



National Association of Health Underwriters

America's Benefits Specialists

November 6, 2009

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Minority Leader, U.S. House of Representatives
Washington, DC 20515

Dear Madame Speaker Pelosi and Minority Leader Boehner:

As the House begins the process of debating and voting on H.R. 3962, the Affordable Health Care for America Act, the National Association of Health Underwriters (NAHU), a professional trade association representing more than 100,000 health insurance agents, brokers and employee benefit specialists from all across America, wishes to express our formal opposition to this measure.

NAHU members strive to help individuals and employers of all sizes purchase health insurance coverage on a daily basis. They also help their clients use their coverage effectively and make sure they get the most out of the benefits they have purchased. As such, our membership is extremely interested in making sure that Americans have access to the highest quality and most efficient health care delivery system possible. NAHU believes that health reform changes are necessary and must begin by addressing the true underlying problem with our existing system: the cost of medical care. Unfortunately, we have grave concerns that H.R. 3962 will do little to reduce the cost of medical care and improve health coverage affordability. Specifically, we have very serious concerns about these following aspects of the bill:

Government-Run Public Plan Option

NAHU strongly supports efforts to enact real and substantive private market reform to provide all Americans with access to affordable health care and insurance, and to lower health care and insurance costs. However, a government-run public option would fail to help us meet these goals. Although the language in this measure does provide for the government-run plan to negotiate rates with providers like private insurers, the negotiated rates for the public plan are capped, which is not the case for its private market competitors. Furthermore, there is nothing in this legislation that would prevent the federal government from modifying its practice of negotiating rates to setting rates at a later time, which history has shown via the Medicare and Medicaid programs.

Even if both the public plan and private insurers were to negotiate rates with providers in the exact same manner, the two options are inherently different and could never truly be equal. The public plan would not only account for administrative costs differently than private plans, but it also would not be held to the same solvency standards. In addition, plan members would not be allowed to sue the government option in state courts and the government-run public plan would have an advantage in network creation, as Medicare participating providers would automatically

be included unless they elected to opt out. The public option is also not subject to the same billions of dollars in taxes as private plans are, including state premium taxes, which, in the vast majority of states, are a top-five source of state revenue.

Millions of Americans covered by private insurance would be burdened with the cost shift from the public option as a result of these discrepancies, and our already-suffering state budgets would be impacted by a substantial loss of revenue. Any public option would likely displace tens of millions of happily insured Americans from the conventional marketplace and exacerbate the worst elements of the current system: gross inefficiency, high costs and bureaucracy. We urge you to eliminate the government-run public plan option provisions from any final health reform legislation.

Affordability

By far, the greatest access barrier to health insurance coverage in America today is cost. Great care must be taken when implementing market reforms on a national level to avoid inadvertently inducing cost increases in the existing private market system. Regardless of how “fair” a market reform idea might seem on its surface, it is not at all “fair” if it prices people out of the marketplace. Unfortunately, NAHU sees many provisions in H.R. 3962 that would actually make health insurance coverage significantly more expensive for private individuals and American businesses.

Regarding coverage affordability, one area that gives us great pause is the effectiveness and enforceability of the individual responsibility requirements. We believe there must be adequate financial incentives for all Americans to obtain coverage—both through subsidies and also through significant financial consequences for those who have the means to maintain affordable coverage and elect not to do so. While these provisions of H.R. 3962 appear to be stronger than what the Senate is considering, we are concerned about enforcement if the tax code is the only mechanism being used. Under this legislation, healthy individuals may find it more financially advantageous to forgo coverage until they are sick and then utilize the guarantee-issue protections, causing a tremendous cost and adverse selection problem.

