



THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

January 23, 2017

The Honorable Senator Lamar Alexander
Chairman, Committee on Health, Education, Labor, and Pensions
428 Senate Dirksen Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Alexander:

Thank you for seeking input from insurance regulators as Congress considers its next steps in federal health reform. New Hampshire has weathered the changes brought on by the Affordable Care Act (ACA) more successfully than many other states, and we are pleased to share information about New Hampshire's experience that we hope will be helpful in improving the health insurance landscape, particularly as it relates to transparency, competition, and the cost of care.

On January 11th, I sent House Majority Leader Kevin McCarthy the attached letter, laying out in detail the key components of New Hampshire's approach, which include (1) preservation of state-based insurance regulatory authority, (2) a market-based approach to covering the Medicaid Expansion population, and (3) a focus on addressing health costs through transparency and data-driven analysis of state markets. It also contains recommendations that address several of the questions posed in your letter, including my thoughts on actions that could help stabilize state health insurance markets and the timeframes in which it would make sense to take such actions, as well as the importance of creating mechanisms to support state innovation.

Given the urgency of your request and the fact that you are receiving input from many state regulators, I want to focus on New Hampshire's unique experience as it relates to your final question: **What is your vision of a modern private health insurance market in your state? What would you do to lower health care costs, provide more individualized plan choices, and innovate, and what additional authorities would the states need from Congress to do so?**

New Hampshire's longstanding effort to improve the functioning of health insurance markets through health cost transparency and annual analysis of cost drivers and their effects on state markets is a unique approach which I believe carries great potential as a model for other states, and which Congressional action could facilitate. Through NHHealthCost, <http://nhhealthcost.nh.gov/>, the nationally-acclaimed health cost transparency website developed by the New Hampshire Insurance Department (NHID) using data from the state's all-

payer claims database (APCD), insurance companies, consumers and employers can view the actual costs to them of medical procedures and use this information in managing the costs of their care.

The cost transparency focus in New Hampshire predates the ACA, and enjoys strong bipartisan support as a free-market initiative focused on the cost of health care. Fostering data transparency has encouraged competition at the health care provider level and led carriers to develop plan designs that encourage the use of low-cost, high-quality care providers. The NHID has also used claims data to better understand the most pressing health issues in the state, including, as we face an opiate addiction crisis, analyzing claims cost data to establish prevalence levels in the commercially insured population and identify treatment patterns.

The cost of health insurance is driven largely by the cost of paying claims, and the most significant determinant of claims costs for carriers is the size of the discount the carrier is able to negotiate with providers. As a consequence, competition in health insurance markets is centered on insurers' ability to build a competitive network by bringing a large volume of patients to health care providers, thereby increasing their negotiating leverage with these providers to obtain favorable discounts. New Hampshire insurance laws that predate the ACA require the NHID to produce and release publicly a detailed annual report on cost drivers and their effects on health insurance markets in the state.¹ In our experience, the biggest barrier to market entry by new carriers is not regulatory requirements like state licensing or coverage mandates but the difficulty of building a provider network with discounts that can put the carrier in a position to offer premium rates that are market-competitive. New Hampshire's market analyses of claims data support a finding that transparency enhances competition by helping both insurance carriers and providers better understand the market in which they are operating and thereby creating increased price sensitivity.

Preservation of the system of state-based insurance regulation, including states' ability to make health cost information transparent to consumers and employers, is central to controlling the cost of care using a market-driven approach. Recently, the US Supreme Court's 2016 ruling under ERISA in *Gobeille v. Liberty Mutual* hampered states' authority to collect claims data with respect to self-funded employer coverage, even when that coverage is administered by an entity that is under the jurisdiction of state insurance regulators. The Court suggested that this function rests with the U.S. Department of Labor, an agency that lacks the resources and expertise to engage in either insurance regulation or claims data collection. While we recognize the importance of working cooperatively with the Department of Labor, and recently filed comments with the agency in conjunction with its ongoing rulemaking under ERISA,² it is also important for states to maintain primacy in regulating and understanding their states' markets for health insurance and health care services.

