



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

June 22, 2017

The Honorable Mitch McConnell, Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Schumer, Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

As the Senate now considers its version of health care reform, we are pleased to offer New Hampshire's insights on improving the health care system in the United States through a focus on transparency, competition, and an improved partnership with states that includes reliable, adequate federal funding and more flexibility for states to choose their own approaches to addressing the cost of care.

In New Hampshire, the Affordable Care Act (ACA) falls short because it lacks a coherent approach to stemming rising costs, relies too heavily on bureaucratic, centralized systems controlled by the federal government, erodes the doctor-patient relationship and fails to give states sufficient flexibility to develop their own approaches. In short, our current health care system is no longer affordable for patients or taxpayers and has caused premiums to explode. It has failed to bend the cost curve in health care spending and has not reduced the federal deficit.

We appreciate the House and Senate's commitment to moving forward legislation that corrects these problems and to continuing the conversation with political leaders at the state level, where many of the reforms will have to be implemented. Our central message is that states need sufficient time, reliable funding, and greater flexibility in order to play their proper role in shaping and implementing solutions. Health insurance is a necessity of modern life and while reform is critically necessary, it must be replaced with something that works for people. To be clear, reform without an adequate replacement is not an acceptable option. Any repeal of the ACA must be simultaneous with a replacement.

While we have not been able to support the American Health Care Act (AHCA) as it passed the House, we are confident that considerable improvements will be made and we hope you will consider our insights as you continue your deliberations.

In recent years, New Hampshire has been an innovator in the development of healthcare solutions. Some of our innovations and efforts in many cases predate or transcend the ACA. For example:

- New Hampshire has retained full regulatory control over its insurance markets, a traditional state function, while leaving the construction and operation of ACA systems like the exchange to the federal government.
- Our Medicaid expansion uses private insurance plans to cover the expansion population, which has increased competition and doubled the size of our individual market.
- Our response to the opioid and behavioral health crisis has focused on making access to these services on par with medical-surgical services in the private market, and at the same time exploring innovative delivery systems and care coordination for our Medicaid population through the state's transformation waiver.
 - The availability of health coverage to the expansion population -- in particular, coverage for behavioral health and substance use treatment services -- has been a key component of New Hampshire's response to its opioid crisis.
- We are recognized as a national leader in health cost transparency, using the state's all-payer claims database to empower consumers and employers to lower costs (such as NH HealthCost: <http://nhhealthcost.nh.gov/>), as well as creating innovative, data-driven public policy approaches.

It is imperative that Congress act in a way that does not diminish the availability of – or funding for – approaches like New Hampshire's. We already have urged that cost-sharing reductions (CSRs) be funded, until such time as there is clarity about what replacement of the ACA will mean for insurance market rules.

In addition, we suggest that Congress consider the following:

1. Retain state primacy in regulating health insurance.

Preservation of the system of state-based insurance regulation 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 a broad spectrum of 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, one of the biggest barriers to market entry by new carriers is the difficulty of building a provider network that puts the carrier in a position to offer premium rates that are market-competitive. New Hampshire's analyses of claims data support a finding that transparency enhances competition by helping insurance carriers and providers better understand the market in which they are operating.

Additionally, giving states the flexibility to tie their Medicaid programs to work requirements (like TANIF) is critical. We believe rejection of mandatory job requirements by the federal government was a poor decision. All Medicaid recipients, not just the expansion population, who can work should be required to have an actual work requirement, since they are able-bodied adults. By actual work, we mean paid employment, not the TANF definition of "work related activities," which includes activities that don't translate into job readiness. Bottom line, states should be allowed to set up and define work requirements for the entirety of the Medicaid population without federal interference.

2. Make funds available as soon as possible to help state insurance regulators stabilize their markets and give insurance companies sufficient time to react to federal changes.

