AMENDMENT OFFERED BY: SENATOR JACK HATCH (IOWA), SENATOR KAREN KEISER (WASHINGTON), REPRESENTATIVE CINDY ROSENWALD (NEW HAMPSHIRE), REPRESENTATIVE SHARON TREAT (MAINE)

1 **POLICY: HEALTH REFORM**

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3 **COMMITTEE: HEALTH**

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5 **TYPE:**

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7 The National Conference of State Legislatures joins the Administration, Congress and the broad range of
8 stakeholders who support and are committed to help establish a health care system in America that seeks to improve
9 access to affordable and cost effective health care services to all Americans. States, using state and local government
10 resources and in partnership with the federal government have aggressively sought to expand the reach of health care
11 services to the many individuals who have no home in the current system. States cannot do it alone. We look
12 forward to joining this effort to bring individuals, families, business, government and the health care industry
13 together to rebuild our health care system.

14

15 We urge Congress and the Administration to build on the successes of state health care initiatives, while recognizing
16 the inherent limitations states have faced as they have sought to increase access to affordable health coverage within
17 budget restrictions, often constrained by the limits of state legal authority under federal Medicaid and ERISA
18 statutes, and unable to reach across state lines to create a truly seamless and comprehensive approach.

19

20 **The NCSL supports a federal initiative for comprehensive health care reform that provides affordable**
21 **insurance to all Americans. We support a program with the following characteristics:**

22 **(1) It should limit administrative complexities and consumer confusion by means of an insurance**
23 **exchange or connector, whether federal state or regional, to assist families and small businesses**
24 **compare prices and quality so that they can choose the health care plan that best suits their needs;**

25 **(2) It should include a public insurance option side-by-side with commercial insurance for those for**
26 **whom private insurance is not the best option;**

27 **(3) It should recognize and support the right of each person who already has health insurance to**
28 **continue to be insured under the same policy, and the right of all to keep their current health care**
29 **provider;**

30 **(4) It should seamlessly wrap around Medicaid, Medicare, CHIP, VA and other existing public health**
31 **care options;**

32 **(5) Recognizing the importance of shared responsibility, it should guarantee health insurance regardless**
33 **of medical condition, and insure affordability through a sliding scale based on ability to pay;**

(6) It should incorporate the best practices successfully demonstrated in the states including an emphasis on prevention, chronic care management and wellness programs, medical home models and accountable care organizations for a greater coordination of care for each patient and better outcomes, and to reduce health disparities.

(7) The provider payment system should be reformed to reflect these best practices and the cost savings that will be achieved if everyone has coverage;

(8) It should insure a financially sustainable system by incorporating cost containment measures that effectively reduce costs while maintaining quality, including measures pioneered by the states;

(9) It should recognize that the states are partners in the implementation of any comprehensive national health care program and have already invested significant funds to expand access to, and improve the quality of, health care. States should not be penalized financially for their past actions to guarantee access to affordable , quality health care in the absence of federal programs or policies; and

(10) It should not preempt state policies that go beyond the federal "floor."

While the states stand ready to do their part to make our health care system a responsive and successful system, states do have some concerns. Despite the generous Medicaid assistance to states provided in the American Recovery and Reinvestment Act (ARRA), states across this nation continue to struggle to maintain their Medicaid programs. The depth and breadth of this economic downturn confounds the best economists and has damaged state treasuries. With the dire state of state budgets in mind, it is imperative that additional state Medicaid assistance be a central part of this health reform initiative. It is also troublesome that to date no provision has been made to address the health care needs of undocumented immigrants. As fall approaches and the possibility of a flu pandemic looms large, it would seem more important than ever to make certain that a process and mechanism exists to provide the necessary care to protect the public health.

Comprehensive health reform legislation covers a myriad of issues. Below are some of the issues great importance to state legislators.

MEDICAID

MEDICAID - FUNDING

Automatic Countercyclical Stabilizer - The current economic situation has highlighted the fragility of the existing Medicaid funding arrangement. Despite the substantial infusion of federal countercyclical assistance over the past few months, states continue to struggle to maintain their existing Medicaid programs. The inclusion of a statutory countercyclical stabilizer in the health reform package is a priority for NCSL. It is extremely important in light of pending proposals to expand eligibility, add new services and increase provider reimbursement rates.