¹ Here is a link to the NHID's most recent annual market report, which was issued in December 2016 and relies on 2015 data: <http://www.nh.gov/insurance/reports/documents/nhid-2015-medical-cost-drivers-final-report.pdf> .

² Link to comments on USDOL rulemaking: <http://www.nh.gov/insurance/legal/documents/nhid-comments-on-labor-dept-notice-of-proposed-rulemaking.pdf>

Congressional action to provide states with clear authority to collect claims data is critically important after the *Gobeille* decision. Over half of New Hampshire residents with commercial health coverage are in self-funded employer coverage, and this statistic is similar in many other states. Fully capturing the data from all covered persons is important to maintaining an accurate understanding of health costs, particularly if New Hampshire's model of promoting competition through health cost transparency is to be used in other states. For this reason, we recommend that Congress amend ERISA to expressly authorize state insurance regulators to collect health claims data on an anonymous basis with respect to both fully insured and self-funded coverage.

The New Hampshire Insurance Department contact to coordinate additional followup is Sandra Barlow: She can be reached at sandra.barlow@ins.nh.gov. Thank you again for seeking input from states as you consider changes to the ACA. We would be glad to provide more detailed information regarding New Hampshire's work and experience in this area.

Very truly yours,



Roger A. Sevigny

Enc. January 11, 2017 letter to U.S. House Majority Leader Kevin McCarthy

cc: Governor Christopher T. Sununu
NH Senate President Chuck Morse
NH Speaker Shawn N. Jasper
NH Congressional Delegation
- Senator Jeanne Shaheen, Senator Margaret (Maggie) Hassan, Representative Ann
McLane Kuster, Representative Carol Shea-Porter
NH DHHS Commissioner Jeffrey Meyers

Submitted to:
[Healthcarereforms @help.senate.gov](mailto:Healthcarereforms@help.senate.gov)



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January 11, 2017

The Honorable Kevin McCarthy
Majority Leader
United States House of Representatives
H-107, U.S. Capitol Building
Washington, D.C. 20515

Dear Representative McCarthy:

Thank you for seeking input from insurance regulators as Congress considers its next steps in federal health reform. We are pleased to share information about New Hampshire's experience that we hope will be helpful in improving the health insurance landscape, particularly as it relates to transparency, competition, and the cost of care.

New Hampshire has weathered the Affordable Care Act (ACA) more successfully than many other states. Between 2014 and 2017, the number of insurance companies offering individual market coverage in the state has increased from one to four. Premium increases for 2017 plans are less drastic than in other states, with only a 2% increase in the cost of the second-lowest-cost silver "benchmark" plan.

Through NHHealthCost, <http://nhhealthcost.nh.gov/>, the nationally-acclaimed health cost transparency website developed by the New Hampshire Insurance Department (NHID), consumers and employers have been able to view the costs of medical procedures and use this information in managing the costs of their care. This data transparency initiative has encouraged competition and led carriers to develop plan designs that encourage the use of low-cost, high-quality care providers.

These are the key components of New Hampshire's successful approach:

- **Preservation of state-based insurance regulatory authority:** New Hampshire retains state regulatory oversight of its insurance industry "to the maximum extent possible by law," while not taking on new obligations for activities that are specific to the ACA (*e.g.*, operating the exchange, signing people up for coverage). The NHID performs plan management functions, which are consistent with its traditional regulatory role, while leaving operation of the exchange infrastructure and ACA-specific programs to the federal government.
- **Market-based approach to covering Medicaid Expansion population:** The New Hampshire Health Protection Program (NHHPP) purchases private-market coverage (Qualified Health Plans) for the expansion population, doubling the size of the state's individual insurance market and increasing the number of carriers offering coverage. This program has also forged strong working relationships between insurance regulators and the state's Medicaid agency, and it has enabled program enrollees to become accustomed to using private insurance coverage.
- **Addressing cost through transparency:** As a national leader in cost transparency and integration of transparency efforts with insurance regulation, New Hampshire is in a unique position to

continue making public the costs of medical procedures, enhancing competition and access to cost information for employers and consumers. This is one of the best examples of a state-supported free-market initiative focused on the cost of health care.