It appears likely that New Hampshire will face significant premium increases in 2018. To address

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this challenge, the New Hampshire Legislature just passed HB 469, a law that will give the state's insurance commissioner the ability to establish market stabilization mechanisms, including applying for any federal waiver opportunities that may be available. However, the current waiver provision in the ACA (Section 1332) is cumbersome and unwieldy, geared to significant changes in coverage design. Instead of this onerous waiver process, we urge the Senate to act as quickly as possible to create a market stabilization fund to which states can make an expedited application. While we would not seek to waive out of the preexisting condition coverage requirement, this would allow states such as New Hampshire to stabilize their markets quickly without altering state market rules or standards relating to covered benefits or consumer protections.

In addition, 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 is harmful to state markets. States are in a better position than the federal government to develop mechanisms to address market instability – but as with the Medicaid program, sufficient funding will be key to the success of any market stabilization effort.

3. Give states sufficient time, funding, and flexibility to develop state-specific Medicaid approaches.

Development of an approach and passage of state legislation will take time. States need to be able to understand and fully investigate their options before changes to existing systems take effect. For example, New Hampshire's current approach to Medicaid expansion combines two complex systems, Medicaid and private insurance regulation. It took years to develop and is currently authorized through the end of 2018. Insurance carriers' 2018 rates have already been developed and filed for state approval under the assumption the expansion population will be part of the individual market risk pool. Mandatory federal changes to the program prior to 2019 would not only be difficult for the state Medicaid agency to implement but would disrupt state insurance markets.

The New Hampshire Legislature is in the process of passing its biennial budget. Changes in funding associated with the Medicaid program could have a significant impact on the state budget. It would be highly disruptive, not to mention inefficient, to make changes in the availability of federal funding without giving states sufficient time to take legislative and budgeting action in response.

While New Hampshire uses private coverage to serve the Medicaid expansion because of the ACA's flaws, the state has not been afforded full flexibility to address the cost of care using market forces and innovative plan designs. For 2019 and beyond, the state would welcome the opportunity to further refine this program free of the Medicaid-specific constraints (for example, the requirement of added layers of appeal and the prohibition on cost-sharing for emergency room use) that have hampered the state's ability to address costs efficiently through market forces. We recommend that any changes provide a clear description of what flexibility states have, including during the transition periods.

4. Encourage state-based efforts to enhance competition through health cost transparency.

People buying Obamacare plans at full price face high deductibles, but the way subsidies are structured does not incentivize individual consumers to use lower-cost providers, which lowers costs to the system as a whole. Through NH HealthCost, a 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 has made citizens active participants in their care, encouraged competition and led carriers to develop plan designs that encourage the use of low-cost, high-quality care providers. Unfortunately, the US Supreme Court's 2016 ruling under ERISA in *Gobeille v. Liberty Mutual* has 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.

To enhance the transparency that fosters competition in health insurance markets, Congress should amend ERISA to confirm states' authority to gather health claims data from insurers and third-party administrators in a manner that, as in New Hampshire, fosters effective state insurance regulation and competitive markets. New Hampshire is able to do this without creating privacy concerns, as our statute bars the submission of any personally-identifiable information in connection with the database. This approach could serve as a model for other states seeking to improve competition through health cost transparency.

Reforming our nation's health care system is imperative and our leaders must take swift, but thoughtful bipartisan action that is transparent and welcomes all sides to the table. We would look favorably on free market reforms that would expand Health Savings Accounts (HSAs) and deregulate Association Health Plans (AHPs) to allow small businesses to pool together across state lines through their membership in a trade or professional association to purchase health coverage for their employees and their families.

In New Hampshire, we pride ourselves on a system of government that demands that we work together past the politics for the common goal of positive outcomes. We hope that as you and New Hampshire's senators consider reforming health care that you consider not only New Hampshire's health care experiences but also our tradition of approaching major public policy reforms in a bipartisan manner.

Sincerely,



Christopher T. Sununu
Governor



Charles W. Morse
Senate President



Shawn N. Jasper
Speaker of the House