

nominee who does not understand and fully accept that their duty is to serve, as the oath says, "under the Constitution and laws of the United States." That is why I think it is only fair to state these concerns before the hearing. I hope my colleagues will be following it. I know our committee members are working hard. It is being a bit rushed, but we are doing our best to be ready next Monday to commence the hearing. I think it will be a good time. I look forward to it, and I hope people who see it will feel as if it was fairly conducted and beneficial not only to Senators, who must vote, but to the American public at large.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to speak in morning business for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### HEALTH INSURANCE RATE AUTHORITY ACT

Mrs. FEINSTEIN. Mr. President, tomorrow the President of the United States will address the Nation on the 90-day anniversary of the passage of health care reform, so I have come to the floor at this time to discuss an omission from the health care bill, and that omission is the protection of consumers from unfair medical insurance premium rate increases, which, as I will show in the next 15 minutes, are now taking place virtually all over this Nation.

On March 4, I introduced legislation to provide the Secretary of Health and Human Services with the ability to set up a rate review procedure to provide that insurance premium rate increases are reasonable. Senators BOXER, BURRIS, CASEY, GILLIBRAND, LAUTENBERG, MIKULSKI, REED, SANDERS, and WHITEHOUSE have all cosponsored this bill. I originally proposed the amendment during the health care reform debate. We worked with the Administration in putting it together. We worked with the Finance Committee. We worked with Representative SCHAKOWSKY in the House, who has introduced the same legislation. President Obama decided to include it in his health care reform proposal, but unfortunately it did not meet the criteria for reconciliation and therefore had to be dropped. On March 4, I introduced a bill to provide this rate review, and on April 20 Senator HARKIN was good enough to hold a full hearing in the HELP Committee.

The time has come to take action. The time has come to protect consumers from the egregious abuse of insurance companies that are, in fact, taking place across this very Nation today.

Health insurance premiums have been spiraling upwards at out-of-control rates—10, 20, 30 percent per year—

all while big national insurance companies enjoy increasing profits.

Everyone by now is familiar with the increases that Anthem Blue Cross, a subsidiary of WellPoint, was set to impose—as much as 39 percent—for 800,000 Californians in the individual market. It turns out that Anthem Blue Cross used flawed data to calculate these health insurance premium increases for hundreds of thousands of California policyholders, resulting in increases that were larger than necessary. The State insurance commissioner ordered an independent actuarial study, and here is what they found: They found that the 25-percent average increase proposed by Anthem should only have been 15.2 percent.

What is most disturbing is that Anthem's case is not an aberration. Far from it. The five major insurers in the small group market in California—Blue Shield, Kaiser Permanente, Anthem Blue Cross, Aetna, and United Health Care—have just announced rate increases for small businesses that will average 12 to 23 percent. Some will be hit with rate increases as much as 76 percent. That likely means people will lose their insurance. This means that over 1.6 million Californians will shortly see increases in premiums. These premium increases have been going on all along. As a matter of fact, literally hundreds of thousands of Californians have had to lose their insurance because they can't pay these premium increases.

This is not a problem unique to California. The White House reports that premium rates have been rising across the Nation with substantial geographic variation. For employer-sponsored family coverage, premiums have increased 88 percent in Michigan over the past decade compared with a 145-percent increase in Alaska.

A recent report by the Center for American Progress Action Fund found that WellPoint is pursuing double-digit increases in the individual market for 10 other States in addition to California: Colorado, Connecticut, Georgia, Indiana, Maine, Nevada, New Hampshire, New York, Virginia, and Wisconsin.

Here are a few examples of those rate increases in the individual market. Average rates in Colorado will increase by 19.9 percent. Some consumers will see increases as high as 24.5 percent. In Maine, Anthem Blue Cross Blue Shield requested a 23-percent increase in 2010. They then sued the State's insurance commissioner for rejecting an 18.5-percent increase last year on top of it. But in April a Maine court upheld the insurance commissioner's decision. In Indiana, rates are expected to increase 21 percent in 2010.

Other insurance companies are also raising rates. Health Care Service Corporation of New Mexico proposed 24.6 percent increases for about 40,000 individual policies last fall. The school district in Weston, CT, is served by CIGNA, which proposed a 23-percent in-

crease in the district's insurance premiums for the 2010-2011 fiscal year.

In a recent Kaiser Family Foundation survey, 77 percent of people purchasing insurance in the individual market report being asked for premium increases. That is over three-fourths. These increases are averaging 20 percent. We don't know the extent of the problem nationwide, but the reporting requirements in the health reform law will improve the information available. However, right now, until changes go into effect, there is a glaring loophole which allows for private for-profit medical insurance companies—the big ones—to increase rates as much as they possibly want to and possibly can.

