DON NICKLES
OKLAHOMA

COMMITTEES
BUDGET, CHAIRMAN
FINANCE
ENERGY AND NATURAL RESOURCES
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510-3602

July 31, 2003

Dear Colleague,

I am writing to bring your attention to a letter I received from the National Association of Attorneys General opposing legislation to override state laws which regulate the health insurance market. Under various pieces of legislation pending in Congress, a new regulatory framework and certification process for association health plans (AHPs) would be established. This structure would exempt AHPs from state regulations and would place their oversight with the Department of Labor.

As we all struggle with addressing the problem of access to quality health insurance, I have strong concerns that we not worsen the problem in our effort to find a solution. While I share the goal of the proponents of this legislation, these bills have inadequate solvency requirements, lack of federal oversight, fragment the risk pool and will have a negative impact on the health insurance market. While they may lower costs for some, they will greatly increase costs for others.

According to the Congressional Budget Office (CBO), nearly two-thirds of cost savings would result from attracting healthier members, thereby increasing costs for firms that remain in the traditional insurance market. In addition, the proposals permit employers to opt in and out of AHPs based on their expected benefit needs. This means employers could select an AHP when they have healthy employees who only need limited benefits but switch back to a state regulated plan when they need the full protection of state laws. Furthermore the CBO figures show that most AHP enrollees would be transferring from the small group market rather than being newly insured

States have enacted many different strategies which aim to solve problems in their particular markets and many states already allow for purchasing cooperatives that provide small businesses the opportunity to join forces in obtaining coverage. Unfortunately, there is a history of problems with proposals such as AHPs. In 1974 Congress exempted Multi-Employer Welfare Arrangements (MEWAs) from state insurance regulation and placed them under the regulatory authority of the Department of Labor. These plans have a long history of abusing their fiduciary relationships with their enrollees. The General Accounting Office reported MEWAs left 400,000 consumers with over $123 million in unpaid claims from 1988 through 1991. Former Chief Counsel for the Senate Permanent Subcommittee on Investigation Eleanor Hill found that the current legislation would only allow old MEWA loopholes to persist.

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The Attorneys General are writing because they know well the extent of consumer fraud and abuse that will occur if the states are preempted from setting standards for insurance companies that sell insurance for small employer groups. "We are hearing more and more stories from people who have been duped by these plans," said Carroll Fischer, Oklahoma State Insurance Commissioner. The state laws that would be preempted not only assure consumers have important protections (e.g., access to independent external review) but also provide for critical programs that would not be available to those enrolled in AHPs. For example, the state solvency guarantee funds that assure claims for providers and consumers are paid when a company goes bankrupt. The federal insolvency fund in the AHP bill is not set up to adequately protect consumers and providers (i.e., claims are not paid directly as under state guarantee programs) and could essentially make the taxpayer liable.

Please take a moment to read the enclosed letter from the National Association of Attorneys General.

Sincerely,



DON NICKLES
U.S. Senator

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Attorney General of Oklahoma

July 15, 2003

By Fax

Senator Don Nickles
Chair
Senate Budget Committee
624 Dirksen Senate Office Bldg
United States Senate
Washington, D.C. 20510

Senator Kent Conrad
Ranking Member
Senate Budget Committee
624 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senators Nickles and Conrad:

Re: S. 545 and HR. 660 - "Small Business Health and Fairness Act of 2003"

As the principal enforcers of consumer protection laws in our respective states, we, the undersigned Attorneys General, write in opposition to legislation pending before Congress that will preempt state laws that regulate and oversee association health plans.

Association health plans are health insurance plans sponsored by professional and business associations. We know from past experience that exempting these plans from state law harms consumers. In the mid 1970's, Congress enacted legislation which exempted a similar type of plan from state law. These plans were called Multiple Employer Welfare Arrangements ("MEWAs"). The result of this experiment was at least 398,000 consumers with more than $123 million in unpaid claims. Not surprisingly, Congress repealed the exemption that preempted state regulation as the only way to limit fraud and abuse.

