

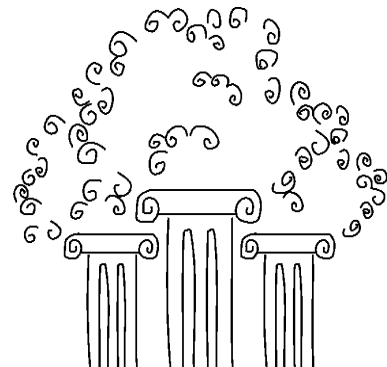
INSURENEBRASKA

*Help for Nebraska's Small Businesses
and Working Families
An Analysis of the InsureMontana Program*

HEALTH CARE ACCESS PROGRAM

Nebraska Appleseed Center for Law in the Public Interest

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INTRODUCTION

Every Nebraska family should have access to the medical care they need. We all benefit when everyone has access to health care. Healthy workers are more productive workers. Healthy children are better able to learn. Healthy citizens lead to healthier communities and a stronger state. Yet, over 232,000 Nebraskans will go without health insurance this year.¹ Even more, 437,000, will go without health care for at least part, if not all, of this year.²

Unfortunately, having a job and working hard will no longer protect us from being uninsured. Seventy-six percent (76%) of non-elderly uninsured Nebraskans (ages 0-64) have at least one full time worker in the family.³ Insurance has become prohibitively expensive for many businesses in Nebraska, especially small businesses and their employees. In 2002, Nebraska ranked 49th in the percent of private sector establishments that offer health insurance to employees, with 42% of establishments offering it.⁴ Nebraska's small businesses employing ten or fewer people make up more than two-thirds of our state's businesses,⁵ but relatively few of them offer their employees health insurance (31.5% of businesses with one to four employees, and 53.7% of businesses with five to nine employees).⁶ Moreover, over 75% of the businesses in Nebraska that do not offer their employees health insurance reported that they do not do so

¹ Current Population Survey, Annual Social and Economic Supplement, U.S. Census Bureau, 2007, *Table H106: Health Insurance Coverage Status by State for All People: 2007*.

² *The Wrong Direction: One Out of Three Americans Uninsured*, Families USA, Sept. 2007.

³ The Henry J. Kaiser Family Foundation, State Health Facts, *Nebraska: Distribution of Non-elderly Uninsured by Family Work Status, States (2005-2006), U.S. (2006)*, at www.statehealthfacts.org.

⁴ *Id.*, *Nebraska: Percent of Private Sector Establishments That Offer Health Insurance to Employees, 2006*. The national average is 56%.

⁵ *2005 County Business Patterns: Number of Establishments by Employment*, US Bureau of the Census 2007, p. 4.

⁶ *Nebraska Employee Benefits Report 2007*, Nebraska Workforce Development, Labor Market Information Center, 2007, p.44. This data was gathered from a limited survey of businesses and reflects the medical insurance offered to *full-time* employees only. According to the Kaiser Family Foundation, only 27% of Nebraska businesses with fewer than 50 employees offer health care coverage. The national average for businesses of that size is 43%.

because it is too expensive for the business, the employees or both.⁷ Small businesses in Nebraska are the entrepreneurial backbone of our state economy and their inability to offer hard working employees affordable health insurance is a problem with far-reaching consequences that demands a creative and vigorous public response.

A comprehensive reform of our health care system, at either the state or national level, would benefit all Nebraskans and their small businesses. But, unless and until we can agree on a more comprehensive solution to the problems in our health care system, we can consider policies that will increase coverage within our current system such as increasing health care among small business. We need to keep these businesses strong and their workers healthy enough to work.

The state of Montana has created a successful program, called Insure Montana, to help small businesses access health insurance. Insure Montana is a purchasing pool through which eligible small businesses, those with two to nine employees, can purchase insurance. The program uses its funding to subsidize the premium payments for employers and employees. In addition, small businesses that are offering health insurance can apply for tax credits to help offset the cost of maintaining that coverage.

Insure Montana may serve as a model for a similar initiative in Nebraska. The first half of this report will describe the Insure Montana program and the success it has had thus far. The second half will review several considerations Nebraskans should reflect on before implementing a similar program. Specifically, Nebraska should:

⁷ 2004 *Nebraska Employee Benefits Report*, Nebraska Dept. of Workforce Development, Labor Market Information Center, 2004, p. 3; Michelle Mason, et. al., *Results from the 2006 Small Employer Survey: Nebraska State Planning Grant, Year 3*, Nebraska Center for Rural Health Research at the University of Nebraska Medical Center, Jan. 2007, p. 5.

- ❖ Bring all the stakeholders to the table – insurers, small businesses, medical professionals, and consumer advocates – to help assess the benefits to this type of program in Nebraska and discuss how it might be most effectively structured.
- ❖ Consider some adjustments to the Insure Montana program such as using an adjusted community rating system; revising the eligibility criteria to include the business owner's earnings; and creating a process for communication between the program administrator and the insurance carrier.
- ❖ Determine whether the state's energy and resources should be spent pursuing this type of solution or a more comprehensive solution that might benefit all Nebraskans, small businesses, big businesses, self-employed workers, and families alike.

