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HEALTH INSURANCE
REGULATION

National Portability Standards
Would Facilitate Changing
Health Plans

Statement of Mark V. Nadel, Associate Director
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Madam Chairman and Members of the Committee:

I am pleased to be here today as the Committee continues its deliberations on health insurance reforms. Currently, many Americans face discontinuity in their health care coverage when they change employers, and others do not change jobs because of concerns about losing health care coverage. The legislation you and Senator Kennedy recently introduced includes provisions that would increase the portability of health care coverage when individuals change health plans. Allowing individuals to receive credit for their previous health care coverage in many cases would exempt them from having to fulfill a waiting period before being fully eligible under their new plan. My statement today will focus on (1) the status of state and federal insurance reforms and (2) the number of individuals who would potentially be affected by such national portability standards. My comments are based on our ongoing work on health insurance regulation and an analysis of the Bureau of the Census' March 1994 Current Population Survey.

In brief, we found that federal and state laws reflect steps taken to improve the portability of health insurance, but the possibility remains that an individual's coverage would be reduced when changing jobs. Most private health plans still require waiting periods before making people with preexisting conditions fully eligible for coverage. On the basis of existing data on the number of people who change jobs and studies on the effect of health insurance on job mobility, we estimate that roughly up to 21 million Americans a year would benefit from legislation waiving preexisting condition exclusions for individuals who have maintained continuous health care coverage. In addition, perhaps as many as 4 million Americans who at some time have been unwilling to leave their employer because of concerns about losing their health care coverage would benefit from the proposed legislation. However, although premium increases are possible, the insurance industry's response to such reforms remains unclear.

BACKGROUND

Because most Americans receive their health insurance from their employers, changing jobs can disrupt their health insurance. If a new employer does not offer health insurance, an individual must either depend on another source of health coverage (such as a spouse's plan or purchasing individual coverage) or become uninsured. Even if a new employer offers coverage, the new plan's benefits may be more limited or more expensive.

In particular, most private health plans have waiting periods for new enrollees and also limit coverage for preexisting conditions. These limitations allow insurers to be confident that new enrollees have not purchased insurance just because they have become sick. However, the risk of losing health care coverage also discourages many workers from changing jobs, leading to a phenomenon known as "job lock."

Employer benefits surveys have found that waiting periods and preexisting condition clauses are common, even among larger employers. KPMG Peat Marwick in 1994 reported that, among employers with at least 200 employees, 62 percent of health plans have waiting periods that an employee must fulfill before getting coverage, typically lasting fewer than 3 months. In addition, preexisting condition exclusions are found in 59 percent of indemnity plans, 70 percent of preferred-provider organization plans, and 56 percent of point-of-service plans.¹ Most of these preexisting condition exclusions last for 1 year or more.

FEDERAL AND STATE LAWS ATTEMPT TO IMPROVE HEALTH INSURANCE PORTABILITY

The Congress and the states have taken several initiatives to improve the portability of health care coverage. In 1986 the Congress enacted provisions known as the COBRA continuation coverage requirements.² It generally allows individuals who leave an employer to continue their health plan for up to 18 months by paying no more than 102 percent of the premium previously paid by the employer and employee, even if the employee starts a new job that offers health care coverage.³ A recent study found that 22 percent of eligible individuals continued health care coverage

¹Health maintenance organizations (HMO) do not typically have preexisting condition clauses. See Health Benefits in 1994, KPMG Peat Marwick (Washington, D.C.: 1994).

²Named after the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which included them (classified at 29 U.S.C. 1161 et seq.).

³In addition, other situations can occur to qualify an individual for COBRA continuation coverage. For example, a family member who loses health care coverage as a result of death or divorce of an insured worker may continue coverage for up to 36 months. Also, a disabled individual may continue health care coverage for a total of 29 months, but may be required to pay 150 percent of the premium for the final 11 months. COBRA continuation requirements do not apply to employers with fewer than 20 employees.

through the COBRA requirements.⁴ Another study estimated that the COBRA requirements increased mobility among those with health insurance by 10 percent.⁵

Last month, we reported that 38 states have included portability provisions in their small employer health insurance legislation.⁶ These provisions require insurance carriers to waive preexisting condition limits or waiting periods if an individual has been continuously enrolled in a health plan. The states vary in the size of groups for which these provisions apply, the length of time allowed between health plans for coverage to be considered continuous, and how coverage between current and prior policies are linked for determining the effect of preexisting conditions.

