

Changes in Healthcare Legislation

**2008 Southeastern Regulators
Association (SERA) Conference**

October 21, 2008

**Brian Webb
Manager, Health Policy and Legislation
National Association of Insurance
Commissioners (NAIC)**

Concept of Health Insurance

What is health insurance?

Protection from economic loss resulting from a medical condition, such as costs of medical care (medical expense coverage) or loss of income due to medical condition (disability income coverage)

Concept of Health Insurance

What is Risk Pooling?

- Pooling spreads the cost of high cost individuals among a larger group of people
- Healthy individuals subsidize the cost of sicker individuals and pay “more than their share”
- Larger pools are more likely to have predictable incidence of health conditions, and thus more predictable and stable risk

Concept of Health Insurance

How is Health Insurance Different?

- Other lines of insurance provide protection against *unexpected* and *unlikely* events
- Health insurance does this, but also provides coverage for entirely predictable and routine events, such as preventive care

Health Insurance Markets

- **Large Group Market:** Businesses with more than 50 employees
- **Small Group Market:** Small businesses, typically 2-50, though states vary
- **Individual (Nongroup) Market:** Individuals and dependants, self-employed

Who Regulates Health Insurance?

State Role:

- Primary Regulator of Insurance

Federal Intervention:

- ERISA
- HIPAA and Similar Laws
- Federal Insurance Programs
- Tax Law

Key Areas of State Regulation

- Licensure
- Solvency
- Rates and Forms
- Access to Coverage
- Protections
 - Consumer Protections
 - Provider Protections
- Oversight

State Consumer Protections

- Access to Care – Benefit and Provider Mandates
- Utilization Review
- Grievance and Appeal Rights
- Consumer Complaints
- Marketing Review
- Consumer Education – Fraud Prevention

State Provider Protections

- Prompt payment of claims
- No provider discrimination
- No gag clauses
- No “incentive arrangements”

Health Insurance Reform

- For over 25 years policymakers have been actively debating the uninsured issue
- In the meantime: premiums rise; the number of uninsureds grows; health care spending increases; quality of care falls
- The most important issues – health care costs and utilization - remain an afterthought!
- Is the time ripe for reform?

Forces for Reform

- **Not just individuals calling for reform**
- **Not just small businesses calling for reform**
- **Large companies are now complaining – international competitiveness said to be at stake**
- **The ability of the economy to absorb health spending is in doubt**
- **Major issue in Presidential politics**
 - **#2 domestic issue behind economy**

Components of Reform

- Congressional and State proposals are beginning to swirl around a few key components:
 - Direct Subsidies
 - Insurance Market Reforms
 - Reinsurance
 - Individual Mandate
 - Employer Pay or Play
 - Cost and Quality Initiatives
- But the “devil is in the details”

Direct Subsidies

- Premium subsidies are included in most reforms, but the type and target of the subsidies often differ
- Types of subsidies
 - Refundable tax credits
 - Tax deductions
 - Direct premium subsidies
- Targets of subsidies
 - Low-income individuals or employees
 - Small employers
 - High-cost individuals
 - The uninsured only

Insurance Market Reforms

- Combining the individual and small group market, like Massachusetts
- Eliminating employer coverage – Wyden bill
- Improving access in the individual market – maybe extending HIPAA to self-employed and/or non-group market
- Creating nationwide or regional purchasing pools
- Eliminating health status as a rating factor
- Creating connectors
- Shifting high-risk persons to High Risk Pools

Reinsurance

- Success of HealthyNY program continues to spark interest in reinsurance as a method of subsidy
- Primarily discussed as government-funded program that retroactively compensates Plans for certain high-cost policyholders
- Key Issues:
 - What is the attachment point?
 - Who is eligible for reinsurance?
 - How much \$\$ are we talking about?

Individual Mandate

- A key component of the Massachusetts reforms
- Concept has support among certain Democrats and Republicans
- Enforcement is THE issue
- Subsidies for low-wage workers and how to rate products are also important issues

Employer Pay or Play

- A key component of reforms in Vermont, Massachusetts and Rhode Island – and the City of San Francisco
- San Francisco law was halted by ERISA challenge – 9th Circuit ruled that the mandate did not violate ERISA
- NAIC supports clarification in ERISA

Comprehensive Reforms Concepts

- Wyden – Eliminate group coverage; subsidies go directly to individuals who access coverage through exchanges
- Stark/Dingell – Medicare for all
- Enzi – Tax subsidies for individuals to buy standardized coverage that is community rated
- Durbin/Snowe – Nationwide purchasing pools for small businesses to purchase coverage
- Many More To Come!

