Approved: 2-11-97
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 4, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:
Bill Wolff, Legislative Research Department
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Bill Wolff, Kansas Legislative Research Department
Kathleen Sebelius, Kansas Insurance Commissioner

Others attending: See attached list

Briefing on Kassebaum/Kennedy Health Insurance Reform Legislation

Bill Wolff, Kansas Legislative Research Department, briefed the Committee on the Health Insurance Portability and Accountability Act of 1996, commonly referred to as the Kassebaum/Kennedy Health Insurance Reform legislation which provides for extensive reforms of the insurance marketplace. Mr. Wolff noted that those insurance reforms will affect group plans, individual policy forms and long-term care insurance. (See Attachment 1) Committee discussion on insurance related to the probationary period, individual eligibility and COBRA coverage.

Kathleen Sebelius, Kansas Insurance Commissioner, also briefed the Committee on key points of HIPAA or K/K as noted in her written testimony. (Attachment 2) Commissioner Sebelius pointed out that if all states do not adopt a qualified alternative insurance mechanism by July 1, 1997, the federal government will mandate such legislation. After Committee discussion, the Chair noted that a bill addressing the Kassebaum/Kennedy legislation was introduced in the Financial Institutions and Insurance Committee, and such legislation will soon be assigned to a subcommittee for study .

Adjournment

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 5, 1997.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-4-97

NAME	REPRESENTING
Bob Harder	MPS
Jerry Dick	KFB
Fred Patenka	BCBSKS
Bruce Linhart	Preferred Health Systems
Susan M. Baker	Hein + Weir
Kathy Statleo	HHS
Shon Nelson	Preferred Registry of Nurses
Barb Young	Home Health Services
DK Shriver	Kansas Legal Services
Rick Guthrie	Health Midwest
Bill Gross	St. Luke's Shawnee Mission Health System
Steve Rosen	KDHE
Janice Nelson Kimball	KU Grad student / Mennonger
Carolyn Middendorf	KSNA / Topeka
Amy Campbell	R. Rice Law Office
Cindy Harrington	Goeden Real Ins. Co.
Michelle Peterson	Golden Rule Ins.
John Peterson	Ks Governmental Consulting
Ken Bahr	KS. Hospital Assn.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-4-97

NAME	REPRESENTING
Ashley Sherard	Overland Park Chamber
Larrie Ann Brown	KHA
John Federico	Peter McGill + Assoc.
Shirley Beerbenberger	League of Women Voters
Kay D. Bartz	Dept of Administration
Michael Byington	Wichita Industries for Services for the Blind
Kelly Kultala	City of Overland Park
Con P. Schmitthenner	Kansas Dental Assoc.
Debby Klaveur	SRS

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February 3, 1997

Kassebaum/Kennedy: Federal Health Insurance Reform

The Health Insurance Portability and Accountability Act of 1996, commonly referred to as "Kassebaum/Kennedy" provides for reform of the insurance marketplace in several ways. This memorandum is an attempt to set out those reforms as they affect group plans, individual policy forms, and long-term care insurance.

Group Market Reforms
(All Large Groups Including ERISA)

Briefly, Kassebaum/Kennedy:

- defines a preexisting condition exclusion as one relating to a condition, physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date;

- limits an exclusion for a preexisting condition to a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date;

- allows a health maintenance organization (HMO) to impose an "affiliation period," applied uniformly to all enrollees regardless of health status and for a period not to exceed two months, three months for late enrollees (an affiliation period is that period of time that must expire before the HMO coverage becomes effective);

- prohibits the establishment of rules for eligibility based upon health status-related factors [health status, medical condition (physical and mental), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence, and disability];

- prohibits the imposition of any preexisting condition exclusion for newborns and adopted children within 30 days of birth or adoption;

- prohibits the imposition of a preexisting condition exclusion for pregnancy;

- limits the use of genetic information to those conditions actually diagnosed as a preexisting condition;

Senate Public Health and Welfare
Date: 2-4-97
Attachment No. 1

- requires the portability of coverage provided there is not more than a 63-day period during which a person had no coverage (defines how coverage is to be credited—"creditable coverage"); and

- guarantees renewability of coverage, except for nonpayment of premiums, fraud, violations of participation or contribution rules, termination of coverage, movement outside of the service area, or the association membership ceases.

