



HCFANY on Federal Health Reform: *The House Leadership Bill (H.R. 3962)—November 6, 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. The following summary describes HCFANY's position on the House Leadership Bill.

☺ **Affordability.** The House leadership bill has the strongest approach to affordability of all pending Congressional legislation. New York is a high-cost state, where family coverage costs \$24,000 a year on average. Over this past decade, the price of insurance has risen seven times faster than median wages. Two-thirds of all bankruptcies are related to medical debt. Faced with this reality, even New Yorkers with moderate income levels would require subsidies to buy insurance on their own. The House bill makes coverage more affordable for New York's working families.

- The House bill provides sliding-scale subsidies to people earning up to 400% of the federal poverty level (FPL), which is \$73,240 for a family of three. Premiums are capped at 1.5% of gross income for lowest income families, rising to 12% for the highest income folks. Although the House Bill has more progressive subsidies than the Senate bill, some New York families will still struggle to make ends meet. (See Family Budget Chart attached). HCFANY would prefer more generous subsidies at lower and moderate income levels and the continuation of subsidies to families up to 500% of FPL. Nonetheless, the House bill represents the best path of the Congressional bills to achieving affordable quality coverage for all.
- The House 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 progressively scales out-of-pocket exposure from \$500/\$1000 for an individual/family below 150% of FPL to \$5,000/\$10,000 for an individual/family at or above 400% of FPL.
- The House bill's approach to penalizing people who do not or cannot comply with the mandate to carry insurance coverage is preferable to the Senate's. Under the House bill, the penalty is 2.5% of an individual/family's adjusted gross income per year. By contrast, the Senate Finance Committee Bill imposes a regressive tax penalty of \$750 per adult per year, regardless of income.
- The House bill forbids people who have employer-sponsored insurance from receiving subsidies unless the cost of their coverage exceeds 12% of their income. This requirement could prove to be especially burdensome for low-wage workers. HCFANY prefers the Senate Finance Bill, which sets this threshold at 10%.



HCFANY supports the affordability schedule adopted in the House bill and prefers it to the affordability schedule in the Senate Finance bill, but recommends allowing workers with employer-sponsored insurance to obtain subsidies if the cost of their coverage exceeds 10% of their gross income.

☺ **Medicaid.** Medicaid is the safety net insurance coverage for the poor and disabled in New York State. The House leadership bill would expand Medicaid coverage to families with incomes up to 150% of FPL, while the current Senate Finance Committee bill would only expand it to 133% of FPL. New York is a “leader state” and already offers Medicaid coverage to families with children with incomes up to 150% of FPL and people without children in the home up to 100% of FPL.

- The House bill requires the federal government to fully fund the costs of expanding coverage to all up to 150% of FPL for the first two years, and require the States to pay 9% of these costs thereafter. All States would be treated the same.
- The Senate Finance Committee bill, however, would only provide full federal funding for a small portion of New Yorkers (those between 100-133% of FPL without children). It rewards the laggard States who have not offered generous Medicaid coverage to their residents.
- The New York State Division of the Budget estimates that the Senate Finance Committee bill will exacerbate New York’s budget crisis and *cost* New York \$900 million, while the House bill would engender State budget savings.

HCFANY supports the House Bill’s approach to expanding Medicaid coverage to 150% fairly across all States.

☹ **Children’s Health Coverage.** Child Health Plus, New York’s State Children’s Health Insurance Program (CHIP) Program, offers comprehensive coverage with an affordable sliding-fee premium scale for families up to 400% of the Federal Poverty Level (FPL). Families above 400% of the FPL can buy into the program by paying the full premiums (without government subsidy). The House Leadership Bill would eliminate this program, under the assumption that children will now be able to get coverage through employer plans, the Exchange, or Medicaid.

- New York’s Child Health Plus Program has no deductibles and no co-payments. If Child Health Plus is eliminated, costs for children in the Exchange will be significantly higher. An average New York family of 4 (2 parents, 2 children) never pays more than 3% of their income for their children’s coverage under Child Health Plus.¹ Families purchasing child

¹ Calculations based on eligibility levels and premium sliding fee scale for Child Health Plus. Premiums are \$15, \$30, \$45 or \$60 per month per child depending on family income.



coverage-only from the Exchange will pay as much as 7% of their income². Families purchasing family benefit coverage will pay even higher rates.³ (See Table 1 below).

