NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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Statement of the
NATIONAL ASSOCIATION OF REALTORS®
To the Senate Finance Committee on
"Description of Policy Options
Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans"
May, 2009

Introduction

The debate on health insurance reform as it applies to the American workforce has traditionally focused almost exclusively on the relationship between employers and employees, the deduction that employers receive for providing health insurance coverage and the exclusion from employees' income of health insurance benefits. Given the key role of employers in today's health coverage system, this attention is understandable.

However, the problems facing the self-employed – a category that includes the membership of National Association of REALTORS® (NAR) - have been, for the most part, overlooked. It is our hope that the current reform effort will recognize the unique challenges faced by the self-employed and provide the attention needed to address the needs of this fast-growing component of the American workforce.

NAR's members are the individual real estate agents, brokers and broker/owners who help consumers buy or sell a home and other types of real property. The overwhelming majority of agents are not employees of the realty offices with which they are affiliated. They are independent contractors, a separate legal business entity from the real estate company itself. Real estate firms, the businesses with which these independent agents are affiliated, are likewise small firms which typically have fewer than five salaried employees. Our most recent survey work indicates that this system has not served our members' needs as 28% of our 1.2 million members are uninsured.[1]

We thank the Committee for the opportunity to comment on the coverage overview document and look forward to continued conversations.

[1] It's interesting to note that the percentage of uninsured Realtors® is almost double that of Americans as a whole. In 2004, for example, the percent of the U.S. population without health insurance coverage was estimated to be 15.7 percent compared with the Realtor® percentage of 28 percent.

Non-Group, Micro-Group and Small Group Market Reforms

Rating Rules. The nation's state regulated individual and small group health insurance markets are not working for the self-employed and small businesses. As a result, NAR's policy supports (1) uniform federal rating rules for the individual and small group markets, (2) guaranteed issue and guaranteed renewal rules, and (3) a prohibition on health status as an underwriting criterion. While the use of age as a rating criterion is one that may negatively impact our membership, we are supportive of its use as an appropriate rating factor, just as we are of the use of geography.

While we believe that many of our members may benefit from the proposed 7.5:1 ratio rating ratio, we are very concerned as to the impact that such a ratio would have on our self-employed members located in those states that currently have community rating rules or narrower allowable ratios than those anticipated for the Exchange policies. We do not believe that reform efforts, which are intended to improve access and affordability, should penalize those living in states that have adopted more rigorous standards.

Fragmentation of Small Business Insurance Markets. As an organization of self-employed individuals and small employers, NAR is unsure of the rationale behind:

- dividing the small group insurance market into "non-group" (self-employed/individual), "micro-group" (2-10 employees) and "small group" components, and

- allowing the "small group" market for firms with more than 10 employees to be defined by the states.

NAR has always advocated for reforms that would ensure that all small businesses – the self-employed and small employers - -are treated equally. We are greatly concerned that, as outlined, this proposal would not support this goal and would, in fact, reverse what gains have been made in the 13 states which include the self-employed in the small group market. At this point, it is unclear, to what extent such a change for these purposes could have in other areas where the small group definition is used.

Additionally, we are concerned that the bifurcation will further fragment small group insurance pools, create an uneven playing field for the self-employed and smaller firms vis-à-vis the rest of the small firm universe, and create the potential for some participants to "game" the system. We would strongly urge that any national reform proposal include the self-employed in a small group market, and provide a single, common federal definition for what constitutes the small group market.

One possible solution to the dilemma of how to effectively pool for small groups, micro groups and the self-employed would be to provide them with a separate Exchange model similar to what has been proposed in the Small Business Health Option Program Act (SHOP), re-introduced by Senators Durbin (IL), Snowe (ME) and Lincoln (AR) as S. 979 on May 11, 2009.While we feel too many Exchanges would cause confusion for consumers, we feel that it is necessary to give small business and the self-employed the proper treatment so they can better afford coverage via shared risk. A small group market federally defined as 1-100 would be an improvement over many state rating systems while negatively affecting very few.

