November 16, 2007

Thomas R. Sullivan
Insurance Commissioner
Connecticut Insurance Department
P.O. Box 816
Hartford, CT 06142-0816

RE: Charter Oak Health Plan

Dear Commissioner Sullivan:

I have reviewed your letter of November 5, 2007 containing your legal staff's opinion concerning the Connecticut Insurance Department's (CID's) jurisdiction over the Charter Oak Health Plan and the managed care entities that will be involved in the Plan. My staff and I have also reviewed Public Act 07-2 and conclude that the Department has much broader jurisdiction and responsibility than it has opined, and we seek your commitment in ensuring that the Department exercises such broad jurisdiction to protect consumers of the state and to avoid erosion of the Department's jurisdiction over insurance products.

First, we disagree on a basic premise. The Charter Oak Health plan is not a social program. It will be open to consumers of all incomes, many of whom will not receive any sort of subsidy from the state. In fact, consumers over 300% of the federal poverty level (FPL) will receive no subsidy toward their insurance premiums. If state subsidies were a test of whether a program is a social program for purposes of insurance regulation, then the provision of state employee insurance, at a large cost to the state, would turn that type of insurance into a social program for state employees as well.

Further, there is no real comparison between the Charter Oak plan and the federally subsidized programs HUSKY A and HUSKY B, mentioned by your reference to C.G.S. § 17b-266. The HUSKY programs, while insurance, as specifically described in C.G.S § 17b-266(a), are subject to substantial and detailed statutory oversight and regulation by the federal government: "The commissioner may enter contracts for the provision of comprehensive health care on a prepayment or per capita basis **in accordance with federal law and regulations, with the following** ...." C.G.S. § 17b-266(a). The benefit package for HUSKY A is essentially outlined in federal statute as are the options for coverage in HUSKY B. HUSKY B itself, however, is based on the state employee plan, and therefore, there is a right to an external appeal under C.G.S. § 38a-478n as recognized in the Memorandum of Understanding between DSS and CID and in the HUSKY B regulations recently issued by DSS. It is the federal law and regulations provision of C.G.S. § 17b-266(a) that essentially allows for an interpretation that

HUSKY is not subject to state insurance regulation. In other words, there is some logic in the Department's deferring some regulatory oversight in the HUSKY programs because of the comprehensive federal scheme governing the programs.

Charter Oak is a creature of state law. There is no federal law that applies to the Charter Oak plan. The mere possibility of some kind of federal financial participation, alluded to as unlikely by Commissioner Mike Starkowski as recently as Friday, November 9, 2007, does not convert Charter Oak into an unregulated insurance plan or a plan out of the reach of the Insurance Department's jurisdiction.

The reference to section 23(e) of P.A. 07-2 as the basis for the Department's conclusion that it has no oversight with respect to benefits, rates or forms is puzzling. While there is reference to C.G.S. § 17b-266 as a basis for justification for the Department's opinion that it has limited jurisdiction, the reference is incorrect. While it is true that there is similar language in 17b-266, the language in section 23(e) of P.A. 07-2 is there for an obvious purpose, to allow for the ease of administration for the Charter Oak plan by DSS, and for the participation of at least one of the current HUSKY managed care organizations, Community Health Network of Connecticut, Inc., in both continuing HUSKY contracts and the Charter Oak product. The language in 17b-266 clearly refers, as stated above, to compliance of the HUSKY contracts with federal law. However, there is no language in section 23(e) of P.A. 07-2 that subjects Charter Oak to any federal laws, nor is there any language that exempts any health care center from Chapter 698a or other insurance regulation. The only exemptions from Chapter 698a are for financial oversight and licensing of consortia. This seems to me to be a limited *exemption* from insurance laws, as opposed to the basis for limited *jurisdiction* as stated in your letter.