INSURE MONTANA

Insure Montana is a state subsidized, independent health insurance purchasing pool serving Montana's smallest businesses. Small businesses with two to nine employees that meet the program's eligibility requirements have the opportunity to enter the program. For those eligible businesses that do not currently offer health care coverage, Insure Montana provides both the employer and the employee with subsidies to help them purchase insurance through the program. In addition, eligible small employers who are currently offering health insurance can apply for a tax credit which is used to incentivize those companies to maintain their current health care coverage for their employees.

History

Insure Montana is the result of a state initiative to help small businesses and their employees acquire health insurance. The initiative appears to have been driven in part by the results of an expansive study conducted in the state on the issue of the uninsured. For the last several years, the United States Department of Health and Human Services' Health Resources and Services Administration (HRSA) has provided states with grants to study the issue of uninsurance. Montana's Department of Public Health and Human Services received its grant in 2002 and partnered with the University of Montana's Bureau of Business and Economic Research to conduct an extensive survey of people and businesses in Montana on the issue of health insurance.⁸

⁸ Steve Seninger, *Household Survey and Employer Survey Findings about Health Insurance Coverage in Montana*, The University of Montana Bureau of Business and Economic Research, 2004, pp. 4-5. Nebraska received its HRSA State Planning Grant in 2003 and partnered with the Center for Rural Health Research at the University of Nebraska Medical Center to conduct an extensive study of Nebraska's uninsured. The results can be found at: www.nlc.state.ne.us/epubs/U4920/B007-2004.pdf.

In 2003, the results of the survey revealed a relatively high proportion of Montanans were uninsured, 173,000, and like Nebraska, the majority of those uninsured Montanans were working (84%), most of them self-employed or working for small businesses.⁹ Similar to Nebraska, only about 40% of businesses in Montana with fewer than 10 employees offer health insurance.¹⁰ The vast majority of employers in Montana who do not offer health insurance cited the cost of premiums as their primary reason for not sponsoring a health insurance plan for their employees.¹¹ The employer survey portion of the study indicated that there was significant interest in exploring some public-private policy options to make health insurance more affordable for small businesses.¹²

The concerns raised by this study translated into action. In 2004, Montana voters approved a state ballot initiative to raise cigarette taxes \$1 per pack, along with a significant tax increase on other tobacco products. The tax increase was promoted as a means to fund several different health care initiatives in the state of Montana.¹³ The revenue to be generated from the increase was designated for placement in the Health and Medicaid Initiatives Account¹⁴ and the revenue is to be used to “assist eligible small employers with the costs of providing health insurance benefits to eligible employees” through premium subsidies and tax credits, among other things.¹⁵

Just months later in 2005, the Montana state legislature passed House Bill 667, which created the legal mandate, administrative structure and rules, and the financial backing for the

⁹ Id., pp. 5, 10.

¹⁰ Id., p. 18.

¹¹ Id.

¹² Id., pp. 18-22.

¹³ Pettinger, Anne E. “*I-149 would hike tobacco tax.*” Queen City News 20 October 2004.

¹⁴ Mont. Code Ann. §§ 17-2-102, 53-6-1201, 16-11-119(1)(c) (2007).

¹⁵ Mont. Code Ann. § 53-6-1201(1)-(3)(f). This account also provides funding for: 1) Maximizing federal matching funds for the State Children’s Health Insurance Program, 2) a new needs based prescription drug program, and 3) increased Medicaid services and provider rates.

state sponsored independent health insurance purchasing pool which is now Insure Montana. Montana generated over \$82 million in revenue in 2007 from the increased tobacco tax,¹⁶ which the state distributed to various Health and Medicaid Initiatives Programs, of which Insure Montana is a large part. In its first two years, the state allocated \$13 million to Insure Montana—\$3 million in the first year, \$10 million in the second—to cover start-up costs and allow the program to get off of the ground.¹⁷ For fiscal years 2008-09, Montana has allocated \$22 million to the program.¹⁸

Overview of Insure Montana

Insure Montana is a separate entity organized under the aegis of the State Auditor's office (which also functions as Montana's Insurance Commission). Insure Montana has its own board (the "Board") that is appointed by the Insurance Commissioner and the Governor. By law, the board must consist of:

1. Two individuals with specialized knowledge of the health insurance industry and the state employee health benefit plans, respectively;
2. Two individuals who are consumers and represent the small business community;
3. Two individuals who are consumers representing the public interest;
4. And the governor must appoint one management-level individual with a working knowledge of Medicaid services.¹⁹

Together, the Board and the Commissioner are responsible for the administration of the Insure Montana purchasing pool. The Board of Directors is tasked with an array of responsibilities, including establishing eligibility criteria and assistance amounts, approving the health plans that

¹⁶ *State Cigarette Tax Rate & Rank, Date of Last Increase, Annual Pack Sales & Revenues, and Related Data*, Campaign for Tobacco-Free Kids, Aug. 2008, p. 2, found at <http://www.tobaccofreekids.org/research/factsheets/pdf/0099.pdf>.

¹⁷ *Focus on Insure Montana: Fiscal Pocket Guide*, Sept. 2006.

¹⁸ Dahl, Stacia. "Auditor Morrison submits proposal to lift the waiting list on Insure Montana." 28 April 2008. Montana State Auditor's Office. <http://sao.mt.gov/news/20080428waiting%20list.html>.

