



June 18, 2008

VIA REGULAR MAIL AND FACSIMILE
(860) 808-5387

The Hon. Michael P. Starkowski
Commissioner
Department of Social Services
25 Sigourney St.
Hartford, CT 06106

RE: Charter Oak Health Plan

Dear Commissioner Starkowski:

As a broad-based coalition of advocates dedicated to promoting access to meaningful health insurance coverage for the uninsured, we are writing to express our concern about the discriminatory nature of the Charter Oak Health Plan towards people with physical and mental chronic illnesses. Not only are we troubled by the inequitable *effect* Charter Oak will have on this population, but we also are particularly troubled by the *intent* to discourage enrollment of people with mental and physical disabilities in the first place. We urge you to correct this improper discrimination before final agreements are signed with any managed care organizations (MCOs) locking in this illegality.

The discriminatory intent was made obvious in an October 1, 2007 e-mail message from DSS consultant Steve Schramm to you and other DSS officials in which he sought to justify the limitations on mental health benefits, durable medical equipment, and prescription drug coverage that he had proposed. Mr. Schramm explained that these limitations were necessary "to avoid selection issues associated with the chronic users of those services. . . . This is viewed as an incentive approach or negative plan design to avoid bad risk." (Copy enclosed). The Schramm memo transparently explains that the "[p]oint to having limits on those kinds of services" is to discourage enrollment in Charter Oak by "chronic users of those services." The state signaled its agreement with this rationale by incorporating these coverage limitations into the Charter Oak plan. Thus, the plan was designed by the State specifically to discourage "chronic users" of mental health and substance abuse treatment, prescription drugs and durable medical equipment – i.e., individuals with chronic physical and mental illness — from enrolling in it.

The Constitution of the State of Connecticut mandates that "[n]o person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of . . . physical or mental disability." Conn. Const. § 20. Discrimination against classes of persons mentioned in the equal protection clause, such as the mentally and physically chronically ill, is subject to strict scrutiny by courts. *Daly v. DelPonte*, 225 Conn. 499, 514 (Conn. 1993). Purposefully excluding a sizable portion of the uninsured, the chronically ill, from a state

program that professes to provide coverage to the uninsured, implicates a gross constitutional violation.

State statutes also prohibit discrimination against people with chronic illness. Conn. Gen. Stat. § 46a-76 prohibits discrimination based on mental and physical disability (among other traits) in the allocation of state benefits. It states that "mental disability . . . or physical disability . . . will not be considered as limiting factors in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law." In addition, Conn. Gen. Stat. § 46a-71 provides that "(a) All services of every state agency shall be performed without discrimination based upon . . . mental disability, learning disability or physical disability" and that "(b) No state facility may be used in the furtherance of any discrimination, ***nor may any state agency become a party to any agreement, arrangement or plan which has the effect of sanctioning discrimination.***" (Emphasis added).

Conn. Gen. Stat. § 46a-51(15) defines "physically disabled" as "any individual who has any *chronic* physical handicap, *infirmity* or impairment . . .," (emphasis added), and Conn. Gen. Stat. §46a-51(20) defines "mental disability" as referring to "an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's 'Diagnostic and Statistical Manual of Mental Disorders.'"

Thus, state law prohibits state agencies from discriminating against people with chronic illnesses in the allocation of state benefits, including state-subsidized health benefits, or from being "a party to any agreement, arrangement or plan which has the effect of sanctioning discrimination" against people with chronic illnesses. Yet, that is what Charter Oak is designed to do, to the extent that it provides a state-funded premium subsidy for the population under 300% of the federal poverty level.

You and other state officials consistently have taken the position that Charter Oak is not subject to the insurance laws, including the insurance "mandates" or consumer protections, because it is a government-created and subsidized program rather than commercial insurance. (See, e.g., Letter, Commissioner Thomas R. Sullivan to State Healthcare Advocate Kevin Lembo, Nov. 30, 2007, attached). Consequently, as a government program involving the allocation of state benefits, Charter Oak is governed by the State Constitution and the anti-discrimination statutes. As the Schramm memo conclusively demonstrates, Charter Oak was created with the specific intent to discourage people with chronic illnesses from participating by limiting the types of benefits individuals with chronic illnesses most need: prescription drugs, durable medical equipment, and mental health and substance abuse treatment. This intentional discrimination against individuals with mental and physical chronic illness violates the above-cited state statutes and constitutional provision.

