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January 2014

Petroleum Marketers Walk Fine Line On RFS

Representatives of major petroleum marketer associations walked a fine line during their testimony to EPA officials at Thursday's public hearing on EPA's proposed blending requirements for 2014 under the Renewable Fuel Standard (RFS). On the one hand, they emphasized their support for programs that encourage the use of cleaner fuels; but on the other hand, they emphasized the unique challenges their members face as being on the front lines of fuel sales to motorists.

"We have supported the RFS and opposed its repeal in the past," said the Society of Independent Gasoline Marketers of America's (SIGMA) R. Timothy Columbus. However, the association supports the proposed conventional ethanol blending reduction in 2014. "We need to avoid what could be a severe blendwall shock."

SIGMA believes that EPA's expectations in the proposed renewable volume obligation (RVO) might need more tweaking, especially on its assumptions about the rapid sales growth of E85 or other high-ethanol blends. EPA's rule assumes about 180 million gal of E85 will be blended in 2014, though the amount this year will be 60 million to 70 million gal.

"To reach the statutory number [14.4 billion gal for 2014, which EPA has proposed to reduce to 13.01 billion gal], you will need to see sales of higher blends," he said, "But we are not seeing demand for them."

Columbus said that he was at a meeting with fuel marketers last month who represented more than half of the installed E85 pumps in the country. With one exception—a retailer in San Diego—the retailers said that the high-ethanol

blends accounted for only about 1.5% to 2% of their sales. "Consumers don't have to buy it," he said.

The National Association of Convenience Stores (NACS) also supports the RFS, said its representative, Paige Anderson, "but the blendwall is real. Our members have to deal with it every day. The volume reductions proposed [for ethanol blending] in 2014 are a positive step."

Retailers struggle to promote E15 and E85 because consumers hear negative information about ethanol from oil company advertisements. "The big challenge is consumer awareness," she said.

Speaking with OPIS after her comments to the EPA panel, Anderson said that retailers are "agnostic" about the type of fuel they sell, but they have to respond to consumer demand. "If consumers want it, we'll sell it—natural gas, E85, biodiesel, and so on," she said.

However, many retail outlets have installed equipment that is rated only for E10, and they lack the space to install new tankage. Stations with only two tanks and four dispensers—very common—would have to think long and hard before converting one of those tanks and associated systems to E85. "We've seen stores convert to E85, but then drivers in flex-fuel vehicles aren't filling up with E85," she said.

Dan Gilligan, representing the Petroleum Marketers Association of America (PMAA), cited infrastructure in his remarks to the EPA panel. He commended EPA for issuing guidance to help retailers who wish to handle blends over E10, but he said that guidance is not the same as actual legal protection. Manufacturers of fuel systems for retailers do not certify old equipment for higher ethanol blends.

Marketers have invested about \$300 billion in infrastructure, according to PMAA, and the costs to replace parts to accommodate E15 is unknown. "Many underground storage tanks are fine with E15," Gilligan told OPIS after the hearing. "[But] it is the piping and other components that might need to be replaced. Same is true for dispensers. Because dispensers are above ground, retailers can visually monitor dispensers on a regular basis with approval from the local fire marshal."

At the hearing, Gilligan also cited another on-the-ground issue that could arise if EPA finalizes its 2014 RVO at a level higher than its current proposal. At a higher RVO, obligated parties would need more renewable identification numbers (RINs) to be able to sell gasoline in the U.S. This would raise the price of RINs, and Gilligan said it could incentivize some retailers to blend at above E10 in order to generate more RINs—which possibly could create problems with their tankage, he said.

--Kevin Adler, kadler@opisnet.com

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Time To Rethink Ethanol

By TU Editorial Board

Our opinion: Congress needs to rethink an ethanol policy that increasingly looks more destructive than beneficial.

Drive with the windows down along a country road in Rensselaer County in August and the verdant fields of corn stalks whisper as they're rustled by the hot summer breeze whipped up as you pass. The fields are plentiful from there to other rural corners of the Capital Region, though it's hard to tell the sweet corn, which you eat, from the field corn, which is used to feed livestock or make ethanol.

