



National Association of Health Underwriters Federal Legislative Priorities for 2010

The National Association of Health Underwriters (NAHU) is the leading professional trade association for health insurance agents, brokers and consultants, representing more than 100,000 benefit specialists nationally. Our members service the health insurance policies of millions of Americans and work on a daily basis to help individuals and employers purchase health insurance coverage.

The members of NAHU believe all Americans need a health care system that delivers world-class medical care and financial security. Americans deserve a system that is responsible, accessible and affordable. This system should boost the health of our people and our country's economy. Americans also deserve a system that is realistic. We should build on the strengths of the current system in a bipartisan manner and guarantee access to coverage for all Americans.

For those considering legislation to reform our nation's health care delivery system, we offer the following ideas for your consideration.

Role of Health Insurance Agents, Brokers and Consultants

To be successful, any reformed delivery system must include health insurance agents, brokers and consultants. With the increase in affordable access to private coverage that will come with responsible health care reform, millions of new Americans will have the opportunity to enter our health care delivery system. The nation's agents, brokers and consultants look forward to continuing our role as their advocates in the coverage process.

Containing Health Care Costs

Responsible health reform must begin by addressing the true underlying problem with our existing system: the cost of medical care. NAHU believes there are a number of steps policymakers could take to help reduce both government and private-sector health care costs and promote medical care cost containment amongst all Americans including:

- Creating wellness programs in both the Federal Employees Health Benefit Plan and in government-subsidized health coverage such as Medicaid, Medicare, CHIP and the Veterans Health system.
- Allowing for wellness factors to be used as rating characteristics when determining private group and individual market premium rates. For employer groups, this includes not only the existence of a wellness program, but also factors that help determine wellness.
- Codifying the current Health Insurance Portability and Accountability Act (HIPAA) bona fide wellness plan rules for employer-sponsored health insurance plans with the incentive cap raised to 50 percent. These rules should also be extended to individual health insurance market.
- Establishing a safe harbor for those employers promoting wellness and health activities among their employees from non-intentional discrimination charges.

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- Correcting the Equal Employment Opportunity Commission and Genetic Nondiscrimination Act rules that currently prohibit mandated health risk assessments and limit both employer wellness programs and referrals to disease management services.
- Making commonsense medical liability reforms including a \$250,000 cap on damages for pain and suffering, a \$500,000 cap on punitive damages and deadline of one year for adults and three years for children to file suit after a medical injury to recognize such savings.
- Making widely accessible objective information on best medical practices and protocols available through comparative effectiveness research, as long as the outcomes are used as an informational tool between doctors and patients, not coverage determinations.
- Extending delivery system reforms to Medicare and Medicaid and the private sector as well, including:
 - Incentives to increase the number of primary care providers and those practicing in rural areas.
 - Reducing waste, fraud and abuse in our public and private insurance programs and medical assistance plans.
 - The use of pay-for-performance standards and value-based purchasing.
 - Increased public access to provider quality and cost transparency data.
 - Incentives for doctors and medical facilities to improve system inefficiencies and eliminate errors through best-practice guidelines and support for evidence-based medicine.
 - Additional transparency regarding physician financial interests in the referral process.
 - Incentives for coordinated care to prevent hospital readmissions.

Market Reforms

Surveys show that the vast majority of Americans are happy with their personal private health insurance coverage, particularly those who receive coverage through their employer. But even though it works well for many people, the private health insurance market is not without its gaps. Some market reform improvements are definitely needed so that all Americans will have fair access to affordable coverage. However when implementing market reforms on a national level, great care needs so that coverage stays affordable. No matter how “fair” a market-reform idea might seem on its surface, it’s not at all “fair” if it also prices people out of the marketplace.

NAHU supports the following reasonable market reforms that will promote affordability, increase access and preserves the private market:

- A requirement that all states have at least one private guaranteed purchasing option for all individual health insurance market consumers, accompanied by some type of financial backstop or risk adjuster to accommodate for the high health costs of Americans with catastrophic medical conditions.
- Risk-adjustment mechanisms should operate under federal guidelines, but their administration and design should be state-based to allow for flexibility and for states to take advantage of existing risk-adjustment structures like the high-risk health insurance pools that are already operational in 35 states.

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- A requirement that all health insurance carriers give pre-existing condition credit for prior coverage in the individual market just as they do for the group market.
- Pre-existing condition coverage rules that are consistent in both the individual and group insurance markets
- Greater pricing standardization for the individual and small group health insurance markets. If a modified community rate is used to determine premiums, at a minimum variations must be allowed for applicant age at the natural age breakdown rate of at least five to one (meaning that the rate of the oldest applicant may be no more than five times the rate of the youngest applicant), the existence of a wellness program, other wellness factors, including smoking status, family composition and geography.
- A uniform application for coverage for all individual and small group health insurance policies.
- A federal financing/reinsurance backstop for those rare individuals whose medical expenses are so great they would exceed health insurance policy lifetime caps.

NAHU also recommends that the definitions of individual, small-group and large group insurance coverage for the purposes of applying market reforms in existing federal law remain unchanged. Currently the federal definition for individual coverage is a single individual or family, a small group is 2-50 employees, and a large group is 51 or more employees, but the individual states have the ability to make adjustments. In particular, we feel that the standard definition of a fully-insured large employer group should remain at 51 or more employees for market reform purposes, with a state-by-state option for expansion if desired.

