Office of the
Healthcare Advocate
State of Connecticut

Testimony of Kevin P. Lembo, Healthcare Advocate before the Human Services, Appropriations, and Insurance Committees On the Charter Oak Health Plan, December 5, 2007

Good afternoon Senator Harris, Representative Villano, Senator Harp, Representative Merrill, Senator Crisco, Representative O'Connor and members of the human services, appropriations and insurance committees. As someone whose office sees on a daily basis the struggles of families and individuals who have no health insurance or are underinsured, I welcome the opportunity to speak about the Charter Oak Plan. Like the Governor, I support the idea of providing access to health insurance for our uninsured residents. However, I believe that the Charter Oak plan needs some major adjustments in order to achieve the goals of providing comprehensive healthcare insurance to those who enroll in the plan, making services under the plan meaningfully accessible and making the plan viable on a sustainable basis. I remain 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.

The Charter Oak plan as designed is not comprehensive in scope. A less-than comprehensive plan means that some of Connecticut's citizens will not be protected by the existing state policies requiring coverage of items such as minimum hospital stays for delivery, mental health parity and diabetes testing and equipment. A limited benefit plan design including very low coverage limits on items like prescription drugs, or a "mandate-lite" plan design as has been described recently, sends the message that Connecticut is not concerned with providing comprehensive health care coverage to our uninsured population.

The state should not be in the business of marketing and setting the precedent for the proliferation of limited benefit plans or trying to avoid the legal obligations that it imposed on other regulated plans. When it comes to health insurance - something is NOT better than nothing. In my office, I have seen far too many examples of the drastic consequences of underinsurance, and limited benefit plans have no place in the insurance market.

The Charter Oak legislation contains no language exempting this insurance product from the consumer protections in the state Insurance Statutes. Nor is there any public policy rationale for doing so. 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. In fact in March 2007, Commissioner Starkowski testified 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.

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The Insurance Department reached a conclusion early this year that the Charter Oak plan was subject to the consumer protections of the insurance statutes and would require specific exemptions from those protections, including mental health parity. The department even drafted language for those exemptions. While the department later changed its position, it did so based on a less-than legally sound basis, stating that Charter Oak is a "social program" because it involves some state subsidies for low-income persons.

This flawed reasoning led me to request of the Insurance Commissioner that he reconsider his position. Charter Oak is supposed to be open to consumers of all incomes, many of whom will receive no subsidy toward their insurance premiums. Frankly, 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.

I remain unconvinced that the consumer protections in our statutes place an unwieldy burden on insurers. The idea that these consumer protections are costly has taken on a life of its own through repeated assertions of this mantra by the insurance industry, assertions that are supported only by industry studies.

I have communicated strongly to the Insurance Commissioner that even if it were uncertain whether the consumer protections apply, the remaining insurance statutes must apply to the Charter Oak plan. There is absolutely no policy or legal justification for the Charter Oak plan to be exempt from such statutes as the Connecticut Unfair Insurance Practices Act, or those statutes governing managed care organizations or those providing for market conduct examinations, among others. I am disturbed by the Insurance Department's reluctance to regulate a product so clearly defined as a fully-insured product. I am committed to ensuring that consumers of the Charter Oak product receive the same protections provided to me, you and the Governor under the state's insurance laws.

Our goal should be for all state residents to benefit from the protections of our insurance laws. I made many recommendations to the Governor to achieve that goal and to improve the Charter Oak plan, including: a minimum medical loss ratio to ensure that premium dollars are going to service costs rather than to increase margins for the insurance companies; the setting of reimbursement rates to a level that would ensure access; and, accountability under HIPAA.

My hope is that we can improve the Charter Oak plan so that it complies with the letter and spirit of the insurance protections that many of us here today already enjoy. We must slow down the procurement process to ensure that the product is comprehensive, affordable and marketable to all uninsured residents. Alternatively, this legislature may need time, in light of the new information before you, to amend the provision of P.A. 07-2 to guarantee consumer protections. I have said this before, but it bears repeating: It is too easy to get this wrong in the rush to do something. We need to get this right.

Thank you for your attention and welcome any questions you may have.

Attachments

A) Letter to Governor Rell, October 22, 2007

B) Letter to Insurance Commissioner Thomas Sullivan, October 15, 2007

C) Response of Insurance Commissioner Sullivan, November 5, 2007

D) Letter to Insurance Commissioner Sullivan, November 16, 2007

E) Response of Insurance Commissioner Sullivan, November 30, 2007

F) Excerpt of Human Services Hearing Committee Transcript from March 15, 2007, Exchange between Senator Harris and Commissioner Starkowski re Charter Oak Plan

G) Draft – Revisions to Insurance Statutes Related to Charter Oak, January 2007