

HEARING ON BUSINESS PRACTICES IN THE
INDIVIDUAL HEALTH INSURANCE MARKET:
TERMINATION OF COVERAGE

Thursday, July 17, 2008

House of Representatives,
Committee on Oversight and
Government Reform,
Washington, D.C.

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Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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11 The committee met, pursuant to call, at 9:30 a.m., in
12 Room 2154, Rayburn House Office Building, the Honorable Henry
13 A. Waxman [chairman of the committee] presiding.

14 Present: Representatives Waxman, Murphy, Speier, Lynch,
15 Tierney, Van Hollen, Cummings, Braley, Sarbanes, Kucinich,
16 Davis of Virginia, Issa, Bilbray, Platts, and Shays.

17 Staff Present: Phil Barnett, Staff Director and Chief
18 Counsel; Kristin Amerling, General Counsel; Karen Nelson,
19 Health Policy Director; Karen Lightfoot, Communications
20 Director and Senior Policy Advisor; Andy Schneider, Chief

21 | Health Counsel; Roger Sherman, Deputy Chief Counsel; John
22 | Williams, Deputy Chief Investigative Counsel; Sarah Despres,
23 | Senior Health Counsel; Michael Gordon, Senior Investigative
24 | Counsel; Steve Cha, Professional Staff Member; Earley Green,
25 | Chief Clerk; Jen Berenholz, Deputy Clerk; Caren Auchman,
26 | Press Assistant; Ella Hoffman, Press Assistant; Zhongrui
27 | ``JR`` Deng, Chief Information Officer; Miriam Edelman,
28 | Special Assistant; Mitch Smiley, Staff Assistant; Lawrence
29 | Halloran, Minority Staff Director; Jennifer Safavian,
30 | Minority Chief Counsel for Oversight and Investigations;
31 | Keith Ausbrook, Minority General Counsel; Adam Fromm,
32 | Minority Professional Staff Member; Patrick Lyden, Minority
33 | Parliamentarian and Member Services Coordinator; Jill
34 | Schmaltz, Minority Senior Professional Staff Member; and
35 | Molly Boyl, Minority Professional Staff Member.

36 Chairman WAXMAN. The Committee will please come to
37 order.

38 I first of all want to, as the Chairman of the
39 Committee, welcome our newest member, Representative Jackie
40 Speier, who represents the 12th District of California.
41 Representative Speier, we are very pleased to have her on our
42 Committee. She is very experienced as a State Legislator,
43 and I want to acknowledge the fact that she is now a member
44 of the Committee.

45 Today's hearing begins what I hope will be a series of
46 hearings into how the market for individual health insurance
47 policies work.

48 The individual health insurance market serves
49 approximately 14 million Americans. Some members of Congress
50 cite that the individual market as a model for national
51 health insurance reform, yet the business practices of the
52 companies that sell individual health insurance policies have
53 never been closely examined by the Congress.

54 Today's hearing will examine a little known business
55 practice in the individual health insurance market, which the
56 industry calls ``post-claims underwriting.'' Post-claims
57 underwriting is a sanitized name for an exceptionally
58 offensive practice, retroactively denying health insurance to
59 people who get sick, and when they get sick.

60 Most Americans who have health insurance get that

61 insurance through their employers or through government
62 programs like Medicare or Medicaid or Tricare. Americans who
63 are fortunate enough to have group insurance are not at risk
64 for post-claims underwriting. Group insurance coverage can't
65 be terminated when you need it the most.

66 Americans who purchase health insurance in the
67 individual market face a very different situation. In most
68 States, insurers require applicants for individual health
69 insurance to fill out detailed application forms that are
70 designed to identify any physical or mental health condition
71 or chronic illness.

72 Insurers are supposed to then look at the application
73 provided on these forms before approving the applicant for
74 coverage. Based on this information, the insurer decides
75 whether to issue the policy, to issue the policy with certain
76 restrictions, such as refusing to cover pre-existing
77 conditions, or to deny the application altogether. This
78 process is called medical underwriting and the expectation is
79 that it will occur before the policy is issued or denied.

80 Post-claims underwriting happens after the individual
81 health insurance company has decided to approve a policy and
82 to issue that policy. It is often triggered after the
83 policyholder gets sick, or has an accident and requires major
84 health insurance coverage to be put into place to pay for the
85 bills. The insurer then goes back, and then goes with a

86 | fine-toothed comb through the insurance application, to see
87 | if there is any technicality that can be used to justify
88 | rescinding the policy.

89 | This happened to two of our witnesses, Heidi and Keith
90 | Bleazard. They will tell us how their health insurance was
91 | taken away after Heidi suffered serious injuries in a biking
92 | accident. Their insurer, Regence, claimed that Heidi and
93 | Keith made a mistake in their application for health
94 | insurance, and then the insurance company terminated the
95 | policy. They were left with more than \$100,000 in medical
96 | bills.

97 | What happened to the Bleazards is inexcusable. The
98 | reason families buy insurance is so that they will be covered
99 | when they get sick. But Regence cancelled their insurance
100 | when they needed it the most.

101 | Unfortunately, the experience of the Bleazards is not an
102 | isolated one. We will hear today that over 1,000 individuals
103 | in California had their insurance policies inappropriately
104 | rescinded. And we will hear about policyholders in
105 | Connecticut who suffered the same thing. One person who was
106 | terminated because the insurer said he should have known that
107 | his occasional headaches would later be diagnosed as Multiple
108 | Sclerosis.

109 | I understand that insurance companies need to protect
110 | themselves from fraud. But that is not what happened in

111 California, Connecticut, or across the Country. Insurers are
112 using technicalities, or trumped-up ``misrepresentations,``
113 to rescind policies after individuals get sick and accumulate
114 hundreds of thousands of dollars in medical bills.

115 Now, that may be a great deal for the insurance
116 companies. They can pocket the premiums while the families
117 are well and then cancel the coverage if anyone in the family
118 get seriously sick. But it defeats the whole point of
119 getting an insurance policy in the first place.

120 While State regulators are the front line of defense for
121 consumers, the Federal Government is the last line. Under
122 HIPAA, the Federal Health Insurance Portability and
123 Accountability Act of 1996, consumers are guaranteed the
124 right to renew their individual health insurance policies
125 unless they have defrauded the insurer or intentionally
126 misrepresented their medical condition.

127 Unfortunately, few consumers know of their Federal HIPAA
128 rights to guaranteed renewability. That is because the
129 Federal Agency responsible for enforcing HIPAA, the Centers
130 for Medicare and Medicaid Services, has done nothing to
131 enforce those rights or to ensure that States do so. Of its
132 4,387 full-time employees, only 4 are assigned to
133 administering HIPAA. CMS has never taken any action against
134 any health insurer for post-claims underwriting that violates
135 a consumer's HIPAA rights.

136 Our hearing today will examine how the practice of
137 post-claims underwriting is being abused to deny coverage to
138 ailing Americans. We will learn what some State regulators
139 are doing to stop the abuses.

140 And we will ask why the Federal Government is doing
141 nothing to protect consumers from this practice.

142 And we will ask the health insurance industry's trade
143 association why insurers in the individual market do
144 post-claims underwriting, and why it has taken the
145 intervention of regulators to bring an end to this unfair
146 practice in some States.

147 These are not academic questions. Discussions are
148 already underway about how the next Congress might best
149 ensure that all Americans have adequate health care coverage.

150 Some health care reform proposals would move millions of
151 Americans, including many of those now insured through their
152 employers, and billions of Federal dollars, into the health
153 insurance market.

154 This would obviously be a radical change in our health
155 care system. Whether it represents reform is a debate for
156 another day. To prepare for that debate, however, we all
157 need a much better understanding of the individual health
158 insurance market as it currently functions. The purpose of
159 this hearing is to begin that educational process.

160 And I now want to recognize Mr. Issa for an opening

161 | statement.

162 | [Prepared statement of Chairman Waxman follows:]

163 | ***** COMMITTEE INSERT *****

164 Mr. ISSA. Thank you, Mr. Chairman.

165 Mr. Chairman, I would like to have unanimous consent for
166 principles for insuring fair and appropriate practices for
167 individual market policy rescissions and pre-existing
168 conditions causes entered into the record at this time.

169 Chairman WAXMAN. Without objection, that will be the
170 order.

171 [The referenced information follows:]

172 ***** COMMITTEE INSERT *****

173 Mr. ISSA. Thank you, Mr. Chairman.

174 Mr. Chairman, getting individual insurance can be
175 difficult in a market place. The market place clearly favors
176 risks allocated or apportioned over large groups. Losing
177 individual coverage retroactively can put one's life at risk.
178 I believe that is the reason for this hearing today.

179 I think it is an incredibly important reason for the
180 Bleazards who are here today, and we will get the
181 pronunciation better as we go on, I am sure. You have our
182 deepest sympathy. Clearly, mistakes happen. Wrongdoing can
183 occur. And we are here today to try to separate both of
184 those from the legitimate practice of looking for fraud in
185 applications.

186 Undoubtedly, I am sure you will agree in testimony that
187 all three exist. People make mistakes. People defraud
188 insurance companies. And insurance companies make mistakes,
189 or use practices in some cases that are clearly wrong and
190 self-serving. So, I appreciate the Committee covering this.

191 Although HIPAA's jurisdiction is extremely limited, and
192 the administration of both President Clinton and now
193 President Bush have seen fit to see little or no Federal
194 wrongdoing. That doesn't stop this Committee from seeing
195 whether in fact two administrations have been wrong and
196 perhaps create an opportunity for the next administration to
197 get it right.

198 Certainly, our witnesses today from California and
199 Connecticut will be very helpful. It is very clear that
200 although people who are victims, or alleged victims, of
201 misconduct by health insurance carriers are important to hear
202 from. It is also important to hear from as many people who
203 are advocates or responsible for administering the fair use
204 of these opportunities on both sides. Only state regulators
205 have primary jurisdiction. Their goal, the goal of the
206 people of California, Connecticut, and all of our States, is,
207 in fact, to guarantee consumers the contract sanctity
208 necessary in health care arrangement.

209 Consumers clearly need more access and more awareness to
210 this growing problem that an individual health care
211 application could, in fact, retroactively be denied. It is
212 not uncommon when people are filling out applications for
213 people quite harmlessly to gloss over or not take time to
214 mention that they had an injury or an illness decades
215 earlier. That clearly should not allow a technical and
216 unrelated cancellation to occur.

217 We have an industry in America that is under
218 considerable assault with rising costs and limited ability
219 for individuals or even companies to pay. I join with the
220 Chairman in recognizing that with 44 plus million uninsured
221 Americans, the last thing we need to do is to have people
222 doubting whether it is worthwhile to get insurance to begin

223 with.

224 Very clearly, unless people can count on contract
225 sanctity, it is likely that we would only increase the number
226 of people who choose to put the money into a savings account
227 or spend it rather than make that investment against the
228 rainy day occurrence of an illness or injury.

229 Mr. Chairman, as we talked earlier, at this time I would
230 like to ask unanimous consent to have our witness from the
231 third panel, so closely related to the industry and to the
232 regulators, Stephanie Kanwit, be allowed to be on the first
233 panel, because we believe that it is the only way to have a
234 fair back and forth during the evaluation. And it will save
235 a considerable amount of time.

236 [Prepared statement of Mr. Issa follows:]

237 ***** COMMITTEE INSERT *****

238 Chairman WAXMAN. This suggestion that you are making and
239 requesting by unanimous consent is one that we have
240 discussed. And as we looked at organizing this hearing, we
241 think we have organized it in a way that is fair to everyone
242 and will give everyone an opportunity to speak. We could put
243 everybody on one panel, but CMS didn't want to be on with the
244 State regulators, which might have made some sense. The
245 insurance companies, trade associations, are going to be on
246 afterwards. I don't see why they have to be on this panel.
247 And since we have always tried to accommodate the minority
248 and staff in witness recommendations and in structuring the
249 hearings, but our best judgment is we have structured it the
250 way that it makes the most sense.

251 Mr. ISSA. Mr. Chairman, since the UC has not agreed to,
252 and since the minority disagrees at this time that this is by
253 any means fairness, and since there is obviously a slanting
254 on the first two panels by the majority and our one witness
255 has been relegated to the last panel, I would hereby make a
256 motion that we move Stephanie Kanwit to the first panel at
257 this time.

258 Chairman WAXMAN. Is your witness the insurance company?
259 Is that why you are here, to protect the insurance company?
260 Why don't we hear about this problem? And also, as the
261 Californians hear from the California regulators, who I think
262 we ought to be proud of for having done the right thing.

263 They represent the Republican Governor. Let's hear from the
264 witnesses and not go through a procedural motion.

265 I would urge the gentleman not to try to pursue a motion
266 to rearrange the Committee hearing list. I understand your
267 point. You have made a point. But it is the prerogative of
268 the Chairman to decide the order of the witnesses, and we
269 always welcome input. And, in fact, I think we have been
270 more responsive to the input from the minority than when we
271 were in the minority.

272 Mr. ISSA. Well, Mr. Chairman, we did talk about the
273 other alternative, which would be to have the State
274 regulators, including California, who is considering some of
275 these reforms that the Association representative will be
276 talking about on the same panel, and you also declined that.
277 So, at this time, I must reiterate my motion to combine the
278 third and first panel.

279 Chairman WAXMAN. I don't know whether it is appropriate
280 even to entertain such a motion. Let me have our counsel
281 review that and advise me. I have never in my 34 years in
282 the Congress ever had a member, or seen a member, make a
283 motion to stop a hearing for witnesses by asking that they be
284 rearranged in different panels, or in different positions. I
285 have never seen it. It is a first time. I think it is quite
286 inappropriate, because we are trying to get the witnesses the
287 opportunity to be heard. Members of the Committee have not

288 | been informed that there may be motions before us today.

289 | This is a hearing and not a Committee meeting. I will recess
290 | for a second and consult my counsel.

291 | Mr. ISSA. Thank you, Mr. Chairman.

292 | [Recess.]

293 | Chairman WAXMAN. The Chair will recognize himself in
294 | opposition to this motion. I think it is quite outrageous to
295 | make a motion on the basis that the insurance company is
296 | being relegated to an inability to make their case, because
297 | they are the last ones to speak. I think what we need is to
298 | have an opportunity to hear all of the witnesses. And it is
299 | the prerogative of the Chair to make this determination. I
300 | think we have acted fairly. And so, I would urge members to
301 | vote against the motion.

302 | Mr. ISSA. Speaking in favor of it, Mr. Chairman, and I
303 | will be brief. Insurers, and their representatives, trade
304 | association, have answers to many of the questions.
305 | Regulators have questions to be answered. The banter between
306 | the two was not a hypothetical request, but, in fact, one
307 | that I believe very strongly would promote a better dialogue.

308 | The prerogative of the Chair under the House Rules and
309 | the Committee Rules is relatively limited. The ability of
310 | the Majority to, by vote, do what they want to do is pretty
311 | absolute. Today, we make this request mostly because, in
312 | fact, your party said that you wanted to come together. Our

313 party did lose the last election. We want to work with you.
314 This is not an adversarial hearing. And, it should not
315 become one.

316 This is a hearing in which we are trying to find ways to
317 fix a real problem. We have real people here who were
318 adversely affected by it. The regulators that are here today
319 are here with hypothetical and proposed answers in order to
320 keep this from happening in the future, and they will in many
321 cases need legislation and perhaps Federal help to do so.
322 The insurance association representative that we chose to
323 have here, we want them to be answerable for this practice
324 and we want them to be part of any solution. That is
325 necessary in our free market.

326 Mr. Chairman, you did mention that you thought that the
327 motion was not in order. I might remind you that when you
328 were in the Minority, you made motions for subpoenas, or
329 threatened to make motions for subpoenas at hearings like
330 this. This is an opportunity, a scheduled opportunity. We
331 were all given notice that, in fact, a hearing and subjects
332 related to the hearing may very well be brought up.

333 Mr. Chairman, I very much believe that we should look to
334 redo this panel to make it more equitable and more effective.
335 I am happy to work with you on any compromise, but I don't
336 believe that we were properly recognized in the process of
337 finding an acceptable panel that would be beneficial to all

338 | of the individuals who are going to spend their time on the
339 | day as here, and for those individuals and representatives
340 | who are here today to give testimony and be questioned.

341 | Chairman WAXMAN. The gentleman has made his case. The
342 | issue before us is a motion to rearrange the panels. All
343 | those in favor of the motion offered by the gentleman from
344 | California, Mr. Issa, will say aye.

345 | Mr. ISSA. Aye.

346 | Chairman WAXMAN. All those opposed will say, no.

347 | [A chorus of noes.]

348 | Chairman WAXMAN. The noes have it, and the motion is not
349 | agreed to.

350 | Mr. ISSA. Mr. Chairman, on that, I have to ask for the
351 | nays and ayes.

352 | Chairman WAXMAN. All those in favor of the ayes and nays
353 | raise your hand.

354 | [A show of hands.]

355 | Chairman WAXMAN. An insufficient number and the request
356 | for a roll call is not granted.

357 | Mr. ISSA. Mr. Chairman, I appeal the ruling of the
358 | Chair.

359 | Chairman WAXMAN. You would go that far to keep us from
360 | even hearing these witnesses, because you are worried that we
361 | won't be here to hear the insurance company. Well, we won't
362 | even get to the insurance company if you drag out this

363 hearing.

364 Mr. ISSA. Mr. Chairman, I do not want to drag out the
365 hearing. I will at this time--

366 Chairman WAXMAN. Those in favor of overruling the
367 decision of the Chair will say aye.

368 Mr. ISSA. Aye.

369 Chairman WAXMAN. Those opposed will say no.

370 [A chorus of noes.]