Questions:

1. Is the decision to place the self-employed and the smaller employers into the individual market one that is based on actuarial analysis that demonstrates the benefits to these two types of small businesses?
2. Will the new individual/micro market be a true merger where all covered lives are pooled together? Or will there be two risk pools created with the individual participants be risk pooled separately from the micro-group participants?

Health Insurance Exchange

Exchange as an Informational Source. Realtors® and the other self-employed workers know how difficult it is to find an objective and comprehensive source of information on the array of health insurance products and make an informed decision on the plan best suited to their needs. In today's marketplace, no one comprehensive source of information exists and access to expertise is many times limited. It is for this reason that we would welcome the incorporation of an "Exchange" to serve as an intermediary that assists individuals and firms in acquiring health insurance in any health coverage reform proposal.

We would hope that any such Exchange include not only access to the array of policies available in a given marketplace but that it also include assistance and/or decision software that would assist the participant in identifying the subset of available policies that best fit their individual circumstances.

Exchange as Administrator. NAR has long held that administrative overhead and inefficiencies have been a major contributor to the high cost of health insurance premiums in the individual and small group market. For this reason, we believe that the proposed Exchange will play a major role in improving upon the current coverage delivery system. The role of the Exchange as the administrator charged with implementing the new federal rules is also one that we believe is an appropriate one.

Multiple Exchanges. Except for the possible creation of a small group Exchange as envisioned in the SHOP Act, NAR remains concerned that too many Exchanges could not only create confusion for the consumer, but increase administrative costs instead of decrease. We believe that the number of Exchanges should be limited and that coordination between the states and the National Exchange is vital.

Transition

Grandfathered Plans. Though NAR has no policy that would allow us to take a position on the proposal to allow individuals who currently have coverage and small employers who currently provide coverage to their employees to maintain such coverage (grandfathered plans), we would pose a number of questions:

1. Would an employer plan be required to meet the minimum credible coverage requirements in order to be grandfathered?

2. If not, would that grandfathered plan meet the individual mandate requirement for employees participating in the plan?
3. Could this exception create an unlevel playing field that would provide grandfathered firms with an inappropriate advantage over other firms that were previously not able to afford coverage for employees or that choose to forgo their former plans in order to provide credible coverage?
4. What is the potential for adverse selection as the result of this grandfathering clause?

Role of State Insurance Commissioners

NAR supports the traditional role that state insurance commissioners have played to ensure that consumer protection laws are enforced. The state insurance commissioners have demonstrated that they are best positioned to provide the oversight of plans with regard to consumer protections (e.g., grievance procedures, external review, oversight of agent practices and training, market conduct), rate reviews, solvency, reserve requirements, and premium taxes.

Observation:

1. The coverage document indicates that the state insurance commissions "…. would provide oversight of plans with regards to federal rating rules and any additional state rating rules and facilitate risk-adjustment within service areas." Further clarification as to what "additional state rating rules" could apply to plans offered through the Exchange would be most helpful.

Benefit Options

NAR policy supports benefit options that provide a range of medical benefits that include both primary and preventive care options needed to maintain health and wellbeing. We have long held that no single policy or list of mandates can satisfy the competing tensions between (a) assuring all desired (or desirable) coverage and (b) creating affordable products. For this reason, we are pleased to see that the option outlined adopts an actuarially-equivalent approach to defining credible coverage.

We do believe, however, that care must be taken to ensure that any standards established are crafted so that products are affordable and designed to meet the needs of a population that varies in its need for an array of covered services. Without an affordable option, the best reform plan will fail to meet the needs of households for accessible coverage.

For this reason, we ask that any proposal to not allow plans to include lifetime limits on coverage or annual limits on any benefits or not charge cost-sharing (e.g., deductibles, copayments) for preventive care services be carefully considered.

Tax Credits

Although the coverage summary document is silent on the tax credit treatment of the self-employed, it would appear that, as written, NAR's self-employed members would be eligible for the low-income tax credits but not the small business tax credit. NAR's policy has been to advocate for equal tax treatment of all small businesses, including the self-employed. As a result, NAR has advocated for making self-employed business persons eligible for small business tax credits designed to make health coverage premiums more affordable.