The recently signed health care bill does require insurance companies to provide justification for unreasonable premium increases to the Secretary of Health and Human Services. They must also post these justifications on their Web sites. This provides transparency, granted, but it leaves the loophole. Simply stated, the Secretary has no authority to do anything about these rate increases. So an insurance company can argue the large increase is justified, but in some States there is no review to see that it is. In other States, officials may not have the authority to block an increase that is not justified. We need to close this loophole.

The bill we have introduced will do just that. This legislation gives the Secretary of Health and Human Services the authority to block premium or other rate increases that are unreasonable. In some States, insurance commissioners already have that authority, and that is fine. The bill doesn't touch them. In Maine, for example, the State superintendent of insurance was able to block Anthem's proposed 18.5-percent increase last year. She approved only a 10.9-percent increase.

In 23 States, including my own—California—companies are not required to receive approval for rate increases before they take effect.

So this legislation we have introduced simply creates a Federal fallback, allowing the Secretary to conduct reviews of potentially unreasonable rates in States where the insurance commissioner does not—and I repeat, does not—already have the authority or the capability to do so. That is in 23 States.

The Secretary would review potentially unreasonable premium increases and take corrective action. This could include blocking an increase, providing rebates to consumers, or adjusting an increase.

Under this proposal, the Secretary would work with the National Association of Insurance Commissioners to implement the rate review process. She would identify States that have the authority and capability to review rates. States already doing this work will continue to do so unabated and unfettered. The legislation would not affect

them. However, for the consumers in the other 23 States with no authority, such as California, protection from unfair rate hikes would be provided.

This proposal would also create a Rate Authority, a seven-member advisory body to assist the Secretary with these responsibilities. A wide range of interests would be represented, including consumers, the insurance industry, medical practitioners, and other experts.

I think this proposal strikes the right balance. There is no need for involvement in States with insurance commissioners that are able to protect consumers. So the legislation I have introduced simply provides Federal protection for consumers who are currently at the mercy of large health insurance companies whose top priority is their bottom line.

We, in fact, are the only industrialized country in the world that relies heavily on a for-profit medical insurance industry to provide basic health care. As T.R. Reid says in his book "The Healing of America": No country with a large for-profit medical insurance industry has been able to really reform health care costs.

So what we have in America today are multiple large, for-profit insurance companies. They are public companies. They are focused on profits. They are heavily concentrated. They leave consumers with few alternatives when their premiums increase. They have merged over the years and they have gained market concentration in a way that no other business or industry is allowed to do in the United States because they have an antitrust exemption. Major League Baseball has that exemption. The health insurance industry is one of only a few industries with this exemption.

The Judiciary Committee has passed out legislation which would remove that antitrust exemption, and that legislation should be passed as soon as possible. In 2007, just two carriers—WellPoint and United Health Group—gained control of 35 percent of the national market for commercial health insurance. That is because they have merged and acquired using that antitrust exemption.

According to a study by the American Medical Association, more than 94 percent of American health insurance markets have a highly concentrated market share. This means these companies could raise premiums or reduce benefits with little fear that consumers will end their contracts or move to a more competitive carrier because they have bought up the more competitive carriers.

In my State of California, just two companies—WellPoint and Kaiser Permanente—control more than 58 percent of the market. In Los Angeles, these two carriers controlled 62 percent of the market in 2008. Before health care reform, these companies had little incentive to be efficient with the premium dollars they collected. These

large insurance companies have large and substantial profit margins while continuing to raise premiums for consumers.

According to Health Care for America Now!, four of the five largest health insurance companies—WellPoint, United Health, Humana, CIGNA—saw profits increase 56 percent from 2008 to 2009; that is, from \$7.7 billion to \$12.1 billion. Only Aetna saw their profits decrease.

In the first 3 months of 2010, the five largest for-profit medical health insurance companies—WellPoint Inc., United Health Group, Inc., Aetna Inc., Humana Inc., and CIGNA Corp.—recorded a combined net income of \$3.2 billion. That is in the first 3 months of this year.

Here is the significance: That is a 31-percent jump over the first 3 months of 2009. So just in the first 3 months of this year, through premium increases they now have a \$3.2 billion or 31-percent increase in profits.