We also reported that most states include, in addition to portability provisions, guaranteed issue, guaranteed renewal, and preexisting condition limitations. For guaranteed issue, states vary in whether insurers are required to actively offer a single plan to all small employers, offer two or more plans, or offer all of their plans with a guarantee that a plan would be issued. Every state we examined except Georgia requires insurers to guarantee renewal of a health policy regardless of health status or claims experience, with limited exceptions. We found that 40 states limit the use of preexisting conditions to deny coverage for specific illness, with about half limiting the term of preexisting conditions to no more than 1 year and 9 states shortening the waiting period to 6 months or less.⁷

However, state insurance reforms cannot address the portability issue for every employee. Under the Employee Retirement Income Security Act of 1974 (ERISA), health plans that are self-funded by employers are not affected by state insurance

⁴On the basis of a sample of individuals 40 through 64 years old, 1.3 million individuals and their dependents maintained health care coverage through COBRA's continuation requirements. Patrice Flynn, "COBRA Qualifying Events and Elections, 1987-1991," Inquiry, Vol. 31 (1994), pp. 215-220.

⁵Jonathan Gruber and Brigitte C. Madrian, "Health Insurance and Job Mobility: The Effects of Public Policy on Job-Lock," Industrial and Labor Relations Review, Vol. 48, No. 1 (1994), pp. 86-102.

⁶Health Insurance Regulation: Variation in Recent State Small Employer Health Insurance Reforms (GAO/HEHS-95-161FS, June 12, 1995).

⁷New Hampshire limits preexisting conditions to no more than 3 months if an individual has not had any medical expenses associated with the preexisting condition in the last 3 months; otherwise, the preexisting condition limit is 9 months.

regulation, including portability requirements. Also, states generally limit their reforms to insurance policies sold to small firms. Furthermore, no analysis exists on the number of individuals affected by these state reforms. We are currently studying the effectiveness of state reforms and their effects on health care coverage and costs.

Several bills introduced in this Congress, including S. 1028 introduced by you and Senator Kennedy and H.R. 1610 introduced by Representative Bill Thomas, would attempt to reduce disruptions in health care coverage and job lock by increasing the portability of health insurance. In effect, these bills would limit the length of time that preexisting condition clauses can restrict health care coverage and provide credit for individuals who have been continuously enrolled by another group health plan. Thus, individuals with medical conditions who change health plans when they change jobs would not have to wait before receiving full coverage. In addition, your proposed legislation would allow individuals who have exhausted their 18 to 36 months of COBRA continuation coverage, or who were ineligible for COBRA continuation because their prior firm employed fewer than 20 employees, to convert to individual coverage without having to meet eligibility requirements such as waiting periods or preexisting condition exclusions. In short, the bill surpasses existing state laws because its reach extends to all health plans, including self-funded health plans and those offered by larger employers.

ESTIMATING THE NUMBER OF INDIVIDUALS AFFECTED BY NATIONAL PORTABILITY STANDARDS

The largest group of individuals affected by the proposed legislation would be those who change jobs. On the basis of our analysis of the Bureau of the Census Current Population Survey (CPS), over 20 million Americans changed jobs in 1993. Nearly 12 million of these individuals who changed jobs also maintained employer-based health care coverage.⁸ An additional 6 million or 7 million individuals are unemployed dependents who receive employer-based coverage through these job changers.⁹ Without portability

⁸Employer-based coverage also includes health plans sponsored by unions or both unions and employers.

⁹For spouses who are both employed, we can determine from the CPS data only whether each individual has employer-based health coverage, not which employer provides the coverage. However, this is not likely to significantly affect our results because individuals who change jobs but elect to receive coverage through their spouse's employer instead of their new employer could still be required to meet preexisting condition clauses for their new health plan. Furthermore, although in some cases individuals who change jobs may already be receiving coverage from their spouse

standards, most of these individuals face preexisting condition exclusions or waiting periods with their new health care coverage. Furthermore, individuals with preexisting conditions would either face a period where their condition is not covered by their new plan or they would be required to purchase duplicative COBRA continuation coverage.

