Testimony of

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On Behalf of

The National Association of Insurance Commissioners

Before the

Senate Health, Education, Labor and Pensions Committee

Regarding:

Stabilizing the Individual Health Insurance Markets

September 14, 2017

Good morning Chairman Alexander, Ranking Member Murray, and distinguished members of the Committee. My name is Ray Farmer and I am the appointed Director of the South Carolina Department of Insurance and Secretary-Treasurer of the National Association of Insurance Commissioners[1] (NAIC). I testify today on behalf of the membership of the NAIC and I thank you for this opportunity to discuss how to immediately address an issue of critical importance to state regulators: the uncertainty and resulting lack of stability in our individual health insurance markets.

As state insurance regulators, we have seen firsthand the effects of the Affordable Care Act's (ACA's) health insurance reforms on our markets, and the results have been mixed. In some states, the individual market is struggling and, in a few, it is on the verge of collapse. In these states, premium increases, limited plan options, little or no competition, rising cost-sharing and more limited options have combined to create a health insurance market that fails to meet the needs of consumers and is unsustainable. However, in other states, the individual market is robust, with increased enrollment and stable premiums.

While the experiences of the states have differed, every state regulator is concerned that things could be worse in 2018 if the necessary legislative and administrative actions at the federal level are not swiftly taken. Specifically, immediate action must be taken to: 1) ensure health insurance carriers will be reimbursed for the reduced cost-sharing plans they offer to lower-income

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

consumers under the Cost-Sharing Reduction (CSR) program under the ACA; and 2) create a federal reinsurance program with permanent funding similar to that which operated in 2014-2016, to spread the volatile risk in the individual market. Both of these actions would help stabilize rates, encourage carriers to remain in the market, and improve consumer choices.

To be clear, the CSR program provides financial assistance to consumers. The reimbursement to carriers under the CSR program is in no way a "bailout" for health insurance carriers. Pursuant to Section 1402 of the ACA, issuers that sell Qualified Health Plans (QHPs) on the Exchange must offer Silver plans with lower deductibles and coinsurance – plans with a 94% actuarial value, an 87% actuarial value and a 73% actuarial value, depending on income - but must charge the same premium as the 70% actuarial value Silver plan. The ACA also clearly states that the Secretary "shall make periodic and timely payments to the issuer equal to the value of the reductions" to compensate them for Section 1402's requirement. Fulfilling the federal law's requirement to reimburse health insurance carriers for benefits they are providing to lower-income consumers is not a bailout by any stretch of the definition.

If the federal government fails to fulfill its obligations to reimburse health insurers, insurers will have only two choices: 1) stop selling plans on the Exchange or in the individual market altogether; or 2) significantly increase premiums for all plans or just the Silver plans. If carriers have to raise premiums by 15-20% to offset their losses under the CSR program what will be cost to the public? As estimated by the Congressional Budget Office in its August 2017 report "*The Effects of Terminating Payments for Cost-Sharing Reductions",* increasing the Silver plan premiums will cost the federal government $194 billion over the next 10 years in increase tax

credit payments and there will still be more consumers in areas with no coverage options. In addition, it must be noted that while those receiving tax credits may be protected from the higher premiums, those not eligible for tax credits could be hit with significant premium increases or be forced to move to a Bronze plan that has higher cost-sharing.

The best option is for the federal government to pay its obligations under the law. And, assurances that these payments will be made in 2018 must be made now. On August 10th, CMS/CCIIO issued an FAQ that allowed carriers to adjust their rate filings and finalize them by September 20, 2017, while carriers must sign their contracts to sell on the federal Exchange by September 27, 2017. Insurance carriers need to know now under what rules they will be operating in 2018, and they must know now before rates are finalized and contracts are signed.

In addition to uncertainty in the federal funding, uncertainty in the risk pool has also increased premiums and moved some carriers to stop selling on the Exchange. The risk pool in many states is much sicker than expected and extraordinary claims have resulted in significant losses for some carriers. To address this, the NAIC supports the creation of a federal reinsurance program to spread the risk of the small, volatile individual market to a larger pool. We recommend that $15 billion per year be provided to cover high claims. This is a program that can be implemented quickly as it is similar to the program that work successfully in 2014 -2016 under the ACA. Protecting carriers from outlier claims and spreading the risk of the individual market will stabilize rates for consumers and encourage carrier participation, giving consumers more choices.