Unlike a lot of the country, New York's ratio between the two has remained fairly constant over the last decade, ranking among the top five states in the country in terms of corn produced to eat and in the top 20 in production of field corn.

But field corn is growing, and it's not because of livestock demand. Fully 40 percent of the nation's corn crop was set aside for ethanol production last year. The shift has been so dramatic — and the rise in corn prices and government subsidies so fast — that The Associated Press found in a recent analysis that farms are starting to gobble up conservation land.

The AP report also offered a reminder of the foibles of ethanol being part of the Obama administration's "all of the above" approach to energy policy. The worry about the conversion of five million acres of land from conservation during Mr. Obama's tenure is about more than a desire to preserve open space. The shift is destroying habitat and contaminating drinking water, rivers and more.

This destruction only adds to the concern about the wisdom and supposed benefits of America's national policy on ethanol, which many view as surviving only as a political favor to farming interests in the Midwest. Mixing ethanol with gasoline was supposed to help reduce fossil fuel consumption and improve emissions, but there's evidence that over the full range of the production cycle from farm to tank, there's little if any gain in those areas. Diverting land that once grew food to fuel production has helped drive up food prices globally.

The Environmental Protection Agency recently proposed reducing the amount of ethanol required to be mixed with gasoline for the first time since 2007, when President George W. Bush signed the requirement into law.

Meanwhile, Congress is trying to reach compromise on the Farm Bill, which includes the subsidies that certainly contribute to farmers' planting decisions. The primary debate on the bill is on funding for the Supplemental Nutrition Assistance Program — food stamps, that is — but subsidies remain controversial. The EPA's proposal is a start. Congress should dial back on subsidies to corn-for-ethanol growers as part of an overall revisiting of our country's energy policy. No energy policy is perfectly green, but a policy that encourages destroying land and producing fuel rather than food in a world where people — yes, even many Americans — are hungry is clearly unbalanced. What's inside those corn husks really does matter.

Indian Tribes, States Pursue Online Gambling

Several states and American Indian tribes are pursuing online gambling, Pew Charitable Trusts reports.

While tribes operate 460 gaming facilities in 28 states, none offers online gambling — yet. And currently, only four U.S. states offer legal Internet gambling. But that could soon change, with so much money at stake.

New Jersey Governor Chris Christie is hoping that New Jersey can generate \$1.2 billion a year from legal online gambling.

By the end of this month, the Alturas Indian Rancheria Tribe in rural California expects to operate the country's first tribal online gambling effort. Meanwhile, the Cheyenne & Arapaho Tribes in Oklahoma are also developing a site that will target gamblers from outside the U.S., as Oklahoma allow tribes to launch gambling websites only if they take bets from people outside the United States. And the Lac du Flambeau Band of Lake Superior Chippewa Indians is also hedging its bets on online gambling, hoping that more states or the federal government will sanction the activity.

States began legalizing online gambling after the U.S. Justice Department reversed a previous ban in December 2011.

Chicago, NYC Aim To Be First Major Cities To Ban E-Cigarettes

Legislative action to ban the use of electronic cigarettes in public places is popping up around the country, and Chicago and New York could become the first major cities to enact such a law.

According to an ABC news report, a Chicago City Council subcommittee will study a proposal to prohibit the use of e-cigarettes anywhere that the use of cigarettes and other tobacco products are already forbidden. The measure, which is supported by Chicago Mayor Rahm Emanuel and other local officials, could be put up for a vote this month.

The proposed ban would amend an existing ordinance regulating tobacco use in public spaces, Chicago Health Commissioner Dr. Bechara Choucair said. If passed, it would go into effect sometime in January. A prohibition on the sale of flavored tobacco products within 500 feet of schools would also go into effect within six months of passage.

The Chicago ban would also make it illegal to sell e-cigarettes to minors within city limits. In addition, retailers would be required to apply for a sales license to sell e-smoke products and they could only be sold from behind the counter -- the same as other tobacco products, Choucair told the news outlet.