State oversight and regulation is the best way to insure that plans remain solvent and that consumers are protected against fraud. Clearly, to expect the Department of Labor to protect American consumers who use these plans in the same fashion that is now afforded by the states is unrealistic. Resource limitations alone make it an impossible task, not to mention the lack of similar federal regulatory authority.

Finding health care solutions for small businesses that are workable and affordable is a laudable goal and one that we support. However, we should not repeat the mistakes of the past by preempting state laws that regulate association health plans in the belief that we are helping small businesses and consumers. Estimates from the Congressional Budget Office state that premiums would increase for 80 percent of small employers, and as many as 100,000 workers would lose coverage altogether under this kind of legislation.

Preemption of state authority over these plans eliminates the ability of the states to intervene on behalf of consumers when these plans fail to live up to their promises. Protections that most of us take for granted would be eliminated for subscribers to these plans such as: limits on how much and how often premiums could be increased; rights to appeal claim denials; required coverage benefits such as mammography, cancer screenings, and emergency service; and consumer marketing protections.

Consumers rightfully expect their states to protect them from fraud and abuse. Elimination of the state role and replacement with weak federal oversight is a bad deal for small businesses and for consumers.

If you have any questions, please feel free to contact us directly.

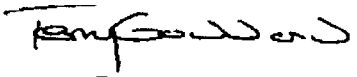
Sincerely,

Christine O. Gregoire
Attorney General of Washington

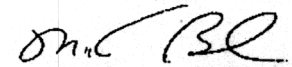
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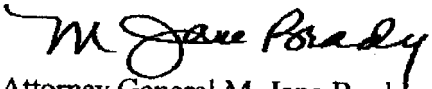
Attorney General Bill Lockyer
Attorney General of California



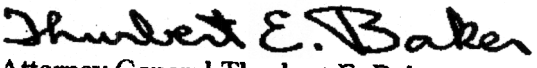
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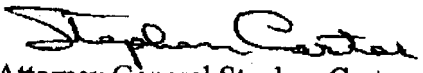
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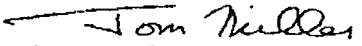
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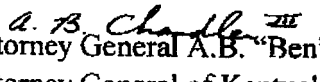
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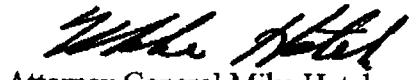
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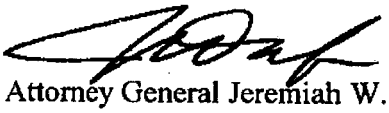
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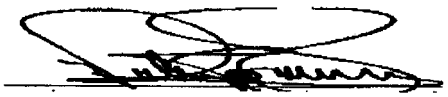
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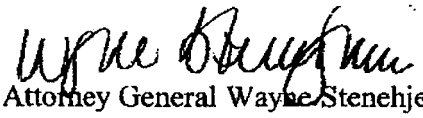
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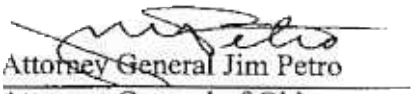
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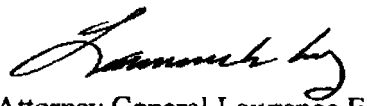
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cc: Senate Budget Committee
Senate Committee on Health, Education, Labor and Pensions
House Committee on Education and the Workforce

THE WALL STREET JOURNAL. ONLINE

May 28, 2003

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HEALTH

FROM THE ARCHIVES: May 28, 2003

Trade Group Seeks to Offer New Health Insurance Policy

By TOM HAMBURGER
Staff Reporter of THE WALL STREET JOURNAL

HEALTH DEBATE

- **Political Capital:** Health-Care Debate Starts With Prescription Drugs[2]
- **Capital Journal:** Democrats Use Health Plans to Target Voters in Primaries[3] 05/21/03
- **The Daily Scan:** Candidates Offer Health Plans As Presidential Race Warms Up[4] 05/15/03
- Bush Plan for Medicare Overhaul Is a Tough Sell in Rural America[5] 05/01/03

Washington -- The National Federation of Independent Business has sold Republicans on a conservative answer to expanding health coverage: a new kind of insurance policy that trade associations could offer members.