¹⁹ Mont. Code Ann. § 33-22-2003(1) (2007).

will be offered to the Insure Montana purchasing pool, and establishing an operating plan.²⁰ The Insurance Commissioner in turn is responsible for adopting the rules for implementing the purchasing pool and overall has the authority to approve or disapprove of many of the Board's decisions.²¹ In addition, Insure Montana has a Director, hired by the Board and the Commissioner, to oversee the day to day operation of the purchasing pool.

How It Works

Insure Montana offers small employers two different types of assistance. First, eligible employers who have not offered health insurance to their employees in the last two years may purchase health insurance through Insure Montana and receive premium incentive payments (for the employer) and premium assistance payments (for their employees) to help pay for the premiums. Second, eligible small businesses that do offer health insurance to their employees may receive tax credits meant to make it more affordable for these businesses to maintain their current health care coverage.

To be eligible for either program, employers must have no fewer than two and no more than nine employees and no employee, *excluding the owner*, can earn more than \$75,000 a year.²² Businesses are enrolled in the program on a first come, first serve basis.²³

1. Premium Incentive and Premium Assistance Program

The Premium Incentive and Assistance Program is targeted to small businesses that have not offered health insurance to their employees in the last two years. This program offers businesses the opportunity to participate in two different insurance plans,²⁴ one more generous

²⁰ Mont. Code Ann. § 33-22-2004 (2007).

²¹ Mont. Code Ann. § 33-22-2005 (2007).

²² Mont. Code Ann. § 33-22-2006(1)(e), (2) (2007); Insure Montana Policy Manual, § 201.1.

²³ Mont. Code Ann. § 33-22-2008(3) (2007); Insure Montana Policy Manual, § 102.1.

²⁴ Insure Montana Plan of Operation, Feb. 2008 ("Plan of Operation"), pp. 1-3; *see also* Mont. Code Ann. § 33-22-2004(k) (allowing Insure Montana Board to approve group health plans for program); Mont. Code Ann. § 33-22-

and expensive than the other, though each guarantees a basic level of coverage and benefits to all Insure Montana consumers, including:

1. A lifetime maximum benefit of no less than \$2,000,000 per plan member;
2. Wellness and preventive services coverage;
3. Prescription drug plan with a separate deductible set at \$100 and \$200 per plan member with a tiered formulary;
4. Preventive and diagnostic dental coverage;
5. Dependents covered to age 25;
6. Domestic partners covered upon criteria certification;
7. Yearly open enrollment for employees to add dependents; and,
8. A proprietary maternity management program.²⁵

Insure Montana’s two insurance plans – a “Standard” plan and the “Premier” Plan – include within them options for a traditional network of providers and a Preferred Provider network (PPO). As explained in more detail below, the Insure Montana premiums vary widely among businesses and employees because businesses can fall into ten different “tiers” or “rate bands” of premiums. The premium for a single employee about 40 years of age in the plan and tier with the most participation, the Premier PPO plan, is about \$283 a month.²⁶ The range of premiums for a single employee of any age in that same plan is \$212 per month to \$594 per month.²⁷

Employers in the premium incentive and assistance programs are required to cover 50% of the cost of each employee’s health insurance premium, not including any spouses or

2005(6), (7) (allowing Commissioner to approve or disapprove of any group health plans being offered by the program).

²⁵ Plan of Operation, pp. 1-3.

²⁶ Insure Montana Database from Insure Montana Director’s Office (premiums set by insurer Blue Cross/Blue Shield).

²⁷ Id.

dependents.²⁸ Insure Montana then provides a premium incentive payment to employers covering 50% of the employer’s portion of the premium for each employee.²⁹ Premium incentive payments, system wide, are set to average \$75 per employee per month.³⁰ To help employees cover their portion of the premium, Insure Montana offers premium assistance payments that subsidize between 20% and 90% of an employee’s total coverage costs, including any dependents or spouses, based on his or her income level compared to the federal poverty line.³¹

Example 1. Premium Breakdown for a single employee, age 35-39

Total Monthly Premium:	\$214.74
- Employer Contribution:	\$107.37
- Employer Incentive Payment:	\$53.69
- Employee Contribution:	\$107.37
- Employee Assistance:	\$64.42 (60%)
- Employee Total:	\$42.95

Example 2. Premium Breakdown for a family with one child:

Total Monthly Premium:	\$742.07
- Employer Contribution:	\$152.78 (50% of individual employee’s contribution)
- Employer Incentive Payment:	\$76.39
- Employee Contribution:	\$589.29
- Employee Assistance:	\$471.43 (80%)
- Employee Total:	\$117.86 ³²

²⁸ Plan of Operation, p. 4. *See also* Mont. Code Ann. § 33-22-2007(3) (incentive and assistance payments are provided pursuant to the plan of operation).

²⁹ *Id.*

³⁰ *Final Report to the Secretary: US Department of Health and Human Services*, Montana Dept. of Health and Human Services, March 2007, p. 28.

³¹ Plan of Operation, pp. 3-4; *See also* Mont. Code Ann. § 33-22-2007(3) (incentive and assistance payments are provided pursuant to the plan of operation).