Chicago is not alone in its bid to include electronic cigarettes in existing tobacco regulations. On Wednesday, the New York City Council's Health Committee will hold a public hearing on adding e-cigarettes to the city's ban on smoking in bars, restaurants and other indoor public spaces.

City Council Speaker Christine Quinn and Councilman James Gennaro are sponsoring the legislation. They said allowing e-cigarettes in places where tobacco cigarettes are

banned threatens "effective enforcement" of the smoking ban and sends the wrong message to children that smoking is safe, the Staten Island Advance reported. In place for deploying a generator within 24 to 48 hours of The law requires these sites be prewired for backup power by April 1 of next year. They also must have a written plan an emergency declaration or loss of power.

Final EPA Underground Storage Tank Rules Pushed Back to Summer 2014, Official Says

The Environmental Protection Agency has pushed back its anticipated date for a final rule on underground storage tanks until summer 2014, an agency official told Bloomberg BNA Nov. 27.

Mark Morgan, regulatory counsel for the Petroleum Marketers Association of America, one of the lead industry groups associated with the rulemaking, told Bloomberg BNA Nov. 26 the group would not meet with the EPA until February 2014, did not anticipate the rule being sent to the White House Office of Management and Budget until late spring 2014 and would not expect a final rule until the summer.

Previously, the EPA had said it anticipated finalizing the rule in December 2013.

EPA proposed a rule in November 2011 that would expand tank owner and operating training requirements, require owners and operators to periodically test tank components, and mandate backup containment systems for certain tanks.

Industry groups, led by PMAA, have argued the regulation would impose undue burdens on small businesses based on "inaccurate compliance cost assumptions" and have repeatedly asked the EPA to withdraw the proposed rule (22 EDDG 16, 2/21/13).

Members of the Senate and House Small Business Committees, in letters this summer, asked the EPA to convene a Small Business Advocacy Review (SBAR) panel to analyze the effect of the regulation on small businesses prior to finalizing the rule. The House committee also asked the agency to withdraw the proposed regulation (22 EDDG 64, 8/15/13).

Sherri Stone, vice president of PMAA, told Bloomberg BNA the Senate Small Business Committee had met with EPA after the agency received the letter, but additional details about that meeting were not immediately available. Darrell Jordan, a spokesman for the House Small Business Committee, said no meeting had been held with the EPA regarding the rule.

The November 2011 proposed rule would apply to underground storage tanks containing petroleum and other hazardous chemicals, which are regulated under Subtitle I of the Resource Conservation and Recovery Act (40 C.F.R. Part 280), but would not apply to tanks containing hazardous waste, which are regulated under Subtitle C of RCRA.

Mass. Governor Signs New 'Right To Repair' Bill

Massachusetts Governor Deval Patrick (D) on Nov. 26 signed that state's new "Right to Repair" bill into law. The measure reconciles differences between a law enacted in August 2012 and a referendum on the same topic that voters approved in November 2012.

The measure requires car manufacturers to provide independent repair shops access to the technical information and tools (such as certain software updates) that manufacturers make available to dealers to fix cars. The aim is to create a more level playing field between dealers and independent repair shops when it comes to getting the tools and information needed to perform repairs.

Groups representing those parties have been in talks to hammer out at national Memorandum of Understanding in this space, and it's expected to be based on the Massachusetts law.

Among the law's provisions:

- Starting with model year 2018 vehicles, car manufacturers would have to allow independent repair shops access to onboard diagnostic and repair information through the use of a standardized interface system. That's expected to be less expensive than the technology that's generally required now.
- Manufacturers' trade secrets are protected.;
- Diagnostic and repair information that manufacturers provide online must be made available on a daily, monthly and yearly subscription basis and on "fair and reasonable" terms.
- Manufacturers are prohibited from requiring dealers to keep buying proprietary information from them when that same information is available cheaper from a third-party in a format that's standardized with other manufacturers.
- The law doesn't cover "telematics" services (getting the diagnostic and repair information via wireless telecommunications) unless that's the only way to get that information.
- The law doesn't apply with regard to certain types of vehicles such as mobile homes used for habitation, ambulances, school buses, buses for hire, motorcycles, vehicles used just to repair highways, and vehicles with a gross vehicle weight rating of more than 14,000 lbs.

