Prepared Statement

of

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Introduction

Chairman Pitts, Ranking Member Pallone, and Members of the Subcommittee, thank you for the invitation to testify on "Expanding Health Care Options: Allowing Americans to Purchase Affordable Coverage Across State Lines." I welcome this opportunity to share with you an overview of state activity in this area.

I represent the American Legislative Exchange Council, or "ALEC," where I have served as director of the Health and Human Services Task Force since 2005. ALEC is a nationwide, nonpartisan membership organization of state lawmakers, with nearly 2,000 legislative members from all 50 states.

ALEC's mission is to advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty, through a nonpartisan public-private partnership of America's state legislators, members of the private sector, the federal government, and the general public. ALEC promotes these principles by developing policies that ensure the powers of government are derived from, and assigned to, first the people, then the states, and finally, the federal government.

ALEC carries out its mission through nine national task forces which focus on the issues of Civil Justice; Commerce, Insurance, and Economic Development; Education; Energy, Environment, and Agriculture; Health and Human Services; International Relations; Public Safety and Elections; Tax and Fiscal Policy; and Telecommunications and Information Technology.

Lowering Costs, Expanding Choices: A State Solution

Our nation faces a crisis of the uninsured. Nationally, 17 percent of the population—or one in six Americans—lacks health coverage. In the states, the uninsured rate ranges from a high of 26 percent in Texas to a low of 5 percent in Massachusetts.[1]

[1] The Henry J. Kaiser Family Foundation, "Health Insurance Coverage of the Total Population," www.statehealthfacts.org.

Although many refer to "the uninsured" as a homogenous group, those who go without health coverage do so for different reasons. Some lack access to employer-sponsored coverage, or are in between jobs that offer health benefits. Some are eligible for Medicaid or SCHIP, but have not yet enrolled.[2]

But increasing numbers of Americans can't afford coverage, or choose not to purchase coverage because it isn't a good "deal" for them. According to the U.S. Census Bureau, the uninsured rate is higher among people with lower incomes. However, 10 million Americans have household incomes greater than $75,000 but still don't choose to purchase coverage. And more than one-third of the uninsured are between the ages of 18 and 24—known as the young and healthy "invincible" population.[3]

A one-size-fits-all solution will not help America's diverse uninsured population. Lawmakers must support policies that will not only lower the cost of insurance, but also increase access to quality coverage options.

The states can offer promising targeted health reform solutions. First, states can develop their own policies that reflect the diversity of their uninsured populations—and implementation "best practices" can emerge from this kind of pluralistic state approach. Second, the Tenth Amendment to the United States Constitution states that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." And since the passage of the 1945 *McCarran-Ferguson Act*, the states have had primary regulatory authority over today's health insurance market and have provided aggressive oversight; enforced consumer protections; and have ensured a local, responsive presence for consumers.[4]

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[2] J.P. Wieske and Christie Herrera, *2010 State Legislators Guide to Health Insurance Solutions*, Council for Affordable Health Insurance, January 2010.

[3] Carmen DeNavas-Walt et al., *Income, Poverty, and Health Insurance Coverage in the United States*, U.S. Census Bureau, September 2010.

[4] ALEC's *Resolution on Preserving States' Rights Regarding Federal Health Insurance Exchanges and a Public Plan*, 2009.

The Promise of An Interstate Health Insurance Market

Among other reforms, some states are considering legislation that would allow individuals to purchase quality, affordable health insurance coverage across state lines. The goal of this legislation is to allow the uninsured more access to health plans at lower prices, while expanding coverage choices for those who are already insured.