Presidential Proposals

- **Obama**

- Employer mandate on larger employers
- Guaranteed issue/Community rating
- Mandate to cover children
- Health exchange
- Public plan to compete with private plans
- Tax credit for small businesses
- Reinsurance

- **McCain**

- Tax credit for individuals/Elimination of tax exclusion
- Sale of insurance across state lines
- Increased funding for high risk pools

Challenges of Health Reform

- Adverse Selection
- Plan Failure
- Fraud
- Increased Costs
- Market Failures/Loss of Competition
- Perverse Incentives

Adverse Selection

- Groups and individuals have more knowledge of future costs than insurers
- They will make decisions to maximize their benefit based upon this knowledge
- Adverse selection (or antiselection) occurs when a pool attracts disproportionately high cost individuals

Preventing Adverse Selection

- Medical underwriting/pricing
- Preexisting condition exclusions
- Limited open enrollment periods
- Waiting periods for eligibility
- Same rules for competing pools
 - Purchasing pools operating parallel to an outside market must have same rules as outside market
 - Otherwise, the pool or the outside market will attract all the unhealthy risk and will fail

Plan Failure

- Inability of a plan to pay claims can leave consumers who have paid premiums suddenly without coverage when they get sick.
- Can lead to catastrophic financial and health consequences.

Health Insurance Fraud

- Reforms that weaken or cause confusion about regulatory authority open the door to fraud
- Unauthorized Insurers
- Sham MEWAs
- Misleading Discount Medical Plans
- Rent-a-Patient Schemes

Increased Costs

- Any reform that alters the composition of the risk pool will cause costs to increase or decrease
- Reforms that affect utilization can also affect costs
- These changes in costs can themselves alter the composition of the risk pool, creating a virtuous or vicious cycle

Market Failure

- If insurers conclude that they can no longer make a profit in a market, they will leave it
- Result:
 - No consumer choice
 - No competition among plans
- This has happened in some small group markets as a result of very tight regulation

Perverse Incentives

- The U.S. health care system is filled with perverse incentives:
 - Pay for quantity of care
 - Cross-subsidization of services in hospital budgets lead to utilization distortions
 - Insurance coverage promotes use of services without consideration of cost
 - Fear of lawsuits prompt doctors to practice “defensive medicine”

Harm to Consumers

- Unpaid Claims
- Fraud
- Increased Cost
- Access problems
 - Increased underwriting can make insurance less available to some in the market

Keys to Healthcare Reform

1. Address Healthcare Costs

- Total spending reached \$2.1 trillion in 2006 – 16% of GDP and \$7,026 per person
 - This level is twice the average for other industrialized nations
- Many concepts are being discussed: health IT, disease management, pay for performance, medical home, promoting healthy lifestyles, etc.
- The cost of care, quality of care and utilization of care must be addressed if reforms will succeed over time

Keys to Healthcare Reform

2. Provides State the Flexibility to Innovate

- States are laboratories for reform and have already instituted many reforms
- States need more flexibility to design, implement and study the impact of reforms
 - ERISA reforms needed
 - Some \$\$ wouldn't hurt, either

State Flexibility Legislation

- The NAIC is supporting bipartisan legislation, H.R. 506/S.325, that would provide states more flexibility:
 - A State would submit comprehensive reform plan to a board for consideration
 - The board would forward approved plans to Congress for fast-track consideration
 - Plans passed by Congress and signed by Pres. would receive funding and flexibility

Keys to Healthcare Reform

3. Protect the Rights of Consumers.

- States already have the rigorous patient and policyholder protections, solvency standards, fraud prevention programs, and oversight mechanisms in place to protect consumers
- State protections must not be preempted or watered down

Questions?

Contacts at the NAIC

Brian Webb
Manager
Health Policy and Legislation
bwebb@naic.org
202-471-3978

Josh Goldberg
Health Policy and
Legislative Analyst
jgoldberg@naic.org
202-471-3984