



National Association of Insurance Commissioners

September 30, 2009

The Honorable Max Baucus
Chairman
Finance Committee
United States Senate
Washington, DC 20510

Dear Chairman Baucus:

As state regulators, and members of the National Association of Insurance Commissioners (NAIC), we urge you to enact legislation that would make insurance coverage accessible and affordable for every American, regardless of health status. Your efforts to develop such legislation are to be applauded and we stand ready to help in any way to ensure legislation is passed this year.

We appreciate your efforts to use the expertise of state insurance regulators, through the NAIC, in addressing certain consumer protections components in the health insurance reform proposal before the Committee. We are writing to emphasize and reiterate our strong record of working with the Congress on similar consumer protection missions in the past and to set the record straight with regard to recent misrepresentations made to you by some consumer groups on September 29th, which questioned the openness of the NAIC model development process and praised the federal regulation development process. The facts reveal a completely different picture.

Fact #1

The NAIC model development process reflects the unique perspectives of the 56 U.S. states and territories and is open to all who wish to participate and has proven effective in creating national regulations that are good for consumers.

In OBRA 1990, NAIC was asked to develop standardized Medicare Supplement plans to bring sanity to the system and protect consumers. The NAIC was directed to receive balanced input from all stakeholders. In response to this request, the NAIC created a subgroup consisting of state regulators, federal regulators, consumer groups, and industry representatives. Every subgroup member had the opportunity to help write the initial draft, comment and amend subsequent drafts, and the final model was adopted by the subgroup by consensus.

As the model continued through the NAIC process, all interested parties had the opportunity to provide comments, speak at meetings, and listen to the debate. All meetings where the model was discussed were open to the public and anyone requesting to speak at the meetings was free to do so.

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This open and transparent process yielded a model that is universally recognized as beneficial to consumers. And, this process was again used three other times to update the original model and again to develop a White Paper on the appropriate regulation of private Medicare plans. It should be highlighted that in the White Paper the state regulators sided with consumers on almost every point in opposition to the position of the industry and the Administration.

Since 1992, the NAIC has utilized a Funded Consumer Liaison program to pay the travel expenses of consumer groups so they can actively participate in NAIC meetings, and ensure their perspective is heard. The consumer groups who have actually participated in this NAIC model development process are conspicuously missing from the list of consumer groups who co-signed the September 29th letter.

Fact #2

The federal regulation development process has not always been as open as the NAIC process and is not always good for consumers.

If the federal regulation development process were as inclusive and transparent as the NAIC process, one could argue that seniors would have been better protected from the harmful practices of some Medicare Advantage (MA) carriers than they were under the marketing rules developed by the Centers for Medicare and Medicaid Services (CMS).

In spite of strong objections from consumer groups and the NAIC, CMS implemented marketing regulations for MA plans that exposed seniors to some of the worst marketing practices we have seen since the Medicare Supplement marketplace was reformed in 1990. Congressional hearings highlighted the problems and the Administration was urged to tighten up the rules. However, it was not until Congress directed CMS to improve the rules that any improvement was made.

The initial bill passed by the House of Representatives to correct the errors in the MA marketing rules asked the NAIC to develop a marketing model that could be adopted by the states. This was also supported in the Senate, though the Administration was able to defeat this effort. It was recognized by everyone that the NAIC process was better for protecting consumers than the federal process, which can clearly be swayed by special interest groups and politics.

While we have confidence that Secretary Sebelius, a former state insurance commissioner, certainly has the interests of consumer foremost in mind, there exists an undeniable inconsistency toward consumer interests from one Administration to the next. The NAIC, however, is a body of state officials with various viewpoints, experience and political dynamics, but all united around the shared goal of protecting insurance policyholders in their respective states. The diversity in the NAIC results in a system of checks and balances where outcomes are based on compromise, but the common focus on consumer protection has proven to yield a more consistent and consumer-oriented approach to standard setting than might exist from one Administration to the next.

This is just one example, but there are many more in ERISA, HIPAA, Medicare and Medicaid regulations – not to mention pension, securities, banking, etc. The open NAIC process has been proven effective in developing regulations that address all concerns.

Fact #3

The proposed legislation does not give the NAIC unchecked authority to write regulations.

As with the Medicare Supplement model developed pursuant to OBRA 1990, the legislation proposed by Chairman Baucus would ask the NAIC to develop model regulations, but the final authority to publish the regulations remains with the Secretary of Health and Human Services (HHS).

As currently drafted, the legislation relies on the process outlined in OBRA 1990 which requests NAIC action within a certain timeframe, with balanced input from all stakeholders. If the NAIC does produce a model, the Secretary of HHS must then review it to confirm that it meets the federal statutory requirements. If it does not, then the Secretary must develop the regulations. If it does, then the Secretary would publish the model as a draft federal regulation and receive comments. This is the process that has been followed with Medicare Supplement models, and it is the process we would expect under health insurance reform.

Fact #4

The NAIC has the expertise and experience to develop models in a timely fashion that can then be adopted and implemented by the states.

Enacting federal health insurance reform legislation will only be the beginning of a long road to reform. Regulations must then be adopted; state laws and regulations must be written or amended; new rules and programs must be implemented. The NAIC has over 100 years of experience helping states draft and implement health insurance laws and regulations. Frankly, the federal government does not.

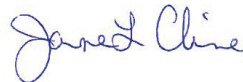
If the process of reforming our health insurance system is to go smoothly, states must have a major role in the development of the regulations. The NAIC pulls from the knowledge of its 56 members and their professional, experienced staffs to produce models that can be easily (or, as easily as possible) implemented at the state level. Consumers cannot afford to wait around for years for the federal government to develop regulations and then wait again while those regulations are interpreted and reinterpreted to meld with current state laws. We have seen that happen too many times before. We cannot afford to see it again.

Again, we urge you and the Congress to enact legislation that would make insurance coverage accessible and affordable for every American, regardless of health status. Personal and political agendas must be set aside – it is time to come together and enact effective reform.

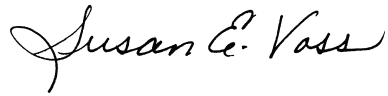
Sincerely,



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Commissioner of Insurance
State of New Hampshire
NAIC President



Jane L. Cline
Commissioner of Insurance
State of West Virginia
NAIC President-Elect



Susan E. Voss
Commissioner of Insurance
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NAIC Vice President



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