



# North Dakota Insurance Department

January 13, 2017

The Honorable Kevin McCarthy  
Majority Leader  
United States House of Representatives  
2421 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Kevin Brady  
Chairman, House Committee on Ways and Means  
United States House of Representatives  
1011 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Fred Upton  
Member of Congress  
United States House of Representatives  
2183 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Virginia Foxx  
Chairwoman, House Committee on Ed and Workforce  
United States House of Representatives  
2262 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Greg Walden  
Chairman, House Committee on Energy and Commerce  
United States House of Representatives  
2185 Rayburn House Office Building  
Washington, D.C. 20515

Dear Majority Leader McCarthy, Chairman Brady, Chairwoman Foxx, Chairman Walden and Congressman Upton:

First, I wanted to thank you for the opportunity to provide input and recommendations on what *A Better Way* for health care means and just how important it is to North Dakota. Thank you for recognizing the important role Insurance Commissioners can and should play in our nation's health system. As you are likely aware, I was elected to the office of Insurance Commissioner by the citizens of North Dakota, and I am grateful for this opportunity to provide input on their behalf.

We can all agree that North Dakotans (along with the rest of the country) deserve affordable health care coverage that works. That coverage can be provided through employers, the individual market, or through Medicare or Medicaid. No matter who is providing the coverage, health insurance needs to be affordable, accessible and flexible. All the things that unfortunately didn't come to fruition under the Affordable Care Act (ACA).

Prior to the implementation of ACA, North Dakota had products that were offered by carriers that were both affordable and provided extensive coverage. This coverage was created by the choice of the consumer and the price was determined by the particular benefits within the policy. When the ACA required Essential Health Benefits to be in all plans it substantially drove up costs to the consumer.

The changes to grandfathered plans and the restrictive changes employers had available to change premium also had a substantial impact in North Dakota. The employees under these plans lost status due to changes in contributions and they were forced into an ACA plan that was not affordable for the employee or employer. Limited benefit plans were also an option in the individual market for North Dakotans as an affordable option that gave them some coverages.

North Dakota has lost carriers in both the group and individual markets due to ACA. In 2009 North Dakota had 13 carriers in the individual market and 10 in the small group market. These markets in 2015 represented 8 in the individual and 7 in the small group market. Out of these carriers only 3 carriers are actively marketing products to consumers in these two markets. The ACA has directly negatively impacted competition which drives up prices and limits choices for consumers.

The ACA was intended to have significant impacts and it didn't disappoint, however, the main impact this legislation has had was to put North Dakotans on a health insurance cost trajectory that is unsustainable. Many of our North Dakota consumers are reaching the point where health insurance is simply no longer affordable. Some of the ACA requirements that have created this unsustainable trajectory include:

- Essential Health Benefits (EHB) benchmark plans that create a floor for benefits
- Three-to-one rate bands based on age
- Guaranteed availability and issue requirements
- Prohibitions on pre-existing condition exclusions
- Prohibitions on annual and lifetime benefit limitations
- Increased overhead costs for insurance company administration

Some of these requirements have positive aspects, but by requiring all ACA-compliant plans to meet or exceed these requirements, the ACA has dramatically impacted the insurer's flexibility to design plans that meet consumer demand. Essentially, the ACA removed the market and competition from the health insurance world. The end result for the consumer has been less competition, less choice and higher prices. Our main and substantial ask would be to allow North Dakota the flexibility to set our own course when it comes to health insurance.

The fundamental reason for state government regulation of insurance is to protect our consumers, and who can understand that duty better than those within the borders of our state? State systems are accessible and accountable to the public, and sensitive to local social and economic conditions. State regulation has proven that it effectively protects consumers and ensures that promises made by insurers are kept.

Many of the questions contained in your letter were driving to the heart of what a new health insurance marketplace looks like, and you will likely receive 50 different answers to each of those questions. This drives the point home; one-size-fits-all regulations do not work. Americans, especially those here in the Midwest, spoke loudly this past election, and the message that was sent was that Washington, D.C., does not know what is best for us. We must be responsible for our own future. I would encourage you to listen to your fellow Americans and put your trust back into the union. As a state, we are capable, we are able and by design we are more responsive than the federal government ever can be. You have a golden opportunity to return this authority for health insurance back to where it belongs - closer to the people - and allow the states to regain their rightful role as the incubators of democracy.

There are some simple ways to provide for more state flexibility in health insurance reform:

- Allow states to redefine the benchmarks for Essential Health Benefits
- Allow states the flexibility to determine what plans work for their markets
- Allow states to set the timeline for submitting rates and forms

Inherent in state flexibility is the recognition that states are and should remain the primary regulators of their own insurance markets. Within that parameter, there has been a lot of discussion surrounding the ability of health insurers to sell their products across state lines. But, let's not forget that this option already exists. States already have the ability to allow insurance products approved by other states to be sold in their states, or to enter into compacts with other states to further facilitate cross-border sales. Many states have specifically allowed for these types of agreements, but to my knowledge not one insurance company has taken advantage of it. This well highlights the geographically-specific nature of health insurance and shows, once again, that the markets work and one-size-fits-all regulation does not.