Small Group Market

Kassebaum/Kennedy:

- defines "small employer" as an employer who employed an average of at least two but not more that 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year;

- would permit a state to elect to include a group health plan that has fewer than two participants as current employees under coverage in the small group market;

- allows for the imposition of a preexisting condition exclusion only if it related to a condition, physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date;

- limits an exclusion for a preexisting condition to a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date;

- prohibits the imposition of any preexisting condition exclusion for newborns and adopted children within 30 days of birth or adoption;

- prohibits the imposition of a preexisting condition exclusion for pregnancy;

- limits the use of genetic information to those conditions actually diagnosed as a preexisting condition;

- requires the portability of coverage provided there is not more than a 63-day period during which a person had no coverage (defines how coverage is to be credited—"creditable coverage");

- requires health insurance issuers offering health insurance coverage in the small group market to accept every small employer that applies; and

- requires a health insurance issuer to renew or continue in force coverage at the option of the plan sponsor, except for nonpayment of premiums, fraud, violations of participation or contribution rules, termination of coverage, movement outside of the service area, or the association membership ceases.

Individual Market Reforms

Kassebaum/Kennedy:

- provides that insurers may not decline to offer coverage to or deny enrollment of an eligible individual or impose any preexisting condition exclusions to such coverage;

- defines "eligible individual"

  - as one who has 18 or more months of coverage and whose most recent coverage was under a group, governmental, or church health plan;

  - who is not eligible for other types of coverages enumerated in the Act;

  - who did not lose coverage because of nonpayment of premium or for fraud; and

  - who had been offered coverage under COBRA, elected the continuation coverage, and exhausted that coverage.

- permits insurers to offer alternative types of coverage, including:

  - a choice of a policy which has the largest or next to the largest premium volume of all such policies offered by the insurer in the state; or

  - a choice of a lower-level coverage policy and a higher-level policy form, each of which includes benefits substantially similar to other individual coverages offered by the insurer in the state.

- guarantees renewability of coverage at the option of the individual with certain exceptions, *e.g.*, nonpayment of premium or fraud;

- allows states to implement an "acceptable alternative mechanism" to coverage described above for eligible individuals in which all eligible individuals are provided a choice of health insurance coverage which imposes no preexisting condition exclusions; includes at least one policy form of coverage that is comparable to a comprehensive health insurance coverage offered in the individual market in the state or is comparable to a standard option of coverage available under the group or individual health insurance laws of the state; and is one of the following mechanisms:

- the Small Employer and Individual Health Insurance Availability Model Act adopted by the National Association of Insurance Commissioners (NAIC) on June 3, 1996; or

- the Individual Health Insurance Portability Model Act adopted by the NAIC on the same date; or

- a qualified high risk pool (one that provides to eligible individuals coverage or comparable coverage that does not impose any preexisting condition exclusion and which provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act); or

- other mechanisms (not a well understood option!).

If the state chooses to implement one of the "acceptable alternative mechanisms," it must notify the Secretary of Health and Human Services by April 1, 1997, that the state has enacted, or intends to enact by January 1, 1998, any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism as of January 1, 1998, and to provide to the Secretary such information as the Secretary may require to review the mechanism and its implementation.

Long-Term Care

This part of Kassebaum/Kennedy is clearly elective, *i.e.*, nothing in the federal enactment requires the state to change its current regulation of long-term care insurance. Having said that, the long-term care provisions of the Act, if enacted for Kansas, could qualify Kansans purchasing such policies for favorable federal and state tax treatment beginning January 1, 1997.

Kassebaum/Kennedy:

- provides that a qualified long-term care insurance contract shall be treated as an accident and health insurance contract;

- defines "qualified long-term care insurance contract" as a contract that provides insurance protection for long-term care services; is guaranteed renewable; meets certain specified consumer protection standards, including disclosures and a mandatory offer of a nonforfeiture provision;

- defines "qualified long-term care services" to mean necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitating services, and maintenance or personal care services provided to a chronically ill individual as prescribed by a licensed health care practitioner;

- defines "chronically ill individual" as a person unable to perform without substantial assistance at least two activities of daily living (ADL)for a period

of at least 90 days due to a loss of functional capacity (ADLs include eating, toileting, transferring, bathing, dressing, and continence);

- provides that premiums paid for a qualified long-term care insurance contract are tax deductible on those contracts purchased after December 31, 1996, and certain other contracts purchased before that date are "grandfathered" (premiums are deductible on the following schedule: age 40 or less, $200; more than 40 but not more than 50, $375; more than 50 but no more than 60, $750; more than 60 but less than 70, $2,000; and more than 70, $2,500); and

- provides that benefits received from a qualified long-term care insurance contract do not accrue as taxable income.