It may be a daunting prospect for someone to purchase a health insurance policy from a faraway state, and so an interstate health insurance market may initially fare better in certain geographic regions (like New England) or in large metropolitan regions (like Washington D.C.) that encompass several states. According to data from ehealthinsurance.com, many Americans live in states where high-cost individual health insurance is the only coverage option—and where better health insurance deals can be found just across the state line.[5]

For example, Georgia recently enacted House Bill 47, legislation that would authorize Georgia insurers to offer health insurance policies sold in other states. Under Georgia's new legislation, an uninsured Georgian looking for coverage in the individual market (in Georgia, an average of $163/month) could find more affordable monthly premiums in neighboring Alabama ($126/month), Tennessee ($151/month), North Carolina ($142/month) or South Carolina ($154/month).

Some states have sizeable uninsured populations despite the availability of low-cost individual health insurance options. Many factors—such as cost, benefit design, and choice of carriers—can influence the decision on which health insurance plan to buy, or whether to purchase health insurance at all. By opening coverage options across state lines, citizens could benefit from innovative plans in other states; insurers would face fewer barriers to entry into a state's health insurance market; and policymakers could benefit from new ideas in other states while maintaining core consumer protections important to their home state.

[5] See Chart #1 attached.

An interstate health insurance market could also help consumers access a more customized benefits package that meets their health needs. State-imposed mandates require individuals to purchase coverage for specific benefits, procedures, or providers in order to purchase health insurance coverage at all. According to the Council for Affordable Health Insurance, the 50 states impose a total of 2,129 mandates on the purchase of individual health insurance coverage.[6]

Permitting the purchase of health insurance across state lines would allow residents to access plans with benefits that meet their health needs. For example, Georgia's 45 government-imposed health insurance mandates—which include medical services like chlamydia screening and morbid obesity treatment—require Georgians to purchase more expensive coverage they might not want or need. Georgia's newly-enacted legislation could allow Georgia residents to purchase coverage with fewer mandates in neighboring Alabama (19 mandates), Tennessee (41 mandates), or South Carolina (29 mandates). Similarly, the bill could allow Georgians who want more extensive benefits to "top up" for richer coverage in neighboring Florida (49 mandates) or nearby Texas (60 mandates).

Recent State Legislative Activity

ALEC began tracking state-level legislative activity in 2007, when ALEC members adopted its model *Health Care Choice Act for States* that vests authority with a state's insurance commissioner to allow the sale of health insurance plans sold in other states.[7] Since that time, an increasing number of states are actively considering legislation to allow for the purchase of health insurance across state lines.

In 2008 and 2009, four and 11 states, respectively, introduced the *Health Care Choice Act for States*, but none of the bills were enacted. In 2010, 18 states considered the *Health Care Choice Act for States*, and Wyoming became the first state to enact this legislation. In 2011, 15 states introduced the *Health Care Choice Act for States*, and Georgia and Maine became the second and third states, respectively, to enact this legislation.

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[6] See Chart #2 attached.

[7] ALEC's *Health Care Choice Act for States*, 2007.

WYOMING

In 2010, Wyoming became the first state to enact legislation, House Bill 128, authorizing the sale of out-of-state health insurance plans. Specifically, the legislation seeks to initiate cooperation of like-minded states to create a multi-state consortium with reciprocity agreements for health insurance plan approval, offer, sale, rating, underwriting, renewal, and issuance.

Wyoming has the smallest population in the country, and often states with small populations have a difficult time attracting insurance carriers for underwriting purposes. And so the goal of House Bill 128 is to create a large-enough population within the consortium so that insurers would be incentivized to develop new insurance products and offer them to Wyoming residents.

Although insurance commissioners from all consortium states will collectively determine the consortium's rules, House Bill 128 stipulates that Wyoming's insurance commissioner will make an initial proposal that would:

- Permit insurers to designate only one consortium state as its domicile state;
- Establish licensing reciprocity so that an insurer domiciled in one consortium state would be licensed to do business in all consortium states;
- Ensure that any plan sold within the consortium retain the covered laws—including offer, sale, rating, underwriting, mandated benefits, renewal, and issuance—of the insurer's domicile state;
- Ensure that any resident of a consortium state will be covered by the consumer protections—including financial solvency requirements, adjudication of claims disputes, and external review processes—of their home state; and
- Require that insurers pay premium taxes, as well as high-risk pool and other assessments, to the consortium state in which the health insurance plan was sold.