--Vincent Taylor, vtaylor@opisnet.com

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Congress Eyes Virginia's Model For Funding Transportation Projects

The model for fixing the federal transportation funding shortfall may lie just across the Potomac River.

Virginia enacted a plan this year that is projected to bring in \$5.9 billion for transportation projects over the next five years — without increasing the per-gallon gasoline tax. In fact, Virginia did away with its statewide 17.5 cents-per-gallon tax at the gas pump entirely, in favor of a new wholesale tax of 3.5 percent on gasoline and 6 percent on

diesel, along with an increase in the state's general sales tax. In the heavily populated Washington suburbs and Tidewater area, motorists pay an extra 2.1 percent sales tax on gas purchases. Drivers of electric vehicles pay a \$64 annual fee.

The idea of a wholesale tax replacing a fee assessed at the pump is getting close attention in Congress, as lawmakers preparing to write a new surface transportation authorization next year look for creative ways to shore up the Highway Trust Fund. The fund relies primarily on per-gallon taxes on gasoline and diesel, which have slumped as motorists drive less and embrace fuel-efficient vehicles. In recent years, Congress has supplemented the trust fund with direct appropriations.

A wholesale tax on motor fuels would solve one of the central problems facing the trust fund by naturally adjusting for inflation. The per-gallon tax of 18.4 cents for gasoline and 24.4 cents for diesel hasn't been increased since 1993, so the trust fund's buying power has steadily eroded with rising prices. Taxing a percentage of wholesale motor fuels costs would boost revenue as prices rise without forcing lawmakers to revisit the question with politically painful votes to raise taxes.

"Several states are turning to a percentage highway fee that is paid for at the refinery level," Senate Environment and Public Works Chairwoman Barbara Boxer, D Calif., said last month at a hearing on highway financing. "This could bring in more than all of the other taxes bring in for transportation."

Sean T. Connaughton, Virginia's Transportation secretary, says the wholesale tax should provide more long-term stability than the cents-per-gallon tax that it replaced. "We were able to show our legislature that we weren't going to have enough money, even for federal matches, by 2017," he said.

General Counsel Corner

By Peter H. Gunst, Esquire

Open Supply in the District of Columbia –

The District of Columbia Code contains a unique provision that, on its face, prohibits inclusion in a dealer's supply agreement of any provision that completely restricts the dealer from obtaining product from alternative suppliers.

In instances where the marketing agreement permits the dealer to use the supplier's trademark, the agreement may only require that the motor fuels resold to the public by the dealer "be of a reasonably similar quality" to the supplier's product, and that the dealer not misrepresent the product's source. D.C. Code § 36-303.01(a)(6) and (11).

A lawsuit filed almost seven years ago in the Superior Court of the District of Columbia, *Kazemzadeh v. Eastern Petroleum Corp.*, relied upon that law to challenge an exclusive supply provision contained within a marketing agreement between a dealer and its then supplier, Eastern Petroleum Corporation.

Over three years ago, in August 2010, the trial court issued its Omnibus Order, which in part dealt with the dealer's claim against its supplier under the District of Columbia statute. Finding that the exclusive dealing

provision did indeed violate District of Columbia law, the court stated that the dealer should "be permitted to sell other brands of motor fuel so long as the quality of fuel is similar and there is no representation that the 'other' brands were obtained" from its supplier or under its supplier's trademark.

The court's order, however, left many other issues unresolved so it was not a final, appealable decision. Thereafter, the case stagnated, at least in part because Eastern Petroleum Corporation went out of business. Ultimately, the litigation was dismissed by agreement in October of this year.

Now, in a new case filed in late August 2013, the Attorney General for the District of Columbia has again raised the issue of the effect of the District's open supply law in an action brought against ExxonMobil and distributor Joe Mamo's marketing entities, styled *District of Columbia v. ExxonMobil Oil Corporation, et al.*

The Attorney General complains that Mr. Mamo's companies have come to dominate the District of Columbia market as "the exclusive gasoline suppliers for about 60% of the approximately 107 retail gasoline stations" located in the District.

