<u>Questions and Answers about Guaranteed Issue in the Small Group Market</u>

Rep. Mike Pence

Q: What is the existing law for small employers?
A: In 1996, Congress passed the "Health Insurance Portability and Accountability Act" (HIPAA). This law mandated nationwide, across-the-board "guaranteed issue" in the small group market. A small group is defined as an employer group with 2-50 employees. HIPAA forces all small employers to buy a guaranteed issue product (if they can afford to pay the premiums). So, any plan (such as copay plans, MSAs, HMO, fee for service plans, PPO plans, etc) that any employer buys is guaranteed issue.

Q: How does guaranteed issue in the small group market work?
A: Guaranteed issue in the small group market mandates health insurers to accept any small employer who applies for coverage – regardless of the group's claim history or health status. While this sounds good, it is an incentive for healthy groups to wait until they are sick before they buy insurance. Very small employers, especially baby groups of 10 employees and under, often wait until one of their employees needs coverage before obtaining it. When healthier employers take their money out of the system and sit on the sidelines, rates skyrocket and employers drop coverage.

Q: What is the state of the small group market?
A: HIPAA has forced all small employers to pay much higher prices and have fewer choices.

- *<u>Small Group coverage costs more than individual coverage</u>***:** Policies sold through eHealthInsurance 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 study.

- *<u>Fewer choices</u>:* Evidence shows that insurance 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 the small group market, with the top five insurers controlling more than 75 percent in the majority of the states studied.

- *<u>Employers Dropping Coverage</u>***:** The number of small employers offering health insurance continues to drop due to 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. According to the Governor's office, guaranteed issue has expedited this problem.

Q: What is my experience with the problems of the small group market?
A: As Regulatory Reform and Oversight subcommittee chairman of the Committee on Small Business during the 107th Congress, I convened a hearing ("The Small Business Health Market: Bad Reforms, Higher Prices, and Fewer Choices") to examine the rising

cost of health insurance for small employers. During the hearing, health insurance actuary Mark Litow from Milliman USA testified on the disastrous condition of the small group market. He reported that health insurance for small employers is “affordable” in only 10 states.

All the witnesses agreed: the small group market has been destroyed as prices are out of control and choices are limited.

Q: What destroyed the small group market?
A: HIPAA’s mandated across-the-board guaranteed issue requirement destroyed the small group market. The insurance system needs healthy groups in it. By mandating that all small employers buy guaranteed issue health insurance, HIPAA forces all employers to pay for the few employers who wait until they get a sick employee before they buy health insurance.

Q: What does H.R. 2851 do?
A: H.R. 2851 takes the first huge step towards making health insurance more affordable for small businesses by repealing the across-the-board guaranteed issue mandate for the small group market in HIPAA. With this bill, an employer will have an incentive to buy and keep health insurance. Under current law, small employers know they can get insurance when they need it, so they have no incentive to buy coverage when the group is healthy. The current guaranteed issue provision forces all employers to pay much higher prices.

Q: How does H.R. 2851 help small employers?
A: H.R. 2851 stabilizes the price of health insurance for small employers because it no longer forces small businesses to buy guaranteed issue health insurance. The bill will remove the incentive for people to wait until they are sick before they buy insurance. The experts who testified at my hearing maintained that there used to be more affordable policies and more choices before Congress passed the guaranteed issue requirement in HIPAA.

Q: What was the law before Congress passed HIPAA?
A: Most states had adopted some version of the National Association of Insurance Commissioners’ (NAIC) "Small Employer Health Insurance Availability" model act. The NAIC act stated that insurance companies (as a condition of doing business in a state) had to guarantee issue two plans (a basic and a standard plan) to any small group. Nonetheless, small employers could still purchase underwritten products and, in most states, the law usually did not force all small employers to buy guaranteed issue products.

Q: If guaranteed issue is repealed, will some individual employees, especially sick and newly hired employees, be unable to get coverage?
A: No. H.R. 2851 only repeals the HIPAA requirement that all small employers must buy guaranteed issue products. If a small employer qualifies for health insurance, then all the employees, including those who are newly hired or in poor health, will get health insurance if they pay the premium.

Q: What happens when some employers cannot qualify for health insurance?
A: First of all, most employers will be able to qualify for coverage. Second, H.R. 2851 returns us to a situation where every state decides how to handle groups that can't qualify for coverage. Prior to HIPAA, many states gave employers an option of buying a standard or basic group guaranteed issue policy if they could not qualify for coverage. So some states may give employers the option of buying a guaranteed issue product.

Or some employers who cannot qualify for insurance may give their employees money to buy individual policies. These employees can then buy a plan on the individual market or through the high-risk pool. The 107th Congress provided $100 million for state-based high-risk pools over two years, and H.R. 1110, introduced in the 108th Congress, provides $75 million a year for five consecutive years so state-base risk pools can continue to be a safety net for people who are uninsurable.

Q: What happens if an individual can't qualify for health insurance in the individual market?
A: They would get health insurance through the state high risk pool.

Q: Will employees be able to keep their insurance if they change or lose jobs?
A: Yes. Individuals who meet the portability qualifications of HIPAA will have portability rights so they can keep their health insurance if they lose or change their jobs.

Q: Will the states need to enact their own version of this legislation?
A: Yes. After Congress passed HIPAA, every state enacted legislation to comply with HIPAA's across-the-board guaranteed issue provision. So each state would have to enact legislation to modify the small group laws in the state.

Q: Does H.R. 2851 interfere in any way with Association Health Plans (AHPs) if they become law?
A: No. AHPs would create an entirely separate alternative for small employers. Current AHP legislation allows small employers to band together in larger groups to buy health insurance across state lines or self-insure under federal ERISA laws. Some small employers may join AHPs to buy insurance. Others may continue to stay in the small group market. H.R. 2851 simply removes the mandate that all small employers buy guaranteed issue health insurance. H.R. 2851 and AHPs increase choices for small employers who are trying to buy health insurance.

Q: Is there guaranteed issue in the large group market?
A: No