Here are the company profits for the first quarter of 2010:

WellPoint, \$876.8 million; that is a 51-percent increase over the same quarter in 2009. Humana, \$258.8 million; that is a 26-percent increase in the first quarter 2010 over first quarter 2009. Aetna, a \$562.6 million profit; that is a 29-percent increase for the first quarter 2010 over first quarter 2009. UnitedHealth, \$1.19 billion; that is a 21-percent increase first quarter 2010 over first quarter of 2009. Cigna, \$283 million; that is a 36-percent increase first quarter over first quarter of last year.

See, this is amazing. They receive these huge profit margins, then they turn around and raise premiums on consumers, many of whom are struggling to keep their insurance because they have lost their jobs, and many of whom have had a double-digit increase last year and even the year before.

In 2009, despite the worst economic downturn since the Great Depression, these insurers set a full-year profit record. This caps a decade of enormous profit growth in the industry. Between 2000 and 2007, profits at 10 of the largest publicly traded health insurance companies soared 428 percent—from \$2.4 billion in 2000 to \$12.9 billion in 2007.

The rapidly increasing insurance premiums are a piece of a larger problem. Multiple factors, including the large profit sustained by many hospitals, now are contributing to the cost of health care in the United States. So what we are seeing is an increase in costs charged by major hospitals.

But it is important to note that while the cost of medical care is increasing, premiums are rising much faster than the cost of medical inflation. I must say, there are predictions that we will build into our budget deficit a structural deficit, and that structural deficit will come from these very rising health care costs. Mr. President, we must do something about it.

From 2000 to 2008, premiums for employer-sponsored health plans in-

creased 97 percent for families and 90 percent for individuals. At the same time, the payments that private insurers made to health care providers increased 72 percent, medical inflation increased 39 percent, wages increased 29 percent, and overall inflation increased 21 percent. So figure inflation increased 21 percent, wages 29, medical inflation 39, and payments to health care providers increased 72 percent, yet insurance premiums increased 97 percent. Much more than the increase in medical costs. That is the problem. If we let it happen, we have no one to blame but ourselves.

Meanwhile, consumers struggle to afford these continued rate hikes. Between December 31, 2008, and March 31, 2010, the combined commercial enrollment of these five companies fell by 2.8 million Americans. So insurers make increasing profits by increasing rates and, at the same time, they push 2.8 million Americans off of medical insurance because of those increasing rates. This is very real. It is happening out there every day, every week, every month. We must do something about it.

Let me give you one personal story. Laurel Kaufer is a 48-year-old single mother of two sons. She lives in Woodland Hills in my State. She is a self-employed mediator and lawyer. She has had Blue Cross for 25 years. Her son, Brandon, is 21 and he attends the University of Arizona. Her son, Zack, is 19 and goes to USC.

Anthem Blue Cross has raised her health insurance rates 550 percent over the last 10 years. Between February of 2001 and March of 2010, Ms. Kaufer has spent \$52,128 on health insurance premiums alone. That doesn't include deductibles.

She has no choice but to pay the increases. With her two sons in college, she doesn't have any disposable income. She seeks medical treatment only when she has to. She and her son do their annual checkups, but as Ms. Kaufer says:

Sometimes I don't get a test that a doctor says I should have, because it costs me money, and I wait it out to see if I can do without it.

This is a family with insurance, passing up tests because they already spend over \$52,000 on premiums.

There are numerous stories like these. Individuals and families have to choose whether to buy groceries, pay their mortgage, or purchase health insurance.

As I pointed out, in the last few years, 2.8 million Americans who were previously insured by for-profit insurance companies have severed their policies or lost their insurance because they can't pay the bill.

I strongly believe we need to take action on this and soon because it is going to continue and it is going to spiral. These companies are going to take every advantage of a loophole in the law to raise premiums, to be able to increase their profit margin and push more people off of insurance.

This bill is very necessary. Premiums are increasing every day. I urge my colleagues to join me in supporting this legislation, the Health Insurance Rate Authority of 2010, which will close this loophole.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF MARK A. GOLDSMITH TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

#### NOMINATION OF MARC T. TREADWELL TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA

#### NOMINATION OF JOSEPHINE STATON TUCKER TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of Mark A. Goldsmith, of Michigan, to be United States District Judge for the Eastern District of Michigan; Marc T. Treadwell, of Georgia, to be United States District Judge for the Middle District of Georgia; Josephine Staton Tucker, of California, to be United States District Judge for the Central District of California.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. will be for debate on the nominations, with the time equally divided and controlled by the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS.

The Senator from Georgia.

