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TESTIMONY BEFORE THE JOINT COMMITTEE ON HEALTH CARE DELIVERY AND FINANCING

June 14, 2007

Good afternoon Chairman Garagiola, Chairman Morhaim and members of the Joint Committee. My name is Ron Wineholt, Vice President of Government Affairs, representing the Maryland Chamber of Commerce. Thank you for the opportunity to offer testimony regarding the need to increase access to health care for Maryland's citizens.

The Maryland Chamber of Commerce agrees that the growing number of uninsured in Maryland is a problem that must be addressed. Individuals, businesses, and state government each have a role to play in solving this problem:

- Individuals – As with other types of insurance, the responsibility for obtaining health insurance is ultimately an individual responsibility to protect the individual and their family from unaffordable financial burdens. Persons with the means to do so should purchase health insurance.
- Businesses - Health insurance is an important part of employee compensation offered by most employers, but the mix of salary and benefits must remain an employer choice.
- State Government - State government must help individuals who cannot help themselves, and promote a competitive, affordable health insurance market. State government must also respect federal law, which allows employers to design their employee health benefit plans.

Different Employers, Different Problems

While all employers face health care challenges, the nature of problems varies by employer size. Ninety-eight percent of employers with more than 200 workers offer health insurance¹, which is typically self-funded by the employer. Their challenge is the escalating cost of health care and the frequency of usage by employees. These large employers have a financial incentive to aggressively manage health care costs and promote wellness programs among employees. State health care mandates do not apply to their plans.

Ninety-two percent of employers with 51 to 200 employees offer health benefits, typically through group plans purchased from insurance carriers. Their concerns are rising health care costs and the limited competition among a few companies in Maryland's health insurance market. While they can design their health benefit plans, the state's mandated health benefits are required.

Employers with 50 or less employees may only purchase Maryland's small group health insurance plan. The likelihood of an employer offering health insurance decreases with employer size. These employers feel squeezed by limited ability to

¹ Kaiser Family Foundation, 2006 Employer Health Benefits Survey Summary, pg.4.

alter plan design, state-mandated benefits, limited competition by carriers, and rising insurance premiums. The small group plan continues to decline in numbers of participating employers and covered employees each year.

Roughly one-half of employers with less than 10 employees offer no health benefits to their employees. Their reasons for non-participation include the significant cost of the small group plan, the need to meet minimum participation thresholds, fear of an inability to meet future costs, and the complexity of contract administration with minimal staff.

Learn from Other States

It is appropriate that Maryland review health care reform laws adopted by other states to adopt measures that are legal and effective in extending health care access, while avoiding laws that prove illegal or ineffective.

For example, you may be asked to consider another “play or pay” employer assessment, perhaps similar to that imposed by Massachusetts. We believe that the Massachusetts law requiring employers to meet minimum participation or spending levels for health benefits or else pay \$295 per employee faces the same legal problems that caused Maryland’s “Wal-Mart” law to be struck down. The U.S. Court of Appeals for the Fourth Circuit stated earlier this year in *RILA v. Fielder* that the law violated ERISA because it would “force employers to structure their recordkeeping and healthcare spending to comply with the Fair Share Act. Functioning in that manner, the Act would disrupt employers’ uniform administration of employee benefit plans on a nationwide basis.”²

More importantly, such an employer assessment would simply be a tax on small businesses that cannot afford health care benefits. It is doubtful that a threatened assessment of \$295 per employee would motivate a small business to spend more than 10 times that amount, which would be the amount necessary to enroll an employee in the small group plan. If the assessment were raised to a higher threshold, it would even more clearly violate ERISA by coercing employer health benefit plan design.

Solutions

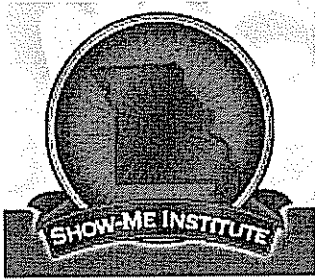
We would encourage the Joint Committee to explore a number of options that may help make health insurance more affordable for individuals and employers:

- Cost containment – The solution is not simply spending more money. The United States already spends a higher percentage of gross domestic product on health care than any other industrialized country. We need to spend health care dollars more wisely and avoid expenditures that are not medically necessary. Consumer-directed health care should be promoted in a market-based system with consumers knowledgeable about the costs and benefits of the health care they are consuming.

