



National Association of Health Underwriters Position Statement Concerning Federal Regulation of the Business of Insurance

The National Association of Health Underwriters, a professional association of more than 20,000 health insurance producers and employee benefit specialists nationally, has serious concerns about potential federal encroachment on the state-based regulation of insurance.

For more than 100 years, the business of insurance has been primarily regulated by the individual states. State regulatory oversight was created to provide very important protections for insurance consumers. These protections are not only critical because of the supervisory authority the states have over the insurance carriers involved in the sale of insurance products in their respective jurisdictions, but also because of the current ability of each state to ensure to each insurance consumer that any product they purchase, regardless of the place of purchase, is safe and meets standard guidelines for solvency. In recent years there have been numerous proposals put forward to shift insurance regulation away from the states to the federal level, or to create an optional federal insurance regulatory system. NAHU feels that such proposals do not ensure adequate consumer protections.

Of all the lines of insurance sold, health insurance products are already subject to the most federal regulation. Millions of Americans have health insurance coverage that is subject to at least partial federal regulation, including:

- Beneficiaries of the federal Medicare, Medicaid and State Children's Health Insurance Programs, participants in the Federal Employees Health Benefit Plan (FEHBP); and
- Individuals who are covered by private self-funded group health insurance plans that are governed by the federal Employee Retirement Income Security Act of 1974 (ERISA) and regulated by the federal Department of Labor.

As health insurance sales and service professionals, NAHU members see on a daily basis how both rules and consumer protections for those in federally regulated plans can be more complicated than for those in plans regulated at the state level of government. Furthermore, consumers with issues or concerns with their insurance products often receive much less personalized attention than what can be provided at the state level, and consumers covered under federally regulated plans are often confused as to who can help them when they encounter a difficulty.

NAHU also has concerns about how a federal regulator, or a more pervasive system of dual regulation, can adequately address the issue of insurer solvency. We have already seen serious federal consumer protection flaws in the area of unauthorized health insurance sales, since unlicensed entities frequently claim to be regulated federally under ERISA.

Dual regulation can also create an unlevel playing field in the market, which impacts both plan quality and cost. An example of this problem is already prevalent in the health insurance marketplace, with the widespread use of state mandated benefit requirements. Plans subject to state regulation must abide by these often costly mandates, whereas plans regulated federally under ERISA do not..

Additional federal insurance regulation, or the creation of an official dual regulatory process, would also put an increased burden on our members—health insurance agents and brokers, and could negatively impact their ability to represent their customers effectively. Furthermore, we have concerns that

increased regulation could hurt the individual states by impacting their licensing and premium tax revenues, funding sources that currently pay for many of the essential state-level consumer protection services. Finally, NAHU feels that creating a new federal bureaucracy is never a good solution to any problem, particularly “modernizing” the insurance regulatory system.

Based on practical experience with dual regulation and our concern for American insurance consumers, NAHU opposes the following types of expansion of federal insurance regulation:

- Federal chartering of insurance companies, or a system of optional federal charters.
- Federal chartering of insurance agencies, or a system of optional federal charters.
- Federal regulation or optional federal regulation of insurance producer licensure.

NAHU recognizes that the current state-based system of regulation has challenges, including, generally, the lack of uniformity and consistency in the areas of producer and company licensing, market conduct and speed-to-market for insurance products, and, specific to health insurance product sales, rate reforms, mandates and other regulatory challenges. We feel that while financial modernization and integration are necessary and laudable goals, they should not sacrifice consumer protections. NAHU believes that the states have made significant progress toward solutions during the past few years, and we have confidence that they will continue on the path toward regulatory modernization in the future.

In order to further facilitate state-based insurance regulatory modernization, NAHU would instead favor federal standards to provide uniformity while still maintaining consumer protection control at the state level. Such national legislation would build on the current strengths in the system. We have already seen through the enactment of measures like the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley; GLBA) how federal requirements that the states make changes to their existing insurance laws but retain direct oversight can lead to national improvements for all.

NAHU looks forward to continuing our work with both state and federal policymakers to improve the insurance regulatory system in America and protect the future of American insurance consumers.