What they don't emphasize is the significant benefits this could provide the NFIB, a major Republican Party benefactor. If the Bush administration and congressional leaders push association health plans into law, the NFIB could reap more than $100 million of annual revenue by selling policies, according to one estimate. The U.S. Chamber of Commerce is among dozens of business groups also considering getting in on the action.

Increased revenue and other benefits are already a hot topic among Republican-friendly business organizations, if not in the debate on Capitol Hill. "What's in it for your association?" boomed consultant Don Dressler, at a meeting of trade-organization executives in Washington. "Membership retention and growth." Seventy percent of businesses that recently joined one California-based trade association, he said, did so because the association offered its members health insurance.

Critics see little profit for the health-care system as a whole. They warn that pending legislation, which would allow the association health plans (AHPs) to escape burdensome state regulation in favor of lighter federal oversight, could lead to a proliferation of cheaper, bare-bones insurance policies that will draw a disproportionate number of healthier, younger workers. That, in turn, could increase financial burdens on more-comprehensive state-regulated plans by leaving them with an older, sicker and thus more expensive pool of covered workers.

But Republicans, under renewed attack from Democrats on the health-care issue, have adopted AHPs as a central part of their agenda for shrinking the ranks of the uninsured. The bill, which has cleared the House three times before, is expected to pass that chamber easily next month. And backers have hopes of improving prospects in the Senate, which hasn't scheduled a floor vote on the matter previously.

Many trade associations currently offer members insurance, but usually they do so through policies that are sold to those within a single state. The AHP legislation would permit small businesses to band together across state lines and purchase policies through their association.

The bill specifically exempts such policies from state regulation; instead, they would operate under less onerous

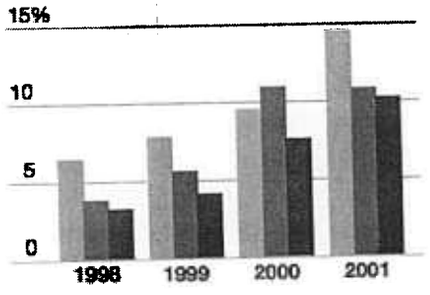
rules of the federal Labor Department. Because most states have a multitude of rules regarding coverage minimums, premiums and reimbursements, AHP insurance would be less expensive than the coverage currently available to small businesses. Proponents say this will reduce the number of uninsured Americans -- which now exceeds 40 million people -- by allowing small companies to find affordable insurance. Currently, small businesses are only half as likely as large ones to offer their workers health coverage.

THE RIGHT MEDICINE?

Because of rising insurance premiums, many small businesses don't offer health coverage for workers. The National Federation of Independent Business wants Congress to allow it to sell its members policies that wouldn't be subject to state regulations.

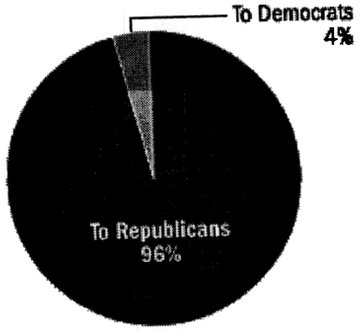
With small business suffering...

Percent increase in health-care premiums, by company size



Powerful lobbyists step in

The NFIB and U.S. Chamber of Commerce, which favor association health plans, gave $2.6 million in political donations in 2000-02:



Sources: Kaiser Family Foundation; Center for Responsive Politics

The new policies likely would draw a flood of interest, says insurance-industry veteran Robert Laszewski. He estimates that a trade association the size of NFIB, which has 600,000 member businesses, could expect new revenue of more than $100 million annually if it got into the insurance business.

Dan Danner, chief lobbyist for NFIB, says the organization's member surveys show that health-insurance costs recently have become the No. 1 concern of small-business owners, surpassing taxes and regulation. NFIB officials pledge that any profit from the policies will be returned to members in savings, not kept within the organization.

