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The Honorable Michael Enzi
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions
379A Russell Senate Office Building
Washington, DC 20510

Dear Senator Enzi:

The proposed Health Insurance Marketplace Modernization and Affordability Act of 2006 ("Act") represents a well intentioned attempt to improve the access of small businesses to health insurance. The process developed to resolve the issues on this Act will be a model for future discussions between Congress and the National Association of Insurance Commissioners (NAIC), and your work with the NAIC has substantially improved the bill.

I applaud your stated position opposing association health plans (AHPs) as detrimental to state insurance regulation. In contrast, your proposal commendably attempts to preserve the strengths of the state regulatory structure, but, as drafted, has the effect of undermining that structure to the detriment of small businesses and consumers.

I urge you to reconsider your effort to seek passage of this Act in its current form. The Act will not advance your goal of improved access. Its unintended consequences will frustrate state protections for small business and reduce affordability of coverage:

1. Small businesses with the least healthy groups will find insurance even more unaffordable under the Act's current rating provision. The Act's rating provisions will allow insurers to engage in risk selection by segmenting the small business market
2. Small businesses with employees most in need of state mandated health benefits will find insurance even more unaffordable under the Act's mandated benefit provisions.
3. Small business will find their state insurance department's hands tied by the extraordinary legal rights granted to insurers under the Act's "market harmonization" provisions. The goals included in the Act for efficient market conduct regulation are commendable. The Act's provisions requiring states to write into their laws special rights for insurers, rather than providing administrative incentives to encourage implementation, are extraordinary and counterproductive. No federal financial regulatory agency grants the industry it regulates these types of rights. There are many other means, such as NAIC reporting, state by state performance "report cards," and making existing federal funding contingent on, and new federal funding available to encourage, achievement of the goals.