371 Chairman WAXMAN. The noes have it.

372 Mr. ISSA. Mr. Chairman, on that, I ask for the ayes and
373 nays.

374 Chairman WAXMAN. All those in favor of a roll call vote,
375 raise your hand.

376 [A show of hands.]

377 Chairman WAXMAN. An insufficient number. The request is
378 not granted.

379 Now we will hear from our witnesses. The Committee will
380 receive testimony from Heidi and Keith Bleazard, who are from
381 Logan, Utah. They had their health insurance policy
382 retroactively rescinded by Regence Blue Cross and Blue
383 Shield, of Utah, after Heidi was in a serious biking
384 accident. They will explain the circumstances and
385 consequences surrounding the rescission of their insurance
386 coverage.

387 Dale Bonner is Secretary of the Business, Transportation

388 and Housing Agency for the State of California. Mr. Bonner
389 was appointed by Governor Arnold Schwarzenegger in March of
390 2007, and oversees 13 departments, including the Department
391 of Managed Health Care. He will testify about the actions
392 his agency has taken to help consumers who had their health
393 insurance inappropriately rescinded.

394 Cindy Ehnes is the Director of the Department of Managed
395 Health Care, was initially listed as a witness, but she was
396 unable to appear this morning, because she is in negotiations
397 with two remaining large plans, Anthem Blue Cross and Blue
398 Shield of California, on this issue.

399 Mr. Bonner is accompanied today by Amy Dobberteen, Chief
400 of Enforcement Division of the Department of Managed Health
401 Care.

402 And Kevin Lembo heads the Office of the Healthcare
403 Advocate for the State of Connecticut in his role as
404 Connecticut's lead advocate for patients and their families.
405 Mr. Lembo will discuss Connecticut's experience with health
406 insurance rescissions and what steps Connecticut has taken to
407 aid policyholders and prevent future rescissions.

408 It is the policy of this Committee that all witnesses
409 that testify before us do so under oath. So I would like to
410 ask all of you, if you would, to please stand and raise your
411 right hand.

412 [Witnesses sworn.]

413 Chairman WAXMAN. Thank you. The record will indicate
414 that each of the witnesses answered in the affirmative.

415 Mr. Bleazard, why don't we start with you and your wife,
416 and have you speak to us. There is a button on the base of
417 the mic, which you have to push in to turn the mic on, and we
418 want to welcome you to the Committee and express our
419 appreciation for your willingness to be here.

420 STATEMENTS OF HEIDI BLEAZARD, LOGAN, UTAH; DALE E. BONNER,
421 SECRETARY, CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING
422 AGENCY, ACCOMPANIED BY: AMY DOBBERTEEN, CHIEF OF ENFORCEMENT
423 DIVISION, DEPARTMENT OF MANAGED HEALTH CARE; KEVIN P. LEMBO,
424 MPA, STATE HEALTHCARE ADVOCATE, CONNECTICUT

425 STATEMENT OF HEIDI BLEAZARD

426 Ms. BLEAZARD. Hello, my name is Heidi Bleazard.

427 Chairman WAXMAN. The button on the mic needs to be
428 pressed, and pull it closer so that we can hear you.

429 Ms. BLEAZARD. Can you hear me? My name is Heidi
430 Bleazard, and I am here with my husband, Keith Bleazard to
431 testify about the problems we had with Regence Blue Cross and
432 Blue Shield of Utah rescinding our health insurance coverage.

433 In February of 2005, Keith and I decided we wanted to
434 get an individual health insurance policy for ourselves. We
435 had two friends who are insurance agents, Doug Thatcher and
436 Troy DeLair. Keith had known them for over ten years. We
437 met with them a few times, and filled out applications for
438 health and life insurance, and a nurse came out to complete
439 more detailed paperwork. On one of the forms Keith marked
440 that he had a history of back trouble, but wasn't sure what

441 | to write in the comment section on the back. We consulted
442 | with Doug who knew all about Keith's back history having
443 | similar difficulties with his own back.

444 | Over the years and quite recently, they discussed and
445 | compared their similarities, including medicines and doctor
446 | visits. After discussing Keith's back, Doug Thatcher, one of
447 | our agents, wrote in the application that Keith had ``slipped
448 | disc in back, had surgery 1996, full recovery.'' Doug
449 | assured us the paperwork was filled out satisfactorily, and
450 | we trusted his knowledge of what information the insurance
451 | company needed.

452 | Keith had surgery in 1996 for a herniated disk and went
453 | three years without any pain or trouble of any kind. Later
454 | Keith pulled his back playing basketball and developed back
455 | pain that his Doctor helped him control with medicine. He
456 | has since then carried on his normal active life, including
457 | his job in floor covering, involving hard physical labor, a
458 | wide variety of rigorous activities such as hockey,
459 | snowmobiling, and being an active member of a Search and
460 | Rescue team.

461 | The medicine and doctor visits were detailed by the
462 | nurse on another form. We thought all the forms were being
463 | used together with our medical records, which we signed a
464 | release for the insurance companies to use to make their
465 | decisions. We received a letter in March of 2005 from

466 Regence, indicating that our application had been accepted
467 and we had health insurance coverage.

468 On August 18, 2005, I was in a bad mountain biking
469 accident. I broke my neck in two places and my back in five,
470 had a pulmonary contusion, a few broken ribs, and a brain
471 injury. Search and Rescue got me to where I could be life
472 flied to a trauma center, and they placed me in an intensive
473 care unit. I had to have several hours of neurosurgery on my
474 spine. When I got out of the hospital, I had to stay in a
475 rehabilitation unit until I was good enough to go home. My
476 medical bills were over \$100,000.

477 In November, just when the scope of the bills was
478 becoming apparent, Regence notified us they would be looking
479 into our medical records. And then in January 2006, Regence
480 notified Keith and I that they were rescinding our health
481 insurance policy retroactively. They claimed that Keith
482 failed to provide information in the application about his
483 back. Regence did not respond to our attempt to talk with
484 them to find out where the misunderstanding came from.

485 Troy DeLair, the senior agent, also attempted to clear
486 things up with Regence, communicating to them we had no
487 intention of misleading them. Regence had accepted the
488 claims and paid for Keith's medicines and doctor visits
489 without any problem for most of a year. Having signed the
490 release of records at the time of our application, and being

491 open to the agents and the nurse, we had no reason to suspect
492 Regence was missing any information. Only after the bills
493 from my accident were mounting did they notify us of a
494 problem.

495 Later we learned that they had not received the nurses
496 report detailing Keith's pain medicines and doctor visits,
497 and went to life insurance only, and that these things should
498 have been included on the form that Doug had helped us fill
499 out. Had Regence returned a copy of our application with our
500 healthcare policy, as prescribed by law, at the time of our
501 acceptance, we would have had the opportunity to question
502 where the rest of the paperwork was, and perhaps avoid the
503 future confusion.

504 I hope insurance companies such as Regence would be
505 prohibited from rescinding insurance coverage without making
506 a thorough inquiry into the facts and circumstances
507 surrounding the application of the insurance. In our
508 situation it was completely inadequate to simply look at the
509 application and compare it to Keith's medical records. Had
510 Regence understood all of the facts, I do not believe they
511 would have felt it was appropriate to retroactively cancel
512 our coverage.

513 And I thank you for the opportunity to appear before
514 this Committee to provide information about our
515 circumstances. Keith and I are hard working, responsible

516 citizens. We have never had any trouble with our creditors
517 before this time, or with the law. I believe that Regence
518 has taken advantage of the situation to avoid paying the
519 large medical bills for my biking accident. Any help that
520 you can provide in making sure that these unethical practices
521 do not continue in the future would be most appreciated.

522 [Prepared statement of Ms. Bleazard follows:]

523 ***** INSERT *****

524 Chairman WAXMAN. Thank you very much. Mr. Bleazard, did
525 you have anything to add, or is that it for both of you?

526 Mr. BLEAZARD. No, that was pretty much what we had
527 prepared as far as the outline of our rescission.

528 Chairman WAXMAN. Okay. At least you are here, and when
529 we get to questions, you may want to respond to them.

530 Mr. Bonner.

531 STATEMENT OF DALE BONNER

532 Mr. BONNER. Thank you, Mr. Chairman, and members of the
533 Committee. I am Dale Bonner, Secretary of California's
534 Business, Transportation and Housing Agency. Some years ago,
535 I was the HMO regulator in the State of California, and now
536 as Secretary, I oversee the Department of Managed Health
537 Care, and a number of other regulatory departments.

538 With me is Amy Dobberteen, Chief of the Department's
539 Enforcement Division. And she will be happy to answer any
540 specific questions that you may have about the law or
541 specific enforcement actions. We appreciate the opportunity
542 to be here this morning to help shed light on what you, in
543 your opening comment, noted is a very troubling practice
544 occurring in California, and we are sure across the Nation.

545 By way of background, we started getting aggressive in
546 this area in 2006, when we saw a number of complaints,
547 consumer complaints and an increase in litigation. And so,
548 the Department initiated what has probably been the largest
549 investigation of this practice in the Nation, looking at the
550 five largest plans that provide the most individual coverage
551 in California. That would be Anthem Blue Cross, Blue Shield
552 of California, Kaiser, PacifiCare and Health Net.

553 And we think that since we started getting involved, we

554 | have seen dramatic changes in industry practices. We have
555 | seen about an 81 percent drop in rescissions just in the
556 | first year alone. And we have continued to focus on the area
557 | because, as it was noted earlier, this is a particularly
558 | harsh practice that affects individuals because unlike having
559 | your insurance policy canceled, which just means that you
560 | have no coverage going forward, in this case rescission
561 | results in the entire withdrawal of your coverage even going
562 | back. And so, it leaves the member in many cases in limbo
563 | relative to existing or ongoing treatment, and also, at risk
564 | of being, in some cases, bankrupt, as a result of substantial
565 | legal bills going back in time.

566 | And so, we have continued to focus on these practices
567 | intensely. We don't deny that health plans have the right
568 | and, in fact, the responsibility to take a look and try to
569 | police inaccurate statements in applications and to make sure
570 | that everything is appropriate. But we have been concerned
571 | about what appeared to us to be little or no consistency in
572 | their processes or procedures for investigating these issues
573 | and medical history in determining whether to rescind
574 | coverage.

575 | The Department's investigations and actions to date have
576 | included a total of about \$3.1 million in fines, and we have
577 | brought about a number of procedural changes in health plan
578 | practices, and we have achieved a significant roll-back in a

579 number of rescissions. Working with our State Attorney
580 General and Department of Insurance, we have been able to
581 work with the industry in making sure that insurance
582 applications are much more transparent, and that everyone has
583 a much more clear understanding of what is required in the
584 up-front review process.

585 A final point, or a couple of final points, one is that
586 in April of this year, the Department announced that we were
587 going to take the issue a little bit further and actually go
588 back and review each and every individual case that was, in
589 fact, rescinded dating back to 2004. And that announcement
590 prompted a number of the plans to come forward and offer
591 settlements. And we achieved successful settlements with
592 Kaiser, Health Net and PacifiCare.

593 And those settlements specify that the previously
594 rescinded enrollees will be guaranteed coverage. The
595 pre-rescission out-of-pocket medical expenses will be
596 reimbursed or paid by the Plan, and additional compensatory
597 damages can be gained in arbitration or private litigation,
598 if the member so desires. Unfortunately, there are two of
599 the major Plans that we have yet to achieve some settlement
600 with to date. That is Anthem Blue Cross and Blue Shield of
601 California. Together they have about 2,200 cases of
602 rescission between them. And if we are not able to achieve
603 settlements in those cases, then we will go forward and

604 review each and every case. And, of course, we would prefer
605 not to have that result. But if we are not successful, there
606 could be very substantial fines that would be imposed against
607 each of those Plans.

608 But in summary, we think our aggressive action in
609 California has achieved significant improvements in the
610 industry, certainly in the State, and maybe in other States,
611 because we have brought an end to this very unfair and
612 illegal practice. We have been assured that consumers have a
613 much better understanding of what is required on the
614 application at the point of intake. We have been very
615 successful in restoring coverage for a substantial number of
616 enrollees who have had their coverage unfairly rescinded in
617 the middle of care. We think it is a good thing that we have
618 been able to avoid lengthy litigation between consumers and
619 health plans. And more importantly, we have restored some
620 measure of faith in the individual market, so that those who
621 go out and buy individual coverage have some greater sense of
622 assurance that the coverage will not be rescinded at an
623 inopportune time.

624 On the policy front, the Governor has signed legislation
625 that prohibits insurance companies from trying to recoup
626 payments from providers after they have already approved or
627 authorized a course of treatment and then subsequently
628 rescinded care. He also wants to outline the practice of

629 offering bonuses or financial incentives, to claims adjusters
630 and others, to incentivize rescinding coverage. And
631 ultimately, the Governor wants to see a guaranteed issue in
632 California, coupled with an individual mandate, because we
633 feel very strongly that that would eliminate the need for
634 medical underwriting altogether in the individual market.

635 In the meantime, we are going to continue to vigorously
636 enforce the existing law. And we are going to continue to
637 look out for the interests of consumers, so that we can not
638 only bring light to this issue but more importantly bring an
639 end to this very troubling practice.

640 Thank you.

641 [Prepared statement of Mr. Bonner follows:]

642 ***** INSERT *****

643 | Chairman WAXMAN. Thank you very much. And Ms.
644 | Dobberteen, are you here for questions?
645 | Ms. DOBBERTEEN. I am here for questions.
646 | Chairman WAXMAN. Mr. Lembo.

647 | STATEMENT OF KEVIN LEMBO

648 | Mr. LEMBO. Thank you, Mr. Chairman. My name is Kevin
649 | Lembo. I am the State Healthcare Advocate in Connecticut.
650 | Connecticut has a unique set-up in that we have an insurance
651 | regulator in our insurance department, and I am the full-time
652 | advocate for those consumers.

653 | On behalf of the growing number of Americans who find
654 | themselves trying to get and keep coverage in the individual
655 | health insurance market, thank you for your willingness to
656 | shed light on this very important issue.

657 | The problem with post-claims underwriting abuse and
658 | policy rescissions appears to be growing.

659 | Mr. LYNCH. Mr. Chairman, can we have the witness speak
660 | into the microphone. I cannot hear. I am sorry.

661 | Mr. LEMBO. The result of this process and the
662 | particularly egregious result is the unjust rescission,
663 | cancellation, or limitation of health insurance contracts
664 | after someone is diagnosed with an illness and faced with
665 | expensive medical care.

666 | In Connecticut, we were fortunate and identified this
667 | problem in our market beginning in 2003. My office, the
668 | Office of our Attorney General Richard Blumenthal and our
669 | State Insurance Department saw a jump in complaints from

670 consumers whose policies were rescinded or limited in some
671 other way. They were sick, and didn't understand why their
672 coverage was taken away or limited. Ultimately, a
673 coordinated and successful effort by our offices was
674 undertaken to fix the problem through legislation.

675 Connecticut's law, an act concerning post-claims
676 underwriting, is the product of three years of work at the
677 legislature to protect consumers from unfair health insurance
678 rescissions, cancellations or limitations. Under the
679 Connecticut statute, insurers now need to seek the approval
680 of the Connecticut Insurance Department before they can
681 rescind, limit, or cancel a policy.

682 I want to be clear at the outset that this public policy
683 debate is not about consumers who intentionally misrepresent
684 their health status. That is a red herring that is utilized
685 as a distraction by those who would rather not have this
686 conversation. Further, we could spend a day arguing about
687 what motivates the desperate, albeit infrequent, action to
688 lie on an application. Instead, I am focusing on those whose
689 policies were unjustifiably rescinded, canceled or limited by
690 a carrier to avoid paying claims.

691 In Connecticut, a company denied claims for a resident
692 named Maria, who was diagnosed with non-Hodgkin's lymphoma in
693 2005. The insurer said Maria should have sought treatment
694 and found out the diagnosis sooner, in other words, before

695 seeking a policy.

696 Once the company started receiving her medical claims,
697 it found out she had gone to the doctor for what she thought
698 was a pinched nerve. She also told the doctor she had been
699 feeling a little tired. Maria said she wasn't concerned
700 about the way she was feeling because she had been working
701 particularly hard. Tests were done at that time to determine
702 whether there were other issues. These tests did not yield
703 significant results, and they were not tests for cancer. The
704 company denied payment for subsequent, cancer-related bills,
705 saying that Maria had this condition before she bought the
706 policy and should have sought treatment. Maria ultimately
707 died from her illness.

708 A young man, named Frank, was taken by surprise when his
709 insurance was rescinded because his insurer alleged that he
710 omitted material information from his insurance application.
711 When Frank applied for coverage, he disclosed that he had
712 occasional headaches. After he applied, the carrier obtained
713 all of Frank's medical records, theoretically for medical
714 underwriting, and then wrote him a policy. Several months
715 after getting the policy, Frank went for a routine eye exam
716 and was referred to a neurologist by that eye doctor. The
717 neurologist diagnosed Frank with Multiple Sclerosis.

718 Immediately following that diagnosis, the carrier
719 rescinded the policy stating, in effect, that he should have

720 | known his headaches would have led to a diagnosis of MS. The
721 | carrier stuck to its position even after receiving a letter
722 | from Frank's doctor saying that there would have been no
723 | reason at all to suspect MS, since Frank was an otherwise
724 | healthy young man with a normal exam. Frank was now
725 | responsible for more than \$30,000 in care that he could not
726 | afford. His condition rapidly deteriorated, forcing him to
727 | end his employment, and seek public insurance and assistance.

728 | These are the kinds of people who are impacted by
729 | post-claims underwriting abuses, and that impact is medically
730 | and financially devastating.