Implementation of Wyoming House Bill 128 is still in its infancy, as the legislation states that Wyoming's insurance commissioner "shall be under no obligation to draft rules and regulations

until after March 15, 2011." To date, Wyoming Governor Matt Mead has sent letters to officials in Wyoming's border states, asking them to pass similar legislation and join the consortium.[8]

GEORGIA

In May 2011, Georgia became the second state to authorize cross-border purchasing of health insurance with the passage of House Bill 47. The legislation approves the sale of qualified health insurance plans sold in other states, and allows Georgia's insurers to sell products that are similar to those sold in other states.

What makes a "qualified health insurance plan" is determined by Georgia's insurance commissioner. However, House Bill 47 does require that out-of-state plans satisfy actuarial standards set forth by the National Association of Insurance Commissioners, and that each application for an out of state policy contain the following disclaimer:

> "The benefits of this policy may primarily be governed by the laws of a state other than Georgia; therefore, all of the laws applicable to policies filed in this state may not apply to this policy. Any purchase of individual health insurance should be considered carefully, since future medical conditions may make it impossible to qualify for another individual health insurance policy."

MAINE

In May 2011, Maine became the third state to enact legislation, Legislative Document 1333, that would allow "regional insurers" domiciled in Connecticut, Massachusetts, New Hampshire, or Rhode Island to sell those health insurance policies in Maine. Out-of-state plans sold in Maine must provide applicants with a disclaimer (similar to Georgia's); comply with the individual health insurance laws of its domicile state; and comply with Maine's laws regarding grievance procedures, provider network adequacy, unfair trade practices, and other consumer protections.

ARIZONA AND OKLAHOMA

[8] Interview with the Office of Wyoming Insurance Commissioner Ken Vines, May 16, 2011.

Also of note are bills in Arizona and Oklahoma that would similarly authorize the purchase of health insurance policies sold in other states. In April 2011, Arizona Governor Jan Brewer vetoed Senate Bill 1593, which would have allowed certain out-of-state insurers to sell health insurance policies to Arizonans if a disclaimer (similar to Georgia's) was made to applicants.

Senate Bill 1593 would have required that out-of-state insurers register with the state and certify that they have not violated laws or regulations related to "claim denials, poor customer service, deceptive marketing practices, or fraudulent activities." The legislation would have also allowed the state Department of Insurance to revoke the license of any insurer that did not meet Arizona's financial solvency requirements, or that had been subject to any "regulatory action level event" in the insurer's domicile state. Finally, the legislation would have given Arizona courts jurisdiction over any out-of-state insurer with regards to the health insurance plans sold in Arizona.

In her letter vetoing Senate Bill 1593, Governor Brewer wrote that although she "has been a strong advocate for injecting more choice and competition into [Arizona's] health insurance market," the major provisions of Senate Bill 1593 were added during floor debate and "not subject to the typical public input that such major policy decisions should receive."[9]

In 2010, the Oklahoma Legislature passed its own *Health Care Choice Act*, Senate Bill 2046, which was vetoed by then-Governor Brad Henry. In 2011, similar legislation, Senate Bill 57, is moving through the Oklahoma legislature and has already passed the Senate. The legislation would authorize Oklahoma's insurance commissioner to negotiate interstate compacts that would allow out-of-state health insurance policies domiciled in compacting states to be sold in Oklahoma.