Table 1 – Annual Cost of Coverage for a Family of Four Under Child Health Plus versus in the Exchange

	Child Health Plus		Exchange			
	Child-only Coverage under Child Health Plus		Child-only Coverage under the Exchange		Family Coverage Under the Exchange	
Income	\$	% of income	\$	% of income	\$	% of income
\$55,000 (250% FPL)	\$360	<1%	\$3,840	7%	\$4,400	8%
\$66,000 (300% FPL)	\$720	1%	\$3,840	6%	\$6,600	10%
\$77,000 (350% FPL)	\$1,080	2%	\$3,840	5%	\$8,470	11%
\$88,000 (400% FPL)	\$1,440	<2%	\$3,840	4%	\$10,560	12%

HCFANY does not support the House Bill’s approach to children’s health coverage, and would prefer that CHIP be preserved.

☺ **“Do-No-Harm” and Consumer Protections.** The House bill preserves New York’s right to protect State residents from unfair insurance practices and to provide stronger protections than in federal law. 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.

- Under the House bill, state laws designed to protect health insurance consumers are not preempted unless the state law is totally inconsistent with the new federal law. The bill explicitly says that state mental health parity laws like New York’s “Timothy’s Law” are not preempted.
- Rights and remedies that health care consumers have under state laws are preserved as to coverage offered through the health insurance exchanges.
- The new federal “Health Choices Commissioner” is required to consult with state insurance regulators and state attorneys-general and to coordinate its enforcement efforts with them.
- An ombudsman’s office will be established to assist consumers with such matters as selecting an insurance plan and appealing denials of coverage. However, unlike the Senate bill, the House bill does not support state-based consumer assistance programs.

² Calculations based on cost of average monthly full buy-in premiums of Child Health Plus--\$160 per month per child. (varies by county and plan).

³ Based on Section 343 of H.R. 3962.



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

☺ **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 House Leadership 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, in all cases unless if the insurance company establishes that the consumer made deliberate misrepresentations to the company. Consumers cancelled because of alleged fraud are entitled to an independent third party review.
- Lifetime benefit limitations, clauses that set a maximum amount that may be paid under a policy for a person's lifetime, are prohibited under the House bill.
- Pre-existing coverage limitations, clauses which allow insurers to deny or limit coverage based on such factors as an applicant's health status, disability or claims history, are also banned in the House bill.
- Health insurers are required to provide coverage to all consumers who request it (known as "guaranteed issue") and to renew all policyholders except in cases of non-payment of premiums. (Even in this case, consumers would have a grace period to catch up with their payments.)
- The House bill would limit insurers' ability 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 for 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, yet the 2:1 ratio specified in the House bill is preferred over the 4:1 ratio allowed in the Senate Finance bill.
- The House bill would allow the formation of interstate commerce pacts between states for the sale of health insurance across state lines. The insurance sold in the compacting states would be subject to regulation of only one of the states, which could undermine consumer protections and state oversight of health plans in the other state. HCFANY opposes this amendment, and urges the House bill to preserve the role of state regulators in protecting the interests of their own states' citizens.



HCFANY supports the provisions in the House bill on insurer practices, but urges the House to preserve the role of state regulators in protecting the interests of their own states' citizens.

☺ **Public Health Insurance Option.** HCFANY strongly supports requirements that consumers have a choice of a public health insurance option through the health insurance exchange created by the new law. 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 patient health before profits.

- A public health insurance option would be offered to consumers beginning in 2013 as a plan choice within the health insurance exchange. The public plan must meet the same requirements for benefits, provider networks, cost-sharing (out-of-pocket costs) and consumer protections as private plans.
- Premium rates in the public plan will be regionally adjusted and must cover payment of claims and administrative costs. (Start-up funding is provided for the public plan which must be paid back to the taxpayers over a ten-year period).
- The Department of Health and Human Services is required to negotiate payment rates with providers for the public plan, including that for prescription drugs. Rates must not be lower than Medicare rates and not be higher than the rates charged by other qualified plans. All Medicare providers are presumed to be participants in the public plan unless they opt-out.