Other Provisions

Kassebaum/Kennedy also provides for participation in medical savings accounts for 750,000 persons (generally employed or self-employed persons); increases deductions for health insurance costs of self-employed individuals; and changes the tax treatment of accelerated death benefits received under a life insurance contract on the life of an individual who is terminally or chronically ill.

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

OVERVIEW OF THE HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT OF 1996

Health Insurance Portability and Accountability Act of 1996 (HIPAA, or K/K)

- signed by the President on August 21, 1996
- most sweeping health care legislation since passage of Employee Retirement Income Security Act (ERISA) in 1974

General Structure of HIPAA:

1) amendments to ERISA. One reason the law is so sweeping is it affects self-funded plans, and helps level the playing field by imposing standards on plans over which the states have no jurisdiction

2) parallel amendments to the Public Health Service Act (PHSA) that affect health carriers

3) amendments to the tax code for long-term care insurance, medical savings accounts and deductibility for the self-employed

Our bill focuses on number 2 - amendments to our insurance code.

Insurance Code amendments fall into three areas:

- **small group market** reforms
- **large group market** reforms
- **individual market** reforms

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Essential elements of HIPAA:

Small group market:

1) **guaranteed issue** to

   - **all small employers** (defined as 2 - 50, but states may have groups of one in the small group market, and may go higher than 50)
   - **all eligible employees**
   - **all products** offered by a carrier in the small group market

2) **guaranteed renewability** of all policies with certain enumerated exceptions

3) **preexisting condition exclusion limitations** - limited to 6/12 (lookback, exclusion) with credit for prior coverage as long as there has been no gap in coverage greater than 63 days

Large Group market:

1) **guaranteed renewability** of all policies with certain enumerated exceptions

2) **preexisting condition exclusion limitations** - limited to 6/12 (lookback, exclusion) with credit for prior coverage as long as there has been no gap

The bill calls for a study of availability in the large group market; no guaranteed issue requirements in this market.

Individual market:

1) **guaranteed issue** to eligible individuals (those with 18 months creditable coverage, most recently in a group plan, with no break in coverage greater than 63 days

2) **guaranteed renewability** of all policies with certain enumerated exceptions

3) **no preexisting condition exclusions** may be imposed **on eligible individuals**

Pregnancy is **not allowed as a preexisting condition** in the group market, and is not allowed for eligible individuals in the individual market.

So HIPAA creates federal standards in the area of health insurance - essentially creates a floor in certain areas, below which state standards may not fall.

- state flexibility exists, however
- certain state laws specifically preempted, dealing with preex (such as 12 month lookback period in small group market)

With respect to the individual market, the federal standards will not apply if the state enacts what is called an **acceptable alternative mechanism**. There is a four-pronged test for an acceptable alternative mechanism, and the states are given many options as to how to comply.

HIPAA requires that an **acceptable alternative mechanism** meet **four requirements**:

1. It must provide eligible individuals with a **choice** of coverage;

2. It cannot impose any **preexisting condition exclusions** for eligible individuals;

3. The choice must include **at least one policy form** that is:

   (i) comparable to **comprehensive coverage** in the individual market in the state; **or**
   (ii) comparable to the **standard** plan under the state's small group or individual laws;

   AND

4. The state must be implementing **one of three** things:

   (a) one of the **two NAIC models laws** on individual market reform;

   (b) a qualified **high risk pool** as defined in the law; or

   (c) (i) a mechanism providing for **risk adjustment, risk spreading**, or a risk spreading mechanism or otherwise provides for some **financial subsidization** of eligible individuals; or

   (ii) a mechanism allowing eligible individuals a **choice of all available** individual health insurance coverage.

Additional Health Insurance Requirements

Mental Health "Parity"

- Applies to large group policies and health plans (51+ employees).
- If have caps on mental health benefits and medical and surgical - must use same annual and lifetime limits.
- Company does not have to follow mandate if they can show it would increase cost of coverage by more than 1%.
- Provision sunsets on September 30, 2001.

Mothers and Newborns Protection Act

- Health plan and insurers must provide for minimum hospital stays for mothers and newborn children at least 48 hours after a normal delivery or 96 hours after a cesarean section.
- Mother and child may come home earlier if permitted by the attending physician in consultation with mother.
- Health plan may not offer monetary incentives or rebates to mothers to encourage them to go home early.

