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Financing Design / Consumer Information Issues

Statement of Greg Kelly

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I am Greg Kelly, the executive director of the Coalition Against Guaranteed Issue (CAGI). The coalition represents more than 30 companies, public policy organizations, small business advocacy groups and nonprofit associations, all of which contend that guaranteed issue regulations drive up the cost of health insurance. I would like to commend the FTC for holding hearings on such a wide range of issues related to competition in the health care marketplace. Given the questions posed by today's topic, I am going to talk about the three different health insurance markets: large group, small group and individual. Imposing guaranteed issue laws has affected the cost and availability of coverage in each of these markets. Obviously, in our complex health care system, many factors play a role in driving up the cost of health coverage. Even so, empirical evidence isolates and displays the negative effects of guaranteed issue.

The three entities into which the private insurance market is segmented are quite distinct. Each market has defined boundaries and a unique set of health plans and regulatory environments. The large group market, usually defined as employer-provided insurance for groups greater than 50, covers roughly two-thirds of those with private health insurance. Given that many large employers self-insure and that federal ERISA laws exempt self-insured plans from most state regulations, this market bears the least regulatory burden. In addition, the federal government does not require insurers to provide guaranteed issue plans to large groups. Since large employers face fewer regulations and nearly always offer some health insurance to employees, my discussion today will focus on the two other markets.

The individual market, which accounts for about 10 percent of private coverage, is primarily regulated by the states. The small group market, which accounts for about 25 percent of private coverage, is regulated by both the state and federal governments. Given these different regulatory environments, certain states have imposed guaranteed issue in the individual market, while the federal government has imposed guaranteed issue on the entire small group market. The result has been stark differences in the cost and availability of coverage between guaranteed issue and non-guaranteed issue states and between the individual and the small group markets. The differences apparent in these different markets illustrate, we believe, the impact of guaranteed issue mandates.

What Is Guaranteed Issue? Guaranteed issue is a mandate requiring insurers to accept everyone who applies for health insurance, regardless of health condition. Under guaranteed issue, an individual who has no insurance and becomes ill may apply for private insurance coverage and must be accepted. This is comparable to allowing a person to purchase auto insurance for a car wreck after it’s happened.

When people know they can get health insurance when they get sick, they won't buy it when they're healthy. Younger and healthier people cancel their policies or fail to buy insurance in the first place. The health insurance pool gets smaller and sicker, and escalating premiums eventually drive out all but the sickest people with the most expensive health care needs.

Many insurers reach the point at which they are no longer able to offer a product under such chaotic conditions. The end results are inordinately high prices for insurance, considerably reduced choices for coverage, a greater number of uninsured and, ultimately, a health insurance market wherein many, if not all, insurers stop offering coverage.

Let's look at state examples first. States such as New Jersey, Maine and New York passed guaranteed issue laws in the mid-1990s with disastrous effects on competition and cost. Premiums have exploded and insurers have left these states. For example, a family living in Portland, Maine, pays a minimum of $1,176 a month for a $500 deductible PPO policy, and a family living in Trenton, New Jersey, pays a minimum of $3,576 a month for a similar plan. In New York, PPO or indemnity plans are not even available, and a family living in Ithaca has a "choice" of only one HMO policy at $1,113 a month.[1] In states without guaranteed issue laws, health insurance is much more affordable. Average families in Arlington, Virginia, Pittsburgh, Pennsylvania, and Madison, Wisconsin, can purchase a $500 deductible PPO policy for $410, $461 and $335 a month, respectively, and can choose among coverage options.[2]

No state has implemented blanket guaranteed issue without a loss of consumer choices and a dramatic increase in prices. Thus it is easy to compare the range of affordable products available in non-guaranteed issue states with the limited and pricey products in guaranteed issue states.

Now let's look at the small group market. Keep in mind that the small group market is the hybrid to which a mixture of federal and state regulations applies. In 1996, the federal government imposed guaranteed issue across the board in the small group market, and almost all states have followed with restrictions on the price that insurers can charge small groups. This means that insurers must make all plans available to any small employer who applies for coverage, and insurers are often limited in the variance of what they can charge employers with different characteristics.

In the small group market as in the individual market, guaranteed issue destroys the basic risk classification principles of insurance. Very small employers, especially those groups of 10 employees and under, may wait until one of their employees needs coverage before obtaining it. Or employers may switch to a plan with more substantial benefits when one of their employees needs them. Such adverse selection problems cause prices to skyrocket, healthier groups to leave the market, and insurers to stop offering coverage.

The effects of guaranteed issue on the cost and availability of small group coverage are nationwide. Mark Litow, an actuary with Milliman USA who has priced small group products for more than 27 years, recently provided congressional testimony on the abysmal shape of the small group market. Mr. Litow has estimated that the small group market is in poor or questionable status in 35 out of the 50 states. His assessment is based on an analysis of those states where loses exist for most insurers selling in the small group market. Mr. Litow attributes much of this rapidly deteriorating situation to the federal guaranteed issue and state rating restriction laws. Mr. Litow concludes that the small group market is now viable in only 10 states.

With losses by insurers mounting, evidence shows that carriers are exiting the small group market in droves. The General Accounting Office (GAO) recently completed a study that showed a disturbing market concentration in this market, with the top five carriers controlling more than 75 percent of market share in a majority of the states studied. Healthier groups are dropping coverage because of escalating prices. For example, in Colorado the state division of insurance has reported a loss of 14,663 small groups covering more than 125,000 individuals in the last two years, and the state attributes much of this problem to the guaranteed issue requirement in the small group market.

Guaranteed issue is the one regulation with a direct, dramatic and demonstrable impact on cost and availability of coverage. Given that guaranteed issue is nationwide in the small group market and limited to only certain states in the individual market, it obviously contributes to making the small group market more expensive than the individual market. For example, even though coverage in the individual market is not always as comprehensive, policies sold through eHealthInsurance Services, Inc. are on average 25 percent higher for small business members than for individual members. eHealthInsurance arrived at this analysis through a state-by-state comparison.

Results show that if you make insurance available to everyone, it will not be affordable. Conversely, if you make it widely affordable, it cannot be available to everyone. So if we want affordable and accessible policies, instead of regulating 100 percent of the market, we should create a safety net to address the 1 percent to 2 percent who cannot obtain coverage. High-risk pools allow the market to work for the 98 percent of people who can obtain coverage while providing a strong and successful safety net for the sick. States with the least regulatory burden successfully rely on high-risk pools to cover their uninsurables.

Since legislators can clearly see the impact of guaranteed issue on the cost and availability of coverage, they have a strong rationale for repealing this regulation. On the state level, Kentucky, Washington and New Hampshire repealed their guaranteed issue laws after they caused a complete dearth of health insurance options. With the small group market in rapid decline, Congressman Mike Pence is planning to introduce legislation repealing the federal guaranteed issue requirement in the small group market.

I hope that the information CAGI has presented today will be helpful to the FTC, hearing participants and other policy makers as they review the effects of guaranteed issue on competition in the health care marketplace.

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[1] Source: Monthly rate, family plans, from each state's Departments of Insurance.
[2] Source: eHealthInsurance.com, February 2003.