HCFANY supports the public health insurance provisions in the House 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 to make insurance more affordable. And, while the House leadership bill includes undocumented immigrants in the eligible population for the Exchange, significant barriers to affordable health insurance remain for legal immigrants seeking Medicaid and Medicare.

- HCFANY urges House leaders to continue to resist pressure to exclude undocumented immigrants from being able to buy insurance with their own money at full price in the new Exchange. Such exclusions would cost states money to implement and only create documentation barriers for eligible citizens and legal immigrants.



- However, 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. Similarly, seniors and the disabled are required to have five years of continuous residency immediately preceding application in order to enroll in Medicare. Lawful immigrants who meet the work requirements for Medicare also face an unfair five-year waiting period. These inequities are not addressed in the House bill. New York extends Medicaid coverage to all lawfully residing immigrants and those in the process of adjusting status, and will continue to do so with state-only money if this is not included in the final bill.

HCFANY supports the inclusion of undocumented immigrants under the Exchange in the House bill, but strongly recommends that a lift on the current five-year ban for lawful immigrants be included as an amendment.

☺ **Small Businesses.** The House bill takes crucial steps toward providing more affordable options for quality health coverage for small businesses. This allows them to become more competitive by giving them greater control over one of the most costly and unpredictable aspects of doing business.

- The House bill promotes transparency and gives small businesses simplified choices through the Exchange, increasing bargaining power and driving down costs through a strong public health insurance option, prohibiting pre-existing condition exclusions, ending discrimination against small groups based on health status, and making coverage more affordable through a strong system of shared commitment. These elements are essential to making health care work for small businesses.
- The House bill gives employers the choice of either offering coverage to employees or making a contribution, equal to 8% of wages paid, toward the cost of that coverage. For small businesses, this contribution is based on a sliding scale starting at 0% for businesses whose payroll is less than \$500,000 per year, and up to 6% for businesses whose payroll is less than \$750,000 per year.
- The House bill also 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 House bill for small businesses.

☺ **Women's Health.** Women and girls of all ages have much to gain from the provisions in the House bill, but continuing demands from some House members for restrictions on access to comprehensive reproductive health care, including abortion service, raise serious concerns.

Provisions that are positive for women and women's health include:



- An end to “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;
- Prohibition of insurance denials of coverage for such “pre-existing conditions” as breast cancer, pregnancy and even having been a victim of sexual assault or domestic violence in the past; and
- Guaranteed maternity coverage, which has often been omitted from insurance policies.

Health reform should promote a “well-woman standard of care” that includes comprehensive reproductive health care, which is a key determinant of women’s overall health across the life span.⁴ Ideally, health reform legislation should permit all women, regardless of their income, to use that coverage for abortion services. At the very least, health reform legislation should maintain the status quo, as represented by the Capps amendment, which bars use of federal funding for abortion coverage, but continues to permit use of state funds and private funds to purchase health plans that include abortion services.

HCFANY supports the women’s health provisions of the House bill, as introduced and in the manager’s amendment, and urges House leadership not to further erode women’s access to coverage for abortion services.

☺ **Transitional Funding.** The House bill provides \$5 billion in funding between 2010 and 2013 to support transitional or expanded high-risk pools in the states. The manager’s amendment extends this funding, in states without high-risk pools, to other coverage expansions, such as state public-private partnerships.