731 | Unfortunately, while State Insurance Departments can
732 | often intercede in these cases through market conduct
733 | examinations under their existing laws against unfair
734 | insurance practices, there is little that can be done as
735 | regulators to make it right for these consumers, at least
736 | completely. As State regulatory agencies, they can fix
737 | problems going forward, making it safe for future consumers,
738 | but are limited in what they can do now, for these relatively
739 | uninsurable consumers who are back in the marketplace.

740 | States need to stop this problem on the front-end with
741 | good, clear law that prohibits these abuses and forces
742 | companies to seek permission before rescinding a policy. The
743 | practice must be stopped on the front-end, because the
744 | clean-up is almost impossible.

745 In Connecticut, the Insurance Department recently
746 concluded a very long and deep investigation of Assurant
747 Companies, in particular, Time Insurance, formerly Fortis,
748 and John Alden, that resulted in a record fine for
749 Connecticut of \$2.1 million in fine, and more than \$900,00 in
750 restitution to consumers. The Department did all they could,
751 but the damage to the individuals, in fact, was done.
752 Although the company admitted no wrong-doing, they agreed to
753 pay the fine and restitution.

754 Mr. Chairman, it is my opinion, and that of many of my
755 colleagues, that our States need to move rapidly to address
756 the issue of post-claims underwriting. It is my hope that
757 legislatures across the Country, with your encouragement,
758 will take the following steps to protect consumers and ensure
759 a level playing field in the individual market.

760 We need to create and adopt a State or National uniform
761 application for individual insurance that is clear, easy for
762 consumers to understand, and takes out some of those trip-ups
763 that do occur in the application.

764 States must define medical underwriting and be clear
765 that the review of the application alone is not sufficient.
766 Further, States must require that underwriting be complete,
767 and all outstanding questions be asked and answered to
768 satisfaction before the policy is written.

769 And finally, there should be creation and adoption of

770 | laws to stop post-claims underwriting abuses, and provide
771 | greater limitations on a company's ability to rescind or
772 | limit a policy without a finding of fact and approval of the
773 | State regulator.

774 | Since passage of our Connecticut post-claims
775 | underwriting law, complaints from consumers have dropped to a
776 | handful, and the Insurance Department has received no
777 | requests to modify or rescind a policy. I think this speaks
778 | to the effect of a good law yet to be tested, but I would
779 | encourage my colleagues in other States to join us in ending
780 | the practice.

781 | Thank you.

782 | [Prepared statement of Mr. Lembo follows:]

783 | ***** INSERT *****

784 Chairman WAXMAN. I want to thank all of you on this
785 panel. I think it is a panel that made a lot of sense,
786 because you are all explaining the problem to us, and you are
787 all advocates, if not victims of trying to do something about
788 the insurance company practices to take away insurance when
789 people need it the most. It really is astounding. And what
790 you have described, Mr. and Mrs. Bleazard is horrible. When
791 you are sick, that is when you want that insurance coverage
792 to be there, not to have to have insurance companies come in
793 and take it away from you, and then said, you are stuck with
794 the bill, which I think in your case was \$100,000; isn't that
795 right?

796 Well, people think they get insurance coverage and
797 insurance is insurance. But the reality is that most people
798 have group insurance. And group insurance spreads the risk.
799 The private insurance policies try to avoid the risk. They
800 try to avoid the risk by not insuring people who have been
801 sick, if they, in fact, have been sick, or saying that if
802 they have had an illness, they won't cover any treatment for
803 that illness. If someone has had cancer, and they apply for
804 a private insurance policy, and they, of course, say they
805 have cancer, because that is part of the questions that are
806 asked, they may be told, well, we will insure you for
807 everything but cancer. Well, that is the business
808 arrangement that can be agreed to. There is no Government

809 requirement to do otherwise, if it is a private insurance
810 policy.

811 But once they have asked those questions, and all of the
812 information has been furnished, the insurance company can
813 deny coverage of an individual, but if they agree to cover
814 the individual, they shouldn't be coming back afterwards when
815 they get the bills for medical care and say, oh, we are
816 rescinding the policy. And it sounds to me like in many
817 cases it is a trumped-up argument. Is that your experience,
818 Mr. Lembo? You just went through a lot of horrible examples
819 of people who have been denied coverage after they already
820 had the policy and had been paying for it, on trumped-up
821 charges. Is that fair to say?

822 Mr. LEMBO. Mr. Chairman, in some cases, I think it is
823 fair to say. I think, in the case of the Bleazards, that
824 certainly sounds like what happened. We are looking at a
825 case now that is under investigation, where a person's policy
826 was rescinded as she was in a hospital bed being treated for
827 cancer, but the rescission was based on information, as it
828 was not disclosed, or on hypertension. Under normal
829 circumstances, and without that specter of a large claim
830 coming in, they might have simply limited the coverage to
831 exclude anything related to that hypertension, rather than
832 rescind the whole policy.

833 Chairman WAXMAN. And tell me again, that in other words,

834 | if somebody was denied healthcare coverage and had their
835 | policy rescinded, because when they put on their application
836 | they had occasional headaches, that that person was supposed
837 | to have known that later he would be, or she would be,
838 | diagnosed with MS; is that accurate?

839 | Mr. LEMBO. She should have known that it was a large
840 | enough problem that she should have sought additional medical
841 | attention. As I stated, she didn't think it was that big of
842 | a problem.

843 | Chairman WAXMAN. That is really astounding to me. And
844 | there are members of Congress who are not aware of the fact
845 | that individual healthcare policies, health insurance
846 | policies, are different than from the group policies. Now,
847 | let me just say this to you, and to anybody watching this
848 | hearing, if it weren't for a free press, the L.A. Times
849 | particularly, doing a series of articles about this issue, I
850 | don't know that the State of California officials, and
851 | others, would have realized what a problem it was. But when
852 | the regulators in California, and in Connecticut, and in
853 | Utah, saw what kind of problem it was, these regulators came
854 | in and tried to do something to protect people.

855 | We are trying to do this same thing here with this
856 | hearing, because there is a Federal law, called HIPAA, that
857 | is supposed to stop insurance companies from carrying on
858 | these practices. And we are going to hear in the second

859 panel from the Center for Medicare and Medicaid Services.
860 They didn't want to be on with anybody else. They represent
861 the Bush Administration. They didn't want to be on a panel
862 with anybody else. We could of had them on with the
863 regulators, but they didn't want that.

864 Mr. and Mrs. Bleazard, I just can't tell you how pleased
865 I am you would be willing to come and talk about this. This
866 is not a happy situation in your lives to have your insurance
867 coverage canceled on you. You certainly believe you were not
868 treated fairly; isn't that the case?

869 Mr. BLEAZARD. No, certainly not, you know, we were as
870 honest as we could be. We certainly weren't trying to
871 mislead anybody. You know, we felt all alone, you know, I am
872 surprised that there are other people that are experiencing
873 the same thing.

874 Chairman WAXMAN. Well, it is clear that your situation
875 was not an isolated incident. We are hearing it from others
876 as well.

877 Mr. BLEAZARD. At the time, you feel like you are all
878 alone.

879 Chairman WAXMAN. Yes.

880 Mr. BLEAZARD. It is you against the world.

881 Chairman WAXMAN. Yes. Well, this Committee is going to
882 open an investigation into the practices of the private
883 health insurance market. We are going to be sending

884 questionnaires and documents requests to the major health
885 insurers to get answers to these questions. And I am pleased
886 that all of you are here to give us your perspective.

887 Mr. DAVIS OF VIRGINIA. Mr. Chairman, I wasn't here
888 earlier. Maybe we can combine the second and third panels.
889 That would certainly be okay with us, just so we could
890 expedite and get the appropriate questions.

891 I would ask unanimous consent that my opening statement
892 go on the record, so I won't have to read it.

893 [Prepared statement of Mr. Davis of Virginia follows:]

894 ***** COMMITTEE INSERT *****

895 Chairman WAXMAN. Without objection, all opening
896 statements by members will be put into the record.

897 Mr. DAVIS OF VIRGINIA. Thank you.

898 Mrs. Bleazard, let me ask you, obviously the rescission
899 issue in your case is, I think, very disturbing to all of us.
900 On a later panel, the Committee is going to hear about a
901 proposal to give individuals in situations like yours, an
902 opportunity to appeal a rescission to an objective panel that
903 includes a doctor and a lawyer, which would have the power to
904 reinstate the policy immediately, so you get an instant
905 appeal to an independent group, including a doctor and a
906 lawyer.

907 And even if you lose that, you can still sue. So it
908 wouldn't take away your right to sue, if you were to lose
909 that panel. But, what it would allow is, it would give you
910 an independent group to take a look at something like this
911 very, very quickly, because having to go to Court is a
912 long--even if you win, you lose, because you have got
913 carrying costs, and you are not sometimes getting the care
914 you need in the meantime.

915 Had that kind of option been available to you and your
916 husband, would you have pursued that understanding that if
917 the panel did rule against you, you could still sue? Would
918 that be something that could be of interest to you?

919 Ms. BLEAZARD. As I understand it, yes.

920 Mr. DAVIS OF VIRGINIA. Okay. I mean, it obviously
921 devils in the details. I am not trying to trap you. I mean,
922 conceptually, but in an earlier panel, I think you need an
923 instant right of appeal to some independent group in a case
924 like this that can call balls and strikes right off, and
925 sometimes mitigate or solve this earlier on, so you don't
926 have to go to Court. If you lose, and you think you got a
927 raw deal, you would still have the right to go to Court.
928 That is one of the concepts.

929 And it would allow you to get, possibly, the opportunity
930 to get your insurance reinstated on an expedited basis. It
931 seems to me that is a reasonable route to go, but we will
932 talk about that a little more. I just wanted to get your
933 reaction to it.

934 Secretary Bonner, given California's well-publicized
935 problems with rescissions, do you think that the Federal
936 Government should take over enforcement of HIPAA protections?

937 Mr. BONNER. Well, HIPAA, being a Federal law, I think it
938 would be an inappropriate thing for the Federal Government to
939 be taking a hard look at, yes.

940 Mr. DAVIS OF VIRGINIA. Okay. From the State regulatory
941 perspective, under what circumstances should the Federal
942 Government take over State regulation in the individual
943 insurance market for failure to substantially enforce HIPAA?

944 Mr. BONNER. Boy, that is, I think, a very difficult

945 | question, because I don't think that it is in our interest to
946 | have too many carve outs of our State regulatory
947 | jurisdiction. As I say, HIPAA, being a Federal law, I think
948 | it is a very appropriate thing to be looking at. Beyond
949 | that, I am not sure if you are suggesting the State taking
950 | over certain aspects of our Knox-Keene or other insurance
951 | regulation?

952 | Mr. DAVIS OF VIRGINIA. Well, the problem always is if
953 | the Federal Government isn't doing its job, sometimes the
954 | State is better off in a State like California, sometimes
955 | States don't do the job. I mean, that is always the dilemma
956 | in terms of, do you federalize something like that or give it
957 | back to the States? Mr. Lembo, let me ask you, from a State
958 | perspective, under what circumstances do you think the
959 | Federal Government should step in and take over State
960 | enforcement of HIPAA protections?

961 | Mr. LEMBO. Like, Mr. Bonner and Mr. Davis, I would have
962 | to say, I am not sure on its face, what those circumstances
963 | would be. We would want to preserve the right of States to
964 | regulate insurance as they are doing now. I think the
965 | Federal Government has a role in encouraging better and
966 | stepped-up enhancement.

967 | Mr. DAVIS OF VIRGINIA. Here is my understanding. The
968 | individual health insurance market is regulated almost
969 | exclusively by States. CMS is responsible for making sure

970 | that States enforce protections that are contained in HIPAA.
971 | That is the current law. Only if the States fail to enforce
972 | HIPAA can the Federal Government take over enforcement and
973 | that has not happened.

974 | So I am guessing, with that perspective, from a State
975 | perspective, when do you think the Federal Government should
976 | step in and take over State enforcement of HIPAA protections?
977 | And secondly, do you think that prior to the recent enactment
978 | of State legal reforms in Connecticut, prior to those
979 | reforms, was Connecticut failing to substantially enforce
980 | HIPAA protections?

981 | Mr. LEMBO. I'll take the second piece first, if you
982 | don't mind?

983 | Mr. DAVIS OF VIRGINIA. Yes, you are probably more
984 | familiar with that.

985 | Mr. LEMBO. And that is, there was enforcement activity
986 | around Connecticut's existing Unfair Insurance Practices Law.
987 | Those laws exist in most States, because they are based on an
988 | NAIC model that has been adopted by both States, and give the
989 | States lots of opportunity to regulate around this issue,
990 | without naming it specifically. I think at this point the
991 | conversation that happens on an ongoing basis between CMS and
992 | the NAIC around ways for those two groups to work together to
993 | make sure that there is, in fact, even enforcement seems to
994 | be working but could be encouraged.

995 Mr. DAVIS OF VIRGINIA. Thank you.

996 Mr. LEMBO. Thank you. Mr. Davis. Mr. Cummings.

997 Mr. CUMMINGS. Thank you very much, Mr. Chairman. Mr.

998 and Mrs. Bleazard, I, too, thank you all for being here

999 today, and I am sorry that you are continuing to experience

1000 this nightmare. Mr. Bleazard, you and your wife had recently

1001 married; is that right?

1002 Mr. BLEAZARD. Yes.

1003 Mr. CUMMINGS. And then you decided that you needed to

1004 get both health and life insurance; is that right?

1005 Mr. BLEAZARD. Yes.

1006 Mr. CUMMINGS. And you met with an insurance agent who

1007 was fully informed about your health, including your back; is

1008 that right?

1009 Mr. BLEAZARD. Yes, they were friends of mine.

1010 Mr. CUMMINGS. And in March 2005, Regence Blue Cross and

1011 Blue Shield issued you an insurance policy. Do you remember

1012 how much you were paying in premiums?

1013 Mr. BLEAZARD. I think it was in the \$300 range.

1014 Mr. CUMMINGS. But you paid them?

1015 Mr. BLEAZARD. Oh, yes.

1016 Mr. CUMMINGS. And Mrs. Bleazard, in October, you had a

1017 serious accident, and just hearing your testimony, and so

1018 that we reiterate it, you said, 'My physicians told me that

1019 the fracture is so severe many individuals die as a result of

1020 | it. The fractures in my back were impact fractures, which
1021 | shattered the bone at the point of greatest impact. I also
1022 | had a pulmonary contusion, three broken ribs, and a brain
1023 | injury. Several hours of neurosurgery were performed to save
1024 | my spine. I spent three weeks in the hospital and in a
1025 | physical rehabilitation unit, and I am continuing to do
1026 | physical therapy. My medical bills are over \$100,000.00.''

1027 | Is that right?

1028 | Ms. BLEAZARD. Yes.

1029 | Mr. CUMMINGS. And it is your testimony that the
1030 | insurance company hadn't paid a dime; is that right?

1031 | Ms. BLEAZARD. Well, at first, they paid. And once the
1032 | bills started mounting, they said they were going to look
1033 | into it. And then, they took all the money back. And we
1034 | were left responsible for all of it.

1035 | Mr. CUMMINGS. Now, do you have health insurance now?

1036 | Ms. BLEAZARD. No.

1037 | Mr. CUMMINGS. Are you concerned that you can't or won't
1038 | be able to get it?

1039 | Ms. BLEAZARD. That is correct.

1040 | Mr. CUMMINGS. And what impact has this incident had on
1041 | you, on your family?

1042 | Ms. BLEAZARD. Indescribable stress.

1043 | Mr. CUMMINGS. And can you tell us a little bit about it?
1044 | You know what happens so often, I mean, and I was very glad

1045 | to hear Mr. Bonner's testimony and Mr. Lembo, but what
1046 | happens too often is that the insurance companies collect,
1047 | and then when it comes time, when somebody is going through a
1048 | nightmare, the very thing that they paid insurance for, they
1049 | then suddenly go AWOL, and individuals like you are left in
1050 | pain and suffering. And as I listened to Mr. Lembo's
1051 | testimony, one of the things that I like about the
1052 | Connecticut system is that they have to have basically
1053 | preapproval before doing the rescinding; is that right, Mr.
1054 | Lembo?

1055 | Mr. LEMBO. Yes, Mr. Cummings.

1056 | Mr. CUMMINGS. And it seems like that system, and then I
1057 | also am interested to see that in your testimony, Mr. Lembo,
1058 | you talk about how since the passage of your system, you had
1059 | very few complaints from consumers; is that right?

1060 | Mr. LEMBO. That is correct.

1061 | Mr. CUMMINGS. And why do you think that is?

1062 | Mr. LEMBO. I think sometimes the best law never has to
1063 | be enforced.

1064 | Mr. CUMMINGS. What do you mean by that?

1065 | Mr. LEMBO. Having good law on the books will often put
1066 | an end to certain behaviors that are questionable, and it
1067 | never gets to the point where it has to an enforced law, just
1068 | knowing that the law is there.

1069 | Mr. CUMMINGS. And the fact is that when, you know, you

1070 think about a person going through the trauma of the
1071 Bleazards, or somebody who walks into a doctor's office, and
1072 I have often said that we are all one diagnosis from
1073 disaster. But they walk into a doctor's office and the doctor
1074 says, God forbid, gives them a diagnosis of cancer, they have
1075 got to have surgery, radiation, chemotherapy, but at the same
1076 time they have got to tackle a question of whether an
1077 insurance company is going to pay. That is a major problem,
1078 isn't it?

1079 Mr. LEMBO. It is.

1080 Mr. CUMMINGS. Do you see those kinds of situations, Mr.
1081 Bonner, in your experience?

1082 Mr. BONNER. Situations where the insurance company just
1083 refuses to pay all of the previously incurred medical bills?

1084 Mr. CUMMINGS. That is correct.

1085 Mr. BONNER. Yes, I mean, you see that that is often the
1086 case is that sometimes what prompts the review in the first
1087 instance is the utilization of services. So it is the big
1088 ticket medical bills that sometimes prompts the insurance
1089 company to go back and take a look at the application, and
1090 then that sometimes results in the decision to rescind.