DSS cannot legally create a state benefit that intentionally (or even unintentionally) discriminates against people with chronic physical or mental illness. Discrimination against individuals with physical and mental chronic illnesses may expose the State, and possibly its MCO contractors (to the extent of benefits under their control, such as durable medical equipment), to liability under the above-cited constitutional provision and statutes. The limitations of the Charter Oak plan must be corrected so that people with chronic mental and physical illnesses are not effectively excluded from this state program.

Michael P. Starkowski
June 18, 2008
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We applaud your efforts to design an affordable alternative for Connecticut's uninsured; it is a goal that we all share and hope to realize in the near future. The Charter Oak plan, unfortunately, as currently designed, falls short of this goal by denying people with mental and physical chronic illnesses the same access to state benefits intended for other uninsured Connecticut residents. We trust that you will not shun your responsibility to Connecticut's residents with chronic illnesses and rectify this discrimination before any contracts are signed memorializing it.

We look forward to hearing your reply, and would also be willing to meet with you to discuss our concerns about the intentional discrimination under the Charter Oak plan. Thank you.

Respectfully,

James McGaughey
Executive Director
Office of Protection and Advocacy for People with
Disabilities

Domenique S. Thornton, Esq.
Director of Human Resources & Public Policy
Mental Health Association of Connecticut, Inc.

Alicia Woodsby, MSW
Public Policy Director
National Alliance on Mental Illness - CT
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Jennifer C. Jaff, Esq.
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Advocacy for Patients With Chronic Illness, Inc.

Jan Van Tassel, Esq.
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Connecticut Legal Rights Project

Steve Karp
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Stan Kosloski
Project Director
Connecticut Disability Advocacy Collaborative

Lisa Caron
Project Director
ADA Coalition of Connecticut

Bryte Johnson
Director of Government Relations and Advocacy
American Cancer Society, New England Division

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Shawn Lang
Director of Public Policy
Connecticut AIDS Resource Coalition

Susan M. Nesci
Chief Public Health and Policy Officer
The Arthritis Foundation, Northern and Southern
New England Chapter

Harold Gibber
Executive Director
FAVOR, Inc.

Encs.

cc: The Hon. M. Jodi Rell
The Hon. Richard Blumenthal
State Health Care Advocate Kevin Lembo

If we are carving out RX, what would the \$250 pmpm have to be just for the med care
cluding RX ?
MIKE

-----Original Message-----

From: Steve Schramm [mailto:steve.schramm@schrammraleigh.com]
Sent: Mon 10/1/2007 7:19 PM
To: Starkowski, Michael P.; Parrella, David S.; Voghel, Lee; Schaefer, Mark C.
Subject: Final DRAFT of CTCO Plan Design

Ok,

Took out the HOAs and shuffled the deductibles and out-of-pocket max's to replace, smoothed out the Urgent Care co-pay, and clarified that there are limits (either dollars/days/visits) on things like MH/SA, DME and drugs. Point to having limits on those kinds of services is to avoid selection issues associated with the chronic users of those services. Both Maine and Massachusetts, without such limits, are experiencing selection issues. This is viewed as a disincentive approach or negative plan design to avoid bad risk. On the positive side, you will notice the fairly low deductibles and out-of-pocket max's, which is an incentive approach or positive plan design to encourage good risk. We are trying to match the plan design in your March 9th legislative; as noted above, the one piece that stretches that is the lower deductibles - you had used a \$1,000 deductible across the board - we've talked about stair-stepping that and so we only get to \$1,000 deductible for families above 235% FPL (all others are lower).

Throughout this, we continue to fine-tune our rate setting model and we are definitely coming up against the \$250 per month total cost target, so we are going to need to be finding ways to limit risk through benefits, reimbursement, policies, etc.

FYI - I have cut the number of FPL subsidy breakouts from 5 to 4 by combining the 0-150% and 151-185% into a single 0-185%. Also, highlighted HUSKY B premiums are more for reference, they have not been checked against actual premiums.