Disproportionate Share Hospital (DSH) Payments - The Disproportionate Share Hospital (DSH) program

provides funding to states to make payments to hospitals that serve a disproportionate share of Medicaid, Medicare and low-income clients. NCSL strongly supports this program and considers it in integral part of sustaining the safety net infrastructure.

Treatment of Territories - The funding for the Medicaid program in the U.S. territories and commonwealths is capped and the program includes a more restrictive set of benefits and services than is provided through the Medicaid program in the 50 states and the District of Columbia. NCSL supports funding proposals that more adequately reflect the needs of the people in these jurisdictions and program changes that would provide services that are more comparable to those provided to similarly situated Medicaid beneficiaries in the fifty states.

Payments for Graduate Medical Education - NCSL supports the addition of specific language authorizing Graduate Medical Education (GME) funds within the Medicaid statute **and encourages direct funding of primary care provider education.**

Treatment of Medicaid Waivers - NCSL urges the Congress to work with states that have Medicaid waivers to ensure that the implementation of health reform does not result in hardship for Medicaid beneficiaries or for states.

MEDICAID - ELIGIBILITY

Eligibility Standards and Methodologies and Medicaid Payments – **If fully funded** NCSL ~~is concerned about~~ **supports** proposals to ~~simultaneously~~: (1) raise income eligibility levels for mandatory and optional categories of beneficiaries; (2) add new mandatory eligibility categories; and (3) raise provider reimbursement rates. NCSL appreciates and supports proposals to provide enhanced federal financial assistance, ~~but cannot be certain that these efforts will be~~ **so long as they are** sufficient for all states to provide the required Medicaid coverage and services and to meet other state budgetary obligations. NCSL supports 100 percent federal matching payments for new mandatory eligibility categories or services and for mandatory increases in provider reimbursement for the ten-year period. NCSL urges Congress to make every effort to simplify the Medicaid program by ~~reducing, not increasing the number~~ **replacing the web** of mandatory and optional categories **with a single program for all individuals below a specified income.** ~~and to focus efforts instead on care models that improve outcomes and services to Medicaid beneficiaries.~~ It is critical to increase the numbers of providers participating in the Medicaid program and to improve the quality of services provided to Medicaid beneficiaries.

Income Disregards and the Establishment of the Modified Adjusted Gross Income (MAGI) Measure - Income and poverty measures are not particularly helpful in ascertaining the ability of an individual or household to purchase health care services or coverage in any particular market. NCSL urges Congress to consider factors that address differences in health care costs and overall cost of living to add to the calculation of adjusted gross income. NCSL supports the use of income disregards, particularly for low-income workers.

104 **Maintenance of Effort** - While some level of maintenance of effort is reasonable and expected, too often legacy
105 states, those states that step out first, are disadvantaged when federal programs mirroring their own are enacted. It is
106 important to recognize the investment of states that through state innovation and sacrifice provided access to care that
107 would otherwise be unavailable. NCSL looks forward to working with Congress and the Administration to craft
108 maintenance of effort language that is fair to states and to Medicaid beneficiaries.

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110 **Elimination of the Five-Year Waiting Period for Medicaid Eligibility for Legal Immigrants -** NCSL supports
111 the elimination of the five-year waiting period for Medicaid-eligible legal immigrants.

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113 **MEDICAID - BENEFITS**

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115 In general, NCSL supports increasing the number of optional Medicaid benefits. NCSL opposes new mandatory
116 benefits unless they are fully funded by the federal government. NCSL is particularly supportive of adding the
117 following benefits: Prevention Services (adults); Tobacco Cessation Treatments and Products; Nurse Home
118 Visitation Services; State Eligibility Option for Family Planning Services; Payment for Items and Services Furnished
119 by Certain School-Based Clinics; Translation Services; Optional Coverage for Freestanding Birthing Center
120 Services; Optional Medicaid Coverage for Low-Income HIV-Infected Individuals.

