NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

March 7, 2025

The Honorable John Thune
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Mike Johnson
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Leader Thune, Leader Schumer, Speaker Johnson, and Leader Jeffries:

We write on behalf of state insurance regulators to share important priorities for health insurance markets this year. The National Association of Insurance Commissioners (NAIC) represents the chief insurance regulators in the 50 states, the District of Columbia, and 5 U.S. Territories. The priorities outlined below support affordable coverage, consumer protection, effective state regulation, and state flexibility.

Enhanced Premium Tax Credits

We urge timely Congressional action on enhanced premium tax credits under the Affordable Care Act (ACA). The increased size and broader availability of premium tax credits that have been available since passage of the American Rescue Plan Act of 2021 have resulted in greater enrollment in Marketplace plans in state individual health insurance markets. The greater subsidies have enhanced the affordability of coverage for families of modest means as well as those who were previously denied help with coverage costs due to income limits. Over 25 million people signed up for ACA plans in PY 2025, and potentially all of them could be affected if the enhanced subsidies expire - from very low-income individuals to high income newer enrollees and anyone in between. The economic impact of reduced coverage would extend to health care providers: hospitals, physicians, nurses, and pharmacies. And this could be exacerbated if there are significant cuts to Medicaid.

These credits have moved the needle on access to healthcare for millions, in particular for those who need help the most, those with annual incomes under 250% of the FPL. Ending the enhanced credits at the end of this year would have a major impact on state health insurance markets. The affordability of coverage would change for millions of enrollees, and some may choose to discontinue their Marketplace coverage at the end of the year. Others may continue their enrollment, only to be

caught off guard by significantly higher premium costs in 2026, when more may choose to disenroll. Enhanced subsidies have increased enrollment of the healthiest cohort, ages 18-34, who will be the most likely to drop coverage due to higher out-of-pocket premiums if the enhanced subsidies end. Losing that healthy population will adversely impact the risk pools, which will increase premiums for another significant cohort of enrollees, those aged 55-64. The end of enhanced subsidies and the return of the 400% FPL subsidy cliff together will disproportionately impact households with enrollees over age 55. These changes would not only affect access to coverage for millions, but they would also roil insurance markets as issuers and regulators adjust to a likely smaller and somewhat higher-risk overall individual market.

Further, the end of the enhanced credits would starve state reinsurance programs of the federal support they have used to reduce individual market rates overall. The reinsurance programs operated in 17 states under Section 1332 waivers are funded by the dollars that would otherwise flow through premium tax credits. They do not add to federal costs. If the enhanced subsidies are not extended state reinsurance programs would have less funding available to lower premiums for all consumers in the market should the enhanced subsidies expire.

State insurance regulators urge a decision on the enhanced premium tax credits as soon as possible. State regulators are tasked with reviewing health plans' rates and approving plans for sale each year. Open Enrollment for plan year 2026 begins on November 1, 2025. To make plans available for this date, insurers must file their plans and rates with states beginning in the spring. Health insurers will need to take into account the presence or absence of enhanced subsidies in setting their rates for 2026. Without a decision on the enhanced subsidies, the rate filing and approval process will be challenging, and costly. Uncertainty regarding the continuation of the enhanced subsidies existed in 2022. That year, some states required health insurers to file two sets of rates, one assuming continued enhanced subsidies and one with subsidies returning to prior levels. Developing two sets of rates was costly and confusing for insurers and reviewing them was more complicated and resource-intensive for state regulators. In addition to complicating the rate review process, if this issue remains unresolved it may lead to higher than necessary premiums due to the uncertainty itself.

Regulation of Pharmacy Benefit Managers

States have taken an active role in regulating pharmacy benefit managers (PBMs) over the last decade plus. All states now have some type of PBM regulation in state law. These laws address a range of practices that have the potential to distort markets, raise prices, or unfairly burden consumers or pharmacies. State laws vary, but many states have chosen to require licensure or registration of PBMs, prohibit gag clauses, limit patient cost sharing, encourage transparency, regulate maximum allowable cost lists, and take a variety of other steps to support functional markets.

State insurance regulators welcome Congressional attention to pharmaceutical supply issues and recognize the need for federal authority to address areas outside of state regulation. As it considers federal PBM regulation, we strongly urge Congress to protect and preserve existing state rules. States carefully considered their laws given each state's particular circumstances and enacted policies that respond to the state's needs. Congress should not preempt state authority; instead, federal law should apply when state protections do not. State regulators welcome the opportunity to work with Congress as it advances PBM legislation to help ensure alignment between state and federal provisions.

Federal Support for Consumer Assistance and Mental Health Parity Enforcement

We urge Congress to fully fund State Health Insurance Assistance Programs (SHIPs) and grants to states for enforcement of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

We ask Congress to maintain SHIP funding at a level that keeps pace with the needs of seniors nationwide in a complex marketplace for health plans. The primary goal of SHIPs is to advise, educate and empower individuals to navigate Medicare, Medicaid, Medigap, and long-term care insurance and to help beneficiaries make choices that best meet their needs from the wide array of available options. State insurance regulators recognize the valuable role that SHIPs have played in helping America's seniors, people with disabilities, and their families through consumer education. The NAIC appreciates Congress' past support for SHIPs and requests funding to allow SHIPs to continue their important work.

