



September 29, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Obama:

Health insurers' latest round of questionable premium increases are strangling consumers across the nation, and insurance companies have had the gall to blame the health reform law for the hikes. In truth, insurers are attempting to squeeze every last drop of profit out of consumers before the health reform law can be fully implemented.

A premium increase of up to 20% takes effect this Friday, October 1, for Anthem Blue Cross of California individual policyholders. Anthem in Connecticut is raising premiums well over 20% for some plans and Blue Cross Blue Shield in Oregon is hiking small-employer rates by 17%. None of these increases has been publicly justified or reviewed for reasonableness as required by the health reform law.

You have the power to immediately protect consumers from unjustified premium increases by issuing an Executive Order to freeze health insurance premiums until new premium review and disclosure provisions take effect by the end of the year.

You have the obligation to act on behalf of the millions of Americans who are already struggling to afford their health insurance and may be forced out of coverage entirely by one more indefensible premium increase.

Under *Youngstown Sheet & Tube Co.*, 343 U.S. 579, 586 (1952) the United States Supreme Court clearly held that a President may issue an Executive Order where the President has been expressly or implicitly authorized to act by the Constitution or Congress. As Justice Jackson wrote in his concurring opinion, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." (343 U.S. at 635). *See also Hamdan v. Rumsfeld*, 548 U.S. 557, 638 (2006).

Article II, Section 3, of the United State Constitution provides that the President "shall take care that the laws be faithfully executed."

Under the federal health reform law, Congress expressly provided that health insurance companies cannot raise insurance premiums until insurers "submit to the Secretary and the relevant State a justification for an unreasonable premium increase *prior to the implementation of the increase.*" (Section 2794 (a)(2), emphasis added). The Secretary and states "shall establish

a process for the annual review, beginning with the 2010 plan year and subject to subsection (b)(2)(A), of unreasonable increases in premiums for health insurance coverage." (Section 2794 (a)(1)).

HHS has not yet finalized regulations defining what constitutes an "unreasonable premium increase." Therefore, it is not yet possible for regulators to determine which premium increases require a justification from insurers. Thus, an Executive Order freezing premium increases until the regulations have been finalized, premium increases have been reviewed by regulators, and insurers have justified increases deemed unreasonable, is necessary to implement the express requirements of the federal law.

Congress intended that the premium review process would apply to 2010 increases. HHS has been working diligently to finalize regulations, which should be completed by the end of 2010. Your Executive Order establishing the premium freeze could be written to end when those regulations become effective, thus allowing premium increases to go into effect only after unreasonable increases are justified by insurers as intended by Congress.

There is precedent for the success of such a freeze. In California, Proposition 103 enacted the nation's strongest prior approval system for property and casualty rate regulation in 1988. California's insurance commissioner ordered a freeze on all rates until implementing regulations were enacted, and insurers complied. Despite claims that the freeze and new regulation would drive insurers out of the state, or out of business, the state's auto insurance market is the 4th most competitive in the nation and stayed profitable, while auto insurance premiums rose at the slowest rate in the nation, according to a 2008 analysis by the Consumer Federation of America.

An immediate premium freeze is necessary to prevent insurers from imposing unjustified, unreasonable increases on consumers and, as they have to date, blaming such increases on the health reform law. You have the authority and the responsibility to protect the public from insurer profiteering falsely blamed on the health reform law.

Sincerely,



Jamie Court



Jerry Flanagan



Carmen Balber