³² Example taken from: Families USA Presentation, “Insure Montana Small Business Health Insurance Program,” available at <http://www.familiesusa.org/search.jsp?query=insure+montana>

Currently, enrolled employees earning 300% of the federal poverty line (\$48,270 a year for a parent and two children) receive a 20% subsidy for their premium contribution and make up more than 27% of enrolled employees.³³ The next largest segment, 19% of enrolled employees, receives an 80% subsidy payment from Insure Montana.³⁴ To receive an 80% subsidy a single person must make an income between 100% and 149% of poverty (between \$9,500 and \$14,300 a year), which suggests how significantly the program aids low-income workers.³⁵

The premiums and assistance payments are calculated during the application process. To be enrolled in Insure Montana, a business must submit an application to the purchasing pool to determine its eligibility.³⁶ A proper application contains information concerning employees' earned and unearned income, resource information, and bank account information from both employees and the employer.³⁷ If an employer is deemed eligible, Insure Montana obtains a premium quote from the Insure Montana insurance carrier and provides it to the employer.³⁸ The employer may then accept or decline enrolling in the program.

Premiums are determined using a rate band system. First, a business is rated on a scale from one to ten based on several factors including the health status and age of its employees. Each business, depending on its rating, is then placed into a "rate band" which is a defined range of premiums to be used for businesses within that rate band. Then Insure Montana rates each

³³ Insure Montana Database from the Insure Montana Director's Office.

³⁴ Id.

³⁵ Plan of Operation, p. 3.

³⁶ Mont. Code Ann. § 33-22-2008(4); Insure Montana Policy Manual § 102.1 pp. 1-2.

³⁷ Id.

³⁸ Insure Montana Policy Manual § 102.1 p. 2.

employee in that business on his or her age and calculates for that individual employee a premium that falls within the premium range of the business's rate band.³⁹

Since the funding for this program is defined, when an employer enters the program each business will be approved for a certain number of employees (between two and nine). If the employer hires additional staff, those employees may not participate in the Insure Montana coverage unless or until the employer is approved for additional employees.⁴⁰ Further, if an employer hires additional staff so that the number of employees in the business is above nine, that employer will no longer be eligible for the program subsidies.⁴¹ That employer may, however, continue to participate in the purchasing pool, but the employer and the employee will have to pay the entire premium cost.⁴²

When the program is full, as determined by its available funding, eligible employers are placed on the waiting list to be granted entrance when funding allows.⁴³

2. Tax Credit Program

Eligible small businesses that currently provide health care coverage to their employees can apply for refundable tax credits. The amount in tax credits an employer may claim varies. The Insure Montana statutes establish the tax credit levels for employers in that program.⁴⁴ If the average age of the group is below 45, an employer may not claim more than \$100 each month for each employee and each employee's spouse, if applicable.⁴⁵ If the average age is 45 or older, an employer may not claim more than \$125 for each covered employee and more than

³⁹ This system is dictated by the contract with the insurance carrier for Insure Montana, Blue Cross/Blue Shield. *See also*, Insure Montana Policy Manual § 102.1 p. 2; Mont. Code Ann. § 33-22-2005(6), (7) (Commissioner may approve or disapprove of any contract with an insurer or approved health plan).

⁴⁰ Mont. Code Ann. § 33-22-2008(1)(d); Insure Montana Policy Manual § 204.1 pp. 2-3.

⁴¹ Insure Montana Policy Manual § 204.1 pp. 3-4.

⁴² Id.

⁴³ Mont. Code Ann. § 33-22-2008(3)(b).

⁴⁴ Mont. Code Ann. § 33-22-2006.

⁴⁵ Mont. Code Ann. § 33-22-2006(3)(a)(i).

\$100 for each employee's spouse, if applicable.⁴⁶ Regardless of the group's average age, an employer may not claim more than \$40 for an employee's covered dependents, not to exceed two dependents (spouse not included).⁴⁷ Moreover, an employer may not claim a tax credit or a premium incentive payment in excess of 50% of its total premium contribution, and a tax credit claim cannot be made for premiums paid from a health savings account.⁴⁸

3. Renewal and Accountability

To maintain best practices and proper administration of Insure Montana and to ensure that the program's limited funds are being used appropriately, there is an annual renewal process to confirm the continued eligibility of enrolled employers and employees, as well as those businesses on the waiting list.⁴⁹ The renewal process requires each business to submit an application for itself confirming the number of persons it employs and an application for each participating employee detailing any change in the employee's household income.⁵⁰ If a participating business remains eligible, it will receive an updated premium quote for the upcoming year.⁵¹

If a business fails to properly renew their eligibility it will be disenrolled from the program or will lose its place on the waiting list.⁵² The business must then submit a new application to participate which will place it at the bottom of the wait list.⁵³ If an individual employee's renewal form is incomplete that individual will become ineligible for the next

⁴⁶ Mont. Code Ann. § 33-22-2006(3)(a)(ii).

⁴⁷ Mont. Code Ann. § 33-22-2006(3)(b).

⁴⁸ Mont. Cod. Ann. § 33-22-2006(4)(a).

⁴⁹ Mont. Code Ann. § 33-22-2008(1)(c), (5); Insure Montana Policy Manual, § 103.1.

⁵⁰ Insure Montana Policy Manual, § 103.1.

⁵¹ Id., p. 1.

⁵² Id., p. 2.