1091 Mr. CUMMINGS. Now, going back to the Connecticut system,
1092 what is your opinion of that system, Mr. Bonner?

1093 Mr. BONNER. Well, we are taking a look at many of the
1094 same types of things. We have already developed a model

1095 application that is available through the regulatory, through
1096 the Department of Managed Health Care, but we are also
1097 looking at legislation that might lay out an independent
1098 review process, an instant appeal, some of the other
1099 preapproval, some of the other things that were referenced in
1100 Connecticut.

1101 Mr. CUMMINGS. Thank you, Mr. Bonner.

1102 Chairman WAXMAN. Thank you, Mr. Cummings. Mr. Issa.

1103 Mr. ISSA. Thank you, Mr. Chairman. Mr. Bonner, I am a
1104 fellow Californian. I appreciate the good work that you and
1105 the Governor are trying to do. As you heard earlier, because
1106 we are not able to sort of get our questions ABd between
1107 yourself, the others, and the representative from, if you
1108 will, the healthcare industry, I am going to ask you a series
1109 of questions. In some cases, they may be obvious, but
1110 remember I am going to later be asking the health care
1111 industry to comment on some of these same things. For now, I
1112 will look at it as a California issue, only because, as a
1113 Californian, I am a little more familiar.

1114 First of all, my understanding is in California, the
1115 Insurance Commissioner has authority over all insurance,
1116 except health care; is that roughly correct? That Insurance
1117 Commissioner Poizner has limited jurisdiction in this area?

1118 Mr. BONNER. Well, it is not entirely accurate that he
1119 has jurisdiction over health insurance, it is the distinction

1120 | between regulating the insurance product, which is basically
1121 | indemnity insurance versus managed care, you know, HMO
1122 | insurance, which is what the Department of Managed Healthcare
1123 | regulates.

1124 | Mr. ISSA. Okay. So, my question would be, do you believe
1125 | that even if it is joint, that greater jurisdiction to the
1126 | elected Insurance Commissioner might be helpful in bringing
1127 | pressure to bear to insure that these kinds of selective
1128 | abuses don't happen?

1129 | Mr. BONNER. You know, I don't see the structure of the
1130 | regulator itself as being key to the solution here. I think
1131 | aggressive enforcement and clear rules, and aggressive
1132 | enforcement of those rules, are really the key.

1133 | Mr. ISSA. Okay. Well, if I can get to a couple of those
1134 | potential rules. If, in fact, transferability was an
1135 | absolute right, meaning that no pre-existing conditions in
1136 | California could be looked at under any circumstances as long
1137 | as you were continuously insured, would an absolute statement
1138 | of that in all 50 States be helpful, to prevent essentially
1139 | people having to, if there are continuously insured, having
1140 | to find themselves, you know, going through this process of
1141 | looking in the rear view mirror, and there is a serious of
1142 | questions here?

1143 | Mr. BONNER. To make sure I understand, you are asking if
1144 | we just prohibited the practice of rescission, or it would

1145 | require guaranteed issue?

1146 | Mr. ISSA. No, as long someone didn't have a break in
1147 | insurance when they went from a group insurance to an
1148 | individual insurance, their background would be prohibited.
1149 | In other words, if you will, an assigned selection, that if
1150 | you want to do business in California, you have to accept
1151 | anyone who is going, let's say, from a COBRA coverage, having
1152 | left an employer that did have care, to an individual? We
1153 | would have that right as a condition in California. Would
1154 | that, in fact, distribute the risks in a way that would be
1155 | fair but at the same time prevent a huge amount of people
1156 | having to deal with, in some cases, their pre-existing
1157 | conditions?

1158 | Mr. BONNER. I think, as I understand the question, one
1159 | of the things that you would be concerned about when you
1160 | refer to distributing the risks is the scenario where there
1161 | are substantial numbers of people who in the individual
1162 | market, in particular, who simply are not in the system. And
1163 | so, you know, you don't have that same opportunity to share
1164 | risks or distribute, as you would, in a group environment.

1165 | Mr. ISSA. And I want to get to that, but, you know, this
1166 | is assuming people coming out of a distributive risk.
1167 | Secondly, limiting pre-existing conditions to ones which are
1168 | chronic and life threatening, in other words the State could
1169 | eliminate conditions that are unrelated to the claim from

1170 | being allowed to cause cancellation of the claim? The state
1171 | could do that, just yes or no, it is certainly within the
1172 | power of the State?

1173 | Mr. BONNER. The State could do that.

1174 | Mr. ISSA. Yes or no, if you don't mind. Is it a good
1175 | idea?

1176 | Mr. BONNER. Yes.

1177 | Mr. ISSA. Is it a good idea? You know there have been
1178 | specific conditions, and Amy may speak to this better, but
1179 | there are specific conditions where the legislature has made
1180 | a termination that they are not grounds for cancellation or
1181 | rescission.

1182 | Mr. BONNER. And in this case, an accident. In other
1183 | words, an event, which is traumatic in its nature. Would
1184 | that be probably first and foremost among them that even if
1185 | you knew you had cancer and didn't say so, but you were in a
1186 | car accident, uninsured, or you were just a rider in the car
1187 | and you became seriously injured, cancellation, even though
1188 | you didn't say you had cancer, the injuries are, you know,
1189 | are unrelated, by definition, wouldn't that be one of the
1190 | first ones that California should ensure would not allow this
1191 | retroactive cancellation?

1192 | I agree with you that an accident should not be grounds
1193 | for cancellation, or a rescission, yes.

1194 | Mr. ISSA. Okay. Once again, Mr. and Mrs. Bleazard, you

1195 | have our deepest, not just sympathy, but recognition that you
1196 | shouldn't have to be here today. This shouldn't have
1197 | happened. And I appreciate the Chairman's willingness to try
1198 | to bring focus for change. And I yield back, and thank the
1199 | Chairman.

1200 | Chairman WAXMAN. The gentleman's time has expired.
1201 | Before I recognize the next member, members have a lot of
1202 | conflicts in their schedule, and that is just the way this
1203 | place operates. And I am going to have to go to a conference
1204 | committee that I pleaded with the Senate not to call at the
1205 | same time, but they didn't pay attention to that. So that is
1206 | why I wanted to speak out of order.

1207 | There has been another request of changing the panels.
1208 | And Mr. Davis said, perhaps we could put the insurance
1209 | companies with CMS. Now, I suppose, we could have put
1210 | everybody on one panel, and we could have moved this hearing
1211 | faster, but I really don't think that makes sense, because
1212 | CMS is the regulator. And as the regulator for the Federal
1213 | Government, they didn't even want to be on a panel with the
1214 | regulators in the State Government, because that would have
1215 | made some sense.

1216 | But to put the insurance companies with CMS doesn't make
1217 | sense. And you can't have everybody talk all at once. So,
1218 | we have to have witnesses get a chance to speak and ask
1219 | questions. So, we have had this panel, which we thought made

1220 sense to put you altogether. We have CMS next. And then, we
1221 have the insurance companies.

1222 Now, there is a concern on the Republican side of the
1223 aisle that people won't be back for the insurance companies.
1224 They won't be here for the insurance companies. Well, we
1225 only have two Republicans here now, and I hope they will be
1226 here, but I don't see Republicans rushing in to be here at
1227 all at the moment, but they do have conflicts in their
1228 schedule. We have some Democrats, but we don't have all of
1229 our Democrats.

1230 So, the Chair's prerogative is to set the agenda, to
1231 call the hearings, and to set the agenda, and to, in
1232 consultation with the Republicans, establish the order for
1233 the witnesses. And I am going to stick with what we have,
1234 even though this request has been made, because I think what
1235 we have makes sense. I will certainly try to be back here
1236 for the insurance companies, because I, particularly, want to
1237 hear from them and ask them questions.

1238 So, Mr. Davis, I know you have made that request and I
1239 hope you will acquiesce.

1240 Mr. DAVIS OF VIRGINIA. Well, you are the Chairman. Can
1241 we just move ahead? Thank you.

1242 Chairman WAXMAN. Okay. Thank you. Mr. Lynch.

1243 Mr. LYNCH. Thank you, Mr. Chairman. And right on point,
1244 I am actually in two hearings simultaneously, one down the

1245 | hall, so I am going to have to leap out and go over to that
1246 | hearing, and hope to come back in time for the insurance
1247 | company testimony.

1248 | Mr. Chairman, I want to thank you for your willingness
1249 | to work with the minority, as well. I want to thank the
1250 | panel for coming forward with their testimony, helping the
1251 | Committee with its work.

1252 | Following the Chairman's initial remarks, the essence of
1253 | our insurance system is really to spread risks, to distribute
1254 | risks across a wider, healthier, less accident prone
1255 | population. And what has been described here, this practice
1256 | of post-claims underwriting, basically turns the whole theory
1257 | of insurance on its head. In other words, the end result
1258 | here, at least the cases that have been described here,
1259 | demonstrate a pattern of conduct, and I would say thousands
1260 | of cases demonstrate a pattern of conduct, by some insurance
1261 | companies in some States, in which the insurer actually
1262 | accepts an application for insurance and accepts payment of
1263 | premiums from the consumer until the point at which a claim
1264 | is filed.

1265 | Then, it appears, at least from the cases we have seen
1266 | here today, the insurance company rescinds the insurance
1267 | agreement in many cases based on specious reasoning. The end
1268 | result is that the consumer is led to rely to his or her
1269 | detriment on the inducement by the insurance company to rely

1270 up to the point that the harm, or the illness, is actually
1271 irreparable. Because, but for the insurers inducement, the
1272 consumer could have kept on looking for insurance elsewhere,
1273 but it was sort of trapped by the insurer's conduct. And
1274 again, the number of cases that have been cited here in
1275 California, and Connecticut, and elsewhere, indicates that
1276 there really is a national pattern of conduct here that is
1277 indeed troubling.

1278 Mr. Lembo, you provided a lot of testimony here today,
1279 and I want to ask you about a couple of cases that you
1280 described. You described a case of a woman who purchased
1281 health insurance and then was later diagnosed with Hodgkin's
1282 lymphoma, or cancer that attacks the lymph nodes. After she
1283 received her diagnosis, her insurer terminated her coverage.
1284 Can you tell me why the insurer terminated the coverage in
1285 that case?

1286 Mr. LEMBO. Yes, sir. I just have to flip to that one, I
1287 am sorry. In the case of the woman with Hodgkin's lymphoma,
1288 a 34-year old woman, it was a straight pre-existing condition
1289 charge on the part of the insurance companies. They said
1290 that she should have sought treatment, because she had
1291 experienced minor shortness of breath while exercising.

1292 Mr. LYNCH. Shortness of breath, while exercising?

1293 Mr. LEMBO. That is correct.

1294 Mr. LYNCH. You are serious? Okay. Was there any

1295 | connection between her shortness of breath while exercising
1296 | and the lymphoma, in your opinion?

1297 | Mr. LEMBO. Not being a doctor, I would say, no, but--

1298 | Mr. LYNCH. All right. I will let you go on that one. I
1299 | want to ask you about another example. Some of these are
1300 | really outrageous. According to your statement, you had a
1301 | young man in good health. I think you named him Frank. He
1302 | disclosed to the insurer that he had occasional headaches,
1303 | that the insurer agreed to issue a policy nevertheless, and
1304 | then several months later, Frank was diagnosed with Multiple
1305 | Sclerosis. After learning of that diagnosis, the insurer
1306 | rescinded Frank's policy. You are more familiar with the
1307 | detail of this case. Was the rescission in this case
1308 | justified, in your opinion?

1309 | Mr. LEMBO. No, it was not.

1310 | Mr. LYNCH. Okay. I know that there are tens of
1311 | thousands of cases cited in California, or in Connecticut,
1312 | and elsewhere, is it your opinion that this is an isolated
1313 | practice, or these are outliers, or does this, as I suspect,
1314 | represent more of a pattern of conduct by perhaps a narrow
1315 | group of insurers?

1316 | Mr. LEMBO. I think that is probably the case, Mr. Lynch,
1317 | that it is not a common practice, at least not in
1318 | Connecticut, but the outcome of that process is pretty awful
1319 | for consumers. So, in a state of \$3.4 million, when you get

1320 a couple hundred cases of rescission, that is a trend and a
1321 spike.

1322 Mr. LYNCH. Mr. Bonner, just the same question on the
1323 scope of this--

1324 Mr. CUMMINGS. [Presiding] The gentleman's time is up.

1325 Mr. BONNER. Yes, I think that the number of cases we
1326 have seen, almost 5,000, or about roughly 4,800, in the last
1327 few years, that it suggests that it is a common practice.

1328 Mr. LYNCH. Okay. Thank you, Mr. Chairman. I yield
1329 back.

1330 Mr. CUMMINGS. Thank you very much. Mr. Bilbray.

1331 Mr. BILBRAY. Mr. Bonner, we heard a lot about this
1332 problem in California. And I guess, there is no uniform
1333 National policy on reporting rescissions, or whatever. Do
1334 you think California is unique in any way, and that is why it
1335 seems to have been focused more in California. Or, why is
1336 California such a hot bed?

1337 Mr. BONNER. Well, the short answer to your question is I
1338 don't think there is anything structurally unique about
1339 California, particularly since we are talking about the
1340 individual market. And I think part of it obviously is the
1341 numbers, you know, it is a large State. And we have almost 3
1342 million, I think roughly 3 million in the individual market,
1343 so just the scale and the numbers is, I think, significant.
1344 But I would venture to guess that if you just adjust for

1345 | population and so on that you would find that it is probably
1346 | a routine.

1347 | Many of the same carriers in California are national
1348 | companies, so those that we mentioned, Kaiser, Health Net,
1349 | PacifiCare, are national companies, and so, some of these
1350 | practices are the function of national corporate practice and
1351 | policy. So, I don't know that there is anything unique to
1352 | California that would suggest the problem is greater there
1353 | than other States.

1354 | Mr. BILBRAY. Well, if the problem isn't greater there,
1355 | the problem itself, if you were judging by the complaints
1356 | themselves, or the highlights of the problem, it goes far
1357 | beyond our proportionality and population. Is there, you
1358 | know, is it a heightened sensitivity? Is it the fact that
1359 | the reporting, or the sensitivity, or the concerns about
1360 | that, is a little more heightened in California than it may
1361 | be in the general population of the United States? Because
1362 | it seems like proportionality in population, even though we
1363 | are the big guy, we still seem to have more press, more
1364 | media, more reporting coming out of California than even the
1365 | numbers would justify. You say you don't think the problem
1366 | is any worse than anywhere else in the Country, do you think
1367 | the sensitivity to the issue may be what is driving the
1368 | appearance, at least, of more activity, or more concern, in
1369 | California based on what we have seen?

1370 Mr. BONNER. I think that maybe a variation on that
1371 theme, I would say, rather than sensitivity, I would say
1372 awareness, meaning that we have done a lot of work over the
1373 last several years to increase consumer awareness of what
1374 their rights are, and made it easier for consumers to bring
1375 complaints, not necessarily legal complaints, but just
1376 complaints with the regulator, and through their health
1377 plans.

1378 So, I think all of those things, and in addition to the
1379 private litigation that we have seen, the more that you do to
1380 shed light on the issue and let people know that they have
1381 some form of redress, the more people you are going to have
1382 raising the issue, and hence it is much more transparent on
1383 the regulatory radar as well.

1384 Mr. BILBRAY. Well, I think the sensitivity to consumer
1385 protection in California has been something that, you know,
1386 the whole world has talked about before. And, as somebody
1387 who has come from a family lawyer, it also happens to be that
1388 California proportionately per capita has more lawyers in any
1389 other state in the Union, so, it might raise a little degree
1390 there too. But, thank you very much. I appreciate it. And,
1391 Mr. Chairman, I yield back.

1392 Mr. CUMMINGS. Thank you very much. Mr. Murphy.

1393 Mr. MURPHY. Thank you very much, Mr. Chairman. I know
1394 Chairman Waxman had to go a conference committee, but I would

1395 | just like to thank him for keeping the order of panels that
1396 | we have here today.

1397 | I am going to go out on a limb and take a guess that the
1398 | Bleazards don't have a lobbyist, or representative, here in
1399 | Washington. And I am pretty certain that the families and
1400 | the individuals that Mr. Lembo talked about don't have
1401 | lobbyists or representatives, here in Washington.

1402 | And I, for one, have absolutely no problem with
1403 | individual citizens coming to Washington, the stories of
1404 | individual citizens being told here, being given preference
1405 | to associations and corporations, who will have every
1406 | opportunity after this panel is done to reach out to the
1407 | members that didn't get to make it to this hearing and make
1408 | their case. I think that is how hearings should be run. I
1409 | think we should hear all of the evidence, but I have
1410 | absolutely no problem with regular, average, everyday people,
1411 | getting a little bit of preferential treatment in terms of
1412 | how the stories are being told here, given that they don't
1413 | have the type of representation that others do.

1414 | Mr. Lembo, first of all, I want to thank you for coming.
1415 | I was in the state legislature for a number of years when the
1416 | office was created, and have watched it grow, and have
1417 | watched it become an asset for consumers in Connecticut.
1418 | And, I guess, my question is this, for all of the States out
1419 | there that don't have the new statutory structure that we

1420 | have put in place in Connecticut, what were the tools
1421 | available to you before this law passed, or to the Insurance
1422 | Commissioner, when you were receiving these hundreds of phone
1423 | calls, what was the recourse that you had, or what was the
1424 | recourse that those individuals had, when they were seeing
1425 | these rescissions?