That domination resulted, according to the Attorney General, in large part from Mr. Mamo's acquisition in 2009 of 31 Exxonbranded gasoline stations in the District. The Attorney General claims that as a result of Mr. Mamo's market dominance and the imposition of exclusive supply requirements on the independent dealers who operate the stations, Mr. Mamo can "set the wholesale prices paid for Exxon-branded gasoline in D.C., depriving D.C. residents and others ... of the benefits of competition in the wholesale supply of Exxon-branded gasoline."

The defendants have raised preliminary objections to the Attorney General's suit, filing motions to dismiss that have not yet been resolved. If the Attorney General clears that hurdle, however, the issue of the enforceability of the D.C. statute may yet be finally resolved. Hopefully, the Attorney General's suit will not drag on as long, nor end as indecisively, as the Kazemzadeh litigation.

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of \$12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of \$2 per abstract. Please call 518-452-4367.

Attention Inspection Stations

The association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other than the one to be inspected is substituted for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This violation almost always results in revocation..

Communication:

New York State (NYS) is exploring the possibility of implementing a NYS Automotive Repair Shop List (List) for use by New York State Agencies and other Authorized Users. The survey referenced in this notification serves as a Request for Information (RFI) that will provide information necessary to develop criteria for establishment of such a List. NYS is requesting information from Automotive Repair Shops located in New York State that provide one or more of the following services: (1) diagnosis and repair of vehicle malfunctions; (2) Preventative Maintenance of vehicles; (3) auto body repair to vehicles; and also (4) glass repair services; or (5) towing services. New York State is requesting that Automotive Repair Shops complete survey questions related to general Automotive Repair Shop and pricing information.

Your input is important.

To complete a response please click on the following link:

<http://www.ogs.state.ny.us/purchase/Bidcalendarlv.asp>, and you will be re-directed to the OGS Bid Calendar. Scroll down the page and click on the link 22753, titled “*ANNOUNCEMENT REQUEST FOR INFORMATION (RFI)*: AUTOMOTIVE REPAIR SHOP SURVEY (12/2/13-1/19/14).” Please read additional information about the survey, brief instructions on how to complete the survey and click on the Survey Monkey link to complete the survey. The purpose of this survey is to collect industry information only and does not guarantee a contract or other agreement to provide service to or on behalf of New York State.

The survey will be open from December 2, 2013 through January 19, 2014. The deadline for completion date of this survey is **1/19/2014 at 10:00PM EST**. Questions about this survey may be directed to PS_SW_FleetMaintenan@ogs.ny.gov.

*Additionally, in order to be notified by e-mail of forthcoming communication for the establishment of the NYS Automotive Repair Shop List please register with both the:

Office of General Services' Bidder Notification Service (BNS) at:

<https://online.ogs.ny.gov/vendorregnet/VendorRegistration.aspx?strSrc=menubar> . During the registration process, please select Classification "25". BNS registration questions may be directed to the New York State Procurement (NYSPRO) Customer Services team at 518-474-6717 or customer.services@ogs.ny.gov.

And please also register with the **New York State Contract Reporter at:**

<http://www.nyscr.org/Public/CreateAccount.aspx>

Once registered on the NYS Contract Reporter, you can create an “E”Alert account profile and receive bid notification messages that match your business profile. Get new solicitations delivered to your email box the morning they are published in the NYS Contract Reporter. This enhanced service is now *free* to registered users.

Thank you for your time and input. We appreciate your feedback.