² *Retail Industry Leaders Association v James D. Fielder*, (2007), pg. 21

- Emergency care - Ensure that health care providers and consumers have a financial incentive to treat health care problems in the most efficient setting. It is appropriate that the state support health care clinics as an alternative to hospital emergency departments, but it will only prove effective if patients are appropriately directed.
- Uncompensated care – Both Massachusetts and Missouri have enacted laws to enable their tax departments to pursue a tax refund intercept for hospital bad debt. Maryland for years has administered such a program to collect overdue taxes and child support.
- Section 125 plans – Missouri’s recently enacted health care reform law (HB 818) requires all employers (other than self-funded plans) to offer a Section 125 plan if they contribute to an employee’s health insurance premium. It also authorizes employers with 50 employees or less to allow new employees to retain an individual policy with a defined employer contribution. All individual health insurance premiums are granted a state income tax deduction. (See attached article)
- Small Group - Massachusetts will be developing “mandate lite” reduced benefit policies for individuals ages 19 to 26. Why is Maryland the only state in the country with only one plan for small employers? ³
- Medical Liability Reforms - Medical liability reform remains important to assure access to health care and reduce defensive medicine that consumes up to 10% of health insurance premiums. We urge the Joint Committee to endorse meaningful medical liability reforms.
- Competition – The General Assembly passed modest legislation in 2007 (SB 427/HB 579) that will offer insurance carriers more flexibility in the types of health insurance products that they can offer. We applaud that action and recommend that the Joint Committee build on that effort and review insurance laws to help promote competition. Insurance companies should be allowed to sell the products that people want to buy.
- Individual Mandate – The Joint Committee should endorse an individual mandate for high income individuals who lack health insurance.

³ Maryland Health Care Commission, Interim Report on the Study of Affordability of Health Insurance in Maryland, (2005), pg 11.



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Free-Market Health Care Reform in Missouri: A Primer

June 3, 2007

By Beverly Gossage

A long-awaited free-market step on the path to cover those without health insurance came out of Jefferson City on Friday. Gov. Matt Blunt signed HB 818, making Missouri the first state to permit pretax contributions from small business owners to their employees' individually selected policies. Unlike other health care reform "solutions" that require more government intervention and bureaucracy—third-party or one-payer systems, employer mandates, tax hikes, and cost shifting—this law offers a common sense approach to health care reform.

The media has focused on a controversial midwife provision that was inserted into the bill at the last minute. But the real news here is the bill's revolutionary approach to health insurance reform — and the fact that the bill won such overwhelming bipartisan support in both chambers of the Legislature. There's a lot to be excited about in HB 818, so here's a primer you won't find in the press.

The standard employer-based model for health insurance coverage leaves a remarkable number of people out. Nationwide, about 30 percent of workers in firms with fewer than 25 employees are uninsured, and 88 percent of Missouri businesses have fewer than 25 employees. Many small companies no longer offer group health insurance. According to a study by America's Health Insurance Plans (AHIP), only 42 percent of Missouri small businesses offer health insurance. These employers' reasons include: the hassle of selecting a plan each year; employer contribution and employee participation requirements; lack of retention among employees; and the high cost of group premiums. The uninsured mention affordability and portability as barriers to health insurance.

HB 818 addresses these concerns:

The annual insurance renewal hassle. Shopping to determine which single carrier's one or two plans (if any) an employer will offer each year to attempt to meet the needs of all employees is every small business owner's nightmare. Employers would generally rather run their companies than be in the health insurance business. Since employees under HB 818 are allowed to select their own individual plans, they can choose from a marketplace of carriers and plan designs for the one that best meets their personal preference. The employee becomes the consumer and purchaser of insurance; the employer merely contributes a defined amount. HB 818 also allows the employer to continue to offer a small group plan and contribute to employees' individual policies.

Employer contribution requirements. Most small group carriers require that the employer contribute at least 50 percent of the premium for the individual employee. Many employers would like to contribute to their employees' health insurance, but would like to have the flexibility to determine their contribution amount. By allowing a defined contribution, HB 818 gives employers this option. Business owners may discover that individual policies can be less expensive than group plans, so their contribution, even at 50 percent, may be less than it was with a group plan.

Lack of employee participation and small group participation requirements. Most small group carriers require that at least 50 percent of employees participate in a plan. Although part-time employees are not counted in this participation requirement, and are frequently left without coverage, small business owners have found it difficult to maintain this standard. Employers can now contribute to premiums without this constraint. Previously uninsured employees are more likely to purchase individual plans if their employers are picking up some of the cost and they can pay for it through pretax payroll deductions.