Specifically, Oklahoma's legislation would allow both domestic and out-of-state insurers to sell policies without Oklahoma's 38 mandated benefits, so long as a disclaimer (similar to disclaimers in the legislation of Georgia, Arizona, and Maine) was made at the time of

[9] Arizona Governor Janice K. Brewer, Letter to Arizona Secretary of State Ken Bennett on Senate Bill 1593, April 28, 2011.

application. Oklahoma's insurance commissioner would also have the authority to license out-of-state plans; regulate the market conduct and financial solvency of out-of-state insurers; require that out-of-state insurers pay premium taxes to Oklahoma; and require that the out-of-state insurers participate in Oklahoma's high-risk pool. Once the compact is negotiated with another state, it would require approval by the governor (via executive order), or by a majority vote of both houses of the legislature.

Conclusion

We have a responsibility to help the uninsured gain access to meaningful health insurance coverage without added government regulation. That's why I thank you, Chairman Pitts, for holding this hearing and for giving me the opportunity to share state-based initiatives that may help many Americans gain affordable, innovative, and customized health insurance coverage across state lines. We look forward to working with you, and with state legislatures, on developing this promising policy initiative.

Chart #1: AVERAGE MONTHLY PREMIUM, INDIVIDUAL COVERAGE (2010)

STATE	PREMIUM	STATE	PREMIUM
Alabama	$126.38	Montana	$168.01
Alaska	$192.30	North Carolina	$142.70
Arizona	$142.44	North Dakota	$139.54
Arkansas	$123.07	Nebraska	$140.22
California	$156.20	New Hampshire	$188.46
Colorado	$145.96	New Jersey	$268.14
Connecticut	$197.36	New Mexico	$152.93
Delaware	$158.58	New York	$339.60
Florida	$165.76	Nevada	$160.02
Georgia	$163.10	Ohio	$127.47
Hawaii	$159.29	Oklahoma	$143.93
Idaho	$141.19	Oregon	$165.63
Illinois	$161.15	Pennsylvania	$156.54
Indiana	$144.65	Rhode Island	N/A
Iowa	$110.05	South Carolina	$154.82
Kansas	$120.07	South Dakota	$135.93
Kentucky	$117.61	Tennessee	$151.42
Louisiana	$145.94	Texas	$175.31
Maine	N/A	Utah	$128.53
Maryland	$146.30	Vermont	N/A
Massachusetts	$303.21	Virginia	$161.61
Michigan	$127.41	Washington	$194.87
Minnesota	$136.27	West Virginia	$183.49
Mississippi	$163.51	Wisconsin	$135.17
Missouri	$125.92	Wyoming	$160.75

Source: ehealthinsurance.com, *2010 Fall Cost Report for Individual and Family Policyholders*, September 17, 2010.

Chart #2: TOTAL MANDATES BY STATE (2010)

STATE	TOTAL MANDATES	STATE	TOTAL MANDATES
Alabama	19	Montana	38
Alaska	33	North Carolina	52
Arizona	33	North Dakota	34
Arkansas	45	Nebraska	36
California	56	New Hampshire	44
Colorado	54	New Jersey	45
Connecticut	59	New Mexico	57
Delaware	32	New York	52
Florida	49	Nevada	44
Georgia	45	Ohio	29
Hawaii	23	Oklahoma	38
Idaho	13	Oregon	49
Illinois	46	Pennsylvania	57
Indiana	35	Rhode Island	69
Iowa	27	South Carolina	29
Kansas	42	South Dakota	29
Kentucky	45	Tennessee	41
Louisiana	51	Texas	60
Maine	53	Utah	25
Maryland	67	Vermont	42
Massachusetts	47	Virginia	57
Michigan	25	Washington	57
Minnesota	64	West Virginia	39
Mississippi	29	Wisconsin	35
Missouri	42	Wyoming	37
TOTAL		**2129**	

Source: Victoria Craig Bunce and J.P. Wieske, *Health Insurance Mandates in the States 2010*, Council for Affordable Health Insurance, October 2010.