Congress authorized grants to states for enforcement of federal mental health parity laws in 2023 (section 1331 of the Consolidated Appropriations Act (CAA) of 2023). We ask that these grants be fully funded at no less than $10 million per year. Because of the way Congress structured the Mental Health Parity and Addition Equity Act (MHPAEA), monitoring compliance requires more than just a comparison of benefits between mental health and substance use services and medical and surgical services. It requires a complex analysis of quantitative and nonquantitative treatment limits embedded in plans' policies, procedures, operations, and evidentiary standards. States have worked hard to develop their capacity to conduct reviews under this federal law, but more resources are needed. Grants authorized by the CAA would allow many states to enhance their enforcement and hold more plans accountable for the MHPAEA standards. With record numbers of Americans seeking mental health services and an ongoing epidemic of addiction, the time is right to make sure health insurers are complying with these important consumer protections. The relatively modest federal investment will support state efforts and help ensure that consumers enrolled in state-regulated health insurance are protected by MHPAEA as Congress intended.

State Regulation of Association Health Plans

Legislation passed by the House in the last Congress (The CHOICE Arrangements Act, HR 3799) would have preempted state authority to regulate association health plans (AHPs), health benefits offered by groups of small businesses. We support Congressional action to bolster health coverage options for small businesses, but we remain opposed to legislation that would preempt state authority to regulate small group insurance.

Contrary to the House-passed bill, a 2018 rule from the Department of Labor created new pathways for the formation of AHPs but also clarified that AHPs remain multiple employer welfare arrangements (MEWAs) subject to state regulation. That rule, however, was overturned by the courts. In the last Congress, Senator Braun introduced a bill, S 3167, that would codify the regulation and we supported that legislation.

State regulation brings important protections; state regulations establish standards to prevent underfunded AHPs from defaulting on valid claims and protect against risk shifts that raise prices in a state's small group market. Bills like HR 3799 would upend the longstanding authority of states to protect consumers and markets – bills like S 3167 would provide states with more options while preserving their authority. We urge Congress to maintain a continuing role for state insurance regulators in protecting small businesses, their workers, and broader insurance markets by keeping

AHPs under state supervision. The first Trump administration's AHP rule did not take the step of removing state authority and neither should legislation in this Congress.

Small Group Markets

Across states, small group health insurance markets have been changing; many are losing enrollment as small employers or their employees find other coverage sources, including AHPs, self-funded plans (so-called level-funded arrangements) and individual coverage health reimbursement arrangements. Nonetheless, small group markets remain an important source of coverage for millions—they allow small businesses to compete for workers by offering health coverage, but many of those businesses are facing higher costs due to smaller and sicker risk pools in the small group market.

State insurance regulators are monitoring these markets and working to ensure they remain viable for the small businesses and employees who use them. While the necessary steps are not yet clear, state insurance regulators want to make Congress aware that small group markets may require additional support in the years ahead. Regulatory flexibility, reinsurance, and merged markets are some of the options states are considering. To the extent federal action is needed, state regulators hope to find support in Congress for small business coverage at the appropriate time.

Medicare Advantage Marketing

In 2022, the Senate Finance Committee reported on deceptive marketing related to Medicare Advantage plans. The report highlighted some of the egregious marketing practices state regulators have identified and have continued to observe in the years since. As the report concluded, greater enforcement is necessary to protect seniors. CMS has since established stronger rules on Medicare Advantage marketing, which have been helpful in curtailing some deceptive practices. Nonetheless, more action—and more enforcement—are needed. We strongly believe that enforcement should be at the state level, as it was before the Medicare Modernization Act was passed in 2003.

The Medicare Modernization Act (MMA) limited the authority of states to oversee MA plans to just solvency and licensing. Before the MMA, states had full authority to review marketing practices, pursue market conduct reviews, and penalize poor actors – but after the MMA states have no such authority. We strongly recommend that Congress return to the states authority to oversee the advertising and marketing of MA plans. State authority to enforce CMS marketing rules would add enforcement capacity while maintaining one set of national rules for plans and marketers.

State Flexibility

Congress has recognized the importance of providing states with the flexibility they need to support the unique conditions of their health insurance markets. Under federal laws states may choose to operate their own health insurance marketplaces or use the federal platform; they may develop state innovation waivers to test innovative ideas; or make a variety of other choices to suit the needs of their residents. We ask Congress to continue to support state flexibility in structuring health insurance markets. Particularly, we recommend that Congress work with states to expand flexibility under the Section 1332 waivers – such as for subsidies and exchange design – and ensure pass through dollars for these waivers are dependable. State regulators and legislators are best positioned to understand and respond to the needs of state residents, health insurers, and health care providers.

Thank you for your consideration of these priorities during the 119th Congress. Of course, as other health insurance issues emerge, the NAIC stands ready to consult with you, your staff, and other members of Congress to provide expertise and counsel from state insurance regulators.

Sincerely,

Jon Godfread
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North Dakota Insurance Department

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NAIC President-Elect
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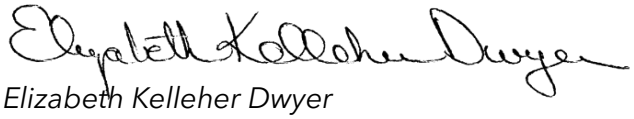
Virginia Bureau of Insurance



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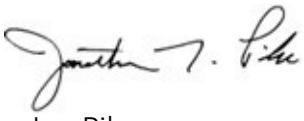

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