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Status: Active

Listing ID: 92487

Price: \$499,000 ([Mortgage Calculator](#))

Address: 1489 RT9 ([Map](#))

City: CLIFTON PARK

Zip: 12065

Property Type: Single Family

Property Style: RASIED RANCH

Bedrooms: 3

Baths: 1&21/2

Sq. Footage: 2400

Age: 40

School District: SHENENDAHOWA

Garage Size: 3

Contact the Owner:

Name: LINDA OR DON

Phone: 518-371-8188

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35%	2009-2010
35%	2008-2009
35%	2007-2008
30%	2006-2007
30%	2005-2006
25%	2004-2005
22.5%	2003-2004
17.5%	2002-2003
10%	2001-2002
15%	2000-2001
30%	1999-2000
40%	1998-1999

DISCOUNT HISTORY

25%	2012
25%	2011
20%	2010
20%	2009
20%	2008
25%	2007
25%	2006
25%	2005
20%	2004
20%	2003
20%	2002
20%	2001
30%	2000

Current Group Management took over for the 04-05 policy year
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Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
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It's difficult to adhere to all of the ever changing requirements needed to receive the lowest rates. Most merchants are penalized with incidental fees, non-qualified fees and surcharges. Global Payments – EXS will take the time to educate you and serve as your advocate as it relates to receiving the lowest processing rates available.

GRANY members are encouraged to receive their complimentary and confidential line-by-line savings analysis from Global Payments – EXS. **Simply fax a recent MC/VISA merchant statement to 518 452-1955.**

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LEGAL PLAN

As a member in good standing of the Association, you are entitled to participate in our group legal service plan. If you are in need of this service, you must first call the Association office at (518) 452-4367. An appointment will be arranged that will be convenient for you and the attorney.

Covered services available to members include:

- Defense in Small Claims Court if your business is sued or at Department of Motor Vehicles or at any other New York State Administrative Proceeding hearing. (Once per year.)
- Review of leases, supply contracts and franchise agreements to advise you of your obligation under these contracts. The plan does not include actual negotiation on your behalf. (One hour per issue, up to five hours per year.)
- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

Appeals of judgments against you are not a covered benefit, but are available to members at special contract prices.

Additional legal services will be provided by the designated law firm's standard hourly rate less 15%. Special contract prices have also been negotiated for the following services.

- Residential real estate purchase or sale. The designated law firm will represent you in the sale of purchase of your primary residence and/or a second home or vacation property at the following rates:

Sale	\$295.00
Purchase	\$350.00
- Simple will \$75.00 Simple will (husband and wife) \$125.00

In order to participate in the plan you must be a member in good standing and must have been a member for ninety days prior to the need for legal service.

**CIGARETTE SALES TO MINORS
CLERK CERTIFICATION**
COMPLIANCE WITH THE NEW STATE CERTIFICATION OF
CLERKS WHO SELL TOBACCO PRODUCTS

CERTIFICATION OF A CLERK WHO SELLS TOBACCO PRODUCTS
POINT REDUCTION CLASS

NEW YORK STATE AMENDED ITS POLICY OF ENFORCEMENT FOR RETAILERS WHO SELL TOBACCO. UNDER THE NEW LAW A POINT SYSTEM HAS BEEN ESTABLISHED. EACH VIOLATION OF A TOBACCO SALE TO A MINOR WILL GENERATE A FINE AND TWO POINTS. THREE POINTS AND THE RETAILER'S LICENSE TO SELL CIGARETTES WILL BE SUSPENDED. HOWEVER, IF THE CLERK HAS RECEIVED A CERTIFICATION BY TAKING AN APPROVED SEMINAR, THE VIOLATION WILL RECEIVE ONE POINT.

THE STATE IS ENFORCING THIS LAW
*IN ORDER TO ACCOMMODATE OUR MEMBERS,
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WHEN:

The First Tuesday of every month at 2:00 PM
The Third Wednesday of every month at 10:00 AM

COST:

MEMBERS: \$15.00 - NON-MEMBERS \$30.00

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Gasoline and Repair-shop Association of New York

HEALTH INSURANCE PROGRAM

If you are going without health insurance, you are taking a big risk. Now is the best time to stop exposing yourself to high medical costs. Even if you have insurance, you will want to check how our health insurance programs can better suit your needs. Here are some of the benefits of our program:

- **Reduced premiums by being a member of our groups.**
- **Programs provided by a variety of providers.**
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Let us work with you to find the best program at the best price. We will send you more information, and help you to navigate the selection of plans and options to find the one that is best for you.

**To find out more information call
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