Chart #3: LEGISLATIVE ACTIVITY:
HEALTH CARE CHOICE ACT FOR STATES (2008-2011)

YEAR	STATE	LEGISLATION	ACTION
2008	Colorado	House Bill 1327	Failed
2008	Minnesota	House File 4218	Failed
2008	Minnesota	House File 4229	Failed
2008	New Jersey	Assembly Bill 2767	Failed
2008	Wisconsin	Assembly Bill 873	Failed
2009	Arkansas	House Bill 1407	Failed
2009	Colorado	House Bill 1256	Failed
2009	Maine	House Bill 230	Failed
2009	Minnesota	Senate File 1280	Failed
2009	New Jersey	Assembly Bill 2767	Failed
2009	North Carolina	Senate Bill 725	Failed
2009	Pennsylvania	House Bill 1744	Failed
2009	Pennsylvania	House Bill 1745	Failed
2009	Pennsylvania	Senate Bill 508	Failed
2009	Texas	Senate Bill 2416	Failed
2009	West Virginia	House Bill 2987	Failed
2009-2010	California	Senate Bill 92	Failed
2009-2010	Wisconsin	Assembly Bill 540	Failed
2010	Colorado	House Bill 1163	Failed
2010	Florida	House Bill 1191	Failed
2010	Florida	Senate Bill 2280	Failed
2010	Georgia	House Bill 1184	Failed
2010	Georgia	Senate Bill 309	Failed
2010	Georgia	Senate Bill 407	Failed
2010	Indiana	House Bill 1152	Failed
2010	Minnesota	House File 2901	Failed
2010	Minnesota	House File 3418	Failed
2010	Missouri	House Bill 2412	Failed
2010	Nebraska	Legislative Bill 693	Failed
2010	New Hampshire	House Bill 1431	Failed
2010	New Hampshire	House Bill 1585	Failed
2010	New Hampshire	Senate Bill 452	Failed
2010	New Jersey	Assembly Bill 1364	Failed
2010	New Jersey	Senate Bill 715	Failed
2010	Oklahoma	Senate Bill 1346	Failed
2010	**Oklahoma**	**Senate Bill 2046**	**Vetoed**
2010	South Carolina	Senate Bill 986	Failed
2010	Tennessee	House Bill 2417	Failed
2010	Tennessee	Senate Bill 3177	Failed
2010	Virginia	House Bill 31	Failed
2010	Virginia	House Bill 339	Failed
2010	Virginia	House Bill 536	Failed
2010	Vermont	House Bill 697	Failed
2010	West Virginia	House Bill 4282	Failed
2010	**Wyoming**	**House Bill 128**	**Enacted**
2011	Arizona	House Bill 2689	Failed
2011	Arizona	Senate Bill 1287	Failed
2011	**Arizona**	**Senate Bill 1593**	**Vetoed**
2011	Connecticut	House Bill 5449	Failed

YEAR	STATE	LEGISLATION	ACTION
2011	Florida	House Bill 1117	Failed
2011	Florida	Senate Bill 1566	Failed
2011	**Georgia**	**House Bill 47**	**Enacted**
2011	Georgia	Senate Bill 216	Failed
2011	Kentucky	House Bill 494	Failed
2011	Indiana	House Bill 1063	Failed
2011	Maine	House Paper 348	Failed
2011	Maine	House Paper 366	Failed
2011	Maine	House Paper 891	Failed
2011	Maine	Senate Paper 77	Failed
2011	**Maine**	**Legislative Document 1333**	**Enacted**
2011	Missouri	House Bill 262	Failed
2011	Montana	House Bill 445	Failed
2011	New Hampshire	House Bill 327	Pending
2011	New Hampshire	Senate Bill 150	Pending
2011	New Jersey	Assembly Bill 1364	Pending
2011	New Jersey	Senate Bill 715	Pending
2011	**Oklahoma**	**Senate Bill 57**	**Passed Senate**
2011	Pennsylvania	House Bill 47	Pending
2011	Pennsylvania	Senate Bill 216	Pending
2011	Virginia	House Bill 2506	Failed
2011	West Virginia	Senate Bill 419	Failed

Source: American Legislative Exchange Council