Steve

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State of Connecticut



Hartford

THOMAS R. SULLIVAN
INSURANCE COMMISSIONER

P. O. BOX 816
HARTFORD, CT 06142-0816

November 30, 2007

Kevin P. Lembo
State Healthcare Advocate
PO Box 1543
Hartford, CT 06144

Re: Charter Oak Health Plan

Dear Mr. Lembo:

Thank you for your letter of November 16, 2007. I share your commitment to ensuring that the Department exercises its authority to protect the consumers of the State of Connecticut and have been clear in my desire to preserve the Department's regulatory authority over insurance products and sales under my jurisdiction.

With respect to your most recent letter, the Department's counsel and staff have once again carefully reviewed the points raised therein. However, the Department's position has not changed since its letter to you dated November 5, 2007. The Department maintains its position that the Charter Oak Health Plan is not commercial insurance subject to Department regulation; it is a social program.

Our conclusion is based on the following: (1) the availability of a state subsidy and federal funding and (2) the plan is sponsored by DSS, which is statutorily charged with administering a wide variety of social programs including health care programs such as the HUSKY plan and Medicaid.

While it appears that we have differing opinions concerning the jurisdiction of the Insurance Department as it relates to the Charter Oak plan, the Department stands ready to provide appropriate assistance to protect consumers. For this reason, the Department is in the process of exploring ways in which Connecticut consumers eligible for Charter Oak can be assured the same consumer protections offered to HUSKY participants.

Sincerely,

A handwritten signature in cursive script that reads "Thomas R. Sullivan".

Thomas R. Sullivan
Commissioner

cc: Commissioner Mike Starkowski, DSS

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD, CONNECTICUT 06106

M. JODI RELL
GOVERNOR

FOR IMMEDIATE RELEASE
December 27, 2006

Contact:
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Governor Rell Announces Universal Health Care Initiatives for Connecticut Adults and Children

New Proposals Provide Universal Access to Health Care

Governor M. Jodi Rell today announced two new proposals to bring health insurance to thousands of additional Connecticut residents, including the **Charter Oak Health Plan** to provide affordable coverage for uninsured adults of all incomes and the new **HUSKY Health 2007** initiative to help ensure that every uninsured newborn and school-age child is enrolled in the state's HUSKY Plan.

"My goal is to make sure that every adult and child in Connecticut has access to health insurance," Governor Rell said. "These two initiatives mean that health care coverage would be available to every uninsured Connecticut resident who needs it."

The Governor's new **Charter Oak Health Plan** addresses what many experts call the toughest challenge in health care nationally—bringing health care coverage to uninsured adults of all incomes. The new plan will be a private-public partnership offering health insurance at an affordable group rate. The new **HUSKY Health 2007** initiative seeks to eliminate the coverage gap for children who are eligible for HUSKY but for some reason are not enrolled by their parents.

"To develop the Charter Oak Plan, my administration will work with representatives of major managed care providers in Connecticut to develop an affordable, accessible product," Governor Rell said. "For under \$250 a month, we could address the needs of the working uninsured with a basic health insurance package that would include a full prescription package, laboratory services and pre- and post-natal care."

"Good health care cannot be a privilege available only to those with the ability to pay," the Governor said. "The most vulnerable -- expectant mothers, newborn children, our students, the working uninsured and our retirees -- all need and deserve access to quality, affordable medical care."

Charter Oak Health Plan: coverage for uninsured adults

The Charter Oak Health Plan would benefit uninsured adults of all incomes who do not have insurance through the workplace by providing basic, quality health insurance to adults from age 19 to 64 -- people who range from young adults who are no longer eligible for their parents' health policies to older adults who are not yet eligible for Medicare.

The State would help connect uninsured adults with insurers participating in the Charter Oak Health Plan, in part through the 211-Infoline service. There would be no cost to the State for the Charter Oak Health Plan, other than nominal administrative and marketing support. The Plan would include:

- Full prescription package with a three-tiered copay. The lowest copay, for a generic drug, would allow a prescription to be filled for \$10 – 15.
- Unlike many other states, coverage would not be restricted for enrollees with pre-existing conditions – the people most in need of coverage and the most difficult to insure.
- No maximum annual benefits. Instead, a lifetime benefit up to \$1 million – ensuring coverage would be available when needed.
- Laboratory, X-Ray and other diagnostics available with 20 percent copay.
- Assignment of clients to a primary care physician with requirements similar to most health care plans regarding prior authorizations and referrals.
- Copays for prenatal, postnatal and preventative care would be lower than regular office visits, encouraging clients to seek these cost-effective, health-promoting services.