⁵³ Id., pp. 2-3.

premium assistance payment, though filing a proper application reinstates his or her eligibility for the next scheduled payment.⁵⁴

An audit system has also been created in Insure Montana to measure the accuracy of the information submitted by businesses and employees and to ensure the accuracy of the eligibility determinations by the Insure Montana staff.⁵⁵ Employers enrolled in both the premium incentive and assistance program and the tax credit program are randomly selected for auditing.⁵⁶

In addition to the renewal and auditing process, Insure Montana requires that participating employers in the premium assistance program notify it of certain changes within 30 days, such as: (a) an employee leaving employment; (b) the business discontinuing its group health insurance; (c) the addition of a new employee to the insurance; or (d) an employee making a change to her health insurance coverage, such as adding a dependent.⁵⁷

Insure Montana's Success Thus Far

In its first six months, Insure Montana had almost 250 enrolled employers, and 554 by the end of its first year of operation. As of July 2008, Insure Montana's premium assistance program covered 747 small employers, which accounts for 2,055 covered employees and 1,931 covered dependents.⁵⁸ Moreover, 711 employers, covering 4,029 employees and their dependents, received an average annual tax credit of \$5,355 for offering their employees a qualified healthcare plan independent of Insure Montana.⁵⁹ More telling of the interest in this

⁵⁴ Id., p. 3.

⁵⁵ Id. § 104.1.

⁵⁶ Id.

⁵⁷ Id. § 204.1.

⁵⁸ Insure Montana Database, Director's Office.

⁵⁹ Id.

program is the presence of more than 500 employers currently on the Insure Montana's waiting list for the purchasing pool and 47 on waiting list for the tax credit.⁶⁰

The current insurance provider, Montana Blue Cross/Blue Shield, is running a 72.14% medical-loss ratio.⁶¹ The medical loss ratio reflects the percentage of premiums that are spent on paying claims for medical care. Many states set a level for the medical loss ration, for example 75%, to make certain that the bulk of people's premiums are being used for the medical coverage people are paying for and do not just go to company profit.

In 2007, the second year of operation, Insure Montana's medical loss ratio was 81.84%⁶² which was considered high, but still within the industry's targeted range of 60-82%.⁶³ The high medical-loss ratio was likely due to the fact that the waiting period for pre-existing conditions would have ended in 2007, leading more people to get treatment for their illnesses that year. The drop in the medical loss ratio in 2008 to 72.14% reflects the fact that employees have had consistent care and coverage for nearly two years and the claims have leveled out.

If the medical loss ratio gets too high the concern is that the insurance carrier will have to raise its premiums to pay for its overhead and maintain its profit margin. In a program structure like Insure Montana, increased premiums mean more resources must be spent on higher incentive and assistance payments for fewer employers and employees. As a result, Insure Montana had planned to assess the wisdom of reducing coverage via mandatory deductibles and other cost shifting and mitigating strategies.⁶⁴ As recently as April 2008, the Insure Montana Board solicited interest and questions from licensed state health insurance

⁶⁰ Id.

⁶¹ Insure Montana's Director's Office (information from insurance carrier Blue Cross/Blue Shield).

⁶² Id.

⁶³ Insure Montana Carrier Meeting, Meeting Minutes, April 21, 2008, p. 4, found at http://www.insuremontana.org/PDF/INSURE_MT_CARRIER_MEETING.pdf.

⁶⁴ Id., p. 5.

carriers.⁶⁵ Each one was interested in submitting a bid, suggesting that the pool was providing profitable or promising business.⁶⁶ The low medical-loss ratio this year means that only a small increase in premiums is anticipated for next year, making these changes less urgent. Still, some changes in benefits may be considered by the Board simply to reduce premiums, thereby allowing Insure Montana to stretch its funds to cover more employers. The difficult balancing act, however, is that cost-shifting measures, while making it less expensive for the program, make it more difficult for employees to afford coverage even with assistance payments. If cost-shifting measures lead to decreased participation it would defeat the central mission of Insure Montana.

⁶⁵ Id., p. 4.

⁶⁶ Id., p. 1.

Nebraska workers are facing a similar challenge to workers in Montana. In our current health care system, hard work is not always rewarded with access to health insurance. As noted, 76% of non-elderly uninsured Nebraskans have at least one full time worker in the family.⁶⁷ Without health insurance people are more likely to delay seeking treatment for an illness, with the wait often resulting in increased anxiety, poorer health outcomes, and higher bills than would have resulted had they received treatment earlier. These factors affect overall quality of life, including an individual's ability to provide for his or her family and contribute to his or her community. The Insure Montana program could provide a useful model to create a program in Nebraska that would help an important segment of Nebraska's uninsured small business employees. It may be necessary, however, to alter the program to better suit the needs of Nebraskans.

Scope of the Program

The basic eligibility requirements of Insure Montana would be appropriate for Nebraska. The program focuses on some of the smallest businesses in the state, those with two to nine employees. Businesses of this size comprise a majority of small businesses in Nebraska.⁶⁸ They are also the least likely to be able to offer health care coverage to their employees. As a result, these businesses are the most effective target for this program. If the program is a success, it could be expanded to self-employed persons or other larger businesses.