While we are intrigued by the proposed individual subsidy credit, given the level of detail provided by the coverage document on the credit's structure, we have been unable to assess its usefulness for our membership at this point in time. Our comments, therefore, are less complete than we would have liked to provide. We look forward to finding out more about the individual credit and assessing its value for our membership.

Individual Tax Credit. For the five percent of NAR members who are either (1) brokers who earn all or a portion of their income as a salaried manager of a realty office, or (2) salaried sales agents, the individual tax credit is a necessary component of reform. We believe that the credit will also help to make the individual mandate more affordable for the salaried employees of realty firms. Anecdotal reports indicate that even when a real estate firm offers coverage to its salaried staff, the take-up rate is limited. We would expect the individual tax credit to increase the take-up by employees of realty firms.

NAR believes that if an individual requirement for coverage is included in the final bill, subsidies and opt-outs are essential to help working Americans afford even the most basic plan. We believe that the Committee's approach of allowing subsidies for up to 400% of federal poverty level (FPL) is an important recognition of the difficulties individuals will continue to face in affording coverage until costs are contained.

Small Business Tax Credit. The National Association of Realtors strongly holds that the tax treatment of health insurance premium expenses should not differ by the size of the business entity. This principle is an underlying construct of the NAR-supported Small Business Health Option Program Act (SHOP).

As outlined in the coverage paper, a qualified small real estate firm would be permitted to deduct the cost of employee premiums they pay and to also claim the small business tax credit. The discussion paper, however, is silent on the tax treatment anticipated for insurance premiums paid by – and on the applicability of the small business tax credit to - self-employed individuals, like NAR's sales agent members.

Real Estate Firms. Real estate firms are small firms which typically have fewer than five salaried employees – a receptionist, bookkeeper, office assistants, transaction coordinator, etc. This is likely even the case for most "name-brand" offices, e.g. Prudential, Century 21, Coldwell Banker, etc., since most offices are independently-owned franchises.

Like other small businesses, realty firms have struggled to provide health insurance coverage to their salaried employees. The 2006 NAR Firm Profile survey showed that 39% of real estate firms offer health insurance coverage to their salaried staff, but only 30% contributed to the cost

of the premiums. When asked what constituted the largest barrier to offering employee coverage, cost is cited. We are hopeful that the proposed tax credit will mitigate the burden that an employer mandate will place on realty firms which are struggling to survive in today's tough real estate market.

Independent Real Estate Sales Agents. Currently, 95% of all sales agents are independent commissioned sales agents. Realty agents are treated as self-employed independent contractors so long as they meet the requirements set out in IRC Sec 3508. They also may deduct the cost of their health insurance premiums. In order to assure that all small businesses are treated equitably, NAR believes the self-employed small business person should be allowed to deduct the cost of insurance premiums and be eligible for the small business credit just as an individual who employs himself and one additional person would be allowed to do.

Observation:

1. Compensation may come not just in wages, but in the form of commissions, tips and bonuses. Any tax credit should address these differences in the definition of wage, so as not to disadvantage certain professions from utilizing the credit.

Inequitable Payroll Tax Treatment. There is one additional tax inequity that we would hope could be addressed as a part of the reform effort. Currently, when an employer pays any portion of an employee's health insurance premium, the employee does not recognize any income. As the payment is not treated as income, neither the employer nor the employee pays any payroll tax on the employer's payment. The self-employed person does not receive that same treatment. While the self-employed person is permitted to deduct their health insurance premium payments in computing taxable income, the self-employed person is nonetheless required to make payroll tax payments on the premium amount. This is an inequitable result. This fundamental unfairness should be eliminated so that the self-employed, are on the same footing in computing their Self-Employment Contributions taxes as employers and employees.[2]

Public Health Insurance Option

While the results of the March 2009 NAR national polling project of both registered voters and Realtors, conducted by the bipartisan polling team of Hart Research and Public Opinion Survey, underscored how dissatisfied Realtors® are with the current health delivery system, it is also clear that the Realtor® community holds strongly to the belief that individuals should have the ability to choose their preferred health insurance plan from an array of private policy options that offer choices in the scope of covered services and policy costs.