To improve the effectiveness of the individual responsibility requirements, we suggest:

- A string of disincentives for healthy people who are not exempt from the individual mandate for financial reasons to forego coverage and simply pay the fine, and who subsequently obtain coverage if needed when sick or injured. Such individuals should be subject to a pre-existing condition look-back and exclusionary period of at least six to twelve months for those who have more than a 63-day break in coverage. Other disincentive ideas should be considered as well.
- Clearly establishing an annual open enrollment period for individuals to purchase coverage under the guarantee-issue provisions and make plan changes. Those who do not purchase coverage during this time should be subject to both late enrollment penalties and also a pre-existing condition look-back and exclusionary period of at least six to 12 months. Exceptions should be made for individuals who undergo a life-changing event, such as the addition of a new child or a change in employment. The HIPAA qualifying event standards in current law could serve as a model for these exceptions.
- An increase in the role of employers in enrollment and enforcement, including auto-enrollment requirements for newly eligible individuals in available employer-sponsored health insurance plans for groups of 50 and more with an employee opt-out. In addition, if federal assistance were provided to even smaller employers to assist with the associated

administrative costs, it is possible that they could auto-enroll newly eligible people as well. However, it is critical that the employer requirement include a clarification that employers who have 90-day probationary periods to receive benefits do not have to eliminate those waiting periods.

- Using employers as a point of coverage verification. Documentation could be required upon hiring and also on an annual basis, particularly for those who opt out of the employer-sponsored plan.
- Requiring coverage verification as a condition of receiving services at facilities like the state department of motor vehicles, schools and hospitals. Schools already do something similar with great success regarding vaccinations.

Another area that raises affordability concerns are the premium rating requirements. In order to prevent price increases in individual and small group markets, we believe it is critical that the age bands be set at to 5:1. These bands are much closer to the natural breakdown in age, and will have a substantial impact on pricing as state experience with age bands indicates. Age bands of 2:1 (as are proposed in this bill) have been shown on the state level to be devastating to health plan affordability. We also encourage you to add variations for participation in employer wellness programs and rating for tobacco use to help with medical care cost containment.

Regarding group size relative to the rating provisions, we have concerns that the bill provides no distinction between small and large employer groups that do not self-fund their health plans. Under current law, fully insured employer groups over 50 employees are treated very differently than the small-group market, and these groups are typically rated based on their past claims experience. This market is the health insurance market working best today, and the rating reforms proposed by this measure, which would apply to all fully insured groups regardless of their size, would significantly increase costs in this market. It also would create adverse selection to the fully insured market, as the larger groups that choose to fully insure would only do so if they had concerns about their group's claims experience.

We specifically request that groups of more than 50 employees be permitted to use claims experience to determine their premium rates. This process is much different than prospective health status rating and is how all large groups develop premiums today. When we hear that large groups "community rate" their employees, what this really means is that the group develops rates that are the same for all participants in their employer group based on the employer's claims experience. Eliminating the ability to develop premiums in this manner will result in significant rate shock for many employers and their employees. It also means that employers and employees will not really be able to "keep the insurance coverage they have" because the structure and pricing of current coverage will be irrevocably changed by these proposed rating reforms.

Another provision in this legislation that will negatively impact coverage choice and affordability is the 85% minimum loss ratio requirement, which far exceeds any similar state-level requirement. Such a strict requirement would limit many key insurer cost containment practices including their claims, fraud prevention and disease-management services, which, although are not directly attributable medical expenses, reduce overall operational costs. In addition, this requirement does not take into account the need to address underlying cost drivers in health care and unless those issues are addressed directly, no market reform measure will result in more affordable policies for the uninsured or those who already have coverage.

We also want to confirm that any new reform would retain the wide range of health plan product choices consumers have available to them now and allow for further marketplace innovation,

rather than eliminating choices currently available. To control costs and ensure that current individual policies remain available—particularly all qualified high-deductible health plans—we would like to see the minimum actuarial value for qualified benefit plans set at 60%, rather than 70%, as currently proposed. The Congressional Budget Office estimates that most individual policies marketed now fall in the 55-65% value range, so a change to 60% would accommodate much more of the current market. As you know, Massachusetts uses 56% as the value for its lowest plan option in its Connector to accommodate a wide array of plan choices.

Agent and Broker Provisions

NAHU does appreciate the section of the legislation that specifically ensures the role of licensed health insurance agents and brokers in a national exchange. However, we would like to see these provisions expanded and clarified to ensure that policies purchased through an agent or broker could be subsidized should the purchasing individual/family be eligible. We believe that our nation's agent and broker community could do a great deal to enroll currently uninsured Americans who would be eligible for purchasing assistance under this legislation.