In addition, the Plan would also discourage costly emergency room visits by requiring clients to bear a portion of the costs for ER visits for non-emergency situations. If the visit resulted in admittance to the hospital or was determined to be of an emergency nature, client costs would be waived.

“The key to keeping the premiums low is keeping the number of enrollees as high as possible and that is why there are no income requirements,” Governor Rell said. “College students, recent graduates, first-time employees, and part-time employees would all be eligible.”

HUSKY Health 2007: coverage for newborns and school-age children

Newborns: Governor Rell’s HUSKY Health 2007 initiative addresses an entirely preventable gap in children’s health—of the 109,025 births in state hospitals over the past 30 months, 2,776 were identified as having no insurance coverage, even though they were eligible. HUSKY Health 2007 waives the premium for the first two months following birth, eliminating any possible reason for not enrolling a newborn.

The state's HUSKY Plan serves children and teenagers in families of all incomes, based on a sliding fee scale. Over 221,000 children are currently enrolled, and coverage is available for uninsured newborns.

"We have identified newborns without coverage as a key target because there is no reason for them to not have coverage, Governor Rell said. "Based on income, HUSKY coverage can be free, or can require a modest premium. Under HUSKY Health 2007, if a family's income is high enough to require a monthly premium for HUSKY coverage, the State will waive the premium for the first two months. This will be our gift to Connecticut's newborns and it will encourage parents fulfill a basic parental responsibility by enrolling their children and keeping them enrolled."

Schoolchildren: Governor Rell's HUSKY Health 2007 initiative also focuses on health coverage for school-aged children. Currently, parents tell schools whether their children have health insurance only at the beginning of kindergarten and sixth grade. The Governor is proposing to require such notification at the beginning of every school year. This would help school systems refer parents to the HUSKY Plan. To assist schools, the Governor has dedicated \$130,000 in outreach funding for regional education service centers. These centers will train all staff who come into contact with students and parents about the HUSKY program, including program benefits and how to enroll.

The Governor also believes that HUSKY recipients have been on a roller coaster ride as benefits and coverage have fluctuated in response to fiscal concerns in recent years.

"There has been too much instability with the adoption of adverse changes to the program and their subsequent repeal," Governor Rell said. "Therefore, I am asking the state legislature to adopt a "no adverse changes" policy in the Husky program for the next two year period as we try to increase enrollment in the program."



STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD, CONNECTICUT 06106

M. JODI RELL
GOVERNOR

FOR IMMEDIATE RELEASE
January 3, 2008

Contact:
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Governor Rell's Landmark Charter Oak Health Plan For Uninsured Adults Moves Forward

Charter Oak Health Plan RFP Is Released; Program to Start on July 1st

Governor M. Jodi Rell's landmark plan to offer affordable health coverage to uninsured adults in Connecticut is moving forward today with the release of a Request For Proposals for the Charter Oak Health Plan to the insurance industry nationwide.

"From the time I announced my Charter Oak Health Plan last year, it has been my goal to ensure that every adult and child in Connecticut has access to health insurance," Governor Rell said. "Today's announcement means that we are another step closer to bringing affordable health insurance to thousands in our state who need coverage and do not currently have it."

At Governor Rell's direction, the Department of Social Services today released the open and competitive request for proposals for the Charter Oak Health Plan, which is designed to provide an affordable health insurance product to adults currently without coverage. The Charter Oak Health Plan start date is projected to be July 1, 2008.

The Governor's plan addresses what many experts have called the toughest challenge in health care nationally – bringing health care coverage to uninsured adults of all incomes. The Governor also included in last year's state budget a premium assistance component of the Charter Oak Health Plan with the goal of offering monthly premiums as low as \$75 for low-income residents and premiums of no more than \$250 for those with higher incomes.