"Our intent would be to pass it all along to our members," Mr. Danner says. "If that kind of money is out there, the big guys are making too much and our guys would be delighted to save it."

Aides to President Bush, who got interested in the idea during the 2000 campaign, say the legislation contains safeguards against "cherry-picking" of healthy workers, and predicts many small businesses would offer ample coverage. "This plan would benefit average workers," says Labor Secretary Elaine Chao, who has been traveling the country promoting the idea at NFIB forums. The proposed legislation would permit the plans to be offered only through well-established groups such as the NFIB, the Chamber of Commerce and the National Restaurant Association, which have been leading the charge for passage.

That's a powerful lineup of Republican campaign allies. The NFIB, in particular, has emerged since the early 1990s as the most Republican-leaning of Washington trade groups. Of the $1.9 million the organization has provided in regulated "hard money" political donations since 2000, 97% has gone to Republicans, according to the Center for Responsive Politics, a nonpartisan campaign-watchdog group here. The organization's network of small-business owners also has worked to help Republican candidates.

To be sure, the NFIB faces powerful opposition in trying to push the association health-plan legislation on Capitol Hill. The Blue Cross Blue Shield Association leads the coalition against the bill, joined by consumer and labor groups and state regulators, who stand to lose if the bill becomes law. Each side has formed coalitions that patch through constituents to the phone lines of lawmakers, hold receptions and put on seminars for Capitol Hill staffers.

One opponent in Congress, Democratic Sen. Edward Kennedy of Massachusetts, vows to filibuster the bill, arguing that it ultimately will increase costs and expand the number of uninsured. "This is special-interest legislation at its worst," he complains.

But the NFIB sees its prospects in the Senate brightening. Two Democratic senators who earlier had fought the association health-plan idea, the late Paul Wellstone of Minnesota and Jean Carnahan of Missouri, have been replaced by Republicans allied with the small-business trade group.

Republican Sen. Jim Talent, who defeated Ms. Carnahan in November, actually worked as an NFIB lobbyist in 2001 between his earlier service in the House and his Senate campaign. "I ask my colleagues to just look at this practically," Mr. Talent says. "There are millions of people who don't have health care who could get it if we enact this legislation. You've got to have something better to offer before you oppose a bill that could do that much."

Write to Tom Hamburger at tom.hamburger@wsj.com[1]

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Updated May 28, 2003

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Health Plans Touted by Bush Raise Issues of Fairness

By Albert B. Crenshaw
Washington Post Staff Writer
Thursday, January 22, 2004; Page E02

When President Bush urged Congress during his State of the Union address to give small businesses more freedom to "band together" to negotiate lower health insurance rates, some lobbyists rejoiced while others were distressed.

Such arrangements, called association health plans, have been around for years, but operating under state insurance regulations, which in many places require insurers to cover a variety of conditions and treatments that self-insured plans, offered by many large employers, exclude to cut costs.

By paying most medical costs out of pocket, self-insurers not only avoid paying for an insurance company's profit, they also get a break from federal law. The 1974 Employee Retirement Income Security Act exempts them from state insurance regulation, giving them considerable freedom to decide which medical conditions they will cover and which they will not.

It's a benefit that many smaller companies would like to have.

A federal preemption of state rules would cut costs by eliminating state requirements and by allowing association plans to offer standardized coverage across more than one state, proponents say. These efficiencies would allow businesses that now can't afford coverage to obtain it for their workers, according to backers.

"It's a fairness issue," said Jack Faris, president of the National Federation of Independent Business, a strong supporter of the plans. When the small-business employee "in a pickup truck can't get insurance and the employee working [for a big company] on the assembly line can, it's just not fair -- and the president understands it," Faris said.

Legislation permitting association plans has passed the House, Faris said. Opponents said the idea lacks sufficient support to pass the Senate.

Bush's plug "doesn't make anything happen" on its own, Faris said, "but I can tell you there's a lot more interest in the Senate today than there was yesterday."

As reasonable as such plans might seem on the surface, in reality they would do more harm than good if freed from state oversight, opponents say.