These individuals would benefit from the proposed legislation to the extent that they would not have an extended gap between jobs that would preclude them from continuous coverage. Because most job changes are voluntary and therefore unlikely to lead to a significant gap in employment, we estimate that about 9 million individuals and 5 million of their dependents would be able to change jobs without having any preexisting condition clause exclusions under the proposed legislation.¹⁰ The remaining 3 million individuals and 2 million dependents would likely have reduced waiting periods, if any, before receiving full eligibility for coverage.

Your proposal would also allow portability of individual coverage for anyone who loses employment-based coverage and is no longer eligible for COBRA continuation coverage. In addition, those individuals employed by firms with fewer than 20 employees are not eligible for COBRA continuation coverage and could immediately qualify for individual coverage through the proposed portability standards if they lost their employer-based coverage.¹¹ On the basis of COBRA continuation coverage election rates and turnover rates among small employers, therefore, we estimate that about 2 million individuals would be able to convert from employer-based coverage to individual coverage (although at a higher premium) without having to meet preexisting condition waiting periods. Thus, in total, as many as 21 million individuals a year who change health plans could benefit from national portability standards.

and, therefore, would not need to change health plans, in other cases, an employed spouse who receives coverage from an individual who changes jobs would also be required to change health plans and potentially fulfill preexisting condition limits. These two cases would offset each other and, therefore, not affect our estimates.

¹⁰If an individual has worked for fewer than 12 continuous months prior to changing employers, then he or she may still need to fulfill a shorter preexisting condition limit.

¹¹Fewer than 18 million individuals (including self-employed individuals) receive health care coverage from firms with fewer than 20 employees.

Portability Provisions Would Also Lessen Fear of Losing Coverage From Changing Jobs

Portability provisions, however, would affect many more individuals than just those who change health plans. The proposed legislation would also allow some workers who remain in their jobs out of fear of losing health care coverage to change jobs. Although studies on the extent of job lock have varying conclusions, we estimate that over time between 1 million and 4 million additional individuals would change jobs if national portability standards were in effect.

Surveys have found that between 11 and 30 percent of individuals report that they or a family member have remained in a job at some time because they did not want to lose health care coverage.¹² Extrapolating from a 1993 survey by the Employee Benefit Research Institute, we estimate that as many as 3 million or 4 million Americans would be relieved of job lock by the proposed preexisting condition standards. Twenty percent of individuals who reported job-lock as having occurred in their households cited preexisting conditions as the main reason for not changing jobs, according to this survey.

Other estimates of the extent of reduced job mobility for those with health insurance have varied, according to other statistical analyses. Although one study found little evidence of job lock,¹³ other studies we reviewed found that job mobility was reduced by at least 20 percent for individuals with health insurance and more for those who could have high medical expenses. For example, one study determined that job mobility for workers with health insurance was reduced by nearly one-third for married men, over one-third for workers with large families (a proxy for high medical expenses), and two-thirds for workers with a pregnant wife.¹⁴ Another study found that employer-provided health insurance reduces job mobility by 23 percent for men and over 30 percent for

¹²See "Health Benefits Found to Deter Switches in Jobs," The New York Times, September 26, 1991, pp. A1, B12 (survey by The New York Times and CBS News), and Public Attitudes on Health Benefits, 1993, Employee Benefit Research Institute (Washington, D.C.: 1993) and similar surveys in 1991 and 1992.

¹³Douglas Holtz-Eakin, "Health Insurance Provision and Labor Market Efficiency in the United States and Germany," in Rebecca Blank, ed., Social Protection Versus Economic Efficiency: Is There a Tradeoff? (Chicago: University of Chicago Press: 1994).

¹⁴Brigitte C. Madrian, "Employment-Based Health Insurance and Job Mobility: Is There Evidence of Job-Lock?," The Quarterly Journal of Economics, Vol. 109, No. 1 (1994), pp. 27-54.

women. On the basis of these results, the authors conservatively estimated that approximately 1 million additional workers would have changed jobs but for job lock.¹⁵

CONCLUSIONS

In conclusion, we estimate that as many as 21 million to 25 million Americans a year could possibly benefit from proposed national portability standards. Despite past federal and state reforms, the lack of health insurance portability remains a concern for many Americans, particularly those with costly health conditions. Many states have enacted portability standards for insurance carriers, but because ERISA preemption prevents states from applying portability standards to self-funded health plans, only national standards can apply to all health plans. Whether insurers, however, would respond to these reforms with increased premiums is uncertain.