NAHU also believes that people purchasing individual health insurance coverage deserve assurances that they will not be subject to unfair policy rescissions or pre-existing condition determinations. To protect against them:

- States should be required to develop an independent medical review process to resolve disputes
- Health plans should be required to limit rescissions to only material omissions and misrepresentations on the uniform insurance application.
- If a carrier does not conduct a review of listed medical conditions on the application upon submission, it should not be allowed to use any subsequently obtained health information as a standard for a rescission, unless fraud or deceit has occurred.
- Health plan consumers should be clearly informed of their rights relative to rescissions and pre-existing condition determinations, as well as their obligation to provide complete and accurate responses on health plan applications and to provide additional information if needed.

NAHU opposes a minimum loss ratio requirement for private insurers. While we agree with the goal of providing consumers with more value for health care dollars spent, minimum loss ratio requirements significantly and negatively impact coverage choice and affordability.

Exchanges

NAHU has thoroughly evaluated the policy ideas behind exchange proposals and has concluded that our lawmakers need to carefully weigh the pros and cons and structural options of any exchange, rather than assume its automatic inclusion in comprehensive reform. Exchanges are

merely a form of purchasing pool, and while purchasing pools may provide more health plan options for individuals to choose from, history shows that they do not reduce health insurance costs. While we do not believe it is necessary for an exchange to be included in any national health reform effort, if one or more is included, we recommend that they be structured in the following manner so that they do not damage or eliminate the traditional private insurance marketplace:

- Exchanges should be state-based and regulated. If there is a desire for national unifying standards, they can be achieved through model legislation and regulations developed by the National Association of Insurance Commissioners.
- Each state should have the ability to design and maintain its own exchange and be granted the ability to seek waivers.
- A federal regulator should be avoided as duplicative of the role our nation's governors and insurance commissioners.
- To preserve consumer choice, the individual and group private insurance markets independent of the exchange should continue to be allowed.
- Any health insurance exchange should include state-licensed health insurance agents and brokers as its sales and marketing force.
- The "online portal" model is preferred over a bricks-and-mortar institution and regulatory body that also sells private coverage and/or offers a public program option. Also, multiple competing exchanges should be allowed within states.
- Greater stability will be realized by not mixing market types (i.e., not combining individuals purchasing coverage independently with small businesses or other group coverage) within the exchange.
- If both small groups and the self-employed are eligible for participation, extra restrictions should be made on the self-employed to control entry into the pool and to ensure the true existence of a business.
- If exchanges are utilized as a means of subsidy administration, such subsidies should be broad-based and available to eligible individuals and businesses purchasing coverage both inside and outside the exchange.

Subsidies and Tax Incentives for the Purchase of Private Health Insurance Coverage

The federal government should provide adequate help to those who truly cannot afford to purchase private health insurance coverage or need some degree of assistance towards the cost of private coverage premiums, but they should do so in a financially prudent manner.

- NAHU believes that any expansion the federal Medicaid program should be limited to the truly needy—no more than 100% of the federal poverty level (FPL).
- To prevent reduce the crowd out of the private market that could occur with a Medicaid expansion and save public money at the same time, NAHU supports mandatory premium assistance for employer-sponsored coverage when qualified private coverage is available.
- We also support targeted premium-assistance programs and/or refundable and advanceable tax credits for low-income individuals with family incomes of up to 200% of FPL and small businesses purchasing private coverage for their employees.
- We believe our tax system must be changed to provide equity for individual market consumers with their counterparts in employer-sponsored plans, but those changes

should not come at the expense of the current tax exclusion for employer-provided coverage. We suggest:

- Removing the 7.5 percent of adjusted gross limit of medical expenses on tax filers' itemized deduction Schedule A form and allowing the deduction of individual insurance premiums as a medical expense in itemized deductions
- Allowing self-employed individuals who are sole proprietors or who have Sub-S corporations to count their health insurance premiums as a full deductible business expense on Schedule C.

Government-Run Public Plan Public 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, the inclusion of a government-run public plan option in any health reform package would fail to help us meet these goals, and NAHU stands in complete opposition.

The Responsibility 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 to provide coverage, because while well-intentioned, such a mandate would do little reach the currently uninsured population and would actually hurt American workers by negatively impacting new job creation, causing the loss of millions of current jobs, suppressing wages and perpetuating instability in what is an already fragile American economy.

Long-Term Care

If more individuals were able to privately finance their long-term care needs, the cost savings to both the federal government and the states in reduced Medicaid expenditures would be enormous. To address this problem some have proposed the establishment of a new nationalized long-term care program for American workers. While the idea of offering long-term care coverage to working Americans is well-intentioned, policymakers could more easily and cost-effectively encourage millions more Americans to plan for their futures and purchase private long-term care coverage by enacting these simple market-based incentives:

- Allowing for the inclusion of long-term care insurance premiums in Section 125 plans to encourage employers to offer such coverage to their workers as either a voluntary or subsidized benefit.
- Allowing for an above-the-line federal income tax deduction for long-term care insurance premiums, which would allow taxpayers to claim a tax deduction regardless of whether they itemize their deductions and whether they have other medical expenses.

Financing Issues in Health Reform

NAHU believes that policymakers should not attempt to finance health care reform on the backs of Americans who already are doing the responsible thing and purchasing private health insurance coverage and creating American jobs as small business owners. This would include financing reform through an excise tax on private coverage, cuts to the private Medicare Advantage program, changes to the existing federal tax exclusion for employer-

provided health insurance and changes to the tax status of account-based health coverage options. Instead, it is wholly appropriate for Congress to consider health-related excise taxes in financing health reform that can help deliver revenue and simultaneously discourage unhealthy lifestyles that are a major component in fueling growing health care costs.

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