



Testimony to

**Senate Finance Committee
Assembly Ways & Means Committee**

Health & Medicaid Budget Hearing

Presented by

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February 9, 2010



Good afternoon. I am Kenneth Adams, President and CEO of The Business Council of New York State, the leading statewide business trade organization in our state. I appreciate the opportunity to provide testimony today specifically on several aspects of Governor Paterson's 2010-11 Executive Budget proposals in health care and health insurance. There is much to be concerned about because the Medicaid-related budget proposals do little to transform service delivery and care leaving our state's taxpayers with state-subsidized health delivery models that are not financially sustainable and will push the New York health care delivery system and its taxpayers to the brink.

I had the honor of testifying before you last week at the Economic Development budget hearing. My testimony at that time, and your questions of me and other presenters at that hearing, focused on how to ensure New York could remain competitive; what models might work to help retain and grow those employers already here and what might be needed to attract new businesses to our State. The Governor's budget proposal must be looked at in its entirety, and the health-related budget proposals provide a good example of the cause and effect that will result if many of these proposals are enacted.

I will focus my testimony on five elements of the budget which The Business Council opposes: the HCRA surcharge on surgical and radiological procedures; the increases in assessments on nursing homes, inpatient services, and home and personal care providers; reinstating the Insurance Department's authority to approve health insurance rates (commonly known as "prior approval"); the Early Intervention insurance language; and the pharmaceutical code of conduct. Each of these proposals represents a cost shift – to employers and to New Yorkers with employer sponsored health insurance. If the Legislature believes taxpayers need to continue to prop up unsustainable state-subsidized programs, you need to be honest with New Yorkers that your actions are directly accountable for a portion of the increasing costs of privately provided health insurance.

Prior Approval

The Governor's proposed budget includes language similar to that he introduced as part of a program bill last session. Surprisingly – and perhaps an example on just how gimmicky, "fuzzy math" has gotten – the Division of Budget attributes Medicaid savings of some \$70 million in 2010 to the prior approval language.

In short, The Business Council does not support reinstating to the Insurance Department authority to impose price controls on health insurance rates in the commercial market prior to their becoming effective. We ask the Legislature to dismiss any consideration of this language as part of the budget making process, and we will work with you in the program session to identify ways to provide some form of relief to commercial health insurance rates.

I think it is not news to anyone here that insurance has been a heavily regulated industry for years and health care and politics are intertwined. Much like the budget which has become a politicized and flawed process, reinstatement of prior approval would make rate setting a subjective process likely leading to rate

suppression ignoring underlying the cost drivers impacting rates. Prior approval would have far reaching implications beyond those mentioned in the budget bill memo. This language will limit competition – not expand it; it will drive costs up for large employers whose rates will need to increase to subsidize any rate suppression likely to occur in the small business market as a result of the prior approval process; and it will limit product availability designed to meet employers' needs, as insurance companies will do a cost-benefit analysis to support only a limited number of rate filings.

Consider the testimony given last year by the University of Rochester Medical Center at the legislative hearing on prior approval might: "price controls for commercial health insurers that artificially suppress premium rates will lead to their inability to adequately reimburse providers." The testimony went on to say that reinstatement of prior approval will add to the financial instability of hospitals at a time when they have sustained significant state Medicaid reimbursement cuts and ultimately undermine quality health care delivery systems.

Reinstatement of a cumbersome approval process which didn't work in real time when it was in place in the 1990s is hardly the solution to containing health insurance premiums for the commercial market. Government actions such as the \$4.2 billion in health insurance taxes, including \$700 million in new and increased taxes passed as part of last year's state budget, along with the increasing number of insurance mandates continue to add unnecessary and burdensome costs on health insurance premiums and reinstatement of prior approval will merely be one more line on a growing list of "add on" costs to health insurance premiums.

Early Intervention

While the budget seeks to achieve Medicaid savings in the Early Intervention program through a series of recommendations, one particular "savings" proposal is nothing but a cost shift which undermines the whole premise of health insurance rate setting.

While characterized as a way of maximizing commercial insurance reimbursement, in fact the Governor's budget language acknowledges its state-designed and mandated program model is not sustainable and thus, the state can no longer afford it as constructed. You might expect, then, budget language which in fact puts in place some parameters to achieve both cost and quality efficiencies. Instead, the budget shifts this program's burden to insurance carriers and says "you pay!" There is no language which imposes real parameters on the program to get spending under control within a quality construct. The budget language simply moves the cost to a different column – essentially saying "look we reduced state spending" and says that private carriers must reimburse providers of early intervention services regardless of plan benefits and negotiated provider reimbursement rates and regardless of whether that provider is within the health plan's network.