"This is just a giveaway to the president's supporters," Sen. Edward M. Kennedy (D-Mass.), ranking minority member of the Senate Health, Education Labor and Pensions Committee, said in a statement yesterday. "It will . . . deny state-required benefits to millions of people who have good insurance today, and will raise insurance premiums for millions."

Some small-business advocates agree.

Legislation permitting the new plans "essentially creates two small-business health insurance markets," said Jeremy Claeys, spokesman for the National Small Business Association. "It creates the association market and it creates the state-regulated market. Individuals who have illness where coverage is required by the state will stay in state market. Association plans are able to circumvent state law and regulation -- this is how they achieve their pricing advantage -- they will not cover those things. Healthy individuals will more than likely go with the association plans because they need fewer coverages," with the ultimate result that prices in the state markets will soar..

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Congress is trying to create a "new" kind of federal health insurance called Association Health Plans—AHPs for short. But AHPs are really healthcare that hurts. AHPs mean no protection, no guarantee and no limits on price. They will be exempt from health and consumer protection laws we have in this state. We need to do something about healthcare, but AHPs will make things worse.

THEY WILL BE ABLE TO RAISE YOUR RATES, AS MUCH AND AS OFTEN AS THEY WANT. You could face frequent rate hikes because you get sick and file a claim.

THEY WILL TAKE AWAY YOUR RIGHT TO APPEAL. Right now, in most states, you have the right to appeal if health insurers refuse to pay your bill, but you won't with AHPs.

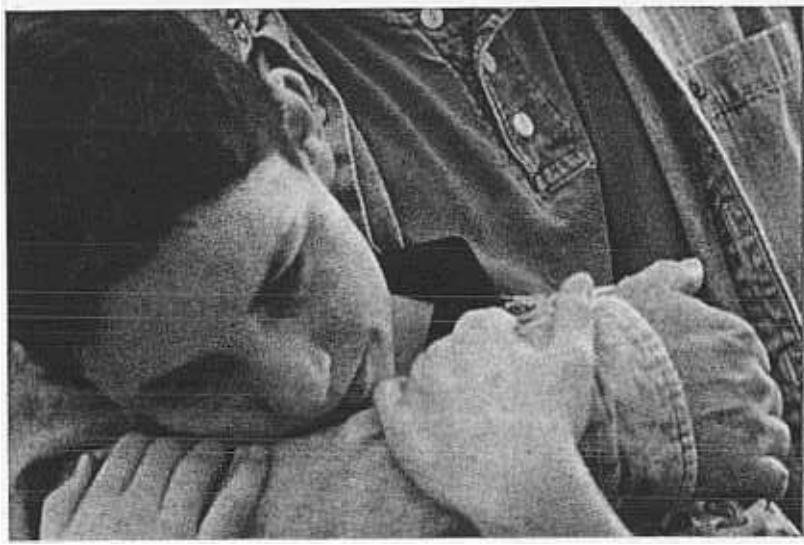
THEY MAY NOT BE THERE TO PAY YOUR CLAIMS. You could get stuck with the bills, because AHPs won't have to keep enough money in the bank to cover your medical expenses.

ONLY YOU CAN STOP THEM. Protect Your Healthcare, a broad alliance that includes the American Federation of Teachers, the AFL-CIO, the American Nurses Association and the National Partnership for Women & Families, is committed to fighting AHPs. Help us stop Congress from creating AHPs—healthcare that hurts.

STOP AHPs—NO PROTECTION, NO GUARANTEE AND NO LIMITS ON PRICE.

To learn more visit www.protectyourhealthcare.org or call us toll free at 1-877-AHPS-HURT.

SKYROCKETING RATES.
UNPAID CLAIMS.
NO RIGHT TO AN APPEAL.



IS THIS THE FUTURE OF HEALTHCARE?

ASSOCIATION HEALTH PLANS ARE HEALTHCARE THAT HURTS.

Tell Congress to stop federal AHPs before it's too late.
www.protectyourhealthcare.org