

**NAIC RECOMMENDATIONS FOR FEDERAL ACTION**  
**Federal Relief Subgroup**  
**State Innovations (B) Working Group**  
**May 2007**

**Context for NAIC Recommendations**

- States have a better chance to implement innovative approaches and test their effectiveness. States should be arguing that best route to broader health care solutions is to let states act as laboratories that may lead to federal reforms (e.g., HIPAA reforms in 1996).
- This means at least three things for current federal health care debate: a) Congress should relax restrictions that impede state innovation (e.g., ERISA and Medicaid), b) Congress should support demonstration projects in states (e.g., grants), and c) Congress should not impose new restrictions on states that will impede state-based reforms.

**Results of State Survey (November 13, 2006)**

Departments of Insurance were asked to provide responses to the following questions:

- Has your State considered the preemptive effect of ERISA, HIPAA, or any other federal law on innovations related to making health care insurance or alternative health care financing mechanisms more affordable, particularly with respect to small group markets?
- If so, please share with us the innovations considered and any conclusions that you reached regarding the possible preemptions.

27 states (including the District of Columbia) provided responses:

- Nine stated that they had either not been keeping track of whether federal laws had preemptive effects upon any health reform efforts or that there were no such effects.
- Eighteen responded that they had encountered situations where federal law preempted or threatened to preempt health reform proposals.

The eighteen states that had encountered federal preemptions identified the following areas:

**Specific Issues Targeted for Relief**

After reviewing the survey results, and consulting other experts, the Subgroup refined the list to identify those categories on which the NAIC's efforts should focus. The Subgroup discussed all of the information submitted by the states and determined what impact the relief would have on state reform efforts and how the suggestion would be received in Congress and by other interested parties.

Those suggestions that were determined to have the greatest impact on state flexibility and have the highest potential for success – and not create insurmountable opposition – are highlighted by the Subgroup below.

***I. DATA COLLECTION***

**Recommendation**

Amend ERISA to clarify that state data collection requirements are saved from preemption. The amendment would ensure states may require employers to provide information on plan premiums and benefits and collect claims data from third party administrators. Creation of standardized data collection processes is a possibility. It would also allow states to require employers to report information on their coverage plans for purposes of implementing state Medicaid and SCHIP premium assistance plans.

**Proposed Language**

Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended by adding at the end the following paragraph:

‘(e) **Furnishing Data to States with Respect to the Impact of Employee Benefit Plans on State Insurance Markets**

(1) **Responsible State Agency May Collect Information on Employee Benefit Plans.--** The State agency responsible for the administration and enforcement of the law of a State applicable to health care and/or insurance may collect information from employee benefit plan sponsors and administrators in regard to the cost and availability of healthcare coverage or healthcare services and access of individuals to healthcare coverage through the insurance market.

(2) **Employee Benefit Plan Sponsors and Administrators Required to Provide Information on Employee Benefit Plans.--** Employee benefit plan sponsors and administrators shall provide the information requested by the State authority in paragraph (1) within a time frame specified by the State authority.

(3) **Nondiscrimination.--** The State authority may not require an employee benefit plan sponsor or administrator to provide information that is not required of other benefit plan sponsors or administrators.’

(4) **Construction.--**Nothing in this subsection shall be construed--

(A) to limit the applicability of the decision of the Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in this subsection; or

(B) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this subsection.

**II. PAY-OR-PLAY**

**Recommendation**

Amend ERISA to clarify that pay-or-play requirements that are neutral as to whether an employer pays an assessment or offers health benefits and make no prescriptions regarding the form of benefits offered to employees are saved from preemption.

**Proposed Language**

Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end the following paragraph:

‘(10) (A) Nothing in this section shall be construed to prohibit a State from granting a credit or imposing an assessment on employers based on their contribution to the group health benefit plan of employees, provided that the State does not specifically define the type of plan to which the employer must contribute.’

(B) **Construction.--**Nothing in this paragraph shall be construed--

(I) to limit the applicability of the decision of the Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (A); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

### **III. WAIVER AUTHORITY**

#### **Recommendation**

Amend ERISA to grant the Secretary of Labor the authority to grant waivers from that statute for the purposes of encouraging and facilitating innovative state initiatives to expand health insurance coverage, contain health care costs, and to improve the quality and efficiency of health care.

#### **Proposed Language**

Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end the following paragraph:

‘(9) (A) Subsection (a) shall not apply to any State law to the extent such law conforms to or reflects the provisions of a comprehensive health insurance plan developed and implemented by the State and certified by the Secretary of Health and Human Services.’

(B) Construction.--Nothing in this paragraph shall be construed--

(I) to limit the applicability of the decision of the Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (A); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

### **IV. FEDERAL GRANTS**

#### **Recommendation**

Create a new federal grant program that will provide qualified states both start-up and operation funds to develop and implement innovative health insurance reforms that will address access and affordability of health insurance and health care.

#### **Proposed Language**

Baldwin/Price and Voinovich/Bingaman legislation.