- **Data-driven analysis of state markets:** New Hampshire insurance laws that predate the ACA require the NHID to produce an annual report and annual hearing on cost drivers. The NHID has developed exceptional data resources that can be used in analyses that help inform public policy, including understanding the costs and market effects of particular policy changes.
- **Focus on addressing the opiate crisis through private coverage:** The NHID has used its data and regulatory resources to help address the state's opiate addiction crisis. This work has included analyzing claims cost data to establish prevalence levels in the commercially insured population, identify treatment patterns, conduct a detailed review of health insurers' substance use disorder (SUD) claims practices, and convene a robust working group to explore how best to use private insurance coverage to enhance access to SUD treatment and behavioral health services.

Based on our experience in regulating health insurance, the NHID suggests that Congress consider the following as it makes changes aimed at giving states more flexibility to provide insurance options that expand choices and lower premiums while also maintaining market stability:

Retain states' primacy in regulating health insurance, including encouragement of state-based efforts to enhance competition through health cost transparency.

Preservation of the system of state-based insurance regulation, including states' ability to make health cost information transparent to consumers and employers, is central to controlling the cost of care using a market-driven approach. The cost of health insurance is driven largely by the cost of paying claims. As a consequence, competition in health insurance markets is centered on insurers' ability to attract healthy enrollees and build a competitive network by bringing a large volume of patients to health care providers, increasing their negotiating leverage with these providers to obtain favorable discounts. In our experience, the biggest barrier to market entry by new carriers is not regulatory requirements like state licensing or coverage mandates but the difficulty of building a provider network that can put the carrier in a position to offer premium rates that are market-competitive. New Hampshire's market analyses of claims data support a finding that transparency enhances competition by helping both insurance carriers and providers better understand the market in which they are operating.

Avoid making precipitous changes that could destabilize state markets by causing insurance carriers to increase premiums or exit the market due to uncertainty about rating rules and covered populations.

Health insurers participate voluntarily in state markets, and uncertainty about market rules and risk pool characteristics may cause them to raise premiums or leave markets altogether. Making precipitous changes could be particularly harmful in states such as New Hampshire, where markets have regained much of their stability. Under current federal rules, insurance carriers wishing to offer 2018 coverage in the individual and/or small group markets must submit their plans and rates for NHID review in April 2017. Development of plans and rates for 2018 is underway now and is premised on an understanding of the rating rules and likely composition of the risk pool for 2018. Thus, the carriers need to know any changes that would take effect in 2018 in the first quarter of 2017, at the absolute latest.

There are some short-term changes that could support market stability in 2018. At present, transitional or “grandmothered” coverage in the individual and small group markets is slated to end at the end of 2017. In New Hampshire, a large percentage of small businesses have chosen to remain with this coverage as long as possible, rather than switching to coverage that is fully ACA-compliant. If there are to be further changes in market rules as a result of Congressional action, allowing individuals and small groups to remain in their transitional coverage for another year or two – until the full details of the ACA replacement are clear – would support market stability by avoiding an unnecessary transition for those who currently have transitional coverage. Another short-term change to support stability would be full funding of the cost-sharing reductions at issue in the *House v. Burwell* lawsuit and the federal reinsurance program, until such time as the replacement to the ACA takes full effect. Both programs were presumed to be fully funded in the carriers’ 2017 premiums; certainty about these funding sources for 2017 and 2018 would avoid drastic premium increases.