Should Congress force states to allow insurance products approved by other states to be sold in their state, it would fundamentally undermine the principles of state-based regulation. This direction would once again lead us down a path of the federal government overreaching its duties at the cost of self-determination. A vast majority of North Dakotans have grown weary of a far-off federal government that is not responsive to their concerns. Moving regulation out of the hands of the states would simply be trading one bad law for another. Preserving our authority as the primary regulator is paramount to any changes that come in removing the ACA. I would strongly advise you to focus on promoting flexibility within the framework of the law, rather than unintentionally stripping states of their role of primary regulators within the health insurance market. Fundamental to improving North Dakota's flexibility and properly acknowledging the principles of state based regulation is the principle of allowing each state to make its own decision about which products can be sold to its consumers.

Inherent with any change comes instability and unpredictability. During this transition to *A Better Way*, I urge you to work in the short term to stabilize the existing marketplace. There is currently a sense of uncertainty in our health care system and if that is allowed to grow, there is a potential for our markets to be undermined before any reforms can be implemented. In the short term, the focus must be on providing certainty to all. Businesses thrive on certainty and predictability, and I urge you to be open and transparent with regard to what changes are coming, providing advance notice of these changes, and allowing for the necessary time to make these changes without unnecessary market disruption. Our insurance market has faced 8 years of uncertainty and unpredictability. The rules of the game have been constantly changing under the ACA so we need to remain sensitive to this while working in the best interest of the consumer.

Ultimately, our goal remains the same: providing health insurance that is affordable, accessible and flexible. It is our belief that this can be accomplished without destabilizing the marketplace. Therefore, I suggest the following:

- Establish a system for verification of Special Enrollment Period qualifications in 2017
- Modify federal risk adjustment formula to address flaws in the methodology that creates competitive disadvantages
- Address the issues created by the 90-day grace periods
- Address the issue of consumers eligible for other government coverage while enrolling in Exchange plans
- The strongest signal that could be sent, albeit one that continues increased government spending, is to fund temporary, transitional programs, including cost-sharing reductions and reinsurance through 2018. The ACA was not implemented overnight and all-out repeal overnight is simply not responsible or prudent.

Our health insurance market has been dramatically changed since the passage and implementation of the ACA. It has taken 6 years, and during that time our consumers and our companies have had to endure increasing costs, unpredictable rulemaking, and broken promises. You won't find a bigger supporter of a prompt and speedy reform of the ACA than the Insurance Commissioner of North Dakota, however, I also understand the reality Congress is facing.

The last thing America needs is another hastily-passed health care law without proper and prudent input from stakeholders across the country. This is why short-term stability is so critically necessary to get our system right for the long-term.

Finally, any discussion regarding health insurance must also include a discussion of the main cost-driver: the cost of receiving health care. The health care delivery model in this country needs to change. There is no way to truly address the increasing costs of health insurance, without addressing the issues of health care delivery. My hope would be that you look to reward those providers who are coming up with innovative solutions to complex problems. Our goal should always be fair pricing for provider services, no matter who the payer is (government, employers, or individuals). We should seek to incentivize those providers who are transparent regarding the specifics of the charges for services and procedures, this should help reduce the cost inflation we are currently seeing. Also, enacting laws or policies that eliminate the abuses present within the Medicare and Medicaid programs would help reduce the costs to the taxpayers supporting these programs.

We are just at the beginning of this process and I ask that you keep an eye on the marketplace while developing a plan that provides states the ability to regulate and define their own markets; that you recognize and respect the independence and inherent creativity within the states, and provide for options for consumers to have access to affordable health care. I, again, ask you to focus on stability within the marketplace in the short-term, allow the states to regain their rightful place as the incubators of democracy, and address the ever increasing costs of health care. Specifically, I ask the federal government to consider stepping out of the way and allowing states to be the engine of America we have always been. Our citizens, our families and our businesses across North Dakota and America are relying on you to get this right.

Thank you for your willingness to solicit input from Insurance Commissioners across the country. Thank you for the opportunity to express North Dakota's thoughts on what a new health insurance market looks like. As noted, this is just the beginning of a long conversation and I look forward to being partners as we all move forward.

Kind Regards,



Jon Godfread  
Insurance Commissioner

Cc: The Honorable Kevin Cramer, Member of Congress, North Dakota At-Large  
Cc: The Honorable Doug Burgum, Governor, North Dakota