⁶⁷ The Henry J. Kaiser Family Foundation, State Health Facts, *Nebraska: Distribution of Non-elderly Uninsured by Family Work Status, States (2005-2006), U.S. (2006)*, at www.statehealthfacts.org.

⁶⁸ 2005 County Business Patterns: Number of Establishments by Employment, US Bureau of the Census 2007, p. 4.

The Determination of Premiums

States can regulate an insurance carrier's ability to charge premiums or exclude individuals through the system the state chooses for setting premiums, generally known as a rating system. There are three types of rating systems: pure community rating, adjusted community rating, and rate bands. The choice of a rating system is a critical part of any solution that seeks to improve health care coverage. Premium cost will affect an employee's ability to participate in a plan and thereby affect the number of uninsured employees that can actually be helped by the plan. It is important to review the different rating systems to determine which system would be most beneficial to Nebraska.

In a rate band system premiums for similar policies can vary above or below the average premium rate by a percentage set by the state.⁶⁹ Generally, rate band systems allow insurers to set premiums based on several factors, such as age, gender, and health status (known as "medical underwriting").⁷⁰ Insurers are able to charge those with health needs a greater amount while charging a healthier person a lesser amount. For example, if the price of an average policy for a single person is \$400 per month and the state has a rate band of 25%, a healthy person might get the lowest possible rate of \$300 per month for that policy (or 25% below the average rate of \$400), while the highest premium the insurer could charge to someone with health needs is \$500. The difference between the lowest and highest premiums is about 67%.⁷¹ Depending on the rate band percentage the state decides to implement, the variation in policy prices could be minimal or so large it would seem there is no regulation at all.

⁶⁹ *Understanding How Health Insurance Premiums Are Regulated*, Issue Brief, Families USA, Sept. 2006, p. 5.

⁷⁰ Id.

⁷¹ Id.

Insure Montana premiums are decided on a rate band system in part because Montana's small employer market is also governed by a rate band system.⁷² If the rating system is not the same across the market spectrum it is possible to fracture the risk pool. For example, younger, healthier people might stay in the small group market if it uses a rate band system because that system will favor them, while businesses with less healthy or higher risk workers would opt for the Insure Montana program if it used a pure community rating system because everyone would pay the same premium regardless of health status.

Nebraska currently uses a rate band system in its small group market which covers businesses with 50 or fewer employees. Nebraska's Small Business Health Insurance Act, Neb. Rev. Stat. §§ 44-5201 - 44-5267 (2004) (the "Act"), which establishes the rules for the small group health insurance market and its rate band system, provides a logical backdrop to an Insure Montana-like program in this state. Pursuant to the Act, small group insurers may categorize small businesses into "classes of business."⁷³ To determine the premium variation in the market, the arithmetic average premium rate, called an "index rate," is calculated for each class of business within the small group market.⁷⁴ An index rate is also calculated based on the premiums charged to the businesses within each class of business.⁷⁵ Under the Act, the index rate between classes of business in the small group market can vary by 20%.⁷⁶ Premiums for employers within a particular class of business can vary by 25%.⁷⁷ So, like our example above, if a class of business has an index rate of \$200 per month premiums, no other class of business could have an index rate lower than \$160 or higher than \$240. Within the class of business that

⁷² Mont. Code Ann. § 33-22-1801, et. seq.

⁷³ Neb. Rev. Stat. § 44-5257 (2004).

⁷⁴ Neb. Rev. Stat. § 44-5258(1)(a) (2004); Neb. Rev. Stat. § 44-5243 (for each class of business with similar case characteristics the index rate is the average of the base rate for coverage and the highest rate charged for coverage during one rating period).

⁷⁵ Neb. Rev. Stat. § 44-5258(1)(b).

⁷⁶ Id. § 44-5258(1)(a) (2004).

⁷⁷ Id. § 44-5258(1)(b).

has an index rate of \$240, no particular business would have a premium higher than \$300 or lower than \$180. Similarly, within the class of business with the \$160 index rate, no employers would have a premium below \$120 per month or over \$200 per month. Within the small group market as a whole then, premiums will vary significantly with some businesses charged \$120 per month while others are charged \$300 for similar coverage.

When setting new premium rates each year, the Small Business Health Insurance Act allows insurers to take into consideration the “claim experience, health status, or duration of coverage of the employees or dependents of the small employer.”⁷⁸ Insurers may not increase premiums by more than 15% on those bases.⁷⁹ But, that increase is then added to several other adjustments that an insurer is allowed to make when changing premiums each year.⁸⁰

Alternatives to a rate band system are a pure community rating system or an adjusted community rating system. Pure community rating requires insurers to charge the same premiums for the same insurance product for everyone in the community, with some flexibility in the premiums based on geography or family size.⁸¹ Only two states currently use pure community rating in their small group and individual markets.⁸² Several other states use adjusted community rating systems in their small group markets.⁸³ Adjusted community rating prohibits the use of medical underwriting – or basing premiums on someone’s health status – but it does allow insurers to vary premiums for age, gender, and geographical location.⁸⁴ Adjusted

⁷⁸ *Id.* § 44-5258(1)(c)(ii). The duration requirement assumes that the longer one has been on a plan, the sicker one is likely to be. This, however, does not take into account the fact that one will have paid premiums into the system, perhaps without having submitted many claims, over the duration of that individual’s coverage.

