assistance to the states for programs enrolling individuals with pre-existing conditions who have been without insurance for months. Instead, the Senate bill should subsidize states like New York which have already made such coverage available to high risk people through a guaranteed issue system. Payments to these states would better resemble the transitional reinsurance system which the bill laudably sets up to deal with high cost claims in the years 2014-2016.
- The bill's transitional rules for increases in medical-loss ratios do nothing to affect premiums in New York, where the loss ratios are already set at 75% (group) and 80% (individual) and are proving increasingly unaffordable. HCFANY prefers the House bill on this provision, which limits medical-loss ratios to no less than 85%.
- The Senate bill also delays funding for consumer assistance navigators until 2014, when the state exchanges are up and running.

*HCFANY supports the Senate bill's inclusion of a transitional reinsurance system, yet recommends that the bill be amended to include both funding for transitional or expanded high-risk pools in the states, and to adopt the House bill's provision which limits medical-loss ratios to no less than 85%.*



## Will Federal Health Reform Work for New York Families?

The tables below demonstrate the reality of New York Families after including only the following few basic expenses of living: taxes, housing, food and child care. These charts do not include other necessary expenses, such as transportation, fuel costs, heat and electricity costs, school supplies, telephone, credit card payments, loans, and other miscellaneous expenses.

**Table 1 – What House Bill H.R. 3962 Means for a Family of Three in NYC**

Family of Three – One Adult, Two Children					
	200% FPL 5.5% cap	250% FPL 8% cap	300% FPL 10% cap	350% FPL 11% cap	>400% FPL No Cap
Gross Yearly Pay	\$36,620	\$45,775	\$54,930	\$64,085	\$73,240
Taxes	\$7,750	\$10,808	\$14,644	\$18,768	\$22,596
<b>Net pay</b>	<b>\$28,870</b>	<b>\$34,967</b>	<b>\$40,286</b>	<b>\$45,315</b>	<b>\$50,644</b>
Housing Costs	\$14,400	\$14,880	\$14,760	\$14,900	\$17,160
Child Care	\$19,093	\$19,093	\$19,093	\$19,093	\$19,093
Food	\$7,611	\$7,611	\$7,611	\$7,611	\$7,611
Health Costs:					
Max. Ins. Premiums	\$2,014	\$3,662	\$5,493	\$7,049	\$24,000
Maximum OOP	\$2,000	\$4,000	\$8,000	\$9,000	\$10,000
<b>Remainder - annual</b>	<b>(\$16,248)</b>	<b>(\$14,279)</b>	<b>(\$14,671)</b>	<b>(\$12,338)</b>	<b>(\$27,220)</b>
<i>Remainder - monthly</i>	<i>(\$1,354)</i>	<i>(\$1,190)</i>	<i>(\$1,223)</i>	<i>(\$1,028)</i>	<i>(\$2,268)</i>

**Table 2 – What Senate Bill H.R. 3590 (Reid) Means for a Family of Three in NYC**

Family of Three – One Adult, Two Children					
	200% FPL 6.3% cap	250% FPL 8.1% cap	300% FPL 9.8% cap	350% FPL 9.8% cap	>400% FPL No cap
Gross Yearly Pay	\$36,620	\$45,775	\$54,930	\$64,084	\$73,240
Taxes	\$7,750	\$10,808	\$14,644	\$18,768	\$22,596
<b>Net pay</b>	<b>\$28,870</b>	<b>\$34,967</b>	<b>\$40,286</b>	<b>\$45,315</b>	<b>\$50,644</b>
Housing Costs	\$14,400	\$14,880	\$14,760	\$14,900	\$17,160
Child Care	\$19,093	\$19,093	\$19,093	\$19,093	\$19,093
Food	\$7,611	\$7,611	\$7,611	\$7,611	\$7,611
Health Costs:					
Max. Ins. Premiums	\$2,307	\$3,708	\$5,383	\$6,280	\$24,000
Maximum OOP	\$5,800	\$5,800	\$7,973	\$7,973	\$11,600
<b>Remainder - annual</b>	<b>(\$20,341)</b>	<b>(\$16,125)</b>	<b>(\$14,534)</b>	<b>(\$10,542)</b>	<b>(\$28,820)</b>
<i>Remainder - monthly</i>	<i>(\$1,695)</i>	<i>(\$1,344)</i>	<i>(\$1,211)</i>	<i>(\$879)</i>	<i>(\$2,402)</i>

**Sources:** Taxes are based on NYC residency with federal withholding exemptions of three for a three person family. Rents are based on average NYC rents for income bracket, for people who have moved in 2005 or later as set forth in the 2008 Housing and Vacancy Survey. Child Care and food costs are taken from the 2004 NYC Self-sufficiency Standard for the City of New York, for a family with one infant and one preschooler, adjusted to 2008 dollars using the Consumer Price Index. Health Costs for H.R. 3962 taken from Section 343 (d). Income brackets for Maximum OOP and subsidies are listed as “133% through 150%, 150% through 200%, 200% through 250%, 250% through 300%, 300% through 350%, 350% through 400%” are interpreted as: 133% through 150%, 151% through 200%, 201% through 250%, 251% through 300%, 301% through 350%, 351% through 400%. Health costs for Senate Finance Proposal are taken from H.R. 3590 (Reid) “Patient Protection and Affordable Care Act” and “Committee Report on the America’s Healthy Future Act of 2009,” as interpreted by CSS. Premiums for the above 400% FPL population are assumed to be comparable to those on the current direct-pay market in New York.