Opening Statement of the Honorable Fred Upton
Chairman, House Committee on Energy & Commerce
March 1, 2011
(Submitted for the Record)

This month marks the one-year anniversary of the President's signing into law a pair of health care bills that have remained mired in controversy as they fundamentally transform the way Americans receive and pay for health care. We convene this hearing today to hear from Governors, who are on the front lines, about what impact the health care law has had on their states thus far, and what they believe the toughest challenges will be in implementing the President's health care reform package over the coming years.

Medicaid currently covers nearly 54 million Americans, and the Administration's chief health actuary has estimated that the Medicaid expansions included in the law could increase the nation's Medicaid rosters by at least 20 million beginning in 2014. The Congressional Budget Office estimates that these mandates and expansions will cost the states at least $60 billion. This number is three times higher than CBO's original estimate of $20 billion over a similar time period (2010-2019), and still only half as much as conservative estimates by the states themselves, which this Committee analyzed and released with members of the Senate Finance Committee earlier today.

While the President's health care reform package altered the relationship the federal government has with the states by requiring that states drastically expand their Medicaid populations, it is my understanding that Governors are also deeply concerned about the new unfunded mandates in the law and their impact on current state budgets.

Today, Governors cannot afford to continue offering the same benefits in the same way to their existing Medicaid populations. However, the health care law puts them between a rock and a hard place. They cannot make eligibility changes in their optional programs because the law freezes their current programs in place for years.

To stabilize their Medicaid programs, states are looking for flexibility to adjust their programs while still maintaining the quality of care. However, under the Maintenance of Effort (MOE) provisions, which were originally included in the failed trillion dollar stimulus bill, and later expanded in the final health care package, a state would lose all federal funding if it takes actions that make eligibility more restrictive than the standards and methodologies in effect for the

state's program at the time the new health reform legislation was enacted (March 23, 2010).

On January 7, 2011, 33 Republican Governors and Governors-elect, including Governors Herbert and Barbour who are before the Committee today, sent a letter to federal officials formally asking that the Secretary and Congress lift constraints placed on state governments by healthcare-related federal mandates, including the MOE.

Unfortunately, the Secretary's February 3, 2011 open letter to states provided Governors little hope that the Secretary was willing to grant states the authority they needed to waive key MOE restrictions. In the letter, the Secretary noted that she continues to review, "what authority, if any, I have to waive the maintenance of effort under current law." If, in fact, the Secretary does not have the authority to help states manage their own programs, then it is up to this Committee and this Congress to make sure that the states have the flexibility to manage their programs without the endless petitioning at the Centers for Medicare and Medicaid Services (CMS), which invariably leads to failure.

The current impact of the MOE restrictions on states is just the first wave of federal micromanagement imposed by the health care law. Next will be the federal rules and regulations governing insurance exchanges. States like Utah, which have a very successful exchange currently running, will be preempted by federal law. Innovative exchanges will be replaced by the one-size-fits-all approach of a federally defined exchange.

New details on the law's top-down approach to exchanges were just released last Friday in a letter to Governors from Secretary Sebelius. It is clear that the flexibility necessary to maintain existing state exchanges will not be allowed under health care reform. Instead, Governors will be forced to wait for the Washington bureaucracy to determine what health benefits and designs are essential and approved under Washington standards. Governors will not be allowed to foster markets where many innovative options are available to best meet the needs of residents in their own states.

We expect the bulk of today's discussion to focus on Medicaid because the law's mandates are so onerous and unsustainable. Under the law, states will be required to extend eligibility to all non-elderly individuals with family incomes below 138 percent of the Federal Poverty Level (FPL) beginning in 2014. A full

100 percent federal match for the expansion population will be in place for 2014 - 2016. However, beginning in 2017, states will begin to see an increase in the costs they shoulder to cover this expanded population.

In addition to the state costs associated with the direct expansion of Medicaid, there are additional mandated state Medicaid costs, including a potential crowd out and woodworking effect that ultimately drives up Medicaid rolls and costs over the long term.

Governors face a series of fiscal and policy challenges associated with the health care reform and its impact on the administration of existing state health programs. Today's hearing will be an opportunity to hear from three of the nation's most thoughtful Governors.

Although as Governors, each of them follow very different roadmaps concerning health care reform, I believe that we can all agree state innovation and flexibility are key to improving state health programs. My hope is that by the end of today's hearing, we will have a better understanding of what this Committee can do to provide Governors the flexibility they need to create innovative health

programs in a way that helps the people they serve, preserves quality, and reduces the financial burden on taxpayers.