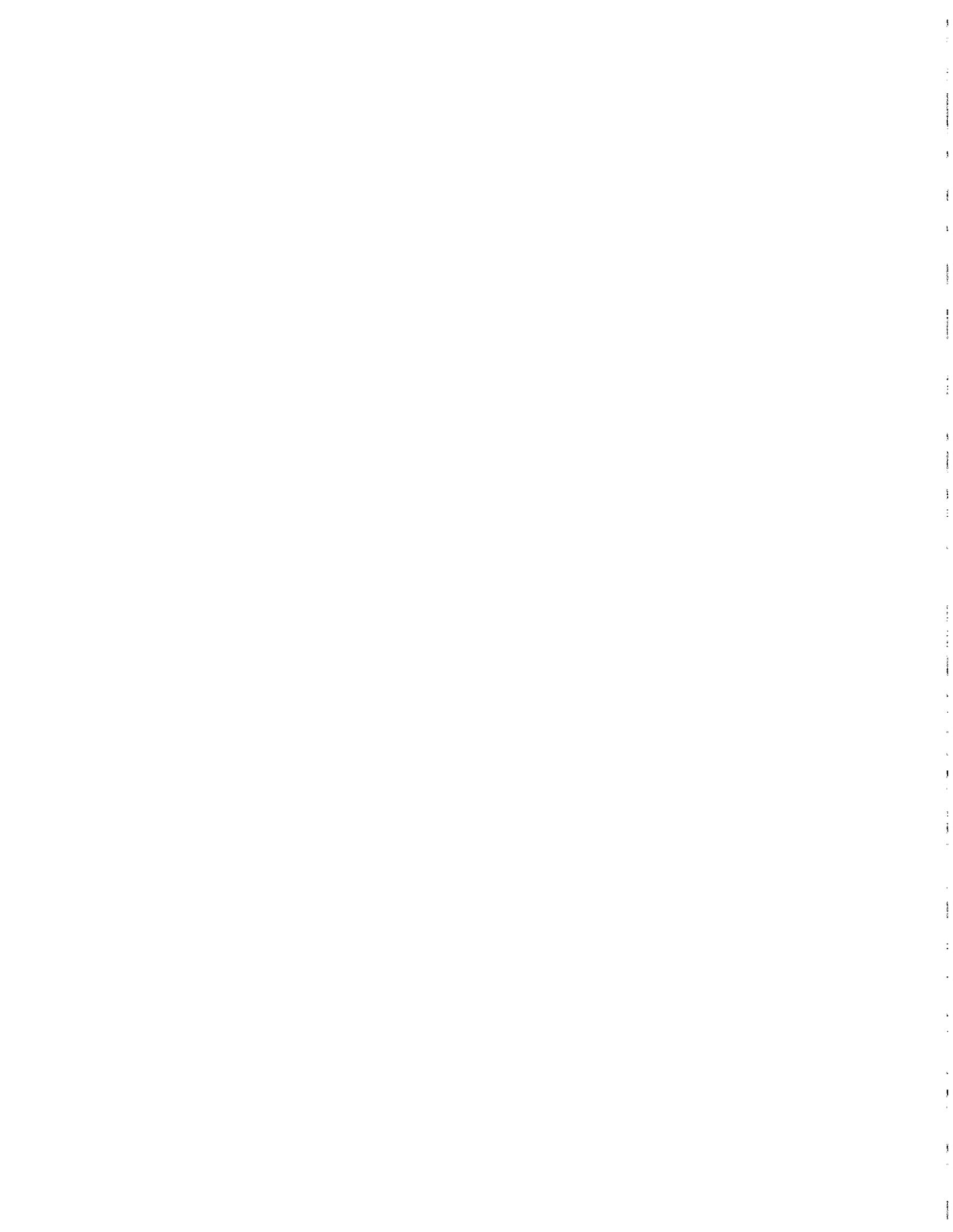
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Madam Chairman, this concludes my statement. I would be happy to answer any questions.

For more information on this testimony, please call Mark Nadel, Associate Director for National and Public Health Issues, at (202) 512-7125. John Dicken, Senior Evaluator, was also a major contributor.

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¹⁵Alan C. Monheit and Philip F. Cooper, "Health Insurance and Job Mobility: Theory and Evidence," Industrial and Labor Relations Review, Vol. 48, No. 1 (1994), pp. 68-85.



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