121 **Inclusion of Public Health Clinics under the Vaccines for Children Program -** NCSL strongly supports the
122 inclusion of public health clinics in the Vaccines for Children (VFC) program.

123 **Medical Home Pilot** - NCSL supports the inclusion of a Medical Home Pilot program.

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125 **MEDICAID - PROGRAM ADMINISTRATION**

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127 **Enrollment and Retention Simplification** - NCSL supports efforts to increase enrollment in Medicaid and CHIP
128 and certainly supports the newly established bonus incentive program enacted as part of the CHIP reauthorization.
129 That being said, given the emphasis on program accountability, we would urge you to stop short of prohibiting
130 administrative procedures that are designed to prevent eligibility fraud and abuse. States could be required to attest
131 that the implementation of the procedure does not result in a reduction in the number of individuals who come
132 forward for redetermination or to show what efforts the state has undertaken to address problems related to
133 transportation or work.

134 **Upgrading Electronic Eligibility Systems -** NCSL urges Congress to provide enhanced matching to enable states to
135 make fundamental and substantial upgrades to their eligibility systems.

136

137 **MEDICAID -PRESCRIPTION DRUG COVERAGE**

138 **Medicaid Payment for Prescription Drugs** - NCSL supports flexibility for states to: (1) impose prior authorization
139 requirements as provided for under current law; (2) provide incentives for the use of generic prescription drugs that
140 are the lowest cost to the state, when appropriate; (3) require utilization review; (4) reimburse pharmacists for
141 pharmacy management services; and (5) enhance collection procedures for federally mandated and supplemental
142 rebates from brand name and generic manufacturers; (6) to participate in multi-state pools to maximize states'
143 collective buying power. We urge Congress to retain the current flexibility states have in the operation of their
144 prescription drug programs. **States cannot compete with the marketing clout and resources of pharmaceutical**
145 **and medical device manufacturers. To contain these costs, we need federal actions to curb excessive or**
146 **misleading marketing, assure transparent disclosure of gifts to providers, and provide prescribers with**
147 **objective information about effectiveness and safety.**

148

149 **Increase Medicaid Rebates -** NCSL supports increased rebates for prescription drugs in the Medicaid program.
150 These increases will mitigate, in part, the growing number of exemptions in the calculation of the Medicaid best
151 price.

152 **Extend Rebates to Medicaid Managed Care Organizations -** NCSL supports the extension of rebates to Medicaid
153 managed care organizations.

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155 **MEDICAID -LONG TERM CARE**

156 **Long Term Care/Dual Eligibles** - NCSL has long called for credit to states when state Medicaid programs develop
157 programs and/or procedures that provide savings to Medicare, that can be counted toward the calculation of "budget
158 neutrality" for Medicaid waiver applications. NCSL is pleased to see this proposal in the policy paper. NCSL
159 supports the development of new and innovative models of care that would combine Medicaid and Medicare funding
160 and incorporate care management, managed care, disease management and quality improvement programs. This
161 would include initiatives that would require participation in a care management program for certain individuals. In
162 these new models of care, information sharing between the Medicare and Medicaid programs would be critical.
163 NCSL is pleased to see continued support for grants and demonstration programs to continue state efforts to develop
164 long term care programs and services that provide high quality, appropriate supports across the continuum of long
165 term care needs and services.

166

167 **Increasing Options for Home and Community-Based Care -** NCSL continues to support increased support for the
168 development and implementation of a broad range of supports within the community for older and disabled people.

169 **Community Living Assistance Services and Supports Act (CLASS Act) -** The CLASS Act creates a new national

insurance program to help adults who have or develop functional impairments to remain independent, employed and in the community. NCSL supports this new program provided it is actuarially sound over the long term.

MEDICAID PROGRAM EXTENSIONS

Transitional Medical Assistance - NCSL supports the extension of the Transitional Medical Assistance Program and urges the Congress to enact a multi-year extension.

Qualified Individuals Program - NCSL supports the permanent authorization of the Qualified Individuals(QI) program.

MEDICARE PROGRAM INTEGRITY

Health-Care Acquired Conditions - NCSL supports the statutory extension of the health care acquired conditions initiative to the Medicaid program. This will make coordination between Medicare and Medicaid simpler.