1426 | Mr. LEMBO. Thank you very much, Mr. Murphy. First of
1427 | all, I always believe that for every call we get, there are
1428 | probably ten that we don't. And I think that is mostly
1429 | because people don't feel in power to fight that big fight,
1430 | and also maybe second-guess themselves, did I complete the
1431 | application appropriately? Is the company right? That said,
1432 | as I mentioned earlier, there are model laws on unfair
1433 | insurance practices in most States in the Country. They are
1434 | very useful. In some of our cases, we were able to utilize
1435 | the pieces of that law to get an appropriate outcome for
1436 | consumers; but in others, we were not. It wasn't until we
1437 | had very specific language that we were able to get relief
1438 | and I hope stop the practice.

1439 | Mr. MURPHY. And in many of the cases that you were
1440 | describing, you were really talking about the insurance
1441 | companies asking these patients, and these consumers, to be
1442 | doctors themselves, that they should have known that
1443 | something was wrong, and should have sought treatment and
1444 | help before they submitted an application. It is bad enough

1445 | that we now have insurance companies acting as doctors, and
1446 | now we are asking the consumers and the clients to be
1447 | doctors, as well.

1448 | And I guess the question is this, what kind of normal
1449 | medical underwriting would we expect, and this is a question
1450 | potentially for Mr. Bonner and Ms. Dobberteen as well, would
1451 | we expect of an insurance company up front when they see an
1452 | application with a notice of shortness of breath, or back
1453 | pain, or other specific problems, what is the normal
1454 | obligation on behalf of that insurance company to go out and
1455 | do due diligence?

1456 | Mr. LEMBO. There is certainly a growing body of
1457 | agreement around what real medical underwriting is. I think
1458 | it is fair for a company that is faced with an application
1459 | that has no flags in it. There are no yeses to any of the
1460 | medical condition questions. To go forward with that
1461 | application under certain circumstances. But any, as you
1462 | mentioned, any of the things that you mentioned should cause
1463 | the company to then seek the medical record and investigate
1464 | further.

1465 | And once they complete medical underwriting, in the
1466 | academic sense, medical underwriting, not a shorthand medical
1467 | underwriting that is just a review of a screening tool, which
1468 | is what the application is, in a rush to sort of own on a
1469 | market in a particular State, because it is a lucrative

1470 market. If we get there, I think we will see a lessening of
1471 this issue, and frankly, the companies will be given an
1472 opportunity to fulfil their obligation to their corporate
1473 entity, and to their stockholders in some case, to make sure
1474 that they are doing their job, as well.

1475 Mr. MURPHY. Mr. Bonner, any comments on the scope of
1476 up-front medical underwriting that we really want to be
1477 requiring, if we were to proffer a uniform law or encourage
1478 States to adopt such laws?

1479 Mr. BONNER. Well, short of a uniform law, or much more
1480 detail than what the regulatory requirement is, I think you
1481 definitely want to see reasonable inquiry into those issues
1482 that may be suggested on the application itself. I think the
1483 other thing that is very important is to look at the
1484 qualifications of those who are actually doing the review, as
1485 well, because one of the issues that we have found is that in
1486 many cases the person reviewing the application and the
1487 information may not have the necessary qualifications to
1488 determine whether they should be making further inquiry to
1489 discover a problem. So, we think that there needs to be some
1490 very clear rules on what is asked on the application, and
1491 very qualified reviewers, as well. Anything you would add to
1492 that?

1493 Ms. DOBBERTEEN. Just that new case law in California did
1494 add that insurers would be obligated to verify the, not only

1495 | the accuracy but the veracity of the answers on the
1496 | application, so that there should be more than just reviewing
1497 | an application and stamping it okay, that they actually do
1498 | have the duty of the investigation prior to issuing the
1499 | policy, rather than post-claims.

1500 | Mr. MURPHY. Thank you very much.

1501 | Mr. CUMMINGS. Thank you very much, Ms. Speier.

1502 | Ms. SPEIER. And thank you to the panelists for being
1503 | here. I apologize for coming in, and going out, and coming
1504 | in, but again, a number of hearings are taking place. I want
1505 | to welcome the regulators from California here. It is great
1506 | to see you again.

1507 | Congressman Bilbray asked a question that I think needs
1508 | to be explored a little bit more. The question was, you
1509 | know, is this kind of something more attributed to California
1510 | than anywhere else where there are more cases? My
1511 | understanding is that California is unique in the Country in
1512 | that so many Californians are in managed care. The vast
1513 | majority of Californians, in fact, are in managed care, so
1514 | they are in group health insurance settings where this would
1515 | not be an issue. And I would offer that as a question to
1516 | either of you to answer.

1517 | Mr. BONNER. Well, that is certainly true that we have a
1518 | much greater saturation of managed care in California than
1519 | you see in other parts of the Country.

1520 Ms. SPEIER. So, it would suggest that in areas where
1521 there are a larger penetration of individual health
1522 insurance, that this is going to be a problem. Obviously, it
1523 is a problem in the individual market, not in the group
1524 market. So, in States across this Country, where individual
1525 health plans have a greater penetration, this is conceivably
1526 more likely to be a problem?

1527 Mr. BONNER. I think that is a logical assumption to make
1528 in the absence of information to the contrary.

1529 Ms. SPEIER. And in your assessment in California, you
1530 have identified a number of insurers who have engaged in this
1531 practice. Do you have any reason to doubt that it is a
1532 practice that is embraced by most insurers, not just in
1533 California but across the Country?

1534 Mr. BONNER. No, you know, my assumption or, let me back
1535 up and say that first, you know, the insurance industry is a
1536 very risk adverse industry and very competitive, as well.
1537 And what they seek is clear rules, and consistent application
1538 in what you see often times, or what I have seen over the
1539 years, as both the regulator and now having oversight of the
1540 regulator, is that competition in the industry is such that
1541 when you have one company that has one approach, or practice,
1542 you often see some consistency in that approach and practice
1543 among their competitors. And so, I think at least that is
1544 what is implicit in your question is, would we tend to

1545 believe that the practice is common amongst insurance
1546 companies in general, and I would say, it is likely.

1547 Ms. SPEIER. This is a hypothetical, of course, but we
1548 are excluding fraud. So, anyone who fills out an
1549 application, and fraudulently fills out an application, says
1550 that they don't have any pre-existing conditions when, in
1551 fact, they did have pre-existing conditions, is not someone
1552 we are talking about. We are talking about rescission where
1553 it is done unrelated to fraud. Shouldn't we just create a
1554 burden on the insurer to establish that, in fact, it is fraud
1555 before a rescission can take place?

1556 Mr. BONNER. Well, you may speak to some of the recent
1557 case law in California that has moved closer to that result,
1558 but you may want to speak to that a little more directly.

1559 Ms. DOBBERTEEN. In fact, California law requires a
1560 showing of willful misrepresentation before they can rescind,
1561 if they have completed medical underwriting. The new case
1562 law did delineate that they have to either absolutely
1563 complete medical underwriting in order to rescind, or make a
1564 showing of willful misrepresentation. It does require
1565 documentation. It does require looking into, rather than
1566 just making that assumption.

1567 Ms. SPEIER. So that is case law, but not statutory law?

1568 Ms. DOBBERTEEN. No. It is based on the statute in
1569 California.

1570 Ms. SPEIER. All right. So then, it is just an issue of
1571 enforcement? If you don't hear about it, you can't enforce
1572 it?

1573 Ms. DOBBERTEEN. We have investigated in depth, not just
1574 waiting for complaints, but we have investigated all five
1575 major health plans who have any products in the individual
1576 market.

1577 Mr. CUMMINGS. Thank you very much.

1578 Ms. SPEIER. Thank you.

1579 Mr. CUMMINGS. Mr. Platts.

1580 Mr. PLATTS. Thank you, Mr. Chairman. I will be real
1581 brief here. Mr. Lembo, I apologize with coming in late, and
1582 I don't think I'm being repetitive, but in your testimony you
1583 talked about the issue of intentional misrepresentations, as
1584 being more or a red herring issue, can you expound on that?
1585 Is that because it is a very small percentage in your opinion
1586 and it is blown out of proportion?

1587 Mr. LEMBO. I think it is a very small percentage of the
1588 group of folks who have the policy that you are saying.

1589 Mr. PLATTS. What level would you put it at in your
1590 opinion?

1591 Mr. LEMBO. You know, not having real data to support
1592 that, it is just our experience based on the case work that
1593 we do.

1594 Mr. PLATTS. Given the work you do, and seeing that not

1595 | as a driving issue here apparently by your testimony, is it
1596 | something that rescissions should not be allowed, or there
1597 | should be a high bar for a rescission being granted?

1598 | Mr. LEMBO. I think before a policy can be rescinded,
1599 | there needs to be a showing that there was a willful, knowing
1600 | misrepresentation of health status.

1601 | Mr. PLATTS. In Connecticut, what is the standard?

1602 | Mr. LEMBO. Knowing.

1603 | Mr. PLATTS. Knowing. And your opinion is just that,
1604 | that should be replicated nationally like that?

1605 | Mr. LEMBO. We went for intentional, but lost that
1606 | particular battle.

1607 | Mr. PLATTS. Okay. All right. Thank you, Mr. Chairman.

1608 | Mr. CUMMINGS. Thank you very much to our witnesses. We
1609 | would to thank you very much for your testimony to the
1610 | Bleazards. We thank you. Clearly, I think everyone on both
1611 | sides are very concerned about what happened to you, and I
1612 | don't think we want to see that happen to anybody else. And
1613 | we will do our very best. And I want to thank our other
1614 | witnesses for providing the testimony. This is the United
1615 | States of America. We can do better by our citizens. And
1616 | again, all of your testimony is very helpful. You are now
1617 | dismissed. Thank you very much.

1618 | We will now call on Ms. Abby Block, the Director, Center
1619 | for Drug and Health Plan Choice, Centers for Medicare and

1620 Medicaid Services, here in Washington.

1621 Mr. DAVIS OF VIRGINIA. Mr. Chairman, while she is
1622 getting here, let me just note, the reason I want to combine
1623 panels is we allowed Mr. Waxman to move the hearing up to
1624 9:30 a.m. this morning. It was inconvenient to us for
1625 different reasons, but we allowed him to do that. I had a
1626 12:00 appointment I couldn't make, and I wanted to get our
1627 appointment while I was still here.

1628 It had nothing to do with bringing lobbyists up front.
1629 I want to underscore that. There is a proposal that they
1630 have, and it would be interesting to have people comment on,
1631 but this is not an adversarial hearing. And I think this
1632 kind of rhetoric is exactly what is wrong with Congress.
1633 Everything has got to get torn up into partisanship. We have
1634 tried our best to accommodate, you know, the Majority with
1635 their time. They didn't give appropriate notice for it, but
1636 we wanted Mr. Waxman to be able to get his hearing in and be
1637 here, because we knew this other Committee meeting was called
1638 that he couldn't avoid. Thank you.

1639 Mr. CUMMINGS. I want to thank you for your comments. But
1640 irrespective of that, I think we can still try to resolve
1641 these issues for the people of our great Country.

1642 Ms. Block, it is the policy of this Committee to swear
1643 in all out witnesses. Would you stand and raise your right
1644 hand?

1645 | [Witness sworn.]

1646 | Mr. CUMMINGS. First of all, we are very happy to have

1647 | you with us. You may proceed.

1648 STATEMENT OF ABBY L. BLOCK, DIRECTOR, CENTER FOR DRUG AND
1649 HEALTH PLAN CHOICE, CENTERS FOR MEDICARE AND MEDICAID
1650 SERVICES.

1651 STATEMENT OF ABBY L. BLOCK

1652 Ms. BLOCK. Thank you, Mr. Cummings, and our thanks to
1653 Chairman Waxman for inviting us today. And thank you Mr.
1654 Davis, and distinguished members of the Committee for giving
1655 us this opportunity to speak. It is my pleasure to be here
1656 to discuss the Centers for Medicare and Medicaid Services
1657 role in the oversight of individual health insurance markets.

1658 As you know, the Agency core mission is administering
1659 Medicare, Medicaid, and the State Children's Health Insurance
1660 Program. As Director of the Center for Drug and Health Plan
1661 Choice within CMS, I oversee day-to-day operations and lead
1662 new policy development with respect to individual insurance
1663 market issues within the Agency's jurisdiction, as well as
1664 with respect to private plans in Medicare.

1665 We share the Chairman's concern with recent reports that
1666 insurers in the individual market might be using rescission
1667 as a means for circumventing the guaranteed renewability
1668 requirements established in the Health Insurance Portability

1669 and Accountability Act of 1996. HIPAA is very clear that,
1670 with limited exceptions, an individual insurance policyholder
1671 has a right to guaranteed renewability. In other words, an
1672 insurer must renew or continue in force an individual's
1673 existing coverage unless a specific exception is met. The
1674 most relative exception for purposes of today's discussion is
1675 if the policyholder acted fraudulently, or made an
1676 intentional misrepresentation of a material fact under the
1677 terms of the coverage.

1678 CMS believes that States have primary responsibility for
1679 enforcement of guaranteed renewability and that CMS can act
1680 only if it determines that a state fails to substantially
1681 enforce the requirement. Specifically, if a state fails to
1682 enact legislation that meets or exceeds Federal HIPAA
1683 standards, or if it otherwise fails to substantially enforce
1684 the HIPAA standards, the U.S. Department of Health and Human
1685 Services has authority to investigate, and if necessary, take
1686 over direct enforcement of the standards in that state.
1687 While there is Federal oversight authority, there is no
1688 direct Federal role in regulating the private individual
1689 insurance market.

1690 It has been suggested that in certain States private
1691 insurance issuers might be using rescission, a State contract
1692 law concept, to circumvent guaranteed renewability. The role
1693 of CMS in addressing such situations hinges on the specific

1694 facts of the situation, including any actions already taken
1695 by the State. If there is any indication that the
1696 rescissions may be occurring for reasons that are
1697 inconsistent with the HIPAA guaranteed renewability
1698 standards, that would be a red flag that the State may be
1699 failing to substantially enforce those standards. CMS could
1700 then begin a process, set forth in our regulations, to assess
1701 the State's compliance with HIPAA requirements. Depending on
1702 the outcome of our investigation, CMS could ultimately take
1703 direct control over enforcement of guaranteed renewability in
1704 a State.

1705 In light of recent scrutiny of the use of rescission in
1706 certain States, the National Association of Insurance
1707 Commissioners established a work group in May 2008 to examine
1708 and develop recommendations relating to the use of rescission
1709 in the individual health insurance market. CMS is actively
1710 engaged in this effort, and we applaud the NAIC's leadership
1711 on this emerging issue, particularly given HIPAA's clear
1712 intent that States take the lead in enforcing individual
1713 insurance market protections.

1714 It is CMS's goal to work collaboratively with States and
1715 other stakeholders to enforce policyholder protections
1716 established by HIPAA. We will do whatever is possible within
1717 the scope of our jurisdiction to ensure that States are
1718 substantially enforcing HIPAA's protections. Thank you for

1719 | the opportunity to testify today, and I would be happy to
1720 | answer any questions you may have.

1721 | [Prepared statement of Ms. Block follows:]

1722 | ***** INSERT *****

1723 Mr. CUMMINGS. I want to thank you very much for your
1724 testimony. And let me just ask you, there is a Federal law,
1725 the HIPAA Act of 1996 that sets a clear Federal standard that
1726 protects policyholders against unfair rescissions, and under
1727 that law, your Agency is charged with enforcing this minimum
1728 standard in ensuring that insurers are not illegally
1729 terminating policies; is that correct? Is that what you are
1730 testifying to?

1731 Ms. BLOCK. Yes, although HIPAA does not specifically
1732 mention rescission, it does mention the discontinuance of
1733 coverage.

1734 Mr. CUMMINGS. All right. And the witnesses on our first
1735 panel, were you here to hear them?

1736 Ms. BLOCK. Yes, I was.

1737 Mr. CUMMINGS. As a matter of fact, they are sitting
1738 right behind you. Describe how insurance companies have
1739 engaged in widespread abuses and routinely terminated
1740 policies after the policyholder gets a serious illness or
1741 injury. The witnesses on the first panel told us that this
1742 is very likely a National problem, not one limited to their
1743 particular States, and in many States, however, such as Utah,
1744 where the Bleazards lost their coverage, there has been no
1745 State enforcement. Now, tell me, Ms. Block, has CMS taken
1746 any enforcement action with regard to improper rescission
1747 practices, any action?

1748 Ms. BLOCK. CMS has not because, remember that, the only
1749 time that CMS has any jurisdiction is if a State, if there is
1750 any indication that a State is not substantially enforcing
1751 the HIPAA provisions.

1752 Mr. CUMMINGS. And how would you know?

1753 Ms. BLOCK. We would have to receive specific complaints
1754 to that effect, and we have not received any such complaints.

1755 Mr. CUMMINGS. And so, in other words, a complaint would
1756 likely come from someone who felt that they were a victim; is
1757 that correct?

1758 Ms. BLOCK. Yes, that would be correct.

1759 Mr. CUMMINGS. And so, you are saying that you have never
1760 received any complaints. Is that to your knowledge?

1761 Ms. BLOCK. Not in regard to rescission. Over the last
1762 five years, we received a total of five complaints about
1763 HIPAA compliance, particularly in the State of Missouri--

1764 Mr. CUMMINGS. But in regard to rescission?

1765 Ms. BLOCK. And none of those were in regard to
1766 rescission.

1767 Mr. CUMMINGS. I see. Now, one of the reasons your
1768 Agency hasn't taken any action to protect policyholders is
1769 that you have devoted almost no resources to this important
1770 responsibility. HIPAA is a big law with numerous enforcement
1771 provisions. For example, requirements relating to patient
1772 privacy insurance portability standards preventing

1773 | drive-through births and mental health parity, and all of
1774 | which need to be enforced. But we were told by the
1775 | administration, that you all only have four people assigned
1776 | to the task of enforcing all of HIPAA's provisions, and that
1777 | is throughout the entire United States of America. Is that
1778 | right?

