

**Testimony of  
Commissioner Sandy Praeger  
State of Kansas**

**on behalf of**

**The National Association of Insurance Commissioners**

**before the**

**Committee on Health, Education, Labor and Pensions  
United States Senate**

**“Increasing Health Costs Facing Small Businesses”**

**November 3, 2009**

Good afternoon Chairman Harkin, Ranking Member Enzi, and distinguished members of the committee. Thank you for holding this hearing on the very important subject of increasing health costs for small businesses and for the invitation to testify today. My name is Sandy Praeger and I am the elected Insurance Commissioner for the State of Kansas and Chair of the National Association of Insurance Commissioners' (NAIC) Health Insurance and Managed Care Committee. I am testifying today on behalf of the NAIC, which represents the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories, whose primary objectives are to protect consumers and promote healthy insurance markets.

### **Problems in the Small Group Market**

The affordability of health insurance coverage to small businesses is a critically important component of health reform. With lower profit margins, small businesses have a much more difficult time affording insurance coverage than their larger competitors. As a result, only 59% of businesses with between 2 and 199 employees offered coverage to their employees. Among the smallest employers, those with between 3 and 9 employees, only 45% offered coverage.<sup>1</sup> For this reason, 28.7% of workers in firms with fewer than 100 employees went uninsured in 2006.<sup>2</sup> The recent economic downturn has only made matters worse.

Adding to the problem, small businesses continue to face significant premium increases, even while inflation remains low and the economy slowly recovers. As efforts continue to reform the health insurance marketplace, state regulators share the concern of the

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<sup>1</sup> Kaiser Family Foundation and Health Research & Educational Trust, 2007

<sup>2</sup> EBRI, October 2007

members of this committee that small businesses could see higher and higher premiums in the coming years. Determining whether and why the rates are rising is the focus of this hearing.

In preparation for today's hearing, the NAIC completed an informal survey of several states requesting information on recent rate filings in the small group market. As reported in the *New York Times*, states are receiving requests for premium increases in the small group market that far exceed general inflation -- but not in every state, not from every company, and not without some justification in most cases.

To give a sample of what requests commissioners are receiving from small group carriers: Washington has received requests ranging from 9% to 20%; Maryland has received rate increase requests from its largest carriers averaging 15% to 16%; New Mexico has received a request to decrease rates by 1.2% and another to raise rates 9%; Ohio has received rate increase request of 10% to 15%; and in my home state of Kansas, we have received requests ranging from low single digits to 13%.

The vast difference in filings depends greatly on the company's current situation. For example, a new company in New Hampshire was relying heavily on consultant data to set its current premiums that proved unrealistic, so they are requesting what amounts to a 30% increase in rates to match their experience. Meanwhile, a few companies are asking for a decrease. In Maryland, the high-deductible plans tied to Health Savings Accounts are asking for significant increases of 19% to 25%.

Of course, an increase in the base premium is only half the story for small businesses. In most states, carriers are allowed to vary premiums charged to a small businesses based on

a variety of characteristics, such as, average age, health status, claims experience, industry, etc. If a single employee in a small business, and particularly in a micro-business, should have a significant change in their health status, then the premium increase could be as high as an additional 15% onto the base premium increase. This is why the commissioners take seriously their responsibility to review rates and ensure that base premiums are appropriate, and why we support reforms that will make small employer coverage more stable.

It must be noted, however, that when state regulators review rates they not only must determine whether they are excessive or appropriate, but also whether they are sufficient. One of the most important protections insurance commissioners provide consumers is the assurance that the insurance company will have the resources to pay claims when they are incurred. If a state regulator chooses to deny appropriate rates and place the company in financial distress, consumers may be happy in the short term, but certainly not in the future.

So, this begs the question, Are the rate increases being requested by the carriers in the small group market appropriate or excessive? To retrieve some insight we asked the states what justifications the companies gave for their rate increases. The answers were fairly consistent.

The number one driver of the higher premiums is medical cost trends. In most states medical costs are increasing by about 10% per year – far outstripping general inflation. Companies are also seeing significant increases in utilization – some attribute this to the uncertainty some have about their jobs and future coverage – and in COBRA coverage, which always has had far higher medical loss ratios. Some carriers also point to small

employers with healthier employees dropping coverage, impacting the health of the pool, while others cite new federal and state benefit mandates.

For the most part, state insurance departments with authority to review the rates have agreed with the actuarial analysis provided by the companies and have approved the rates. However, this is not true in every case. Connecticut, for example, determined that the poor claims experience a company was using to justify a 35% increase was an anomaly and denied the rate increase. Rhode Island asked companies to resubmit their requests in 6 months or significantly reduce their request – most of the companies chose to return in 6 months. In my state of Kansas we are preparing to deny a rate increase for renewals, but allow it for new sales.

