

**WRITTEN TESTIMONY**

**OF**

**SANDY PRAEGER**

**COMMISSIONER OF INSURANCE**

**STATE OF KANSAS**

**ON BEHALF OF**

**THE NATIONAL ASSOCIATION OF**

**INSURANCE COMMISSIONERS**

**FOR THE**

**SENATE HEALTH, EDUCATION,**

**LABOR AND PENSIONS COMMITTEE**

**ROUNDTABLE HEARING ON**

**‘Addressing Insurance Market Reform in Health Care Reform’**

**March 24, 2009**

## **INTRODUCTION**

The NAIC represents the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. The primary objective of insurance regulators is to protect consumers and it is with this goal in mind that the members of the NAIC submit these comments today on the health of the private insurance market.

To begin, we recognize the failures in the current market, they are well documented.

Over 15 percent of Americans, almost 46 million people, go without coverage. For most, coverage is simply too expensive, a result of medical spending that has run out of control and consumes 16 percent of our economy. For others, those without coverage through an employer and with health problems, coverage is not available at any price. For Americans lucky enough to have insurance, premiums take ever larger bites out of the monthly paycheck, even as rising deductibles and co-payments shift more of the financial burden of sickness to the patient. Insurance Commissioners see this every day, and we welcome Congress' interest in helping the states tackle this challenge.

State insurance commissioners believe it is important to ensure that affordable, sufficient health coverage is available to small business owners, their employees, and individuals.

The NAIC offers its full support in developing federal legislation that will reach this goal — a goal that can only be attained through federal-state coordination. We offer the experience and expertise of the states to Congress as it attempts to improve the health insurance marketplace.

## **STATE EXPERIENCE**

States led the way in requiring insurers to offer insurance to all small businesses in the early 1990s, and the federal government made guaranteed issue the law of the land in 1996<sup>1</sup> for all businesses with 2 – 50 employees. Federal law does not limit rating practices, but forty eight states have supplemented the guaranteed issue requirement with laws that limit rate variations between groups, cap rate increases, or impose other limitations on insurer rating practices. These rating laws vary significantly in response to local market conditions, but their common objective is to pool and spread small group risk across larger populations so that rates are more stable and no small group is vulnerable to a rate spike based on one or two expensive claims.

In addition to requiring insurers to pool their small group risk, many states have established various types of purchasing pools and have licensed associations to provide state-approved insurance products to their members.

States continue to experiment with reinsurance, tax credits and subsidies, and programs to promote healthier lifestyles and manage diseases as they pursue the twin goals of controlling costs and expanding access. These state-based reforms are, of necessity, very distinct — based on both the specific needs in the marketplace and the strengths and weaknesses of the marketplace. For example, the State of New York implemented the very successful “Healthy NY” program, a reinsurance-based program that addresses many of the problems identified in New York’s individual and small group markets, but utilizing its strong HMO networks. Likewise, the Commonwealth of Massachusetts has

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<sup>1</sup> 42 U.S.C. 300gg-12.

implemented broad reforms built on past reforms and the unique insurer, provider and business environment.

As always, states are the laboratories for innovative ideas. We encourage federal policymakers to work closely with their state partners, as well as with health care providers, insurers and consumers, to identify and implement reforms that will make insurance more affordable to small businesses. And remember, all significant reforms will have significant consequences – both positive and negative.

## **KEYS TO REFORM**

Based on the experience and expertise of the states, we encourage Congress to consider these four keys for successful health insurance marketplace reform:

**Address Health Care Spending.** Any effort to increase access to insurance will not be successful over time unless the overriding issue of rapidly rising health care costs is also addressed. While the health care challenge in this country is generally expressed in terms of the number of Americans without health insurance coverage, the root of the problem lies in the high cost of providing health care services in this country. According to the most recent National Health Expenditures data, health care spending reached \$2.2 trillion in 2007, 16.2 percent of GDP and \$7,421 for every man, woman and child in the United States.<sup>2</sup> This level is twice the average for other industrialized nations.

This level of health care spending has badly stressed our health care financing system. Health insurance reform will not solve this problem, since insurance is primarily a method of financing health care costs. Nevertheless, insurers do have a vital role to play

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<sup>2</sup> Centers for Medicare and Medicaid Services, National Health Expenditures

in reforms such as disease management, enhanced use of information technology, improved quality of care, wellness programs and prevention, and evidence-based medicine—all of which have shown promise in limiting the growth of health care spending. Whatever is done in insurance reform should be done in a manner that is consistent with sound cost control practices.

**Protect the Rights of Consumers.** States already have the patient protections, solvency standards, fraud prevention programs, and oversight mechanisms in place to protect consumers; these should not be preempted by the federal government. As the members of this committee know all too well, the preemption of state oversight of private Medicare plans has led to fraudulent and abusive marketing practices that would have been prevented under state law, bringing considerable harm to thousands of seniors. In similar fashion, the Employee Retirement Income Security Act of 1974 (ERISA) severely restricts the rights of millions of employees covered by self-insured plans. We urge federal policymakers to preserve state oversight of health insurance and avoid preempting or superseding state consumer protections.

**Avoid Adverse Selection.** Any program that grants consumers the choice between two pools with different rating, benefit, or access requirements will result in adverse selection for one of the pools. For example, if a national pool does not allow rating based on age or health status, while the state pool does allow rating based on those factors, then the national pool will attract an older, sicker population. Such a situation would be unworkable. While subsidies or incentives could ameliorate some of the selection issues, as costs continue to rise and premiums increase, the effectiveness of such inducements could erode.

**Preserve a Strong State Role.** Congress must carefully consider the impact of any new federal reforms on the states' ability to be effective partners in solving the health care crisis. In developing a national direction for health insurance reform, we encourage Congress preserve the role of the states in tailoring reforms to meet the specific needs of consumers and to promote a vibrant marketplace. We also note that states can, and should, play a key role in deciding how reforms will be phased-in to ensure the least amount of negative disruption.

In addition, the NAIC urges Congress to review current federal laws and regulations that hinder State efforts to reform the health care system. For example, ERISA curtails consumer protections and supersedes State laws, and inadequate reimbursement payments in federal health programs have resulted in higher overall costs and decreased access for many consumers. Such federal policies can limit the ability of states to implement broad market reforms.

## **CONCLUSION**

Years have been spent talking about broad health care reforms that will ensure that all Americans have access to affordable health insurance coverage and the peace of mind that goes with it. Action is long overdue and we stand ready to assist in whatever way we can.

The NAIC encourages Congress and the Members of this Committee to work with states and learn from past reforms. Together, we can implement successful initiatives that will truly protect and assist all consumers.