Prepared by: Mary Beth Senkewicz (NAIC) (1/9/97)

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996* [P.L. 104-191]

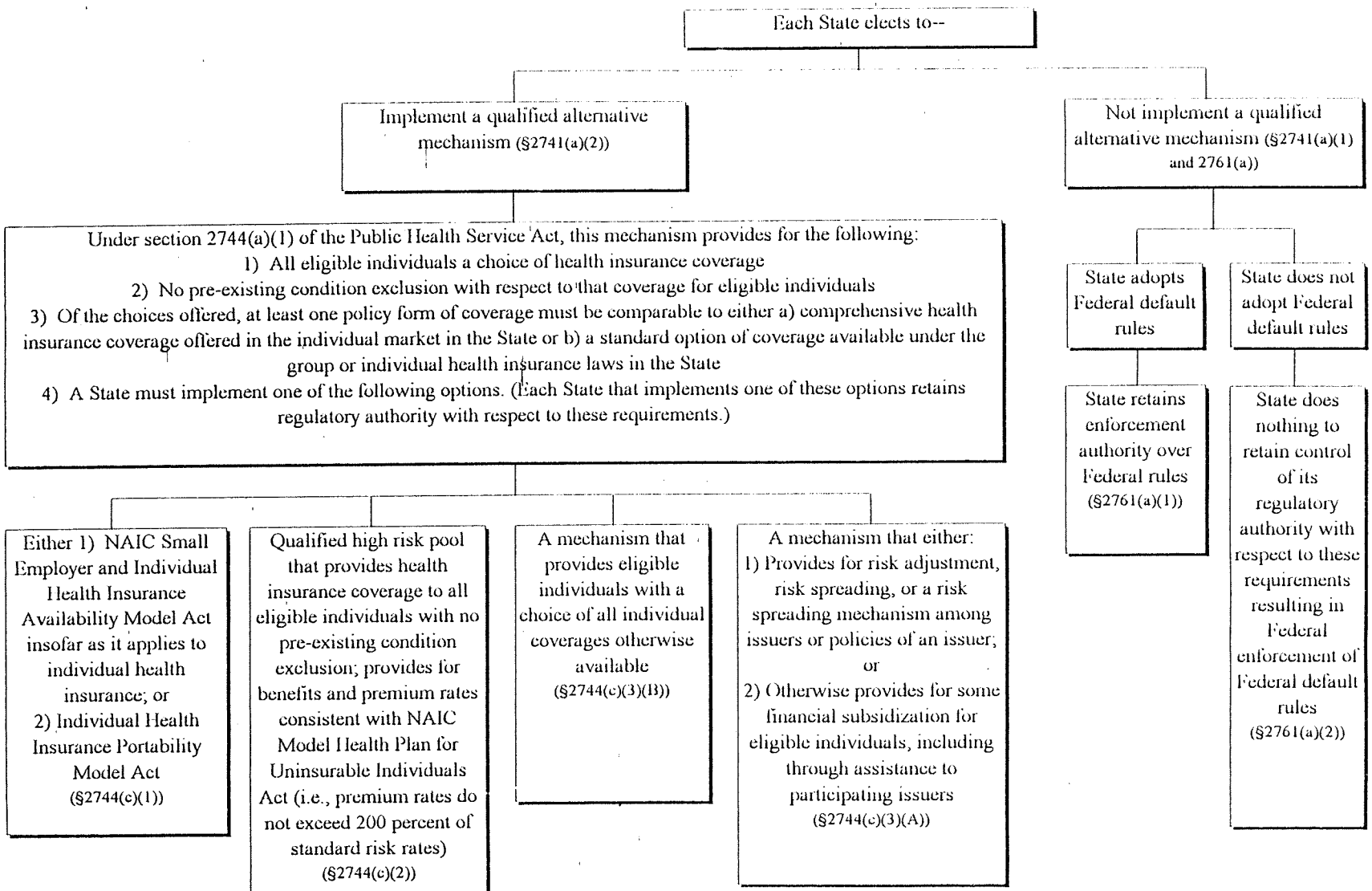
	Large Group	Small Group [2 - 50 Employees]	Individual
Guaranteed Issue	No [§2711]**	Yes, of all products sold in small group market to whole group and eligible individuals within the group. [§2711(a)(1)]	Yes, of a limited number of products to eligible individuals. [§2741]
Guaranteed Renewability	Yes, with standard exceptions. [§2712]	Yes, with standard exceptions. [§2712]	Yes, with standard exceptions.[§2742]
Establishes Maximum PreX Exclusion Periods	Yes - 12 months (18 months for late enrollees). [§2701]	Yes - 12 months (18 months for late enrollees). [§2701]	Preexisting condition exclusions are prohibited for eligible individuals. [§2741]
Establishes Maximum Look-Back Periods	Yes - 6 months. [§2701]	Yes - 6 months. [§2701]	Preexisting condition exclusions are prohibited for eligible individuals. [§2741]
Requires Credit for previous PreX	Yes [§2701(c)]	Yes [§2701(c)]	Preexisting condition exclusions are prohibited for eligible individuals. [§2741]
Preemption of State Law in General	No, unless state standard or requirement prevents application of K/K. [§2723(a)]	No, unless state standard or requirement prevents application of K/K. [§2723(a)]	Yes, unless state implements alternative mechanism. [§§2741, 2744]
Preemption of State Law re: PreX	Yes, unless state law fits one of several exemptions for state laws that are more generous re: PreX. [§2723(b)]	Yes, unless state law fits one of several exemptions for state laws that are more generous re: PreX. [§2723(b)]	Yes; for eligible individuals, federal law prevents the application of any PreX exclusion. [§§2741, 2744]
State Enforcement Permitted	Yes, unless state fails to substantially enforce a provision. [§2722]	Yes, unless state fails to substantially enforce a provision. [§2722]	Yes, unless state fails to substantially enforce a provision. [§2745]
Eligible Individual		Is determined in accordance with terms of the plan, under rules of the issuer which are uniformly applicable and which comply with all applicable state laws. [§2711(a)(2)]	-At least 18 months of previous "creditable" coverage; - Most recent coverage in group plan; - No lapse in coverage that exceeds 63 days; - Has no current coverage; -Not eligible for Medicare or Medicaid; -Has exhausted COBRA. [§2741(b)]