MEDICARE COVERAGE

Reduce or Phase-out the Medicare Disability Waiting Period - NCSL supports the elimination or waiver of the two-year waiting period particularly for individuals **determined by Social Security to have a disability.** ~~suffering from terminal, but relatively brief illnesses.~~

INSURANCE REFORMS AND INITIATIVES

Non-Group, Micro Group and Small Group Market Reforms - Imposing guaranteed issue and guaranteed renewal and rating rules on these markets would significantly increase the number of individuals who would qualify for and afford coverage. The imposition of these rules would require the establishment and implementation of a risk adjustment program to address the concerns of insurers and plans who receive a disproportionate number of chronically ill or otherwise costly participants. These federal insurance mandates, if enacted, should provide a floor, not a ceiling regarding market reform rules, retaining flexibility for states to provide additional guidance to plans and insurers.

Health Insurance Exchange - NCSL supports the development of public/private purchasing cooperatives and other innovative ventures that would permit individuals and groups to obtain affordable coverage. As you know,

203 Massachusetts has successfully established and implemented a health insurance exchange and a number of additional
204 states are considering such an action. We hope that any federal effort will build on and work with state programs. **In
205 developing these programs, NCSL urges care in assuring a seamless transition between Medicaid and the
206 insurance exchange when family income increases or declines. To assure continuity of coverage and medical
207 care, states should have the flexibility to use the exchange, including a public insurance option, to deliver
208 services to Medicaid clients.**
209

210 **Role of States in Regulating Insurance** - Any federal legislation requiring state action to comply with the law
211 should allow a reasonable period of time for state legislatures to adequately debate and enact legislation. Where
212 states already have similar legislation in place, a process for declaring "substantial compliance" should be developed.
213 Great deference should be given to states in the application of the "substantial compliance" doctrine. When federal
214 insurance reforms are adopted, special efforts must be made to ensure that the consumer can easily understand the
215 implementation process and a massive community education effort should be an integral part of program
216 implementation. It is essential that state insurance commissioners play a key role in the regulation of insurers and in
217 protecting the consumer. Finally, NCSL opposes requirements for states to "pay" to maintain existing mandated
218 benefits. States that have greater protections in place should be grandfathered. No individual should lose protections
219 due to federal reform.
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221 **WORKFORCE ISSUES**
222 **NATIONAL HEALTH SERVICES CORPS**
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224 **The National Health Services Corps (NHSC)** provides medical scholarship and loan repayment assistance to health
225 professionals in exchange for primary care service in underserved rural and urban areas after graduation. The
226 National Conference of State Legislatures supports the NHSC program and encourages Congress to make the NHSC
227 a priority program and to appropriate funds necessary to continue its important work within the framework of
228 comprehensive health reform. NCSL urges the Congress to:

229 **Increase NHSC Funding -** Appropriations should be sufficient to allow the NHSC to expand to meet the growing
230 demand for placement by clinicians to provide primary health care services in federally designated underserved
231 areas. The Corps has been successful in recruiting a large number of trained clinicians to its Loan Repayment
232 Program, but funding for the program has not kept pace with need.

233 **Provide Greater Program Flexibility to Better Meet Community Needs -** The goal of NHSC is to educate and
234 recruit primary health care professionals for service in communities experiencing critical shortages of health care
235 providers. Many of these communities consist largely of individuals with specific cultural experiences or ethnic
236 backgrounds. These communities can present special challenges in recruiting and retaining health care providers
237 sensitive to the particular needs of the community. The NHSC recognizes the importance of training culturally-
238 competent and responsive primary health care providers. NCSL urges Congress through the NHSC programs to: (1)

239 develop additional mechanisms to recruit and retain minority participants; (2) augment informal efforts to match
240 communities with specific cultural traditions with health care providers with shared cultural experiences, or who are
241 specifically trained in culturally diverse community-based systems of care; (3) increase and formalize efforts to
242 recruit and place health professionals who represent racial and ethnic minorities in communities who request them;
243 (4) improve training to encompass cultural competency that considers geographical/regional differences that may
244 affect the health delivery system; (5) more directly involve communities in the recruitment, selection and retention of
245 health care professionals through community sponsorships; (6) increase the emphasis on public/private partnerships,
246 including faith-based institutions, to enhance community involvement and contractual arrangements with
247 independent health care providers; (7) develop programs to assist remote communities, those too small for
248 community health centers, but large enough to need assistance in obtaining primary health care for its citizens; and
249 (8) provide technical assistance to states and local communities in implementing NHSC programs and maximizing
250 resources.

