Submitted by Attorney General Scott Harshbarger

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Proposed

Summer Meeting
July 7-10, 1993
Chicago, Illinois

RESOLUTION

PRINCIPLES OF HEALTH CARE REFORM

BACKGROUND

WHEREAS, adequate and affordable health care is an issue of fundamental importance to every American; and

WHEREAS, because of significant problems with health care provider and delivery systems and health care insurance markets, in many states, commonwealths, territories and the District of Columbia consumers are unable to obtain affordable health care services or health care insurance at affordable rates; and

WHEREAS, the Administration is developing a proposal for health care reform for release later in 1993; and

WHEREAS, there are a number of legislative proposals currently pending in Congress; and at least ten Congressional committees are expected to review aspects of these and the Administration's health care reform proposal; and

WHEREAS, a dramatic restructuring of health care in the United States will give rise to substantial legal issues in many areas, including, among others, state constitutional law, competition policy, consumer protection, insurance regulation, and health care fraud; and

WHEREAS, the Attorneys General, as chief legal officers of the States, have significant responsibilities in connection with many aspects of health care delivery, and have developed substantial expertise in the areas described above; and

WHEREAS, the National Association of Attorneys General created the NAAG Health Care Task Force in July 1992; and

WHEREAS, it is the mission of the NAAG Health Care Task Force to monitor proposals that seek to address the problem of health care costs and health care insurance premiums throughout the various jurisdictions and states; and
STRUCTURE

WHEREAS, the health care industry is predominately a local industry that varies significantly from state to state; and

WHEREAS, state governments currently have a major regulatory and administrative role in health care in their respective states; and

WHEREAS, Attorneys General will play a crucial role in the development of state health care delivery systems by providing legal advice to state governments on the structure of such systems; and

WHEREAS, the Administration's health care reform proposal is likely to endorse state flexibility in achieving the goals of reform and preserve some degree of control at the state and local levels; and

WHEREAS, maintaining a significant state role in health care reform is consistent with principles of federalism and will encourage innovation by states; and

COMPETITION

WHEREAS, the Attorneys General have had and will continue to have an important role in competition policy; and

WHEREAS, strong and vigorous competition among health care providers will be a vital element of the Administration's health care reform proposal; and

WHEREAS, competition among health care providers can potentially result in more affordable health care, development of innovative new delivery systems, and increased information for health care consumers; and

WHEREAS, exempting health care providers or purchasers from the antitrust laws or weakening the antitrust laws could impede the goals of affordable, uniform health care reform; and

CONSUMER INFORMATION

WHEREAS, the Attorneys General have the primary responsibility for protecting consumers in their states; and

WHEREAS, expanded information for health care consumers is a necessary part of any health care reform proposal and will result in better medical care and lower prices; and

WHEREAS, informed consumers are better able to make appropriate health care decisions by evaluating representations and charges from health care providers; and
WHEREAS, informed consumers are less likely to be taken in by unscrupulous health care scams; and

WHEREAS, increased consumer education will give consumers both the motivation and the tools to achieve the goal of reduced health care costs; and

FRAUD

WHEREAS, estimates of health care fraud in government and private insurance programs range from $80 to $100 billion annually; and

WHEREAS, the state Medicaid Fraud units have demonstrated their success for more than a decade in investigating and prosecuting health care providers for fraud and in protecting sick and elderly residents of health care facilities from patient abuse and neglect; and

WHEREAS, new health care delivery systems will provide new opportunities for fraud and abuse; and

ERISA

WHEREAS, the Employee Retirement Income Security Act of 1974 ("ERISA") was intended to protect employees from abuse and mismanagement of employee benefit plans and to protect them from failure to pay promised benefits; and

WHEREAS, several court decisions have adopted an expansive interpretation of ERISA preemption which limits state efforts to protect their citizens.

WHEREAS, certain aspects of ERISA, as interpreted by the courts, will severely impede the states' ability to design a health care system that achieves the goals of the Administration's health care reform proposal.

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1) urges the Administration and Congress to adopt the following principles as the basis for any health care reform initiative:

STRUCTURE

a) A primary goal of health care reform should be to provide universal access to health care delivery services.
b) The structure of health care reform should focus particular attention on the health care needs of traditionally underserved and vulnerable populations, including, but not limited to, poor children and poor inner city and rural populations.

c) The structure of health care reform should promote principles of federalism and state flexibility. Preemption of state law should be minimal, explicit, and narrowly tailored in order to encourage state innovation in carrying out the mandates of the plan.

d) To the extent that health care reform contemplates creation of a National Board to oversee the new systems, that Board should be diverse, and should include representatives of the states who can provide expertise on legal and policy issues of concern to the states.

e) To the extent that states are required to undertake new responsibilities under a federally enacted health care proposal, states must be provided with commensurate financial assistance. The federal government should make a financial commitment to state enforcement of statutes and regulations governing the structure of the new health care system.

f) In addition to a base of appropriated funding, the state and federal governments should consider establishment in the state Attorney General's office of a "Health Care Fraud Revolving Fund" into which fines, penalties and settlements associated with health care fraud actions brought by the states are deposited for the use of the states in their law enforcement efforts.

g) Attorneys General should have concurrent authority with the federal government to ensure that participants in the system are properly fulfilling their responsibilities under state or federal law and that consumers' health care rights are protected.

COMPETITION

h) Health care reform should encourage procompetitive market conduct at every level of the health care delivery system and the Attorneys General, as chief law enforcement officers, should continue to have primary responsibility for preventing anticompetitive behavior within the state.
CONSUMER INFORMATION

i) Informed consumer choice should be encouraged by full disclosure in advertising, increased availability of understandable information about treatment options and outcomes for consumers and use of standardized reporting documents. Attorneys General should have concurrent jurisdiction with the federal government to ensure that this information is available to consumers.

j) Billing practices and forms should be standardized and clarified in order to encourage consumers to take responsibility for their health care decisions.

FRAUD

k) If as enacted health care reform does not include Medicaid, the existing Medicaid Fraud Control Units and the funding provided should be maintained and the expertise of the Medicaid Fraud Control units utilized to establish new law enforcement capabilities for the program. If Medicaid continues to exist, the Medicaid Fraud Control Units should be maintained at least at the current federal funding level.

l) The Department of Justice should work with the state attorneys general and Medicaid Fraud Control units to investigate and prosecute fraud and abuse under a new system.

ERISA

m) The protections for working people contained in ERISA should be maintained, but the states should regain the right to take appropriate action to protect the health and welfare of their citizens.

INSURANCE

n) Health care insurance markets should be reformed to provide for portability of coverage, community rating, and the elimination of so-called "cherry picking" by insurers whereby insurers deny coverage to unhealthy consumers.
ADDITIONAL RESPONSIBILITIES OF THE HEALTH CARE TASK FORCE

2) urges the Administration and members of Congress to consult with Attorneys General and other affected state officials when considering health care reform proposals;

3) authorizes the Health Care Task Force to represent the Association’s views before the appropriate federal agencies and Congressional committees.

4) authorizes the Health Care Task Force and the Executive Director to pursue funding opportunities to establish an information clearinghouse and provide technical assistance to state Attorney General offices wrestling with the implementation of state or national health care reform.

5) directs the Health Care Task Force to closely monitor developments in health care reform and report on those developments at the Association’s Spring Meeting in March 1994.

6) authorizes the Executive Director and General Counsel to transmit this resolution to the appropriate members of the Administration, members of Congress, and other interested individuals.