As a result, Realtors® are concerned about reform proposals that would create a new public government health coverage option that would compete with private providers. Realtors® believe (1) the market functions best when there is a level playing field between all

[2] S. 727, the Equity for Our Nation's Self Employed Act of 2009, which would address this inequity, was introduced by Senators Bingaman (NM) and Hatch (UT) on March 26, 2009.

providers of a given service and (2) private plans would be unable to compete with a public plan.

NAR believes insurance reform should *increase* plan choices and affordability for the self-employed, not eliminate the options that those of our members who are fortunate to have coverage currently enjoy. Even if the potential for crowding out of privately-provided insurance choices via a public plan is modest, a public option remains a major concern to Realtors®. Among Realtors® who strongly support major health reform, only 25% supported the creation of a public plan.

Realtors® are not alone in this belief. Among registered voters who strongly support health reform, only 35% of those surveyed indicated support for a public plan option.

As a result, it is our hope that any reforms enacted build upon the private insurance system. In addition, we would hope that any new regulatory framework enacted is given the time and opportunity to demonstrate that it can achieve the desired ends before more radical, larger scale reforms are implemented.

Personal Responsibility Coverage Requirement & Employer Requirement

Individual Mandate. While NAR understands the policy arguments for an individual coverage requirement, currently, Realtor® support is lacking for such a mandate. In our most recent March 2009 poll of NAR members conducted by the bipartisan polling team of Hart Research and Public Opinion Surveys, even among those who strongly favor health reform, only 27% supported an individual mandate. As a result, NAR does not have policy that would support an individual mandate.

This lack of support is not surprising given the difficulties that many Realtors® have had with finding affordable and available health coverage for themselves, their families and their salaried employees. In each of our surveys of Realtors® since 2004, cost has been cited as the overwhelming reason that 28% of the nations' 1.2 million Realtors® have no health insurance.[3]

As with a public plan option, Realtors® are not alone in their opposition to an individual mandate. The same March 2009 survey indicated that among those registered voters who strongly support reform, only 33% indicated support for an individual mandate.

Should an individual mandate be a part of any reform proposal, it is imperative that the self-employed are eligible for significant subsidies (individual tax credit or small business tax credit) to improve affordability and/or have the ability to opt out of the requirement. Further clarification is needed as to the thresholds and circumstances, i.e. "hardships", which would trigger an exemption from the requirement under the committee's proposal.

[3] Interestingly, pre-existing conditions were cited by only 7 percent of all respondents as a reason.

Employer Mandates. Policy adopted by the NAR Board of Directors opposes employer mandates. This position is a reflection of the low level of support expressed by Realtors when polled on an employer mandate - only 11% of NAR's membership who are strongly supportive of health reform indicate that they also support an employer mandate. It is interesting to note that this low level of support is not that much different than the 35% support expressed by registered voters who strongly support reform who were also polled by Hart Research and Public Opinion Survey in March of this year.

The broad outlines of the employer mandate option in the coverage summary do raise a number of questions as to how a broker owner of a realty firm would be expected to implement an employer mandate:

1. While it is clear that a realty brokerage owner would be expected to provide coverage for their salaried employees, would the owner also be required to provide coverage to the independent contractor sales agents that are affiliated with the brokerage?
2. If yes, has consideration been given to how such a requirement would interplay with many state independent contractor laws that prevent that owner from providing benefits to an affiliated independent contractor?
3. If the owner is not required to provide coverage to its affiliated contractors but chose to do so, would the sales agents be eligible for coverage through the Exchange? Would the sales agents be treated as an employee for purposes of calculating any phase out of the credit?
4. Will the average annual income limits of $20,000 be indexed for future years?

Options to Prevent Chronic Disease and Encourage Healthy Lifestyles

Realtors believe that the American health insurance system should enhance health and well being by providing preventive and chronic disease management services. Prevention and disease management must be a component of any eventual health insurance reform measure. Prevention, along with ensuring that individuals have continuous coverage, i.e. no gaps in their coverage, are necessary components for an effective, efficient and cost-effective health care delivery system.