

CONSUMER HEALTHCARE ASSOCIATIONS: AN ESSENTIAL COMPONENT OF STATE HEALTH CARE REFORMS

Health care insurance and delivery systems in virtually every state across the country are inadequate to cover all those in need and still undergoing significant changes. To address the market transformations, including in managed care, regulatory reform is essential at the state if not federal levels. One of the ultimate purposes of health care reform must be to extend access to health care services in a cost effective manner to the over 47 millions of Americans who do not have health insurance. In the new managed care environment, all consumers must be assured access to a high quality, equitably priced health care system that is fair, efficient and accountable to consumers and includes meaningful procedural and substantive protections.

This draft legislation would establish in any state that adopts it a Consumer HealthCare Association that is a self-funded, independent, state-based, nonprofit consumer membership organization that would represent the interests of consumers on health care matters. The bill provides a self-funding mechanism by authorizing the Association, at its own expense, to insert discrete solicitation notices in the mailings of state agencies, health care providers and insurers in permissible ways. Through the Association, consumers will be able to assist state regulatory agencies and other health care entities to achieve market accountability and delivery of accessible, quality health care.

PROTECTING CONSUMERS

Consumers need a mechanism to facilitate their effective, direct participation in debates on health care reform, regulation, implementation and improvement. Employers, insurers, doctors, hospitals and agents have their own powerful, well funded national and state associations which continually represent their own interests. Only consumers lack the organization, funding and technical assistance necessary to participate fully. As a result, state regulators are placed in the untenable position of representing the interests of consumers with minimal direct public input, while balancing those interests against the needs and interests of the industry, government and marketplace. With informed consumers actively and fully participating in the process, the tools and information available to regulators would enhance their capacity to regulate and the market's ability to operate fairly.

State insurance commissioners and attorneys general are charged with protecting insurance consumers' interests, but these agencies are overburdened and understaffed. Yet, the changed marketplace has necessitated additional state

involvement in regulation and enforcement. If regulatory agencies are overburdened with their present responsibilities, it seems unlikely that sufficient funding will accompany any reforms to allow regulators to adequately perform expanded responsibilities. Despite regulators' best intentions, their capacity is inevitably limited by their resources.

This proposal would assist insurance regulators by creating an independent, self-funded organization to advocate on behalf of consumers. The organization's additional resources would ensure that actuaries and experts hired by consumers were available to analyze regulations, propose reforms and monitor the marketplace. Regulators would then be in the coveted position of regulating from a position of full information.

PRECEDENTS

The Consumer HealthCare Association is modeled in structure and form on Citizens Utility Boards (CUBs). CUBs in Wisconsin, Illinois, Oregon and San Diego have represented the interests of residential and small business utility ratepayers since the early and mid-1980's. Their performance has been impressive. The Illinois CUB alone has assisted in saving consumers over \$3 billion in eight years. The San Diego CUB saved ratepayers nearly \$265 million during its first three years of advocacy. And the efforts of the Oregon CUB between 1984 and 1989 saved Oregon ratepayers \$318 for every \$1 invested in membership fees.

The right to enclose a notice of the CUB's existence with an invitation to join the organization has been crucial to the development of a diverse and substantial membership. For example, the San Diego CUB, known as Utility Consumers Action Network, received 50,000 membership subscriptions in its first nine months and within another year had 160,000 members, out of approximately 4.5 million enclosure recipients. The Illinois CUB, which uses state agency mailings to distribute its enclosures, reports that the average return rate from such enclosures is from one-quarter to one-half percent, bringing in about 4,000 members per month to the CUB.

Illinois was the first state to enact legislation requiring state agencies to include messages concerning the CUB in state mailings. The gubernatorial directive enabling the New York CUB similarly established the CUB's right to insert enclosures to New York residents in state mailings, such as those by the Departments of Motor Vehicles or of Taxation and Finance. Such enclosures can reach a diverse group of individuals -- including those who may not have access to alliances or other health care coverage.

CUB legislation in some states has required the utility companies to enclose a CUB solicitation insert in their mailings. Utility companies have challenged the constitutionality of such legislation. In Pacific Gas & Electric Company v. Public Utilities Commission of California, et. al., 475 U.S. 1, 106 S. Ct. 903 (1986), (hereinafter PG&E), the court found that a private utility company could not be forced to disseminate the newsletter of a private consumer group advocating a political position. The court recognized that states have a broad range of discretion in determining appropriate disclosure requirements, but as Justice Powell noted, there is nothing in current case law to suggest "that the State is equally free to require corporations to carry the messages of third parties, where the messages themselves are biased against or are expressly contrary to the corporation's views." 106 S.Ct. at 911, n.12.

The First Amendment issue raised in this case is avoidable. States can require informational "notice inserts" to be distributed by companies, which would fall within the state's regulatory powers to mandate appropriate disclosure requirements for businesses. Neutrally worded notice inserts, which merely notify consumers of the existence of a CUB and their ability to join, have been used in California since the PG&E decision.

Based on the CUB experience, these enclosures -- in the simple form of a one-page fold-up business reply envelope with an imprinted message -- would piggyback on existing mailings and not increase the usual postage cost of a mailing. The enclosure would inform the recipient of the existence, function, and goals of the Consumer HealthCare Association and clearly indicate that the Association is not sponsored by the government, health care providers, and insurers. The notice would give the recipient the opportunity to join the organization. The Association would pay the cost of producing the enclosures and would reimburse the carrier for any incremental costs associated with inserting the enclosures. Membership subscriptions and private grants would thus provide the funding of the Association, imposing no state tax or drain on the budget.

The empowerment of consumers is crucial to improving the state health care system, and this authorizing legislation would provide consumers a meaningful role in the process.

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