Shifting these costs to private carriers and not allowing them to manage the cost and quality of the delivery of early intervention services within the parameters of a given health plan will result in increased health insurance premiums for all. No

one disputes the need for carriers to pay for evidence and clinically based early intervention services – but those services must be managed and they must be provided within the network rules. It is solely because the State did neither of these – managing the services within a cost efficient construct that it finds itself owing a very large bill. A wholesale shift of this program to private insurance carriers which ultimately means into the rates of everyone with employer-sponsored health insurance ignores the problems in this state-designed program.

Pharmaceutical Code of Conduct

The Governor's budget includes language similar to that proposed last year – and rejected by lawmakers – which would impose New York standards on pharmaceutical and medical device manufacturers already subject to federal laws and guidance, and supplemented by industry standards in the marketing of their goods and services.

The Business Council opposes language which imposes these requirements on companies – singling out one particular sector of our very diverse state economy – and subjecting it to rules and disclosure requirements for the legitimate marketing of goods and services. Not only would this language hinder engagement between pharmaceutical representatives and medical professionals, including physicians, it will also limit the means by which prescribers are educated about these products. The language proposes New York-specific regulations on an industry sector which is worldwide, and which is currently subject to existing Federal regulations on information and promotional materials distributed about a prescription drug.

Is it just The Business Council that finds it incongruent that our state's lead economic development agency, Empire State Development, has the biopharmaceutical sector as one of its major growth targets for state and local investment, while the Governor's budget language does the opposite as it singles out this sector as in need of a code of conduct? The biopharmaceutical industry directly employs 55,446 people and is responsible for a total of 130,464 jobs. Of those directly employed, 13,189 work for manufacturing organizations (which includes biopharmaceutical companies that both conduct research and manufacture products), and the remaining 42,257 work for research organizations. Aren't these the high growth, high wage jobs New York is seeking to attract? Aren't these the types of employers any community would want as part of their tax base?

A February 2009 Archstone Consulting study showed that in 2008, New York was second in the nation with 5,053 clinical trial sites in the state. Additionally, New York showed its broad medical strength with high numbers of trials being performed for all 9 conditions studied. In other words – this sector is a valued contributor to our state's economic base and in many regions of our State. To advance language which singles this sector out – when it employs thousands, spends billions on research and development here in our state, and provides a value-add for our state's health care system seems contrary to good public health care policy and sound economic development policy.

HCRA Surcharge

The Governor's budget proposes a new 9.63% HCRA surcharge on surgical and radiological procedures performed in private ambulatory surgery centers, physicians' offices and urgent care settings. Last year's budget increased the existing hospital-based services surcharge to 9.63%, increasing costs for everyone. The Business Council is opposed to this proposal which seeks to expand the reach of the surcharge – and significantly increase the revenue derived from it. We were opposed to last year's increase in the surcharge on hospital-based services as well.

If my theme is beginning to sound familiar -- or if you've heard it from me before -- that's because it is a consistent message: it doesn't matter if it's a 'surcharge', a 'fee', or an 'assessment': it's a tax – and it's a tax that is passed on ultimately to the end user in the form of higher health insurance premiums. And all of this need for additional revenue points to the challenge facing the Legislature and Governor, particularly as it relates to publicly funded health care spending: the spending is out of control, the program models are not sustainable in their current format, and yet nothing in this budget seeks to transform the delivery system and put it on a sustainable foundation going forward. The gap filling with "revenue raisers" through surcharges such as this reach beyond the notion of a "nuisance": these taxes generate millions of dollars for state coffers from New Yorkers at all levels with privately based health insurance driving up their costs with no concomitant benefit in terms of health care quality or outcome.

Health Care Provider Taxes

This year's budget proposal includes increases in assessments on nursing homes (from 6% to 7%); on inpatient services (from 0.35% to 0.75%) and on home and personal care providers (from 0.35% to 0.7%).

It stands to reason if The Business Council does not support the HCRA surcharge, we do not support the increases in these gross receipts taxes on providers.

This bait and switch by adding and increasing a myriad of fees, surcharges and taxes ultimately drives up employer-provided insurance costs. When the national conversation is about affordable, accessible health care and health insurance, New York's insistence on layering on "hidden" charges on all aspects of the health care delivery system – from providers to insurers to end users – takes us in the wrong direction and makes New York less competitive.

In closing if I can leave you with one theme: it is do no more harm. Budgets over the past several years have contributed to increased health insurance premiums for all New Yorkers in accessing employer sponsored health insurance. These budget actions continue to undermine the health care delivery system in New York and ignore the reality of the need for truly transformational policies which will put our system on a sustainable path. Employers need some assurance from their state officials that New York State views health insurance costs as a true factor in whether a company can maintain and grow its workforce, and they need some confidence that state leaders are willing to make the tough choices, rather than shifting more of the burden onto their backs.

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