	Large Group	Small Group [2 - 50 Employees]	Individual
Maternity Provisions Apply (48-Hour Stay)	Yes [§2704]	Yes [§2704]	Yes [§2751]
Mental Health Parity Provisions Apply	Yes [§2705(a)]	No [§2705(c)(1)]	No [§2705(a)]

*This chart sets forth the minimum standards set forth within the Act. In most areas, state standards can go further than the minimum federal standards.

** All references are to the Public Health Service Act (PHSA), as amended by P.L. 104-191, Title I, Sections 102, 111, and subsequent amendments thereto.

12/12/96


Each State elects to--
Implement a qualified alternative mechanism (§2741(a)(2))
Not implement a qualified alternative mechanism (§2741(a)(1) and 2761(a))
Under section 2744(a)(1) of the Public Health Service Act, this mechanism provides for the following:
1) All eligible individuals a choice of health insurance coverage
2) No pre-existing condition exclusion with respect to that coverage for eligible individuals
3) Of the choices offered, at least one policy form of coverage must be comparable to either a) comprehensive health insurance coverage offered in the individual market in the State or b) a standard option of coverage available under the group or individual health insurance laws in the State
4) A State must implement one of the following options. (Each State that implements one of these options retains regulatory authority with respect to these requirements.)
State adopts Federal default rules
State does not adopt Federal default rules
State retains enforcement authority over Federal rules (§2761(a)(1))
State does nothing to retain control of its regulatory authority with respect to these requirements resulting in Federal enforcement of Federal default rules (§2761(a)(2))
Either 1) NAIC Small Employer and Individual Health Insurance Availability Model Act insofar as it applies to individual health insurance; or
2) Individual Health Insurance Portability Model Act (§2744(c)(1))
Qualified high risk pool that provides health insurance coverage to all eligible individuals with no pre-existing condition exclusion; provides for benefits and premium rates consistent with NAIC Model Health Plan for Uninsurable Individuals Act (i.e., premium rates do not exceed 200 percent of standard risk rates) (§2744(c)(2))
A mechanism that provides eligible individuals with a choice of all individual coverages otherwise available (§2744(c)(3)(B))
A mechanism that either:
1) Provides for risk adjustment, risk spreading, or a risk spreading mechanism among issuers or policies of an issuer; or
2) Otherwise provides for some financial subsidization for eligible individuals, including through assistance to participating issuers (§2744(c)(3)(A))