The final budget included \$11 million for program costs for fiscal year 2009. These costs are based on a sliding scale premium assistance plan for enrollees with incomes up to 300 percent of the federal poverty level (for example, an income up to

\$41,070 for a household of two). Partial reimbursement may be available from the federal government.

The competitive bidding process will remain open through March 14, 2008. National and state insurance companies are expected to submit proposals and bids to participate in the new health insurance program. The full Charter Oak RFP can be viewed at www.ct.gov/dss/charteroak or through the state's contracting portal at www.das.state.ct.us/Purchase/Portal/Portal_Home.asp.

Last month, the Governor authorized DSS to issue a combined request for proposals for the new Charter Oak Health Plan for adults and existing HUSKY Plan for children – a move intended to strengthen both programs through unified purchasing power.

First proposed by Governor Rell one year ago, the Charter Oak Health Plan will bring affordable health coverage to adults who don't have medical benefits through work and don't qualify for a public program like the HUSKY Plan, Medicaid or Medicare.

“For the first time in Connecticut, the Charter Oak Plan will offer affordable choices and coverage options to everyone from young graduates and employees of small business to the self-employed and retirees under the Medicare age threshold,” the Governor said. “Good health care cannot be a privilege available only to those with the ability to pay. The most vulnerable all need and deserve access to quality, affordable medical care.”

The Charter Oak Health Plan is a pragmatic, workable approach by Connecticut to bring affordable health coverage to a large part of the uninsured population--adults of all incomes (including childless adults who might otherwise be eligible for HUSKY coverage if they had children under 19).

The current plan for Charter Oak includes:

- A prescription medication package with a three-tiered copay. The lowest copay, for a generic drug, would allow a prescription to be filled for \$10.
- Unlike many other states, coverage would not be restricted for enrollees with pre-existing conditions – the people most in need of coverage and the most difficult to insure.
- No maximum annual benefits. Instead, a lifetime benefit up to \$1 million – ensuring coverage would be available when needed.
- Laboratory, X-ray and other diagnostics available with 20 percent copay.
- Assignment of clients to a primary care physician with requirements similar to most health care plans regarding prior authorizations and referrals.
- Copays for prenatal, postnatal and preventative care would be lower than regular office visits, encouraging clients to seek these cost-effective, health-promoting services.

The Department of Social Services developed the RFP in accordance with direction provided in the Appropriations Act and other legislation enacted in the last legislative session to implement the Governor's recommendation. DSS Commissioner Michael P. Starkowski appeared before a joint legislative hearing December 5 to discuss the details of the Charter Oak Health Plan, including the available state subsidies and the proposed benefit package design. The commissioner reviewed the intended premium and co-pay structure, which provides for a premium as low as \$75 per month for individuals whose income does not exceed the federal poverty level; and reinforced the plan's positive aspects, including the fact that pre-existing health conditions will not exclude a person from enrolling.

Commissioner Starkowski also affirmed that, in general, insurance mandates that impact the quality of care will be required for the participating Charter Oak insurers. Based on comments and concerns from advocates and legislators, the plan design has also been modified with limitation increases in areas such as pharmacy and durable medical equipment. For example, the RFP calls for annual pharmacy benefits of up to \$7,500 and durable medical equipment benefits of up to \$4,000, with full limitation exclusions for diabetic and ostomy supplies.

The Office of Governor M. Jodi Rell



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD, CONNECTICUT 06106

FOR IMMEDIATE RELEASE
June 29, 2007

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Governor Rell's Landmark Health Plan For Uninsured Adults Moves Forward

*Governor Directs Department of Social Services to Prepare for
July 2008 Start After Legislature Approves Charter Oak Health Plan*

Governor M. Jodi Rell's landmark plan to offer affordable health coverage to uninsured adults in Connecticut is moving forward this week after legislators voted to approve \$13 million to get the public-private initiative off the ground.

The Charter Oak Health Plan, first announced by Governor Rell last December, will bring affordable health coverage to adults who don't have medical benefits through work and don't qualify for a public program like the HUSKY Plan, Medicaid or Medicare. Start date is projected to be July 1, 2008.