1779 | Ms. BLOCK. No, I don't believe that is correct, sir. I
1780 | have four people on my staff specifically that do enforce,
1781 | have responsibility and jurisdiction over specific HIPAA
1782 | provisions. HIPAA is, as you say, a very big statute. The
1783 | Department of Labor has jurisdiction over some aspects. The
1784 | Department of the Treasury has jurisdiction. So, I don't
1785 | represent the whole United States Government.

1786 | Mr. CUMMINGS. Well, I'm just talking about, with what
1787 | you testified today with regard to rescission, you all have
1788 | jurisdiction over that; is that correct?

1789 | Ms. BLOCK. That is correct.

1790 | Mr. CUMMINGS. You and the four people?

1791 | Ms. BLOCK. Yes, I have four dedicated staff.

1792 | Mr. CUMMINGS. And they do other things other than the
1793 | rescission oversight; is that correct?

1794 | Ms. BLOCK. They do everything related to the private
1795 | insurance market.

1796 | Mr. CUMMINGS. Very well. Four people for the entire
1797 | United States of America. Today, we heard appalling stories

1798 | of truly abusive conduct by insurers who unfairly rescind
1799 | policies leaving people uninsured and uninsurable in the
1800 | middle of a medical crisis. Your Agency is the ultimate
1801 | authority of HIPAA's protections and it is your job under the
1802 | law to make sure that insurers in all States are complying
1803 | with HIPAA's important safeguards for individual
1804 | policyholders. How can you possibly enforce all of that with
1805 | four people?

1806 | Ms. BLOCK. We believe that the States have primary
1807 | responsibility and that our jurisdiction is to ensure that
1808 | States are, in fact, substantially enforcing the HIPAA
1809 | provisions. If we have any indication that a State is not
1810 | doing that, we have the ability through our regulations to
1811 | investigate and take appropriate action. And I assure you,
1812 | we will do that.

1813 | Mr. CUMMINGS. But that has never happened to your
1814 | knowledge; is that correct?

1815 | Ms. BLOCK. That has not happened.

1816 | Mr. CUMMINGS. And when you hear stories like the
1817 | Bleazards, does that concern you, and does that make you want
1818 | to go back and do something about it?

1819 | Ms. BLOCK. It concerns me very, very much. And, I
1820 | believe, I have expressed our concern. Obviously, we believe
1821 | this is a serious issue. We take it very, very seriously.
1822 | And that is why I look forward to working closely with the

1823 NAIC, as they review the problem and come up with solutions.

1824 Mr. CUMMINGS. And what would your solutions be to them,
1825 because they are sitting here. They have got a \$100,000
1826 worth of bills, trying to figure out how they are going to
1827 pay them. And by the way, and counting, I mean, what would
1828 your solution be? I am just curious.

1829 Ms. BLOCK. I don't have any authority to come up with a
1830 solution. I have to act within the jurisdiction that I have
1831 under the law and regulations.

1832 Mr. CUMMINGS. Mr. Bilbray. Mr. Murphy.

1833 Mr. MURPHY. Thank you, Ms. Block. Just to explore the
1834 Utah situation and law a little bit further. The Federal
1835 law, as you have stated, gives you authority to step in when
1836 a State doesn't comply with the Federal standard, which is
1837 tied to the constitution of fraud, or intentional
1838 misrepresentation, and the Utah law, which had jurisdiction
1839 in the case of the Bleazards, does not have that same Federal
1840 standard of fraud or misrepresentation. In fact, it allows
1841 for the insurer to discontinue a policy simply made on
1842 material reliance with or without any intentional
1843 misrepresentation.

1844 And so, it appears, and I know you may not have had the
1845 chance to, you know, take a look at the Utah law, it
1846 certainly appears from our reading that there is a clear
1847 statutory conflict between the law in Utah that controlled in

1848 | the case of the Bleazards, and the Federal standard. And so,
1849 | it would seem, you know, given the fact that we have here
1850 | today at least one example of a State law, which stands in
1851 | direct conflict of the Federal law, that maybe a first step
1852 | might be for the Agency to do a review of, and there is only
1853 | 50 States, so it is probably not that hard to go and take a
1854 | look at all of the different statutes that control here, and
1855 | determine which States, by the very definition of their
1856 | statutory treatment of this issue, aren't in compliance with
1857 | the Federal law. Does that not seem like a reasonable step
1858 | to take?

1859 | Ms. BLOCK. We actually reviewed all of the State laws
1860 | right after the enactment of HIPAA to make sure that they
1861 | were consistent. And it was the determination of the staff
1862 | at the then-HCFA, that they were, with a few exceptions, the
1863 | last State that came into compliance was Missouri, which
1864 | enacted its legislation just recently, in the individual
1865 | market. What really occurs here is, as I indicated, if there
1866 | is a situation such as the situation in Utah, and we are very
1867 | sympathetic to that situation, that could be a red flag. So
1868 | we would have to look at the specific circumstances of the
1869 | specific case to determine that in that specific situation,
1870 | the State is not substantially enforcing the HIPAA
1871 | provisions. If we were to make such a determination after an
1872 | investigation, we would then work with the State to make sure

1873 | that the State came into compliance, which is the ultimate
1874 | goal, as a very last resort. If the State failed to come into
1875 | compliance, we could then assume jurisdiction in that State.

1876 | Mr. MURPHY. And I appreciate that, but looking at the
1877 | Utah law, and just to quote you the law, it is unclear to me
1878 | how on earth there could have been a determination that this
1879 | was in compliance. The Utah law says, "No misrepresentation
1880 | or breach of an affirmative warranty affects the insurer's
1881 | obligations under the policy, unless the insurer relies on it
1882 | and it is material, or it is made with the intent to
1883 | deceive." And so, that or clause allows I think insurers in
1884 | Utah to cancel a policy based on material reliance.

1885 | So, this is just by way of hoping that one of things you
1886 | will take from this hearing is the chance to go back and
1887 | re-review the determination that there are 50 States in
1888 | compliance, because, at the very least, it looks like the
1889 | Utah policy is not. And lastly, I understand you haven't
1890 | received complaints into your office, but don't you think
1891 | there a pro-active duty on the part of your Agency to at
1892 | least be examining the experience that States have.

1893 | It wouldn't take much effort for your Agency, I
1894 | understand you are short-staffed and that is a problem that
1895 | maybe needs to be solved, but it doesn't seem like it would
1896 | take much effort to be in contact with someone like Mr.
1897 | Lembo, or Mr. Bonner, on even an irregular basis. And that

1898 kind of contact, that kind of solicitation of input from
1899 state regulators and state advocates, would have discovered I
1900 think pretty easily, that there was a problem here that CMS
1901 could have stepped in to address. Shouldn't there be some,
1902 at least rudimentary, pro-active obligation?

1903 Ms. BLOCK. In fact, that happened, sir. That happens on
1904 a regular basis. We talk regularly with State regulators. We
1905 meet regularly with them at the quarterly NAIC meetings.
1906 That kind of interaction goes on regularly.

1907 Mr. MURPHY. And this didn't come up in any of those
1908 discussions?

1909 Ms. BLOCK. Well, it is not that it didn't come up, it is
1910 that, remember our jurisdiction kicks in if we have
1911 determined or believe that there may be a situation where the
1912 State is not substantially enforcing the law, the HIPAA
1913 rules. We have no such indication in Connecticut, nor do we
1914 have any such indication in California. So, of course, it
1915 comes up in discussion, but until, and if, there is a
1916 situation where it appears that there may be circumstances
1917 where the State is not substantially enforcing the HIPAA
1918 requirements, we have no jurisdiction.

1919 Mr. MURPHY. And lastly, Mr. Chairman--

1920 Mr. CUMMINGS. The gentleman's time is up.

1921 Mr. MURPHY. And lastly, Mr. Chairman, just to mention, I
1922 do think that that conflict with State laws would be

1923 | immediate evidence that a State isn't enforcing the Federal
1924 | law, and I would just hope that you would go back and take a
1925 | look at some of these State laws to make sure that your
1926 | determinations are correct. Thank you.

1927 | Mr. CUMMINGS. Ms. Speier.

1928 | Ms. SPEIER. Thank you, Mr. Chairman. Ms. Block, we all
1929 | work for the taxpayers of this Country. And they expect us
1930 | to respond. Now, you have a minimum of \$400,000 of
1931 | taxpayer's funds in four people that are supposed to be doing
1932 | something to make sure that the laws of the State and the
1933 | Country are being enforced. Now, your comment to us was,
1934 | well, you saw no problems in Connecticut or California, so
1935 | you haven't taken any action. Let's talk about some cases
1936 | that may not have been brought to you specifically, but were
1937 | brought to you in the media.

1938 | In December of 2007, USA Today wrote an article in which
1939 | they talked about a woman's insurance policy being canceled
1940 | after she had had emergency surgery for a perforated ulcer.
1941 | And it was canceled by her insurer because the only thing
1942 | that she disclosed on her application was that she was having
1943 | heavy menstrual periods, a condition her doctor said was
1944 | normal for a woman her age. So, based on the fact that she
1945 | was having heavy menstrual periods, her insurer canceled her.

1946 | It was national media. What action did you take in that
1947 | case?

1948 Ms. BLOCK. I have no indication that the State had
1949 failed to take action. I don't know that the individual had
1950 exhausted their State remedies. I can't really act simply on
1951 information, which is never full and complete in a news media
1952 report. If that case was brought to my attention, I would be
1953 happy to look into it and see whether appropriate steps
1954 needed to be taken. I don't even know what State that
1955 incident occurred in?

1956 Ms. SPEIER. Well, let's talk about another case. This
1957 is a case in South Carolina where a policyholder received a
1958 \$15 million verdict following an illegal rescission. The
1959 case disclosed an array of abusive practices. For example,
1960 the insurer's computer system was pre-programmed to trigger
1961 automatic fraud investigations based on billing codes. The
1962 insurer then rescinded coverage based upon an erroneous date
1963 written on a single form. Did you take any action in the
1964 South Carolina case?

1965 Ms. BLOCK. With all due respect, ma'am, I do not
1966 regulate the individual insurance market.

1967 Ms. SPEIER. No, we understand that, but you do have
1968 authority over HIPAA.

1969 Ms. BLOCK. No, the State, apparently, appropriate action
1970 was taken in that case. You just said that the person
1971 received appropriate compensation.

1972 Ms. SPEIER. Did you contact the South Carolina

1973 regulators to determine whether or not they had taken action
1974 against insurers in this case?

1975 Ms. BLOCK. It is not my responsibility to do that. It
1976 is my responsibility only to determine if, in fact, a State
1977 is substantially enforcing HIPAA rules, if a case is brought
1978 to my attention.

1979 Ms. SPEIER. With all due respect, if it is in the
1980 national media, it is brought to your attention. And, if you
1981 do not believe that that is brought to your attention if
1982 something appears in the national media, then there is about
1983 \$400,000 we can cut from the budget right now. Thank you,
1984 Mr. Chairman.

1985 Mr. CUMMINGS. Thank you very much. Ms. Brock, I just
1986 have one question for you. Let me just pick up on what Ms.
1987 Speier just asked you. There is an expectation of the people
1988 of this Country that government is working for them, not
1989 against them. And they pay us to solve their problems. And
1990 they have one life to live. This is no dress rehearsal and
1991 this is their life. And I just have one question for you.
1992 If right this second, Mr. and Mrs. Bleazard wrote on a piece
1993 of paper, Dear Mrs. Block, we believe that the State of Utah
1994 has not done what it is supposed to do in this regard, would
1995 that trigger an investigation from you? That is all I want
1996 to know.

1997 Ms. BLOCK. That certainly could trigger an

1998 | investigation.

1999 | Mr. CUMMINGS. No, I didn't say could. I said, would it?

2000 | All we are talking about is an investigation now, I didn't
2001 | say, conclusion, investigation, because they are sitting here
2002 | right now and they want to know that their government is
2003 | working for them. And you just sat here and said you needed
2004 | a complaint. And I am asking you, these are just regular
2005 | everyday citizens who paid their premiums, who did everything
2006 | that they were supposed to do, and they feel like they have
2007 | been cheated. And I am asking you if right now, if they
2008 | scribbled on a piece of paper those words, would that trigger
2009 | an investigation?

2010 | Ms. BLOCK. That would certainly trigger my looking into
2011 | the situation to determine whether the circumstances in that
2012 | particular case, in fact, triggered an investigation. If
2013 | they would like to make such a request, I would be very
2014 | happy, you know, to entertain it.

2015 | Mr. CUMMINGS. Very well.

2016 | Mr. BILBRAY. Mr. Chairman.

2017 | Mr. CUMMINGS. Mr. Bilbray.

2018 | Mr. BILBRAY. You know, I don't think that it is
2019 | appropriate to close this discussion without highlighting the
2020 | fact that contrary to what a lot of people in this city like
2021 | to believe, the State and Local governments are the front
2022 | line of protection and service to the people of the United

2023 States. Washington is not, and has never been meant to be.
2024 It is meant to be that we end up, try to be, I agree with
2025 you, the last line of defense when systems break down.

2026 But I just have to say it, somebody who comes from
2027 almost 20 years of local government service, the biggest
2028 frustration I had as a mayor, a county supervisor, as an air
2029 resources member trying to protect the public, was the
2030 Federal Government always thinking that they were the first
2031 line rather than the last line. And we just got to
2032 understand that there are always going to be times that we
2033 can sit in Washington and second-guess the men and women that
2034 are serving the American people on the front line in cities,
2035 counties, and States, and always thinking that we could do it
2036 better. History has proven that we don't do it better.

2037 Mr. CUMMINGS. I want to thank the gentleman for his
2038 statement. With all due respect, let me just say this, and I
2039 will be extremely brief, because Mr. Davis has asked me to
2040 try and move this hearing along, and I will do that. But, so
2041 that we will be clear, Ms. Block, under sworn testimony, said
2042 a few moments ago that there were certain things that were
2043 under her jurisdiction, number one. Number two, she said
2044 that there were certain things that would trigger an
2045 investigation of those things under her jurisdiction. That
2046 is number two.

2047 Number three, under her jurisdiction, what she has paid

2048 for, what she has sworn is her job, I simply wanted to get
2049 some answers to a question of a couple that, by the way, at
2050 the beginning of our terms, we raise our hands and swear that
2051 we are going to protect the American people, I want to make
2052 sure that this couple is protected. I am not saying the
2053 Federal Government can do it better, or whatever, I am just
2054 basing that upon the sworn testimony that was given here this
2055 morning.

2056 Ms. Block, I just want to thank you very, very much, and
2057 you are now dismissed. Thank you.

2058 Our next witness is Ms. Stephanie W. Kanwit, who is
2059 Special Counsel, to the America's Health Insurance Plans, the
2060 trade association for the health insurance industry. Ms.
2061 Kanwit, am I pronouncing that correct?

2062 Ms. KANWIT. You are, sir. Kanwit, thank you.

2063 Mr. CUMMINGS. Good.

2064 Ms. KANWIT. Thank you for asking.

2065 Mr. CUMMINGS. She will explain the Association's
2066 policies. And Ms. Kanwit, I know you just sat down, but I am
2067 going to have to ask you to stand up.

2068 [Witness sworn.]

2069 Mr. CUMMINGS. We will now hear from you. And thank you
2070 very much for being with us.

2071 STATEMENT OF STEPHANIE KANWIT, SPECIAL COUNSEL, AMERICA'S
2072 HEALTH INSURANCE PLANS

2073 STATEMENT OF STEPHANIE KANWIT

2074 Ms. KANWIT. Thank you very much, Mr. Cummings, and
2075 members of the Committee.

2076 I am Stephanie Kanwit. I am Special Counsel for
2077 America's Health Insurance Plans, and we represent the 1,300
2078 health insurance plans offering coverage to more than 200
2079 million Americans. I heard Chairman Waxman this morning say
2080 that one of the primary issues we are discussing is how to
2081 ensure that all Americans have adequate health care coverage.
2082 We couldn't agree more.

2083 AHIP, my organization, believes that all Americans
2084 should have access to coverage. And I want to tell you very
2085 briefly this morning about two of our proposals for
2086 reinforcing the individual health insurance market, which is
2087 what we are talking about.

2088 Number one, proposals to ensure that no individual falls
2089 through the cracks, and number two, initiatives to give
2090 consumers in this market peace of mind, including new
2091 consumer protections with regard to rescissions and

2092 | pre-existing conditions.

2093 | Just very quickly, my paper summarizes what the
2094 | individual market covers, who is in it. We believe that
2095 | there are about 18 million people in there. We just took a
2096 | survey in December of 2007, so it is very recent. We found
2097 | that the individual market is both available and affordable,
2098 | that 89 percent of applicants who apply and go through the
2099 | process are offered coverage, and the majority at either
2100 | standard or preferred rates. But we want to go further.

2101 | We have heard some disturbing testimony this morning on
2102 | rescissions in some very articulate testimony from the
2103 | Connecticut and California regulators. We know that
2104 | rescissions are exceedingly rare. Our statistics say that it
2105 | is two-tenths of 1 percent of policies. Two tenths of 1
2106 | percent. We want to make them rarer still. We want to make
2107 | them extinct.

2108 | First, rescission would not be an issue at all if
2109 | universal coverage existed. So, we have proposed, just
2110 | recently, a strategy for individual market reform that would
2111 | guarantee access to health care coverage. That plan would be
2112 | a public/private cooperative adventure, and it would have
2113 | States create what we call guaranteed access plans to provide
2114 | coverage, for those who are uninsured, with the highest
2115 | medical costs, and our plans correlatively, would do their
2116 | parts with a coverage safety net, and guarantee coverage to

2117 | all applicants who aren't eligible for the guaranteed access
2118 | plans. And there would be capped premiums on that.