⁷⁹ *Id.*

⁸⁰ *Id.* § 44-5258(1)(c).

⁸¹ *Understanding How Health Insurance Premiums Are Regulated*, p. 7.

⁸² *Id.*

⁸³ *Id.*; *Small Group Health Insurance Market Restrictions*, Health Policy Institute, Georgetown University, Dec. 2007, found at The Henry J. Kaiser Family Foundation, <http://www.statehealthfacts.org/comparetable.jsp?cat=7&ind=351>.

⁸⁴ *Understanding How Health Insurance Premiums Are Regulated*, pp. 7-8.

community rating has been successful in New Jersey’s small group market. The small employers in New Jersey with fewer than 10 employees provide health insurance at a rate that is higher than the national average.⁸⁵

There is some philosophical difference underlying the use of rate bands versus pure or adjusted community rating. Community rating systems are based on a fundamental understanding of insurance as a means of spreading risk across a large pool of persons. As a result, in a community rating system, the premiums may be lower for everyone overall, but those who are healthy today are likely to pay more in premiums than they might under a rate band system that allows for medical underwriting. The benefit is that when those healthy members do get sick, they will pay a much lower premium than they would face under a rate band system.

Should Nebraska consider a system such as Insure Montana, it will be worth having a discussion about whether an adjusted community rating system would be preferable in an Insure Nebraska program. The use of rate bands can lead to an unfair playing field for small businesses. Under the current system, an employer with a loyal and invaluable, but older, employee of 25 years will have much higher premiums – for all his employees – than a competitor with younger employees. That business will be at a disadvantage in affording coverage for all its employees, which may lead to difficulties in attracting new workers, not to mention the increased overhead that business will face. However, using adjusted community rating in the Insure Nebraska pool might not work unless there was a move to adjusted community rating in the entire small group market. This would help avoid a situation of “cherry-picking” in which the small group market outside of the Insure Nebraska plan would attract the younger, healthier employees, leaving the higher risk employees in the Insure Nebraska pool, making the pool harder and more expensive to insure.

⁸⁵ Id. p. 8.

Community rating has been considered by Insure Montana but the insurance companies have raised concerns about it. At an Insure Montana insurance carrier meeting in April, one carrier suggested that community rating might work if there were some mechanism for adjusting rate levels between businesses and employees.⁸⁶ But, another noted that if the program moved to community rating the premium rating would likely be more conservative and expensive.⁸⁷ At the very least, an Insure Nebraska program should adopt Montana's slight variation on Nebraska's rate band system to the extent that Insure Montana does allow for medical underwriting of a business, but determines the individual premium based on age alone, not health.

Eligibility Requirements

1. Income eligibility

Currently, businesses are eligible to participate in Insure Montana as long as no employee earns more than \$75,000, *excluding* the owner. As noted above, businesses are enrolled in Insure Montana on a first come, first serve basis. There is no other mechanism for prioritization between eligible businesses. This means that Insure Montana is available even to a business with few employees where the owner makes several hundred thousand dollars and can afford health insurance for his employees without the help of Insure Montana. This type of business is not the type Insure Montana was created to help. Further, as evidenced by the long waiting list for Insure Montana, the defined amount of funding that Insure Montana has means that it cannot serve all the businesses that might need the assistance.

It seems reasonable then to begin to look at ways to prioritize which businesses really need the assistance of Insure Montana to protect their employees and remain competitive.

⁸⁶ Insure Montana Carrier Meeting, Meeting Minutes, pp. 2-3.

⁸⁷ *Id.*; Each carrier agreed that employing case management, care management, disease management, and a health risk access would help control costs while providing effective coverage.

Insure Montana is considering a change that would take into account the owner's salary to determine either the eligibility of the business or to exclude the owner from receiving any premium assistance payments himself.

Nebraska should consider this too if it moves forward with a similar program. There are many small businesses and many small business owners that need assistance in order to offer health insurance to their employees and themselves. Clearly, a small business owner making \$80,000 can no more afford health insurance for her employees than the owner making \$75,000. Therefore, the eligibility level for owner salaries may still need to be distinct from the eligibility of employees. However, it might not be unreasonable to ask an owner making a certain level of profit or salary to pay for his/her share of the premiums without incentive or assistance payments. Businesses with large profit margins should be providing their employees with health benefits on their own rather than using limited tax dollars to do so.

2. Double Coverage

Nebraska will also have to grapple with the question of whether to exclude certain small business employees' spouses or dependents if other health care coverage is available to them. For example, should an employee be able to cover his/her spouse through the Insure Montana program if that spouse is offered health care coverage at his/her own job?⁸⁸ With limited slots available in the Insure Montana program, there is a desire to prioritize those persons who need the assistance the most. However, it is difficult to monitor not only the availability of coverage for a spouse, but also the affordability of the spouse's coverage. It is possible that the spouse's coverage is prohibitively expensive which might make it appropriate to allow that spouse to be covered through the Insure Montana program.

⁸⁸ The Insure Montana program does exclude employees who already have "comprehensive health insurance coverage through a spouse, parent, or other person," but it does not prohibit a spouse from participating in Insure Montana if the spouse alone is eligible for a health plan through the spouses' employer. Mont. Code Ann. § 33-22-2001(4)(a).

