



Illinois Department of Financial and Professional Regulation

Division of Insurance

ROD R. BLAGOJEVICH
Governor

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Secretary

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April 25, 2006

Honorable Richard J. Durbin
U.S. Senator
332 Dirksen Senate Bldg.
Washington, DC 20510

Re: Health Insurance Marketplace Modernization and Affordability Act of 2006,
the Illinois Regulatory Perspective.

Dear Senator Durbin:

As you know, the Senate will soon consider S.1955, the Health Insurance Marketplace Modernization and Affordability Act of 2006 ("HIMMA") sponsored by Senators Mike Enzi and Ben Nelson. I commend both Senators for addressing a complex public policy challenge – how to make health insurance more affordable. We confront this challenge in Illinois, and Governor Blagojevich has urged the Division of Insurance to work creatively but responsibly to improve the affordability, accessibility and quality of Illinois' health care system. While I support the goal of making insurance more affordable, I believe that if enacted, HIMMA would worsen the insurance affordability problem and eliminate Illinois' long-standing, citizen-demanded consumer benefits and protections.

Loss of Illinois-Mandated Benefits

Section 2922 of HIMMA would preempt *every single* mandated benefit demanded by Illinoisans and not otherwise mandated by the federal government. Threatened benefits include:

- **Mammograms**
- **Maternity: Pre-Natal and Post-Natal**
- **Ovarian Cancer Screening**
- **Colorectal Cancer Screening**
- **Pap Smears**
- **Prostate Cancer Screening**
- **Diabetes Self Management**
- **Osteoporosis**
- **Well Child Care (*i.e.*, preventive pediatric care)**

Millions of Illinois citizens rely on these threatened benefits to guarantee that insurance companies pay for necessary and life-saving treatments.

Section 2922 allows any individual or group health insurance product to avoid all Illinois mandates regarding covered benefits, services, or category of provider. Illinois citizens victimized by managed care abuses may be prevented by HIMMA from relying on the Illinois Patient Rights Act. State insurance investigators, trained to identify and report violations of consumers' rights, would be prevented from enforcing consumer protection laws for which Illinoisans have fought. The changes would have a profoundly negative impact on the lives of Illinois residents.

The "affordable plan" system offered by S. 1955 would allow private insurance companies to dictate public health care policy on both the national and local levels. HIMMA would authorize insurers to offer extremely basic health plans – plans free from *all* state benefit, service, and provider laws – with the only obligation that those same insurers also offer an "enhanced option."

This purported "enhanced option" must match one offered to state employees in one of the five most populous states, effectively ceding public health care policymaking to insurers. For example, HIMMA does not limit the cost-sharing an insurer can charge, and does not require that the enhanced-option plan be comprehensive. Consistent with benefits offered in at least one of the five most populous states, an insurer could choose a high deductible/HSA plan, a plan that imposes upon the enrolled employee significant personal risk.

HIMMA would promote destabilizing risk selection. Experience shows that plans like the enhanced option – however defined – would attract less healthy individuals while basic coverage plans would attract young and healthy participants. As a result, the "enhanced option" would have such a significantly higher cost that only the sickest groups would pay to enroll, thereby resulting in adverse selection. This market segmentation makes health insurance less affordable for small businesses with seriously ill or high risk employees.

Small businesses that choose to offer the most basic coverage may pay reduced premiums in the near term, but reduced costs will not reduce need. Costs associated with the uninsured and underinsured would shift to other segments of the public and private health care systems. Additional demands would be imposed on Medicaid and ICHIP, Illinois' high-risk-pool.

Rating Requirements

HIMMA's imposition of new federal rating requirements would have less of an effect on Illinois than on other states. Illinois' small group rating law already constrains price differences between healthy and less healthy groups. However, the federal preemption provisions would thwart Illinois' efforts, similar to those in New York and Massachusetts, to adopt new and innovative solutions to address small group health insurance costs.

"Harmonization" of Health Insurance Laws

The Division of Insurance recognizes that while streamlining state processes is appropriate – a goal that the National Association of Insurance Commissioners is already aggressively pursuing – streamlining need not reduce or eliminate important consumer protections. HIMMA misdirects the focus, again detracting from consumer protections. For example, HIMMA requires state regulators to consult with insurers, verify complaint data, and determine the frequency of errors *before* beginning a review of that insurer's market and consumer conduct practices.

Creation of a Cause of Action Against States

Under HIMMA, while consumers would lose enforcement rights, insurance companies would gain unprecedented authority over regulators. The bill would allow private companies – insurers – to sue state regulators in federal courts and, in some instances, allow insurers to proceed straight to the federal court of appeals. Insurance companies would receive a privilege enjoyed by a spare few individuals or private parties – the right to expedited judicial review. Tax dollars used to defend lawsuits would further reduce state resources available to protect consumers.

Eligible Insurers

HIMMA creates an “eligible insurer,” an insurance company not licensed in Illinois that seeks to sell HIMMA-compliant benefits and operate pursuant to HIMMA-harmonized standards in Illinois. To begin selling policies, the insurer need only notify the federal government and Illinois of its intent to operate.

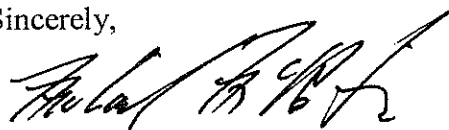
These “eligible insurers” would not be subject to state regulation and HIMMA does not define the federal regulatory oversight. Illinois citizens who buy the policy would not be protected by the Division Of Insurance, which would lack oversight authority and would be subject to a lawsuit by the insurer in federal court. S. 1955 allows eligible insurers to “self-certify” and nowhere specifies a federal enforcement scheme. HIMMA fails to provide for effective solvency regulation of an eligible insurer. In short, HIMMA would create a private insurance company devoid of meaningful regulation.

For decades, states have forcefully developed innovative ways of simultaneously protecting consumers and making insurance affordable for small business. New York, Vermont, and Massachusetts, among others, have recently developed creative programs to insure thousands of previously uninsured residents. HIMMA would limit if not eliminate the creative and constructive efforts of the individual states. We often hear those in Washington tout the states as “laboratories” to experiment and discover innovative policies. S. 1955 would shut down those laboratories and replace them with a one-size-fits-all Washington solution.

I am eager to work to help small businesses provide affordable quality health insurance without gutting consumer protections. Sen. Dick Durbin’s legislation (S.2510), the Small Employers Health Benefits Program Act, would better serve the interests of individuals and small businesses than the scheme presently contemplated by HIMMA.

Please do not hesitate to contact me if you have any questions or comments, or if you would like additional information regarding the Illinois insurance regulatory perspective.

Sincerely,



Michael T. McRaith
Director