2119 | Second, and very critically, our Board of Directors,
2120 | last year, recommended important initiatives to enhance piece
2121 | of mind to those in the individual market. We have outlined
2122 | in our testimony in great detail the numerous consumer
2123 | centric practices we are advocating. And chief among them,
2124 | and the one that I am most proud of, is the position that
2125 | legislative drafting, which States can use to enact
2126 | legislation to provide consumers like the consumers we heard
2127 | testify this morning, with access to independent third party
2128 | review, third party review, which would resolve any disputes
2129 | about medical issues related to not only rescissions, but
2130 | also pre-existing exclusions.

2131 | And our policy, or our proposal, goes even further than
2132 | Connecticut's, because it would be independent of the health
2133 | plan, and it would involve both a medical professional and an
2134 | attorney who is expert in that particular area. And any
2135 | decision, any decision, and this is critical, would be
2136 | binding on the health plan.

2137 | The other key initiative that we set forth in our
2138 | testimony are a number of principles. I made them seven
2139 | separate principles about rescissions. We believe that the
2140 | health plans have very serious responsibilities. First of
2141 | all, they should take responsibilities, and you heard this

2142 reiterated in some of the testimony this morning, for
2143 conducting a thorough, thorough review of questions asked in
2144 an application. And if a plan failed to conduct that
2145 thorough review of unclear or questionable information, and
2146 failed to seek additional information, then the health plan
2147 cannot use that information as a basis for rescinding
2148 coverage.

2149 Just quickly, on a final note, we are trying, our
2150 Association, is trying to come up with policy solutions that
2151 work, both immediately and in the long term. Our proposals,
2152 which we have detailed in the testimony, take account of
2153 state reform efforts over the last 15 years. They were very
2154 well intentioned, but we cited a report we just did last year
2155 by Milliman, which found that even these well-intentioned
2156 State efforts at reform in the individual market, and I am
2157 talking about guarantee issue, without a requirement for
2158 individual coverage, or community rating, had negative
2159 consequences for consumers, higher premiums, decline in
2160 enrollment, and often and unfortunately an exodus of health
2161 insurers from the market.

2162 I am happy to take any questions this morning.

2163 Mr. CUMMINGS. Thank you very much for your testimony.

2164 Ms. Kanwit, you have heard the testimony earlier; right?

2165 Have you been here?

2166 Ms. KANWIT. I did, sir. I have been here all morning.

2167 Mr. CUMMINGS. And probably, all of those insurance
2168 companies are part of your Association, the ones that you
2169 heard mentioned?

2170 Ms. KANWIT. I believe so, yes.

2171 Mr. CUMMINGS. And, as I listen to your testimony, it was
2172 quite impressive. And you were talking about things that,
2173 you all, would propose. And I am just curious why haven't
2174 you all done some of those things? Some of these things, you
2175 don't need us. My friends constantly say in the Congress
2176 that if they can do it in private industry, let private
2177 industry do it.

2178 I have a couple sitting behind you, who is facing
2179 \$100,000 plus in bills, and counting, after having paid their
2180 premiums, and I am sure they are saying, well, that all
2181 sounds nice, but what about us? You follow what I am saying?

2182 Ms. KANWIT. I do.

2183 Mr. CUMMINGS. So why haven't your folks done this
2184 before? I mean, it sounds good, and it sounds like this is
2185 something that has been on the drawing board, most of these
2186 things for awhile, or are these things that just came up?
2187 When did you all come up with these things?

2188 Ms. KANWIT. Our Board, sir, came up with this last
2189 December. We publicized this material last December. And it
2190 has been an issue that has been discussed for a while. We
2191 are also, as you heard this morning about the NAIC, we are

2192 | working with them as well on proposals here.

2193 | Mr. CUMMINGS. And so, when do you anticipate some of
2194 | these things to go into effect, because the people who are
2195 | watching us on television, and I know that you said it is
2196 | only a very minuscule number of people that may be affected
2197 | by this, but those people are in pain. Those people are
2198 | suffering just like this couple is suffering. And we have
2199 | faces to put with the failure to institute these policies.
2200 | And I am just curious, when do you anticipate that is going
2201 | to happen? Or any of them?

2202 | Ms. KANWIT. We hope to make again what happened to the
2203 | Bleazards this morning, for example, a never event. Some of
2204 | our health plans, for example, have already instituted these
2205 | policies in terms of the underwriting standards, but we are
2206 | also working with the state legislatures to implement the
2207 | issue that I talked about, the third-party review, which
2208 | would obviate a lot of the problems in this area. It has
2209 | worked in the medical field, having external review, and this
2210 | would be third-party review, for rescissions and pre-existing
2211 | conditions.

2212 | Mr. CUMMINGS. Now, the reason that the insurer gave for
2213 | rescinding the policy that the husband Keith had, is that he
2214 | failed to provide information in the application about his
2215 | medical issue relating to his back. You heard that
2216 | testimony? Yet, the relevant section of the application was

2217 filled in by Keith's insurance agent, whom Heidi testified
2218 had complete knowledge of the medical history. And in any
2219 event, the medical history of Keith's back has absolutely
2220 nothing to do with Heidi's horrific mountain biking accident,
2221 exactly the kind of catastrophic event that health insurance
2222 is supposed, and I am sure you would agree, to protect
2223 policyholders against.

2224 And you testified that your industry has new initiatives
2225 designed to give consumers peace of mind about their
2226 individual health insurance coverage. And I am just curious,
2227 why do you think insurers treat people the way that they
2228 treated these folks? I mean, I am sure in your discussions,
2229 you tried--I mean, in order for you all to get to the
2230 recommendations, you had to, I guess, know that these
2231 incidents take place. You also needed to know to even come
2232 up with that third-party proposal, you had to know that there
2233 is some problems here. And so, why is that? Why do you
2234 think that is, because they have their opinion, I am sure,
2235 but why do you think that is?

2236 Ms. KANWIT. Well, sir, we are trying to fix it. We want
2237 to make sure that what happened to them does not happen again
2238 in the future. We are asking affirmatively, our member health
2239 plans, and our Board supports this, to go back and do
2240 thorough up-front underwriting, and if that underwriting is
2241 not done, if that investigation is not done, if there is an

2242 unclear question, then the health plan cannot rescind based
2243 on that information. And I am sure the Chair knows that
2244 there are reasons to do underwriting, but you wouldn't need
2245 that if we had universal coverage.

2246 Mr. CUMMINGS. And so, you don't think that any of this
2247 has anything, I am just curious, I am not trying to put words
2248 in your mouth, has anything to do with money?

2249 Ms. KANWIT. I can't speak to that, sir. I can't speak
2250 to an individual situation. As a lawyer, I try not to opine
2251 in an area where I don't know the facts. I don't know,
2252 except what I heard this morning in the testimony, which was
2253 very disturbing, I do not know the facts.

2254 Mr. CUMMINGS. All right. Mr. Davis.

2255 Mr. DAVIS OF VIRGINIA. Ms. Kanwit, thank you very much.
2256 The facts of the case we heard this morning, that were pretty
2257 devastating to whoever was insuring, and I think that is the
2258 kind of thing that we don't want happening within the
2259 industry. You would agree with that from the facts that were
2260 presented here?

2261 Ms. KANWIT. I agree. We are trying to make it never
2262 happen again, a never event, as they would say.

2263 Mr. DAVIS OF VIRGINIA. Do you think that the proposed
2264 external panel review could mitigate harm done in cases like
2265 this?

2266 Ms. KANWIT. Absolutely. I think it absolutely would

2267 | have. I also want to point out that the Utah couple this
2268 | morning who testified, had their policy been rescinded under
2269 | our proposal, they would have gone into the guaranteed access
2270 | plan that we are supporting very strongly here, where the
2271 | State and the private plans would get together and assure
2272 | coverage for every single person, so no one falls between the
2273 | cracks.

2274 | Mr. DAVIS OF VIRGINIA. Look, there are good insurance
2275 | companies, and there are bad insurance companies, just like
2276 | good lawyers, bad lawyers, good Congressmen--I mean,
2277 | whatever, but if you have to take a look at, and I am not
2278 | going to get into names, but I think in those bad situations,
2279 | getting some kind of instant appeal to an independent panel
2280 | is the appropriate resolution quickly. And the difficulties
2281 | with some of the other things suggested today, we are just
2282 | going to put on an army of investigators, and this like
2283 | doesn't necessarily bring this to any kind of climate, it
2284 | doesn't bring it to a conclusion.

2285 | Additional policing may be part of what we need, maybe,
2286 | we need to bring CMS into this. That is something we can
2287 | look at, but ultimately if you are the consumer out there,
2288 | and you have got an injury, and you have got a dispute, you
2289 | don't want to have to go to Court. You know, you don't want
2290 | to have to go on a contingent--nobody gets anything out of
2291 | that over the short term. And so, that is what intrigues me

2292 | about this. Now, can this be instituted, it could be
2293 | instituted voluntarily as part of policies, but do you
2294 | suggest we do this legislatively?

2295 | Ms. KANWIT. We are suggesting that we do this, Mr.
2296 | Davis, by State legislation, but you are absolutely right, it
2297 | could be done relatively quickly and expeditiously. And, as
2298 | I said, it has worked in the medical external review area,
2299 | and it is a variation of that.

2300 | Mr. DAVIS OF VIRGINIA. From an insurer's perspective, is
2301 | there a difference between rescissions and post-claims
2302 | underwriting?

2303 | Ms. KANWIT. Yes, there is. There are different
2304 | principles. Post-claims underwriting is a review of the
2305 | policy after the policy has been issued, which can result in
2306 | rescissions, but may also result in, for example, additional
2307 | limitations, pre-existing conditions, or higher premiums.
2308 | You know, you didn't tell us about your back problem two
2309 | years ago and, therefore we are going to issue the policy,
2310 | but at a slightly higher rate. So, they are not quite
2311 | analogous.

2312 | Mr. DAVIS OF VIRGINIA. So, post-claims underwriting, you
2313 | feel is an appropriate industry practice?

2314 | Ms. KANWIT. I think it is necessary when you have the
2315 | individual market that we have now. As I said, AHIP, and our
2316 | members, and our Board, would like to make it--if you had

2317 universal coverage, we would work with the States and the
2318 Federal Government to consider how we could do guaranteed
2319 issue and you would never need to talk about rescissions, or
2320 pre-existing conditions.

2321 Mr. DAVIS OF VIRGINIA. On an earlier panel, Mr. Lembo,
2322 you heard him state that associating fraud and rescissions is
2323 a red herring, that basically he didn't think there was a lot
2324 of fraud in this. There was a small bit of this. Do you
2325 agree with that statement, or what has been the experience of
2326 the industry?

2327 Ms. KANWIT. I can't speak for the whole industry, but I
2328 used to work for one company in the industry. And there is
2329 some fraud. People need to be careful, because all consumers
2330 are paying for that kind of fraud. And again, with universal
2331 coverage, you wouldn't have to worry about that.

2332 Mr. DAVIS OF VIRGINIA. Did some of this originate with
2333 the consumer? How about the underwriter? Does it exist
2334 there some times, where the underwriter is just interested in
2335 selling a policy?

2336 Ms. KANWIT. That could be possible as well, yes.

2337 Mr. DAVIS OF VIRGINIA. It can go up the chain. All
2338 right. Well, I am intrigued by this. I hope that we can get
2339 more information out on this so that consumers can have some
2340 independent appeal in a case like this and not have to hold
2341 the Court system to do it. And I appreciate your being here

2342 | today. And I just hope we can get some resolution to these
2343 | issues.

2344 | Mr. ISSA. Just following up on the Ranking Member's
2345 | question, when you have an independent insurance agent
2346 | writing, a bonded agent, would one of the other reforms be
2347 | that because that is a bonded agent and the insurance company
2348 | who works with them could seek reimbursement for their
2349 | wrongful act, would it be reasonable for claims made against
2350 | failures by that bonded agent to be paid?

2351 | In other words, that these two individuals still seated
2352 | behind you would not find themselves, because of a failure of
2353 | the bonded agent but rather that person's bond would be where
2354 | you would seek to get reimbursement. You know, often
2355 | insurance companies look at themselves as simply a mover of
2356 | dollars. In their case, it seems like they were a victim of
2357 | the gentleman's friend, but somebody who failed to do their
2358 | job properly. How would you comment on that on behalf of, if
2359 | you will, your industry?

2360 | Ms. KANWIT. That could work, but the consumer is
2361 | responsible for the statements of an agent. But in that
2362 | particular situation, you could possibly find some recompense
2363 | there.

2364 | Mr. CUMMINGS. The gentleman's time has expired. Mr.
2365 | Kucinich.

2366 | Mr. KUCINICH. Thank you very much for appearing before

2367 | this Committee. In looking at your prepared remarks, I
2368 | continue to see where you express an interest in making sure
2369 | that no one falls through the cracks of the health care
2370 | system. How do you square that with the industry policy of
2371 | canceling people's health care? I mean, if you are concerned
2372 | that they don't fall through the cracks, doesn't the
2373 | industry's policies, basically, push people into the cracks?

2374 | Ms. KANWIT. I don't believe so, Mr. Kucinich. One of
2375 | our problems is that, and this is a serious problem for all
2376 | of us, have, whatever the number is, 45, 47 million Americans
2377 | uninsured. We have kind of a patchwork system whereby you
2378 | heard this morning, Ms. Block testified the States have
2379 | primary authority to regulate under McCarran-Ferguson, and
2380 | the Federal Government has some authority.

2381 | Mr. KUCINICH. Why do you think people don't have
2382 | insurance? You are in the insurance business, why do you
2383 | think it is that people don't have insurance?

2384 | Ms. KANWIT. I think that some of it is costs. I think
2385 | some of it is that people choose not to buy insurance. We
2386 | all have to work together to get universal coverage.

2387 | Mr. KUCINICH. And do you think people don't have
2388 | insurance because they can't pay for it, that it is
2389 | unaffordable, that it is not accessible to them?

2390 | Ms. KANWIT. Currently, absolutely.

2391 | Mr. KUCINICH. The price of insurance is too high; do you

2392 think?

2393 Ms. KANWIT. As I said, it is cost as well, and that is
2394 what our guarantee--

2395 Mr. KUCINICH. People just can't afford it, I mean, it is
2396 too high. The industry charges too much; right?

2397 Ms. KANWIT. Well, the industry charges what it needs to
2398 pay out in claims for a system which--the Commonwealth Fund
2399 just came out with a report this morning that talked about
2400 the number of procedures that are done in the United States,
2401 costly procedures that are not medically useful.

2402 Mr. KUCINICH. What is the profit rate of the industry,
2403 of private insurers?

2404 Ms. KANWIT. I believe, sir, that it is about 2 percent.

2405 Mr. KUCINICH. Two percent. Does that 2 percent reflect
2406 audited figures that relate to their true costs, or does it
2407 reflect after paying money for salaries to their executives?

2408 Ms. KANWIT. Those are the profit figures. I can't--

2409 Mr. KUCINICH. Are there people who run health insurance
2410 companies who make millions of dollars a year to run those
2411 companies?

2412 Ms. KANWIT. I believe some of them do, yes.

2413 Mr. KUCINICH. That is included in the cost of operation;
2414 isn't that correct?

2415 Ms. KANWIT. So are all the claims fees, and all of the
2416 medical claims, yes.

2417 Mr. KUCINICH. Now, the neurosurgeon in the hospital and
2418 the physical rehabilitation unit that delivered this care to
2419 Heidi that has been talked about, making it possible for her
2420 to resume a normal life, and even travel to Washington to
2421 testify, they delivered excellent care, but yet her insurance
2422 policy was rescinded and Heidi and Keith don't have the
2423 savings to pay \$100,000 in medical bills, so the providers
2424 are left holding the bag. How does the industry justify
2425 treating physicians and hospitals that way?

2426 Ms. KANWIT. Well, I can't speak for the industry or the
2427 particular cases. I mentioned to Mr. Cummings I don't know
2428 all the facts except what I have heard this morning. We want
2429 to make the situations, such as that testimony this morning,
2430 not occur again.

2431 Mr. KUCINICH. Should insurers be permitted to tell
2432 hospitals individuals are covered, and then later rescind the
2433 coverage, and stick the hospital with six figure bills that
2434 are likely not to be paid?

2435 Ms. KANWIT. That should not happen and under our
2436 proposal would not happen.

2437 Mr. KUCINICH. Now, in northeast Ohio, Mr. Chairman and
2438 Ms. Kanwit, Metro Health has been struggling with enormous
2439 growth and the cost of uncompensated care. In 2007, they
2440 were left with \$10 million in bad debt alone, which does not
2441 include uncompensated care. This is a huge financial burden

2442 on doctors and hospitals, but it happens, you know, to make
2443 money for the insurance industry. I want to know how much of
2444 this practice of rescission is costing Metro Health and
2445 public hospitals like it?

2446 Ms. KANWIT. Probably, very little sir, because
2447 rescission is so rare, and 99.99 percent of people do not
2448 have their individual policies rescinded. It occurs so
2449 infrequently. It is not the bulk of the issues that are a
2450 serious problem under uncompensated care. That is a
2451 cost-shifting issue that again we have to take care of in the
2452 American health care system.

2453 Mr. KUCINICH. Well, I look forward to exploring this
2454 further, because we may have uncovered yet another creative
2455 but until now virtually invisible way that the insurance
2456 industry makes money by denying care. You know, I think, Mr.
2457 Chairman, that this industry is the problem not the solution.
2458 Other countries have decided to get rid of their for-profit
2459 insurance industry and leave the care to patients and doctors
2460 without insurance companies intervening, and they have
2461 enjoyed great success in providing coverage for everyone,
2462 improving the quality of care, and saving substantial amounts
2463 of money.