Similarly, the question arose for children of employees in Insure Montana. If an employee's children can qualify for public health care, should we require the family to utilize the public program, or should the children be covered through family coverage under Insure Montana? The Insure Montana program is going to begin requiring families with children who are eligible for Medicaid or the State Children's Health Insurance Program to utilize that coverage rather than the Insure Montana dependent coverage. Nebraska will have to determine where its state funds are most effectively and efficiently spent and how we might structure an Insure Nebraska program to monitor the options available to an employee's family.

Accountability and Communication

Another lesson learned by the Insure Montana program is the importance of communication between the insurance carriers and the program's administration. When an employee drops insurance coverage, the program administrator must be made aware of that so the program will stop issuing the premium incentive and assistance payments to the insurer on behalf of that employee. Once again, the limited funds available to this program require that the money is used most effectively. An accurate and efficient exchange of information between the administration of an Insure Nebraska program and the insurance carriers for the program will help avoid overpayments to businesses or employees and would be critical to the program's success.⁸⁹

⁸⁹ Insure Montana is also contemplating a change in how the subsidies are delivered. Presently, the incentive and assistance payments are sent directly to the employers and employees, respectively. This, however, can lead to overpayments to employees or businesses that are no longer receiving health care coverage on the Insure Montana insurance. A more efficient payment system would be to deliver the incentive and assistance payments directly to the insurer which knows most immediately when someone has dropped coverage and, therefore, might be able to identify and stop overpayments more quickly and efficiently.

In addition, Nebraska should consider including a financial compliance audit of the program and audits of the participating businesses, as is being done in Montana, should this program be pursued.

Policy and Practical Considerations

Prior to creating any program in Nebraska, a collection of stakeholders – small business owners, insurers, consumers, and providers – should be consulted. In the process of crafting the legislation and policy for Insure Montana, legislators worked with Montana’s major health insurers, a representative from America’s Health Insurance Plans (a trade association), the state chamber of commerce, and the National Federation for Independent Business (NFIB). According to the Policy Advisor for the State Auditor’s Office at the time, the effort was constructive and collaborative, with legislators incorporating several of the these actors’ suggestions, such that both the business lobby and health insurers were staunch supporters of the bill in Montana’s legislature. Crafting and enacting similar legislation in Nebraska will probably require a similarly inclusive and cooperative effort. It will be necessary to seek input from reputable and significant private insurers’ before going through the process of creating funding channels and statutory mandates. The interest and cooperation of more than a single insurer will be crucial to the successful implementation of Insure Nebraska, which will rely on insurers competing with each other to provide both a good and affordable product to the purchasing pool and its enrolled members.

The next step, and potentially the biggest obstacle, will be establishing a reliable and adequate stream of public money to fund the purchasing pool and its obligations. Like many states in America, Nebraska is tax-averse. An increase in income or property taxes to fund this program is likely not feasible. So-called “sin” taxes may be a more viable option. The current debate about the taxation of so-called “alcopops” in Nebraska might provide a small, but

important, first step in obtaining public funds for Insure Nebraska. The state Liquor Control Commission will decide in September whether to tax “alcopops” (which are essentially sweet tasting malt-liquor beverages) as beer or distilled spirits—the former carrying a \$0.31 tax per gallon, while the latter is taxed at \$3.75 per gallon.⁹⁰ Changing “alcopops” classification to “distilled spirits” from beer would result in an estimated \$2 million increase in tax revenues statewide, which could be funneled to a purchasing pool.⁹¹

Raising taxes on cigarettes would likely be another logical source to fund Insure Nebraska. Currently, Nebraska’s cigarette tax is \$0.64 per pack, which is the nation’s 34th highest rate—just above the median rate and considerably below the average.⁹² According to the Campaign for Tobacco-Free Kids, Nebraska raised \$66.7 million last year in cigarette taxes on 106.2 million packs sold.⁹³ If sales remain stable, increasing the cigarette tax just \$0.36, bringing it to an even \$1.00 per pack, which is squarely within the range of neighboring states, would bring in an additional \$38.2 million in tax revenue annually. Again, this type of revenue could support an Insure Nebraska program as well as several other effective public health initiatives.

Montana used its tobacco tax revenue for a variety of health related programs, including its children’s health insurance program. Nebraska should follow this example. If a funding stream is established, it should be used to improve health care access in the state generally by spreading any revenue among the state’s effective public programs in addition to an Insure Nebraska program.

⁹⁰ Hicks, Nancy, “Battle to be waged in Nebraska over ‘alcopops,’” Lincoln Journal Star, 30 Jul 2008.

⁹¹ Id.

⁹² *State Cigarette Tax Rate & Rank, Date of Last Increase, Annual Pack Sales & Revenues, and Related Data*, Campaign for Tobacco-Free Kids, August 2008, at <http://www.tobaccofreekids.org/research/factsheets/pdf/0099.pdf>.

⁹³ Id.

CONCLUSION

There has been a renewed interest in a more comprehensive solution to our broken health care system at the national level and in some successful state-level initiatives for comprehensive reform. Solutions such as these can benefit everyone in the health care system and the state would be wise to spend its energy and resources pursuing and supporting more comprehensive change. But Insure Montana is an excellent and interesting model for the state to consider. It could represent an important step forward on the path to providing health care to all Nebraskans.

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