251 **Greater Program Flexibility to Better Meet the Needs of Participating Providers -** Retaining clinicians in the
252 Corps continues to be a challenge. NCSL urges Congress to consider: (1) Part-Time Service .The establishment of
253 demonstration projects and pilot programs allowing participants to work less than full time. The opportunity to serve
254 on a part-time basis could be an important tool in attracting non-traditional providers, including minority health care
255 providers, and prove to be especially attractive in rural areas where traditional health care centers may be not be
256 available. (2) Tax Relief. Extend to the NHSC Loan Repayment Program, the favorable tax treatment recently
257 afforded to the NHSC Scholarship program in P.L. 107-16. The opportunity to exclude from gross income for
258 federal income tax purposes the amounts of loan payments received from the NHSC would provide an important
259 incentive to clinicians and also provides increased resources to the loan repayment program.

260 **Continuation of the J-1 Visa Waiver Program for Immigrant Physicians and Other Health Professionals -**
261 Under current law, immigrants admitted to the United States for education programs receive a J-1 visa, which
262 requires the individual to return home for two years after completing the educational program before he or she can
263 apply for an immigrant visa, permanent residence status or an additional non-immigrant visa. The requirement to
264 return home can be waived. This waiver program has become a critical part of many state’s efforts to assure
265 underserved areas in the state have access to physicians. NCSL urges Congress to enact legislation to ensure the
266 continuation of this important program in a timely fashion that will permit states and the immigrant physicians
267 adequate time to plan. NCSL also urges Congress to consider whether the shortages in other health professionals in
268 these underserved areas could benefit from a similar program. NCSL urges Congress to permanently authorize this
269 program and to provide for a periodic review and evaluation of the program’s goals and objectives .

270 **HRSA Health Professions Grants and Cooperative Agreements -** The Health Resources and Services
271 Administration (HRSA) through a number of grants and cooperative agreements supports innovations and targeted
272 expansions in health professions education and training. Most of these programs focus on: (1) increasing the
273 diversity of the health care workforce; (2) preparing health care providers to serve diverse population; and(3)
274 preparing health care providers to practice in the nation's medically underserved communities. NCSL urges

275 Congress to continue to support these important programs.

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277 **PREVENTION AND WELLNESS**

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279 **Options to Improve Access to Preventive Services and to Encourage Healthy Lifestyles** - NCSL supports efforts
280 to improve access to preventive services and to encourage healthy lifestyles. In addition to the initiatives proposed
281 for Medicaid, Medicare, states, private insurers and health plans and employers, we urge consideration of a sustained
282 and national public education effort with a particular focus on children, adolescents and young adults. **NCSL**
283 **supports payment reforms that encourage treatment of the whole person and which provide greater parity**
284 **between primary and preventative care and other medical specialties.**

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286 **HEALTH DISPARITIES**

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288 **Data Collection** - NCSL supports efforts to address health disparities and agrees that data collection is an important
289 element. We are particularly supportive of the proposed financial assistance to states to assist with this effort.

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291 **Language Access Services** - NCSL is also very supportive of increased efforts to provide language access services
292 and believes that an enhanced Medicaid match for these services is appropriate. We also think it is equally important
293 to have these services available in private plans.

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295 **PRESCRIPTION DRUG REFORMS**

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297 **Biosimilar Drugs** - NCSL urges the Congress to adopt balanced biosimilar legislation that provides reasonable
298 incentives that will foster the research and development of next generation, life-saving biological medicines as well
299 as job creation and economic expansion, and, encourages the creation of a transparent, science-based regulatory
300 review system that will allow a fair and prompt FDA review of biosimilar products so consumers may benefit from
301 increased price competition as soon as appropriate.

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