



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

September 3, 2003

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The Honorable Bill Frist
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Tom Daschle
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Majority Leader and Mr. Minority Leader:

I am writing on behalf of the National Association of Insurance Commissioners (NAIC) to express our strong opposition to S. 545. This legislation would allow a new category of health insurance company, "Association Health Plans (AHPs)," to form and operate outside the authority of state regulators and beyond the reach of proven state consumer protections and solvency laws. This is a bill with extremely adverse implications for consumers and the members of NAIC urge you to oppose it.

The NAIC, which represents the insurance regulators in all 50 states, the District of Columbia, and four territories, shares the sponsors' concern for the growing number of small business employees who cannot afford adequate coverage. However, the fact is S. 545 would do little, if anything, to address this problem. The bill ignores the root cause of the current crisis – skyrocketing healthcare spending – and would, according to the Congressional Budget Office, actually *increase* the cost of insurance for many small businesses. S. 545 would redistribute the costs of insurance, creating some winners with reduced premium costs and other losers who will pay more for their insurance. A far broader approach to the existing problem – one that addresses healthcare spending, cost-shifting to privately insured persons, and the possible need for subsidies – is necessary to bring true relief to small businesses.

Even more troubling than the bill's lack of effectiveness is the harm the legislation would do to consumers. S. 545 would segment the small group market, eliminate critical consumer protections, and lead to increased fraud and plan failures. Specifically, the bill would:

- (1) Permit risk selection thereby creating opportunities for "cherry-picking" among healthier groups. While the bill's proponents claim to have addressed this issue, they could not be further from the truth. AHPs would be encouraged to "cherry-pick" using four very basic methods:
 - a) Benefit design – S. 545 eliminates all state benefit mandates, allowing plans to deny consumers costlier treatments;
 - b) Service area – S. 545 eliminates state service area and network requirements, allowing plans to "redline" and avoid more costly areas;
 - c) Membership – S. 545 permits associations to offer coverage only to their members, allowing plans to seek memberships with better risk;
 - d) Rating – S. 545 eliminates state rating limits for most plans, allowing them to charge far more for higher risk persons, forcing them out of the pool.

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- (2) Apply to plans exempt from state regulation inadequate federal capital standards and solvency requirements, both of which are inferior to existing state standards. This will lead to plan failures and, given the inadequacy of the guaranty fund, millions of dollars in unpaid claims.
- (3) Allow plans to be exempted from proven state consumer protection laws, including those designed to allow consumer appeals of adverse plan decisions and those aimed at preventing and fighting fraud.
- (4) Ensure the Department of Labor (DOL) is incapable of overseeing the AHPs by providing them no new resources. The Department claims they already possess the expertise to oversee self-insured ERISA plans and, therefore, will be able to police the AHPs. This ignores two very important facts:

First, the Department's oversight of self-insured ERISA plans is minimal – involving very little financial review, insufficient solvency standards and few consumer protections.

Second, the “self-insured” AHPs created in the bill are very different from the single-employer plans created under current ERISA law. In point of fact, the “self-insured” AHPs would be an independent legal entity selling a defined benefit package at arms' length to employers for a defined premium. This separation between the health plan and the employer creates financial and consumer protection issues that DOL is not equipped to handle, nor would be under the bill.

State regulators and the Department of Labor constantly warn small businesses dealing with insurers: “If it sounds too good to be true, it is.” We give the same warning to Congress. The proponents of AHP legislation make claims that sound just too good to be true – and they are. S. 545 would eliminate critical consumer protections, segment the small group market, and, in the end, do nothing to resolve the real issues driving up the cost of health insurance for small businesses.

The NAIC remains committed to improving access to affordable insurance for all small businesses. Together with Congress, we can find solutions that will be effective and not lead to greater problems in the future. The AHP legislation is clearly not the answer and we urge its defeat in the Senate.

Sincerely,



Sandy Praeger
Insurance Commissioner, State of Kansas
Chair, NAIC Health Insurance Task Force