In addition, we have very serious concerns about new provisions that have been added to the legislation that we believe are completely duplicative of the role of licensed health insurance agents and brokers. These provisions grant authority to the exchange's commissioner, in consultation with the Small Business Administration, to include, within the exchange, the following services: *“Educational activities to increase awareness of the Health Insurance Exchange and available small employer health plan options; distribution of information to small employers with respect to the enrollment and selection process for health plans available under the Health Insurance Exchange, including standardized comparative information on the health plans available under the Health Insurance Exchange; distribution of information to small employers with respect to available affordability credits or other financial assistance; referrals to appropriate entities of complaints and questions relating to the Health Insurance Exchange; enrollment and plan selection assistance for employers with respect to the Health Insurance Exchange; and responses to questions relating to the Health Insurance Exchange.”*

Although we believe the Small Business Administration to be a valuable agency; it is already overworked, underfunded and struggling to fulfill key priorities in relation to its current duties and obligations. We question the sensibility in diverting its scarce resources to an area in which it has no real experience, qualifications or track record, especially when this need is already being met in the private market through professionally licensed and state-regulated health insurance producers. We recommend that these provisions be eliminated from any final bill.

Employer Mandate

Concerning the role of employers, NAHU believes that the employer-based system must be at the core of any health reform effort. However, we believe that the provision of benefits must be a voluntary action on the part of employers. We are opposed to an employer mandate—especially one with a structure as proposed in H.R. 3962. The levels of employer-subsidized coverage required far exceed what millions of struggling American businesses can afford to offer their employees. We also find the carve-out provisions for smaller businesses to be completely insufficient and we object to the tying of the mandate to the size of the employer's payroll. These provisions will negatively impact new job creation, cause the loss of millions of current jobs, suppress wages and perpetuate instability in what is an already fragile American economy. We strongly urge that the employer requirement to provide coverage be stricken from any House-passed legislation.

Cost and New Bureaucracy


NAHU has significant concerns about the costs of this measure and the new levels of federal bureaucracy that it creates. Specifically, we oppose the creation of a national insurance exchange and a federal health choices commissioner to regulate benefits on a national level. These functions can, and already are, ably carried out by individual states, providing for a great deal of consumer flexibility, interaction and protection that the federal government simply would be unable to provide. A new federal regulator and exchange would merely create a costly and confusing layer of dual regulation.

We also oppose the expansion of the federal Medicaid program to individuals up to 150% of the federal poverty level (FPL). While we agree that Medicaid provides an important financial and health security safety-net, we believe it should be limited to the truly medically needy with incomes at or below 100% FPL. Such a dramatic expansion of Medicaid would not only be financially crippling in the long-run to our already struggling state governments, but it will also displace millions of Americans from private coverage. This Medicaid program increase will further exacerbate the public-program cost shift to privately insured Americans, which, at current Medicaid enrollment levels, costs the average privately insured family of four almost \$1800 a year.

Finally, we have grave concerns about the bill's mechanism of financing this endeavor, which hinges primarily upon an income tax surcharge that will disproportionately affect our nation's small business owners, who are responsible for job creation and will already be shouldering enormous new costs and responsibilities as a result of other provisions in this bill. We also object to the massive proposed cuts in funding to the Medicare Advantage program, which will effectively eliminate this popular coverage option for more than 6 million seniors who are happily insured under this program today.

We have been consistent in our market recommendations over the course of the debate and acknowledge the effort you have invested in health reform, but we have grave concerns about H.R. 3962 as is currently structured. Our health insurance agents, brokers and consultants are committed to working with you as this process moves forward, but on legislation that will actually achieve our common goal: a world-class and affordable health care system for all Americans. If you have any questions, or if we can be of any additional assistance, please do not hesitate to contact me at jtrautwein@nahu.org or 703-276-3806.

Sincerely,



Janet Trautwein
Executive Vice President and CEO

cc: The Membership of the U.S. House of Representatives