The retention and portability issue. Small business owners understand that in a global society, employees come and go. With each new hire and termination, group dynamics change and insurance premiums can be drastically affected, making it difficult to budget costs and meet participation requirements. When health insurance is employer-based, a constantly

transitional workforce will have a high percentage of temporarily uninsured workers. The federal government reports that 45 percent of those without health insurance are uninsured for only six months or less. Portability is important in helping to cover this group, and most employees would rather keep their selected benefits when changing employers and have a consistent health plan.

B 818 affects both issues by authorizing employees to plug their individual policies into their new employers' cafeteria plans, and permitting those new employers to contribute to the premiums. This is an easier transition for newly hired employees, often eliminating doctor and benefit changes, or a waiting period to access new health insurance. When employees are terminated, they take their plans with them — no need to offer state continuance or COBRA. Changing jobs or being terminated will not be a cause for panic about health insurance loss.

The affordability issue. One-size-fits-all small group health plans, with their accompanying mandates, are often more expensive than individual plans. According to the AHIP, last year in Missouri the average small group single employee premium was \$292, and family rates averaged \$765. By contrast, the average premium was \$192 for an individual, \$332 for a family. The Council on Affordable Health Insurance (CAHI) reports that young "invincibles," age 19 to 34, represent 56 percent of the uninsured. Their premiums can be especially inexpensive on an individual policy. For example, a 25-year-old healthy, nonsmoking male could have an individual policy with a premium as low as \$65, which includes a free annual physical. This is about the cost of an average monthly cell phone bill.

Competition. There are 18 million individual policies nationwide, and Humana expects that number to grow by 5 to 8 percent over the next five years. Other carriers known for being large group providers, such as Coventry and United, recognize this trend and have entered the individual market in recent years. This makes the rates even more competitive. Many carriers already offer convenient "list bill" options, which permit employers to payroll-deduct premiums for individual policies and pay one check or bank draft for all the employees who have policies with that carrier.

Family Discounts. With small group plans, often husband and wife are on separate plans with different employers, and the children may have individual policies. The family can be with as many as three different carriers. With HB 818, if both spouses work for small employers, the family can have one policy purchased independently and each spouse's employer can contribute to the premium. Families can stay together on the same plan. This is nice for several reasons: rates are often lower, because most carriers give a discount if the family is on one policy; there are fewer benefit rules and health cards to keep straight; and doctors can be chosen from one network. Health savings account plans are also growing in popularity, and because they have one family deductible, having the family together is a plus.

Tax incentives. As the popularity of individual plans has increased, the injustice of insurance taxes has become more pronounced. Until now, premiums were only tax-advantaged if purchased through an employer group plan. However, HB 818 permits funneling individual premiums through the Cafeteria 125, making the employee's portion pretax. This equalizes the tax discrimination. Since the employer's portion of the premium is also pretax, this will give an incentive for both employers and employees to contribute to health insurance, covering more uninsured. HB 818 also allows self-employed business owners a state tax credit for personal health premiums, since these cannot be funneled through the Cafeteria plan.

HSAs and Consumerism. When given free choice of an individual plan, many employees choose health savings accounts and the qualified health plans that accompany them, because the premiums are usually 35 percent to 40 percent lower than traditional plans. Employers and employees may both contribute to the health savings account, providing more tax advantages for both parties. These funds grow with interest, and employees may use them to pay health care expenses for the entire family — even save it for retirement, if not used. HB 818 also adds an HSA plan to the state risk pool and Missouri state employees' health benefit package. This provision will give a tax-advantaged, affordable option with a defined out-of-pocket expense for those who do not qualify for an individual plan from a private carrier, and for those who work for the state. This option exposes employees to the actual cost of their health care.

Employees with individual policies, particularly HSA plans, are not insulated from the true cost of the premiums, as well as the cost of care. They recognize that this is their portable plan, not the employer's plan. They are aware that their lifestyles affect premiums. This realization can affect unhealthy, sedentary choices. For example, when told that his premium could be 30 percent lower if he was not a tobacco user, an individual said that was the incentive he needed to stop smoking. This self-ownership provides for more judicious utilization of insurance benefits, and promotes wellness.

HB 818's provisions allowing for small employer contributions to individual plans with pretax advantages can turn uninsured employees into insured consumers. This benefits all of Missouri.

Beverly Gossage is a consumer-based health care expert and research fellow with the Show-Me Institute, which sponsored Gossage's March 5 presentation to the Missouri Legislature on HSAs and free-market approaches to health insurance reform. HB 818 incorporates many of the ideas Gossage presented.