2464 Mr. CUMMINGS. The gentleman's time is up.

2465 Mr. KUCINICH. I would like to state that H.R. 676 is an
2466 important part of that. The U.S. Conference of Mayors

2467 supports it, and 91 sponsors in the House. Thank you for
2468 being here, Ms. Kanwit. I hope that in the future we can
2469 have a not-for-profit health care system, which would make
2470 your presence here not necessary. Thank you.

2471 Mr. CUMMINGS. Thank you very much. Mr. Issa.

2472 Mr. ISSA. Thank you, Mr. Chairman. You know, the
2473 amazing thing about this Committee is that we have virtually
2474 no jurisdiction in this area, but we are asserting ourselves,
2475 and perhaps the best reason is that if your member companies,
2476 and government, and the people fail to resolve this, Mr.
2477 Kucinich's bill will become law.

2478 And, it is very clear that we do have to choose between
2479 dealing with the 45 to 47 million uninsured, dealing with
2480 people who may have pre-existing conditions, but they have to
2481 be able to get insured, or they are going to fall not only
2482 into personal bankruptcy, but they are going to fall back on
2483 to the State anyway.

2484 You know, I, for one, believe that we have a universal
2485 health care system. It is the worst possible universal
2486 health care system, but what it really says is, everyone will
2487 have insurance but that it will be at the emergency room. As
2488 a Californian, and I am particularly sensitive to the fact
2489 that it is very expensive to deliver that care the wrong way,
2490 rather than the right way. On the earlier panel that I had
2491 hoped to have you on at the same time, I asked a series of

2492 | questions and they were probably less tough on the regulators
2493 | than they will be on you.

2494 | The first one would be, why wouldn't it be fair for a
2495 | State or, if you will, all States to simply assign to every
2496 | company based on their percentage in the market, cases with
2497 | pre-existing conditions and essentially, either with or
2498 | without some participation, financial participation of the
2499 | State, say this is the cost of doing business?

2500 | You know, as you said, there is this two-tenths of 1
2501 | percent. If you got only your fair share of all the high
2502 | risks at a particular company, and everybody took part of
2503 | that two-tenths, wouldn't we effectively cover pre-existing
2504 | conditions, get people insured. And the rest of America, or
2505 | the rest of the State, the 99.8 percent would have a
2506 | relatively small increase, if assigned risks were part of the
2507 | scheme. And, I know, you have a proposal for a universal
2508 | health care, but just dealing with the man and woman behind
2509 | you, who today have no insurance and, in fact, have a widely
2510 | exposed pre-existing condition that puts them in the worst
2511 | possible position in their home State.

2512 | Ms. KANWIT. Well, I mentioned, Representative Issa, this
2513 | morning that we had done this Milliman study that talks about
2514 | some of the State attempts at reform, all of these
2515 | well-intentioned reforms, such as guarantee issue, which is
2516 | what I believe you are referring to right here, that everyone

2517 | who applied would get insurance. And unfortunately, as I
2518 | said, the data show that those kinds of reforms raise prices,
2519 | drive insurers out of the market, and make insurance less
2520 | rather than more affordable. One of the problems--

2521 | Mr. ISSA. But my question was narrow for a reason. As a
2522 | Californian, one out of every nine people there, now with due
2523 | respect to the earlier witnesses, that might be true in Utah,
2524 | if Utah were the only State to do it, but to say that
2525 | insurance companies will leave California if California were
2526 | to enact that, let's say, California, Florida, New York, and
2527 | Texas, I think you would get to a point where you couldn't
2528 | afford to be in insurance, and more importantly, I accept
2529 | your statement that you are going to raise prices. But if,
2530 | in fact, what we are talking about is a fraction of 1
2531 | percent, and not all of them, because somebody has
2532 | hypertension, or has a bad back, or something, not all of
2533 | them are going to represent large amounts. Some are going to
2534 | be cancer survivors, who are in remission but find themselves
2535 | in a very difficult situation, so there will be some.

2536 | So my question to you is, looking at it as a National,
2537 | where would your insurance companies go? They wouldn't go.
2538 | So, now the question is, how much would that raise the cost?
2539 | And I would be more than happy to accept an estimate for the
2540 | record, because I have one or two more quick questions that I
2541 | need to ask.

2542 And one of them is, what would be the effect if, in
2543 fact, State Unemployment Insurance became part of that legacy
2544 in that when someone lost their job, they would be covered by
2545 the state as part of unemployment, and then would, in fact,
2546 come back to you without a gap of insurance? Would that,
2547 which is not on the books in any State that I know of, but is
2548 part of what Governor Schwarzenegger was trying to do in a
2549 comprehensive way, and Congressman Speier probably knows more
2550 about it than I do, having just come from there, would those
2551 kinds of things, active from large States, like California,
2552 be effective or at least be helpful?

2553 Ms. KANWIT. Your first question about is raising the
2554 cost for just this small percentage. But it is not just the
2555 small percentage of people, very small, who have their
2556 policies rescinded, or canceled, or have pre-existing
2557 conditions imposed on them, it is all of how do we get the 47
2558 million, the one out of nine Californians, included in the
2559 system, which is why we want coverage for all, and believe
2560 that that is the way to go to keep prices affordable for
2561 everyone by a combination of private and public funding, and
2562 our guaranteed access proposal works for that.

2563 On your workman's compensation question, that is a more
2564 difficult--

2565 Mr. ISSA. Not workman's comp, unemployment insurance.

2566 Ms. KANWIT. I'm sorry. Oh, unemployment insurance.

2567 Mr. ISSA. Workman's comp should already be--

2568 Mr. CUMMINGS. The gentleman's time is up. I have been
2569 very courteous, but I will allow you to answer the question.

2570 Ms. KANWIT. Well, to be honest, I don't know the answer
2571 to the question, because you still have, Mr. Issa, the issue
2572 of who is going to pay for insurance for some of those folks
2573 who are of moderate means? And that is going to be an issue
2574 as well. What we have tried try to do with our guaranteed
2575 access plan is have the public-private funding there to make
2576 sure that they are all covered.

2577 Mr. ISSA. Thank you for your indulgence, Mr. Chairman.

2578 Mr. CUMMINGS. Thank you very much. Mr. Sarbanes.

2579 Mr. SARBANES. Thank you, Mr. Chairman. Just on the
2580 pre-existing condition thing. Right now, there is a lot of
2581 employers, I guess, leaving sort of the individual versus
2582 group insurance distinction aside for a moment, there is a
2583 lot of employers where presumably you have some workers who
2584 might have moved on to another job that are staying in the
2585 job because of a pre-existing condition and understanding
2586 that if they move somewhere else, they may not get that
2587 covered. So, the employer that that person is staying with,
2588 just for the purposes of keeping their insurance in place, is
2589 going to face higher costs that drive up the premiums
2590 associated with that plan, where if you had a system that was
2591 more seamless where people felt they could move without

2592 facing this situation related to pre-existing condition, in
2593 theory across the board, it would sort of come out in the
2594 wash; right? Does that make sense?

2595 Ms. KANWIT. Well, it would be better for everybody. As
2596 a matter of fact, our proposal talks, Mr. Sarbanes, about
2597 pre-existing conditions, and said, we are recommending a
2598 one-time open enrollment plus the third-party review that I
2599 talked about with rescissions to apply to pre-existing
2600 conditions as well. And by the way, HIPAA provides some
2601 protection on that in terms of the portability of your
2602 continuous coverage, credible coverage, the continuation of
2603 that has made a huge difference in the market.

2604 Mr. SARBANES. Let me ask you again about this
2605 distinction between instances where rescission is pursued
2606 when there is evidence that somebody fraudulently, or
2607 willfully, misrepresented information on their application
2608 versus a situation where they just made an innocent mistake,
2609 because, I guess, California is a state that requires that
2610 there is evidence of willful misrepresentation, or fraud, in
2611 order to justify a rescission, but there is other States that
2612 do not approach it that way; right?

2613 Ms. KANWIT. Exactly right. Some States have laws that
2614 say it can be just a misrepresentation, negligent or
2615 otherwise, or omission, whereas a few States say it has to be
2616 actual fraud. And, as you heard this morning, California did

2617 | that with a case called Healy.

2618 | Mr. SARBANES. Right. The proposal that the AHIP put
2619 | forward, you know, as part of these principles, and so forth,
2620 | where do, you all, stand on that question?

2621 | Ms. KANWIT. We are not opining on whether it should be
2622 | fraudulent or whatever. I mean what we are ultimately hoping
2623 | is that you don't need rescission at all. We want coverage--

2624 | Mr. SARBANES. Why wouldn't you? Why wouldn't you opine
2625 | on that?

2626 | Ms. KANWIT. Well, because you don't need to underwrite,
2627 | if you have coverage for everyone. If 100 percent of the
2628 | market is covered, underwriting is never necessary.
2629 | Underwriting is only necessary when you have a market such as
2630 | this, which is voluntary, and consumers get to choose, if,
2631 | and when, they want to buy health insurance. And it really
2632 | isn't fair to everyone else in the market, and everyone else
2633 | who has to afford premiums, if a person can find out if he or
2634 | she needs major medical services, and then decide to buy a
2635 | health insurance policy.

2636 | Mr. SARBANES. But why wouldn't you under the
2637 | circumstances that currently exist, why wouldn't your
2638 | Association want to encourage a practice that only seeks to
2639 | rescind in circumstances where there is a willful
2640 | misrepresentation or fraud? Why wouldn't you take that
2641 | position?

2642 Ms. KANWIT. Well, we might. We just haven't taken that
2643 position, because we really don't go there. We figure that
2644 is really up to State insurance law to define the situations.
2645 We are more interested in the 20,000 foot policy view of how
2646 to make it rare or non-existent.

2647 Mr. SARBANES. Well, I would encourage you to incorporate
2648 that into your policy. I don't quite see how the policy can
2649 be considered a rigorous one without that component to it.
2650 And one of the things that you have talked about is that, you
2651 know, one way to pre-empt this situation and rescission, or
2652 avoid it, is to do a good thorough review of the initial
2653 application; correct?

2654 Ms. KANWIT. Right.

2655 Mr. SARBANES. So that all of the analysis is done there.
2656 And I would suggest to you that it is an incentive to do
2657 that work on the front-end, if an insurer knows that the only
2658 basis for which they can rescind later would be willful
2659 misrepresentation, because you would catch the innocent
2660 mistakes presumably. Right?

2661 Ms. KANWIT. Right.

2662 Mr. SARBANES. If you were doing a thorough review
2663 up-front. So, one of the reasons I am encouraging you to
2664 follow the example in the voluntary policy that you are
2665 putting forth of States like California, who have made it a
2666 requirement that it has got to be a willful

2667 | misrepresentation, as I think that that actually encourages
2668 | the insurers to do the up-front work much more diligently,
2669 | and in the absence of that policy, they won't be back in the
2670 | same situation again. Thank you, Mr. Chairman.

2671 | Mr. CUMMINGS. Thank you very much. Let me make one
2672 | correction. Mr. Issa made a statement with regard to the
2673 | jurisdiction of this Committee, and I want to make it clear
2674 | that under the House Rules, this Committee has express
2675 | jurisdiction to conduct oversight over virtually any subject
2676 | under the legislative jurisdiction of the standing House
2677 | Committees. And I just want to make that very clear. Ms.
2678 | Speier.

2679 | Ms. SPEIER. Thank you, Mr. Chairman. Ms. Kanwit, I was
2680 | very impressed by your testimony. And you obviously
2681 | understand the issue of the insured and the importance of
2682 | trying to make it universal in nature. When I chaired the
2683 | Senate Insurance Committee in California, we had, from time
2684 | to time, occasion to engage insurers through their trade
2685 | associations on issues whether it was health care, or a
2686 | particular policy that was undertaken by the health insurers
2687 | that we found to be problematic, but the trade association
2688 | actually agreed was a problem, and we were able to on a
2689 | case-by-case basis actually resolve those issues working with
2690 | the trade association. Is Regence Blue Cross and Blue Shield
2691 | one of your members?

2692 Ms. KANWIT. Yes, it is.

2693 Ms. SPEIER. All right. I guess I am going to ask you a
2694 very specific question then. Having seen it happen in
2695 California, and it happened very successfully, I would like
2696 to ask you to use your authority and the benefit of your
2697 trade association to go back to Regence Blue Cross and Blue
2698 Shield on behalf of Mr. and Mrs. Bleazard, because by your
2699 own testimony here this morning, you have indicated that you
2700 think that rescission was wrong, and you want to see
2701 rescissions become extinct and, clearly, the mountain bike
2702 accident that happened to Mrs. Bleazard had nothing to do
2703 with that application, and they acted in good faith in
2704 filling out that application, and their agent did as well.
2705 So I would like to ask you if you would take this case to
2706 Regence Blue Cross and attempt to resolve it.

2707 Ms. KANWIT. Absolutely. We will do that.

2708 Ms. SPEIER. I thank you very much.

2709 Chairman WAXMAN. [Presiding] Ms. Kanwit, you set out
2710 some principles, in fact, seven principles, that you describe
2711 as the "cornerstones of what we believe are the
2712 responsibilities of health plans to ensure consumer-centric
2713 rescission practices." As I understand it, these seven
2714 principles were approved by the AHIP Board last November.
2715 Can you tell us how many of AHIP's 1,300 members have adopted
2716 all seven of these principles? And can you tell us how many

2717 are planning to adopt these principles?

2718 Ms. KANWIT. They were adopted by the Board, Mr. Waxman,
2719 in December. I don't have figures for you. I would note
2720 that of the 1,300 members, many of them, the majority, I
2721 would guess, do not even write policies in the individual
2722 market, so they wouldn't even be relative to them.

2723 Rescission doesn't occur in the group market by and large,
2724 because the group market is not underwritten, so they don't
2725 even apply. But I don't have an exact figure for you about
2726 who has adopted, and who hasn't. I will say that our Board
2727 of Directors made up of the Presidents of all of our big
2728 member companies have adopted these principles and believe
2729 that this is the way to go.

2730 Chairman WAXMAN. Well, the reason I asked this question
2731 is that judging from their actions, it doesn't seem like all
2732 your members are on board. Let's take the rescission of
2733 Heidi and Keith Bleazard's coverage. Your principle six
2734 states that, "information about a health condition or
2735 treatment arising subsequent to the issuance of the policy
2736 may not be used as the basis for a proposed rescission," so
2737 it is clear to me that the Bleazards' policy was rescinded
2738 because Heidi had a serious mountain biking accident that
2739 resulted in medical bills in excess of \$100,000, and this
2740 accident clearly happened subsequent to the issuance of the
2741 policy. So under principle six, it can't be the basis of

2742 rescinding the policy, yet the policy was rescinded anyway.
2743 I thank you very much for your testimony, and helping us deal
2744 with this insurance issue, and trying to understand it
2745 further.

2746 Ms. KANWIT. Thank you, Mr. Chairman.

2747 Chairman WAXMAN. We have all learned a lot at today's
2748 hearing about the abusive practices of some insurance
2749 companies, which are dropping coverage for sick people just
2750 when they need it the most. We have also discovered that
2751 there is much we don't know about the nature of these
2752 business practices and the scope of this problem throughout
2753 the Country. It is important that this Committee find
2754 answers to these important questions. And so, we will be
2755 opening an investigation into the practice of post-claims
2756 underwriting by private health insurers. I thank you very
2757 much. Mr. Cummings.

2758 Mr. CUMMINGS. Thank you very much, Mr. Chairman. I will
2759 be very brief. I, first of all, want to thank our newest
2760 member, Ms. Speier, for her question. Mr. Chairman, as I sat
2761 here, I could not help but look at the Bleazards and the
2762 first slight smile that I saw come from them is when Ms.
2763 Speier asked the question, would Ms. Kanwit look into their
2764 case? And Ms. Kanwit, I just want to follow up, and I want to
2765 thank you Ms. Speier for raising that. I am hoping that you
2766 will look into their case and try to help them.

2767 Behind you are sitting two people who are in pain. You
2768 can call it 2 percent, you can call it whatever you want to
2769 call it, but the fact is that they are Americans who are
2770 suffering. And we are concerned about the 2 whatever percent
2771 of a percent that you are talking about, because they are the
2772 ones that have got to pay the bills. They are the ones who
2773 have got to figure out a way out of no way. They are the
2774 ones who have got to wake up at 4:00 o'clock in the morning
2775 trying to figure out why did they pay the premiums, but yet
2776 still when trouble comes, the insurance company is not there.

2777 And so, I know you talked about some things that you all
2778 want to do, but I am very pleased to hear that you are going
2779 to look into their case. And we are hoping, like you hope,
2780 that we won't have to have these hearings in the future, and
2781 so that we can address these problems up front, and I want to
2782 thank you.

2783 Chairman WAXMAN. Thank you, everyone involved, and I do
2784 want to welcome Ms. Speier to her very first meeting of our
2785 Committee. We are delighted that you are now a member of
2786 this Committee, and as I pointed out, you began your tenure
2787 as a member of Congress just a few months ago, but you bring
2788 many years of legislative experience to the table from your
2789 service as a former counsel to the late Representative Leo
2790 Ryan, and from your experience in the California State
2791 Legislature, which from my own experience is a good training

2792 | ground for Congress.

2793 | So we are delighted that you are here. Your commitment
2794 | to improving health care, protecting privacy, looking out for
2795 | American consumers is certainly going to be an asset to this
2796 | Committee. And I know all members are looking forward to
2797 | working with you.

2798 | That concludes our hearing for today. And we are going
2799 | to stand adjourned.

2800 | [Whereupon, at 12:15 p.m., the committee was adjourned.]