Mr. ISAKSON. Mr. President, I rise briefly, and with great pride, to commend to my colleagues the confirmation of Marc Treadwell from the State of Georgia to be a U.S. district court judge of the Middle District of Georgia.

Marc is all Georgian. He was born in Blackshear, and he traveled around as the son of an Army officer. But he came back and attended Valdosta State where he earned his bachelor's degree, and then he graduated from Mercer University's Walter F. George Law School in Macon.

After graduating, he came to Atlanta and, ironically, practiced law at the firm of Kilpatrick & Cody, which represented my company for years in Atlanta. It is one of the most distin-

guished law firms in the State of Georgia.

Marc has been inducted into the American College of Trial Lawyers, and Martindale-Hubbell gave him an "AV," its highest designation.

Marc now teaches at his alma mater, Mercer, and he has written more than 50 publications for Law Reviews and other publications. He is recognized as a leading authority and expert in Georgia evidence law.

Marc is married to his beautiful wife Wimberly. They have two sons, Thomas and John. In addition to juggling his law practice, teaching, and family duties, Marc finds time to be an active member of the Vineville United Methodist Church in Macon.

It is my privilege and honor to thank Chairman LEAHY and Ranking Member SESSIONS for their diligence on this confirmation in the committee.

I commend Marc Treadwell with my highest recommendation for confirmation to the court of the United States of America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Like my friend from Georgia, I rise today also with great pride to strongly support the nomination of Judge Mark Goldsmith, to be a judge for the U.S. District Court for the Eastern District of Michigan.

I have known Judge Goldsmith for a long time. He is a friend and someone for whom I have the greatest admiration both as a person and as a judge. He is extremely intelligent. He is highly respected in Michigan as a judge. Since joining the Oakland County Circuit Court in 2004, he has proven himself to be someone who is highly respected by all sides. He is known for his integrity and fairness. That is certainly what we look for as we look to these important confirmations on the Federal bench.

After graduating from the University of Michigan in 1974, he went on to receive his law degree from Harvard University in 1977. Before joining the State court, he was a partner at Honigman Miller in Detroit. He has also served as an adjunct professor of the law at Wayne State University's law school.

Judge Goldsmith is well known in the community where he formerly served on many boards and is someone who is known for giving back to the community, working with the poor, and working with those who need his help in the Detroit area. He has been recognized for his pro bono involvement and his community work, most notably at B'nai B'rith Antidefamation League and Forgotten Harvest, an organization that collects surplus perishable foods from grocery stores, restaurants, and caterers and provides them to emergency food providers in the metro Detroit area.

The American Bar Association has given him the rating of "unanimously well qualified," which is their highest rating for judicial nominees.

He has been a judge in Michigan since 2002 when he was appointed as a part-time magistrate hearing traffic violations and civil infractions. In 2004, he was appointed to the Oakland County Circuit Court, which has jurisdiction over felonies and major civil claims cases. He was elected to that position in November of 2004 and re-elected in 2006.

In the cases that have come before him, he has always been known to be fair and impartial, willing to listen to both sides and make careful rulings based on the law. It has been my great honor and privilege to know him and to join with Senator LEVIN in making a recommendation to the President regarding his possible nomination. We were very pleased when President Obama chose to nominate him to the Federal bench.

I urge my colleagues to support him unanimously, as the American Bar Association has done—again, giving him their highest rating for judicial nominees of "unanimously well qualified." I hope we will do this soon today.

I yield the floor.

Mr. President, I ask that the time be equally divided between both sides, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I rise this afternoon to say a few words about an excellent lawyer from Macon, GA, Marc Treadwell, who has been nominated to serve as a U.S. District Court Judge for the Middle District of Georgia, the district I was privileged to practice in for 26 years.

He is a native of Blackshear, GA, but as an "Army brat," he grew up near various bases around the United States and abroad.

He is a graduate of Valdosta State University, as well as the Walter F. George School of Law at Mercer University in Macon.

At Mercer, Marc served on the law review and was a member of the school's prestigious Brainerd Currie Honor Society.

After graduation, Marc went to Atlanta to begin his practice of law and returned to Macon in 1985 and has practiced in Macon ever since. He currently is a partner with the Macon firm of Adams, Jordan & Treadwell.

Marc has been inducted into the American College of Trial Lawyers and Martindale-Hubbell and his colleagues have given him the highest rating available to a lawyer in the country with an AV rating.

He now teaches at his alma mater, Mercer, and has written more than 50 publications for law reviews and other publications. Marc is also recognized as a leading authority on the evidence law in our State of Georgia.