- Years ago, New York expanded coverage to high-risk individuals through guaranteed-issue private coverage under standardized plans in the individual market. Instead of setting up segregated products for high-risk individuals, HIPAA eligibles, and the like, it has included all individual purchasers in a single set of products and dealt with the high-risk population through a public reinsurance pool. That pool has not been funded sufficiently to cover all the eligible high cost claims, and the market has become unstable as a result. Nonetheless, high-risk people without employer coverage find coverage here if they can afford the high premiums, and many more could do so if the reinsurance pool worked as intended to lower premiums. The individual market is the functional equivalent of a high-risk pool.
- HCFANY believes the bill should be further amended to clarify that guaranteed issue markets can receive support even if they do not distinguish in enrollment between “eligible individuals” referred to in the bill and others. States like New York which have already

⁴ Chavkin, W., Rosenbaum, S., et al, “Women’s Health and Health Care Reform: The Key Role of Comprehensive Reproductive Health Care,” *Mailman School of Public Health*, New York, 2008.



sacrificed to offer financial support to cover high-risk individuals should be able to receive a portion of this funding.

HCFANY supports the transitional funding provisions of the House bill, but urges a further amendment to specifically allocate support to states, like New York, who already offer coverage to high-risk individuals but do not distinguish in enrollment between “eligible individuals” referred to in the bill and others.

☺ **Seniors and the Disabled.** The House 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.

- The new legislation will close the Medicare Part D coverage gap, known as the “doughnut hole,” by 2019, four years earlier than originally proposed. In addition to this phase-out, the over 3 million individuals who fall into the doughnut hole each year will benefit from a 50% discount on their brand-name drugs beginning on July 1, 2010. With this legislation, 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 House 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.
- 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 option, to individuals who would otherwise qualify for institutional coverage under Medicaid, by enhancing the Federal matching assistance (FMAP) for those supports and services.

HCFANY supports provisions of the House bill which improve Medicare and long term care for older people and people with disabilities



Will Federal Health Reform Work for New York Families?

The tables below demonstrate the reality of New York families after only the following few basic expenses of living: taxes, housing, food and child care. These charts show the *maximum* costs a family could face for health coverage on the Exchange, but do not include other necessary expenses, such as transportation, fuel, heat and electricity, school supplies, telephone, credit card payments, loans, and other miscellaneous expenses.

Table 1 – What 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	>400% FPL No Cap
Gross Yearly Pay	\$36,620	\$45,775	\$54,930	\$73,240
Taxes	\$7,750	\$10,808	\$14,644	\$22,596
Net pay	\$28,870	\$34,967	\$40,286	\$50,644
Housing Costs	\$14,400	\$14,880	\$14,760	\$17,160
Child Care	\$19,093	\$19,093	\$19,093	\$19,093
Food	\$7,611	\$7,611	\$7,611	\$7,611
Health Costs:				
Max. Ins. Premiums	\$2,014	\$3,662	\$5,493	\$24,000
Maximum OOP	\$2,000	\$4,000	\$8,000	\$10,000
Remainder - annual	(\$16,248)	(\$14,279)	(\$14,671)	(\$27,220)
<i>Remainder - monthly</i>	<i>(\$1,354)</i>	<i>(\$1,190)</i>	<i>(\$1,223)</i>	<i>(\$2,268)</i>

Table 2 – What Senate Finance Proposal Means for a Family of Three in NYC

Family of Three – One Adult, Two Children				
	200% FPL 7% cap	250% FPL 9.5% cap	300% FPL 12% cap	>400% FPL No cap
Gross Yearly Pay	\$36,620	\$45,775	\$54,930	\$73,240
Taxes	\$7,750	\$10,808	\$14,644	\$22,596
Net pay	\$28,870	\$34,967	\$40,286	\$50,644
Housing Costs	\$14,400	\$14,880	\$14,760	\$17,160
Child Care	\$19,093	\$19,093	\$19,093	\$19,093
Food	\$7,611	\$7,611	\$7,611	\$7,611
Health Costs:				
Max. Ins. Premiums	\$2,563	\$4,349	\$6,592	\$24,000
Maximum OOP	\$5,800	\$5,800	\$7,973	\$11,600
Remainder - annual	(\$20,597)	(\$16,766)	(\$15,743)	(\$28,820)
<i>Remainder - monthly</i>	<i>(\$1,716)</i>	<i>(\$1,397)</i>	<i>(\$1,312)</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 per 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. Maximum 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%. Maximum health costs for Senate Finance Proposal are taken from “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.