Respectfully, there is nothing by way of legislative intent to suggest that the Charter Oak Plan was intended to be outside the scope of the Insurance Department's jurisdiction. What little history there is, is from the one and only public hearing in February 2007, in which Commissioner Starkowski stated that the intention was to comply with insurance "mandates". Since the final legislation was passed as part of a large implementer bill, there was no substantive debate on the final language of the Charter Oak Plan. Stated above, the statutory language of 17b-266 is not similar to section 23(e) of P.A. 07-2 with respect to federal contractual oversight of the program since it necessarily cannot be. Second, the legislation itself announces Charter Oak "as providing access to state residents who have been uninsured for at least six months…." Public Act 07-2, Section 23(a), and DSS repeatedly refers to the Charter Oak plan as insurance. Third, I see no basis for the Department's conclusion that the Charter Oak plan is not sold in the commercial market, even though I don't believe that whether a product is sold in the commercial market is a threshold requirement for insurance regulation. (The Department has some regulatory authority over Medicare supplemental plans – Medicare recipients are not considered the commercial market by many people and Medicare itself could be considered a social program under the Department's standards.) DSS has stated that the Charter Oak plan will essentially operate like a regular managed care plan, with enrollees above 300% FPL paying premiums directly to their

insurers; DSS will be essentially operating as an intermediary for enrollees in a fully-insured product, much as an employer operates in purchasing a fully insured and regulated product for its employees. It is also very likely that at least three entities currently operating in HUSKY as health care centers (HMOs) for purposes of Chapter 698a and the remaining insurance statutes will be involved with this product. Finally, according to DSS, the dental and vision components of the Charter Oak Plan will be sold directly by the insurers to enrollees at full premium as optional riders with no clear oversight except, I believe, that which already exists in the insurance statutes, including mandatory coverage.

For an insurance plan, or the entities providing that insurance to be exempt from insurance regulation, there must be a clear exemption. As you noted, section 23(e) exempts the consortia, but not health care centers, from the licensing and financial requirements of Chapter 698a. However, there is a host of other insurance statutes for which the Charter Oak plan and the entities operating the plan would not be exempt, and we seek your assurance that the following consumer protections (and others not mentioned here), and their corresponding regulations, will apply to the managed care entities operating the Charter Oak plan.

- Health Care Centers (chapter 698a) - Rates, provider information, solvency, hold harmless, replacement coverage and all statutory sections noted below
- Utilization review - §§ 38a-226 to 226d, including new definition of medical necessity in P.A. 07-75.
- Requirements of insurance contracts (Chapter 699) - § 38a-283 et.seq.
- Readable language in insurance contracts (chapter 699a) §§ 38a-295 to 38a-300.
- Health Insurance - Chapter 700c -- the following provisions **specifically apply** to heath care centers and medical service corporations
    - § 38a-476a - requiring compliance with HIPAA
    - §§ 38a-478 - 38a-479a - requirements for **managed care organizations, which are broadly defined**, including: filing of reports to CID, provision of list of providers, provision of medical criteria, contract requirements, disclosures of summary plan descriptions and multiple other items of information enumerated in § 38a-478g, including the right to an internal grievance procedure, right to external appeal, right to expedited UR, applicability of CUIPA and right of CID to examine and inspect for CUIPA violation.
    - § 38a-479aa - PPO requirements including those on MCOs contracting with PPOs -- right of CID to inspect books included.
    - Consumer protections in group policies, including those associated with dental services, beginning with § 38a-513a and including MH parity § 38a-514, coverage of off-label prescription use, etc.
    - State continuation coverage, § 38a-546
    - Co-pays on x-rays and other radiological services - § 38a-550
- Chapter 705 - §§ 38a-975-38a-998, Connecticut Insurance Information and Privacy Protection Act

- § 38a-8b- stop-loss policies (any sold in CT must be approved by CID – some HUSKY plans use these)
- CUIPA, §§ 38a-815 – 38a-819
- **§ 38a-14, § 38a-14a, § 38a-15** -- examinations re underwriting, financial and market conduct, respectively

I hope that you will address the concerns I've raised in this letter. I believe our goal should be preventing erosion of consumer protections for new insurance products, including Charter Oak. I expect that there will be many chronically ill people who choose to enroll in Charter Oak because of their inability to obtain individual insurance. It is these people that I am especially concerned for, given representations of limited prescription drug coverage of $2500 per year, other limited benefits and the potential lack of broad oversight by your department of this plan. I would appreciate a response at your earliest convenience.

Thank you.

Sincerely,

Kevin Lembo
Healthcare Advocate