States have negotiated lower rates, rejected assumptions, and threatened public hearings in their efforts to ensure carriers are not raising premiums unnecessarily. Most states also impose a minimum loss ratio to ensure premiums are not excessive compared to claims paid. In the end, though, the reality is that the cost of health care and the utilization of that health care are rising rapidly, and insurance companies have little ability to address these issues. Therefore, rates will continue to rise.

Insurance is simply a tool to finance the underlying cost of health care, so unless spending is brought under control, all state and federal reforms will shift the financial burden from one group to another, but not solve the underlying problem. The challenge moving forward will be to overhaul the delivery system to promote prevention, quality, and results-based care, to encourage healthy lifestyles, and to eliminate waste and fraud in the system. Providing insurers with the tools they need to truly manage care, while protecting consumers and providers from some of the abuses seen in the past, would also

help bring much-needed controls to the system. I know that the Committee is well aware of this fact and the NAIC pledges its expertise to assist in any way it can to help “bend the curve” in the future. To that end, we encourage you to grant states continued flexibility to experiment and find solutions that work.

### **Moving Forward**

Insurance Commissioners recognize the magnitude and importance of the problem and have been working hard to ensure that affordable coverage is available to small businesses in their states. 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>3</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, most states have limited the extent to which changes in a business’s claims experience can result in premium increases above and beyond the increases for all of an insurer’s small group policies that result from medical inflation.

In addition to requiring insurers to pool their small group risk, states continue to experiment with reinsurance, tax credits and subsidies, and programs to promote healthier

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<sup>3</sup> 42 U.S.C. 300gg-12.

lifestyles and manage diseases as they pursue the twin goals of controlling costs and expanding access. As always, states are the laboratories for innovative ideas.

Despite our best efforts, however, we have come to recognize that this is a problem that the states alone cannot solve. The difficulties in the small group market, as in the individual market, are ultimately the result of medical spending that has outstripped the ability of most Americans to pay for it. Coupled with a voluntary insurance market where the healthiest tend to be the first to drop coverage, the high spending has resulted in volatile insurance markets with high risks of adverse selection. That is why we strongly support the adoption of federal legislation that will help the states address this issue.

Over the years, the NAIC and individual state Insurance Commissioners have worked closely with this committee and individual Senators, to develop legislation to make coverage more affordable in the small group market. In 2006, we worked closely with Senators Michael Enzi and Ben Nelson to develop the Health Insurance Marketplace Modernization Act (S. 1955). More recently, we have worked closely with Senators Durbin, Lincoln, Snowe, and Coleman to develop the Small Business Health Options Program (SHOP) Act. While we have not agreed with every provision of these proposals, we have worked very hard to provide unbiased, nonpartisan advice to Senators on both sides of the aisle in order to develop legislation that will work for America's small businesses and their employees.

In the current push to enact comprehensive health care reform, the NAIC has attempted to work in this same spirit of state-federal cooperation to help Congress draft legislation that will help all Americans purchase health coverage that is currently out of reach for

millions of us and will make the health care system safer, more reliable, and more equitable.

The NAIC applauds the hard work of both the HELP and Finance Committees to enact long-overdue reforms. As adopted by the committees, the bills would extend guaranteed issue protections to the non-group health insurance market, eliminate pre-existing condition exclusions and annual and lifetime limits, and end the practice of rating policies based upon gender and health. In addition, they would initiate the creation of state-based health insurance exchanges that could streamline the process of purchasing coverage and make meaningful comparisons of health insurance plans much easier. We are very pleased to see that both committee-passed bills preserve state licensing, solvency, consumer protection, and market conduct review laws and regulations and maintain state oversight of health insurers.

However, state insurance regulators remain deeply concerned about adverse selection. While we strongly support making coverage available to everyone, we warn that implementing such a reform without an effective individual mandate, coupled with sufficient subsidies, will lead to severe adverse selection that could increase premiums further for individuals and small businesses. Simply, if a young or healthy person can choose to stay out of the pool and pay a minimal penalty, with the promise that he or she can purchase coverage without penalty when needed, then the insurance pool will be adversely affected. And, the tighter the rating rules, the more premiums for the young and healthy participants will be impacted, and the more an individual mandate and higher subsidies are necessary to keep them in the pool. We do not believe the committee-passed mandates and subsidy structures will be effective enough and fear that the resulting adverse selection could undermine the overall reform effort.



## **Conclusion**

Congress and the nation have a critical opportunity to enact and implement comprehensive health insurance reforms that will dramatically improve the access to and affordability of, health coverage for small businesses and individuals. State regulators believe strongly that such reforms are far overdue and we offer our assistance to ensure passage, and implementation, of these reforms as soon as possible. However, we share the concern of this Committee that those reforms may not have their full impact for several years, and that premiums will continue to rise in the interim.

More immediate transitional steps may be necessary to significantly reduce premiums in the coming years. Subsidies, reinsurance, funding for high-risk pools, reducing cost-shifting from federal programs and the uninsured, are a few things that could be considered. State regulators and the NAIC offer our assistance to the Committee as options are debated.

Again, thank you for holding this hearing, and for inviting me to testify here today. I look forward to your questions.