Office of the
Healthcare Advocate
State of Connecticut

October 22, 2007

Honorable M. Jodi Rell, Governor
Office of the Governor
State Capitol
210 Capitol Avenue
Hartford, Connecticut 06106

RE: Charter Oak Health Plan

Dear Governor Rell:

Lack of quality, affordable health insurance coverage can have serious health and economic consequences for both the uninsured residents of our state and our state's overall wellbeing. As Connecticut's Healthcare Advocate, I see on a daily basis the results when families and individuals do not have health insurance or are underinsured. My staff and I also witness the problem of lack of access to care for those who already have insurance. It is in this spirit that I write with suggestions for the Charter Oak Health Insurance Plan that may make it more likely for you to achieve your goals of providing comprehensive healthcare insurance to those who enroll in the plan; making services under the plan meaningful and accessible; ensuring transparency in the expenditure of public monies to achieve these goals; and, making the plan sustainable into the future.

Although I had hoped to have answers or responses to my concerns addressed by Department for Social Services Commissioner Michael Starkowski at September's Medicaid Managed Care Council meeting, and again at the meeting on October 12, 2007, he did not appear at those meetings to provide an update and to answer questions concerning the plan. Given that the Commissioner has stated that the Charter Oak Plan procurement is to be linked to a new HUSKY procurement for a start date of July 1, 2008, I believe that time is of the essence in addressing the suggestions that I've laid out below.

The Charter Oak plan should be comprehensive in scope. Anything less means that some of Connecticut's citizens will not be protected by previous public policy decisions of the legislative and executive branches requiring coverage for items such as minimum hospital stays for delivery, mental health parity, diabetes testing and equipment. A limited benefit plan design, or an alternative "mandate-lite" design for Charter Oak, as has been described at various times by representatives of DSS, sends a message that Connecticut is not concerned with providing comprehensive health care coverage to our uninsured population, and sets a precedent that we should avoid – that is, the provision of the least common denominator type of insurance in the name of

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providing health insurance. Through the work of my office, I have seen the unfair and drastic consequences of being underinsured. Therefore, I am committed to ensuring that Connecticut does not become a state in which limited benefit plans proliferate. We need to set a good example at the state level by offering a comprehensive insurance product that is subject to state insurance protection and regulation.

I understand that you intend to offer a product for a very low premium, but comprehensive insurance that allows for access to care will likely cost more than $250 a month. I would suggest exploration of the cost of a comprehensive package with higher state subsidies rather than allowing a product into the marketplace that dilutes the consumer protections in the insurance statutes. It may, as a public policy decision, be better to limit enrollment within available subsidy rather than limit coverage and protections.

Beyond my concern about insurance consumer protections, I am concerned that the plan as described creates a two-tiered system, one level for state employees and fully insured individuals and a lower level for uninsured individuals. I believe our goal should be grounded in the belief that all state residents are equally entitled to the protections of our state insurance laws. For this reason, I suggest that you consider a plan design that is benchmarked to an updated version of the HUSKY B package. Since HUSKY B was designed[1] based on the state employee package, this would ensure that Charter Oak enrollees have the same benefits and protections of state employees and members of the legislative and executive branches.

As an insurance product, the Charter Oak plan should be subject to other regulation and consumer protections. For instance, as we have seen in the HUSKY program and generally in insurance, for–profit companies are responsible to their shareholders and are motivated to increase their administrative margins wherever possible. Without the application of consumer protections such as the Connecticut Unfair Insurance Practices Act (CUIPA) and reporting requirements for managed care plans, the insurance companies contracting to provide services under Charter Oak will essentially be operating outside the state's insurance laws. To decrease any motivation to deny care, we suggest that you impose a required medical loss ratio of at least 87.5 percent on any plan contracting to do Charter Oak business with punitive measures if that loss ratio is not achieved. It is a reasonable expectation that insurers use the majority of premiums for direct services, and not for excess administrative costs.

There are other issues that I suggest be addressed quickly and publicly.

- There will be serious access to care issues if reimbursement rates under the Charter Oak plan are not at levels comparable to commercial plan reimbursements. I have seen the negative impact of low reimbursement on network capacity. This is my major concern with doing a joint procurement of

[1] HUSKY B proposed regulations have recently been issued. Those regulations describe the HUKSY B benefits in terms of previous state employee plans. We hope that you, as we do, will support the realignment of the HUSKY B package with the state employee package this legislative year.

Charter Oak with HUSKY A for next fiscal year – we should not repeat in Charter Oak, the decisions that have led to access to care issues under HUSKY.

- The utilization review protections under state insurance law, including grievance and external appeal rights, should be included in Charter Oak. Appeal rights protect against arbitrary and capricious denials of care.
- Privacy protections under current Connecticut insurance law and under HIPAA need to be addressed as "managed care entities" will be involved in this insurance product.
- Strict accountability must be built into contracts for the Charter Oak plans. If this plan is to be jointly procured with HUSKY, and the same managed care organizations that participate in HUSKY participate in Charter Oak, accountability is even more important, as three out of four of those organizations have already resisted accountability under the Freedom of Information Act for their HUSKY operations. Strict public measures should be put into place that allow for meaningful monitoring of the success of the Charter Oak plan.
- Provider protections should be in place to ensure a viable network. In addition to commercially based reimbursement rates, provider rights and prompt pay requirements under CUIPA should be in place.

Other concerns that have not been addressed, but for which a response should be communicated broadly to the public include: whether Charter Oak will be considered creditable coverage for purposes of enrollment in a future new plan; i.e. whether pre-existing conditions will affect enrollment in a plan subsequent to Charter Oak; whether there will be a pre-existing condition waiting period for coverage other than the initial six month crowd-out waiting period.

Lastly, I believe that DSS needs to be more open and up-front about the Charter Oak plan. Advocates, including me, have been concerned with the behind-closed-doors planning of the product, the lack of openness about whether consumer protections will apply and the lack of public input into the plan. Given the current environment in which covering the insured is a major priority for consumers, providers and businesses, public input should have been sought already and should continue throughout the process. Since Charter Oak is an insurance product, I hope that you will consider my suggestions above to make the plan consistent with the consumer protections and requirements of our insurance laws. I am, as always, available to speak further about these issues.

Sincerely,

Kevin P. Lembo
Healthcare Advocate