

April 18, 2022

The Honorable Rick Allen  
U.S. Representative  
570 Cannon House Office Building  
Washington, DC 20515

The Honorable Kevin Hern  
U.S. Representative  
1019 Longworth House Office Building  
Washington, DC 20515

The Honorable Victoria Spartz  
U.S. Representative  
1523 Longworth House Office Building  
Washington, DC 20515

Dear Reps. Allen, Hern, and Spartz:

Thank you for engaging with stakeholders to develop health policy solutions through the Healthy Future Task Force's Affordability Subcommittee. As we stated in our February 3, 2022, letter, State insurance regulators are ready to work with you and other federal officials in bringing down the costs of care and coverage while maintaining stable markets and protecting consumers. The NAIC's Health Insurance and Managed Care (B) Committee has reviewed the January 2022 Request for Information and provide the following comments.

**Improving Health Care for America's Workers and Small Business Owners**

State regulators agree on the need to make coverage more affordable for workers and small business owners. In fact, some state regulators are concerned about the long-term stability of the small group market as the numbers of enrollees have decreased and the risk of the market has deteriorated in some states. We need to ensure that coverage is not only more affordable, but this market remains competitive in the years ahead.

To address affordability, a more efficient and effective tax credit program could be helpful. As the Task Force notes, the small employer tax credits created under the Affordable Care Act (ACA) were neither. Creating more flexibility for states to design assistance programs that best meets the needs of their employers and markets would be a better option than a one size fits all federal program. However, the goal of affordability will never be reached as long as health care costs continue to increase unabated. More must be done to reward behaviors that reduce costs and minimize practices

that drive up costs without adding value. We look forward to working with you on this daunting task as states continue to be the laboratories for such innovations.

As for promoting options and competitive markets, the NAIC did not oppose the creation of Individual Coverage Health Reimbursement Arrangement (ICHRA) option but would note that it has not been very successful, to date. More education and less paperwork and red tape are needed if the program is to grow. Should its usage grow, we would need to monitor its impact on the risk of the small group market pool since ICHRAs may be more attractive to healthier employees.

Likewise, the NAIC did not oppose the Association Health Plan rule proposed by the Trump Administration because, while it provided more flexibility under the federal rules, it did not infringe on states' authority, under ERISA, to fully regulate Multiple Employer Welfare Arrangements (MEWAs). In fact, even as the Trump-era rule has been vacated, states continue to consider ways to allow association plans that are appropriately regulated to enhance affordable options for small businesses and their employees. However, the NAIC has long opposed any federal proposals that would limit or preempt state regulatory authority over Association Health Plans and will continue to do so.

While we support more options for small businesses, we warn that proposals for federal preemption of state regulation or changes to community rating will lead to significant disruptions in the small group marketplace, higher premiums, and fewer coverage choices for many small businesses. And, we know such preemption has, in the past, created regulatory gaps that resulted in association plan failures and fraud that left employers and their employees without coverage. Instead, we support a broader approach to the existing problems - one that addresses health care spending, allows more innovation, and permits more state flexibility - to bring real relief to small businesses.

### **Promoting Employer Programs to Lower Costs and Improve Care**

Large group and state employee plans have been experimenting with various methods to control costs and improve access to quality care. As you highlight, instituting these programs and realizing significant savings can be difficult for small employers. They are often costly to administer and require expertise that the small business employer may not have access to. Federal resources could be helpful to identify efficient and effective programs that could be implemented in the small group market and more education on successful program would also assist small business owners.

In addition, there needs to be a regular review of federal laws and regulations that may hinder or prevent the implementation of cost-effective programs. One current example is federal telehealth rules that, after the national health emergency ends, could again limit the use of telehealth services that have proven to provide greater access to care for consumers and lower overall health spending. Of course, we acknowledge such reviews need to continue at the state level, as well.

Access to good data is an important component in the effort to reduce health care spending. Recent actions at the federal level to fund and promote state all payer claims databases are appreciated. To be fully successful, these databases need to have access to all health data -including from Medicare and ERISA self-funded plans, and that access must be consistent and assured into the future.

## **Increasing Transparency and Innovation**

The transparency of health care costs is critical to the ability of consumers to make good economic decisions when it comes to their health care. This can be one of the costliest decisions they will make, and they need reliable information. The recent federal regulations requiring health insurance carriers and health care providers to provide and post cost information are major steps forward. However, frankly, the provider requirements are not being complied with and not enforced effectively. Some hospitals are not posting the information or, if they are, make it so difficult for consumers and researchers to find that it is worthless. State regulators have received many complaints from consumers and have forwarded them to the federal agencies. We know this requirement can be burdensome on providers and federal agencies are doing their best to ensure compliance, but more must be done to assist consumers and those who seek to aggregate provider data and make it more useable.

As for innovation, Section 1332 waivers remain the primary method for states to implement innovative programs in their states under the ACA. Several NAIC members have developed waiver plans and others are considering them--addressing the affordability of coverage both inside and outside exchanges remains a key goal for states. To date, almost all of the approved waivers have been some form of reinsurance program, and they have been effective in reducing health insurance premiums. States need more flexibility to go beyond reinsurance and find new options to enhance aid to vulnerable populations and assist the unsubsidized and small employers. Breaking down the budgetary wall between Section 1332 and Section 1115 waivers; allowing for solutions that shift funds between markets; and streamlining of the waiver process are just a few ideas that should be considered. We seek the opportunity to work with Congress to develop reforms that will provide more flexibility without reducing consumer protections.

## **Increasing Competition and Identifying Anti-Competitive Consolidation**

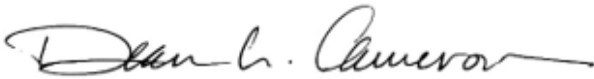
State regulators share the Task Force's concerns about the consolidation of hospitals and other health care facilities, as well as the influence of financial entities in the operations of these key health care providers. This issue can be particularly troubling in rural and underserved areas where access to care can be limited and/or health care costs driven even higher. State and federal agencies need to work together to ensure these consolidations do not result in harm to patients and do not put a thumb on the scales for negotiations with health care insurers.

As your Subcommittee considers ways to improve affordability of health care and insurance, we encourage you also to look at issues like legislative fixes for the "family glitch", access to telehealth, and prescription drugs costs. While there have been discussions on these critical issues over the past few years, no legislation has passed to fix them - and action is long overdue.

The issue of high health insurance costs cannot be addressed until the underlying problem of high health care costs is addressed. Without addressing overall health care costs, we are left with making coverage more affordable for some by making it more expensive for others or for taxpayers - and this is not a sustainable solution. We appreciate this Subcommittee's interest in this daunting task and offer the expertise and experience of state regulators as you review various options. The federal

government and the states need to work with health care providers, insurers, and consumers to implement effective reforms that will curb spending and make insurance more affordable.

Sincerely,



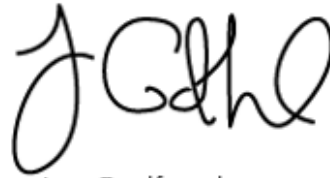
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