In considering longer-term changes, it is important to note that states vary tremendously in terms of whether the ACA reforms have been incorporated into state law and how regulatory systems would function if the ACA were repealed. In New Hampshire, we have not adopted the changes mandated by the ACA with the exception of the individual and small group market rating rules, which were adopted by reference in New Hampshire in 2013 (and our prior rating rules repealed). Our legislature gave the NHID authority to enforce some provisions of federal law that were independently applicable to health insurers; however, without this overarching federal framework, there would be confusion about legal requirements in many areas. Were the ACA to be repealed, our legislature would need time to consider what approach to take in the state. Our legislature meets only the first six months of each year, so responding to changes taking effect earlier than January 1, 2019 would be difficult. We recommend that any changes provide a clear description of what flexibility states have, including during the transition periods, and that those requirements consider the self-funded population, recognizing that many large employers have a choice about whether they want to be in the fully-insured market.

Amend the Employee Retirement Income Security Act (ERISA) to expressly authorize state insurance regulators to collect health claims data on an anonymous basis with respect to both fully-insured and self-funded coverage.

Recently, the US Supreme Court’s 2016 ruling under ERISA in *Gobeille v. Liberty Mutual* hampered states’ authority to collect claims data with respect to self-funded employer coverage, even when that coverage is administered by an entity that is under the jurisdiction of state insurance regulators. The Court suggested that this function rests with the U.S. Department of Labor, an agency that lacks the resources and expertise to engage in either insurance regulation or claims data collection. To enhance the transparency that fosters competition in health insurance markets, Congress could amend ERISA to confirm states’ authority to gather health claims data from insurers and third-party administrators (TPAs) with respect to self-funded and fully-insured plans, in a manner that, as in New Hampshire, fosters effective state insurance regulation and competitive markets.

Health cost transparency is important for employers as well as for individual consumers. States involved with collection of claims data have nearly completed the process of creating a uniform claims data set, which can be used to ease employers’ and TPAs’ concerns about variability in state requirements. In addition, New Hampshire collects the data in a manner that does not create privacy concerns, as our statute bars the submission of any personally-identifiable information to the state into or in connection with the database. This approach could serve as a model for other states seeking to improve competition through health cost transparency.

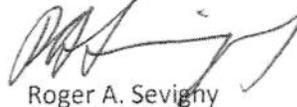
Support states' ability to use innovative approaches to increasing continuity as people move between different types of coverage.

As noted above, New Hampshire's approach to Medicaid expansion has benefited private insurance markets by greatly increasing the size of the individual market and bringing more competition to the state. Our individual market, which previously had been in a death spiral, is now the largest fully-insured market in the state. Similarly, the NHID initially was interested in pursuing a Section 1332 waiver to increase continuity as residents move between different sources of coverage. Were the waiver standards changed, or new programs created to allow more flexibility in state innovation, the NHID would be very interested in working to create greater continuity as state residents move between employers and between different types of coverage.

In the NHID's view, an innovative approach using private coverage to serve populations receiving financial assistance as part of a single individual market risk pool would be preferable to returning to a split system with a subsidized high risk pool. New Hampshire maintained a high risk pool prior to enactment of the ACA and established a federal high risk pool after the ACA was passed. The governance infrastructure associated with the state high risk pool remains in place. In the NHID's view, segregation of high-risk individuals is not an effective approach to bringing down costs. As described above, the NHID's view is that focusing on health cost transparency and competition while maintaining a single risk pool for the individual market is a better approach to controlling costs and is more likely to achieve that result across all payers.

The New Hampshire Insurance Department contact to coordinate feedback and meetings is Sandra Barlow: She can be reached at sandra.barlow@ins.nh.gov. Thank you again for seeking input from states as you consider changes to the ACA. We would be glad to provide more detailed information regarding New Hampshire's work and experience in this area.

Very truly yours,



Roger A. Sevigny

cc: Governor Christopher T. Sununu
NH Senate President Chuck Morse
NH Speaker Shawn N. Jasper
NH Congressional Delegation
- Senator Jeanne Shaheen, Senator Margaret (Maggie) Hassan, Representative Ann McLane Kuster, Representative Carol Shea-Porter
NH DHHS Commissioner Jeffrey Meyers

Submitted to:

<https://www.majorityleader.gov/state-healthcare-recommendations/>