In addition to fully funding the CSR reimbursements and creating a federal reinsurance program, to address high risk claims, the NAIC also recommends that Congress: 1) extend the moratorium on the Section 9010 Annual Fee on Health Insurance Providers through 2019; 2) modify the Section 1332 waiver process; and, 3) provide assistance to U.S. Territories, whose markets have been adversely treated under the ACA.

Extending the moratorium on the Section 9010 premium tax would, of course, help reduce premiums. Modifying Section 1332 waiver requirements would allow more states to pursue their state-based solutions more quickly, thus returning more decision-making back to the states where they are best equipped to balance consumer and insurer needs for a strong market that offers competition, affordable options and significant consumer choice. When modifying Section 1332 requirements, Congress should consider the fact that states are hesitant to pass legislation unless it is clear that it will be approved. Without clear direction regarding what, exactly, may be waived under Section 1332, states are left looking to CMS for guidance, which often does not come. Any congressional efforts to amend Section 1332 should be very clear about what can, and cannot, be waived. Finally, providing grants to the Territories would help them repair their markets where very few, if any, carriers are currently selling individual market coverage.

We also note that several legislative proposals have been introduced under the auspices of market stabilization and increased competition that actually would have the opposite effect. For example, the Competitive Health Insurance Reform Act, H.R. 372, a bill that would repeal the health insurance exemption from federal antitrust laws as established by the McCarran-Ferguson Act, could have far-reaching implications which could hinder competition, harm consumers and

weaken the health insurance market. States have their own antitrust and unfair competition laws. State regulators and attorneys general play complimentary and mutually supportive roles in monitoring and investigating insurers, agents, and brokers to prevent and punish activities prohibited by those state laws. Furthermore, the NAIC's fundamental concern in the 1940s—a concern that continues to define the NAIC's position on antitrust reform today—was that the competitive benefits of collectively developing loss costs and policy language would be jeopardized by the insertion of federal antitrust authority in the insurance markets. This limited exemption allows insurers to share loss data, which promotes healthy insurance markets by increasing the level and competence of the competition.

Another legislative proposal that could adversely affect health insurance markets is the Small Business Health Fairness Act, H.R. 1101. This bill would allow a new category of federally supervised health insurance company, "Association Health Plans (AHPs)," to form and operate outside the authority of state regulators and beyond the reach of proven state consumer protections and solvency laws. State insurance regulators share the Congress's concern for the growing number of small business owners and employees who cannot afford adequate coverage. H.R. 1101, however, would do little, if anything, to address the problem and could exacerbate the problem by encouraging AHPs to "cherry-pick" healthy groups. This, in turn, would make existing state risk pools even riskier and more expensive for insurance carriers, thus making it even harder for sick groups to afford insurance. States already have the power to authorize and supervise AHPs but importantly would do so in a way that protects those consumers and ensures a level playing field. A top-down federal approach like H.R. 1101 would only empower more federal creep, which we vehemently oppose.

Finally, legislative proposals that would mandate interstate sales of health insurance policies, such as S. 1516 and H.R. 314, would do nothing more than undermine state insurance laws, make health insurance policies less available, make insurers less accountable, and prevent state regulators from assisting consumers in their states. Under S. 1516 and H.R. 314, insurance carriers would be allowed to choose their own regulator – their "primary state" – and sell health insurance policies in any other state without having to comply with that state's insurance regulations and laws. Naturally, insurance carriers will seek out a state with regulations that allow them to most aggressively select the healthiest risk, this would then cause risk pools with sicker enrollees to experience steep premium hikes, thus making it more difficult to increase enrollment. Consequently, as existing risk pools collapsed, insurance policies would be forced to cover less and less as insurers try to design policies that discourage the sickest consumers from signing up. Rather than being a top-down federal mandate as they are in S. 1516 and H.R. 314, interstate sales should be conducted under voluntary agreements among states under which appropriate market rules will be set by interstate compact.

To summarize, the NAIC recommends that Congress act immediately to: 1) fully fund CSR reimbursements; 2) provide $15 billion per year for a federal reinsurance program; 3) extend the moratorium on Section 9010 fees; 4) modify the Section 1332 waiver requirements to provide flexibility and expedite the process; and, 5) provide grants to U.S. Territories. Doing these things now will help shore up the individual health insurance market as the Congress continues its consideration of broader reforms.

State regulators remain committed to working collaboratively with Congress on a non-partisan basis to address the longer-term issues related to health insurance. As your partners in government, we look forward to working with you as we all seek to make health insurance coverage more affordable and accessible.