"Our Charter Oak Health Plan is designed to bridge a dangerous gap in health coverage for adults," the Governor said. "Too many of our residents are going without health insurance because they simply cannot afford it. The middle class, especially, is caught in the middle. For the first time in Connecticut, Charter Oak will offer affordable choices and coverage options to everyone from young graduates and employees of small business to the self-employed and early retirees.

"Connecticut already has the excellent HUSKY program for children and low-income parents, and one of the leading Medicaid programs for seniors and people with disabilities," the Governor said. "Medicare is already there for people when they reach 65. What we have been lacking is a practical choice for adults who have fallen through the cracks of health coverage. The Charter Oak Health Plan will fill the gap in a cost-

effective way through a private-public approach to the problem.”

The Charter Oak Health Plan represents a huge step forward for Connecticut in bringing affordable health coverage to a large part of the uninsured population--adults of **all incomes** (including childless adults who might otherwise be eligible for HUSKY coverage if they had children under 19), the Governor noted.

With the General Assembly’s approval of the Charter Oak Health Plan in the new two-year budget package, Governor Rell directed Social Services Commissioner Michael P. Starkowski to begin development of a national ‘invitation to participate’ to the insurance industry. The goal is to offer a menu of credible coverage with monthly premiums as low as \$75 for low-income residents and no more than \$250 for those with higher incomes.

In her budget recommendation to the General Assembly in February, Governor Rell included a premium subsidies for low-income participants to keep the monthly cost affordable. The Governor’s recommendation had contained \$18.9 million for fiscal 2008, \$36 million in fiscal 2009, to be annualized at \$45 million in fiscal 2010.

This week, legislators approved the Governor’s proposal for Charter Oak, although with considerably less funding that she proposed -- \$2 million for startup and preparation costs for fiscal 2008; and \$11 million for program costs for fiscal 2009. The program costs are based on a sliding scale premium assistance plan for enrollees with incomes up to 300 percent of the federal poverty level.

“I applaud the General Assembly for recognizing the need for a practical, cost-effective approach to the problem of uninsured adults,” Governor Rell said. “While my recommendation was reduced and timeframe pushed back, this is still an historic step forward for the state. There is a lot of pent-up demand for Charter Oak, and now we are able to tell callers and emailers that we have a projected start date of July 2008.”

Testifying in support of Charter Oak during the legislative session, Commissioner Starkowski said the Governor’s plan is based on a public-private partnership model that “strikes a balance between individual responsibility and government assistance for the lowest-income participants.”

Commissioner Starkowski said, “The Governor’s vision for Charter Oak blends reasonable cost for the participant with a ‘safety net’ subsidy for the lowest-income uninsured adults—those who either do not qualify for the HUSKY Plan because they are slightly over-income or because they do not have children, or both.”

Starkowski said the state will issue an ‘invitation to participate’ to the insurance industry, with target premium cost of \$250 per month based in part on the likelihood of attracting a pool of young, relatively healthy participants as well as older enrollees to the new insurance product. He said the state has received initial interest from Connecticut and out-of-state health insurance carriers.

The current plan for Charter Oak includes:

- Full prescription package with a three-tiered copay. The lowest copay, for a generic drug, would allow a prescription to be filled for \$10 – \$15.
- Unlike many other states, coverage would not be restricted for enrollees with pre-existing conditions – the people most in need of coverage and the most difficult to insure.
- No maximum annual benefits. Instead, a lifetime benefit up to \$1 million – ensuring coverage would be available when needed.
- Laboratory, X-ray and other diagnostics available with 20 percent copay.
- Assignment of clients to a primary care physician with requirements similar to most health care plans regarding prior authorizations and referrals.
- Copays for prenatal, postnatal and preventative care would be lower than regular office visits, encouraging clients to seek these cost-effective, health-promoting services.

Governor Rell said her administration is discussing the potential for partial federal funding of Charter Oak subsidies with officials of the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS). Currently, the federal government gives Connecticut reimbursement ranging from 50 to 65 percent for HUSKY expenditures.

According to the state Office of Health Care Access (OHCA), over 91% of all residents and over 95% of children under 19 currently have health coverage, putting Connecticut in the top 12 states for this health care benchmark. However, an estimated 222,600 to state residents were believed to be uninsured in 2006, according to OCHA.