



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
GovernorJANE L. CLINE
Insurance Commissioner

April 28, 2006

The Honorable Robert C. Byrd
311 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jay Rockefeller
531 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Byrd and Rockefeller:

I have been watching with keen interest the efforts of Congress to address some of the pressing needs we see in helping small businesses provide insurance to their employees. My analysis of the Enzi-Nelson Bill (S. 1955) has led me to conclude that it will undermine our current regulatory structure, lead to higher and unaffordable rate increases, and increase the cost-shifting that now threatens the sustainability of our health care delivery system. It poses a special threat to a state like West Virginia that is home to a high concentration of older workers. These are the workers most at risk in the scheme advanced by the Enzi bill. For these reasons I feel it is my duty as Insurance Commissioner to share with you my concerns and to express my opposition to the bill as it is now written.

My concerns with this bill are in three areas: The rating system it would impose on the states, the withdrawal of mandates it would dictate and the undermining of state regulatory control it would bring about in the name of harmonization. The rating system in the Enzi bill requires two changes that states have unanimously found untenable. First, it imposes broad rating bands that would produce too great a difference in the rates charged to different businesses. It also removes state imposed requirements for community rating that prohibit rating older or more at risk groups higher than younger, healthier groups. Insofar as insurance is intended to spread risk, the removal of these protections would lead to a skewing of the benefits of insurance to the young and healthy workers while penalizing the elder workers. Specifically, Enzi allows insurers to use age as a case characteristic in establishing rates and this use of age is completely exempt from regulatory review. New Hampshire recently tried to adopt this approach in its state regulatory scheme with disastrous results, leading to a quick repeal of the initiative.

In a similar vein the relaxing of state mandates will encourage a *reduced* level of insurance among individuals who need it most and could severely



aggravate the cost shifting that is already troubling the health care delivery system. The state legislature has determined that certain benefits such as mammography, maternity care, mental health benefits and others, are so important and fundamental to improving the health of West Virginians that they are required to be provided in every full benefit plan. A federally coerced lifting of these requirements would only result in lost benefits for many West Virginians. They would then present as sicker and more needy recipients of government aid.

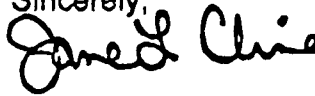
Finally, the provisions of the bill invoking harmonization threaten to deprive the states of regulatory authority and the ability to directly assist consumers in working out problems with health insurance issues. The states powers to regulate forms and rates, to initiate market conduct investigations and to initiate enforcement actions are severely compromised by this bill.

Rating and regulatory issues addressed by the Enzi bill have long been subject to state regulation where a delicate and fragile balancing of interests has evolved. Moreover, as needs change states have been in the forefront of developing new approaches. The states have recently brought forward several new plans that are being tested at a local level for their effectiveness. From the Healthy New York reinsurance approach to the Massachusetts mandatory universal coverage, states are actively seeking solutions to the problems addressed by Enzi. But these state based efforts have the advantage of reliance on experts close to the system being affected, trying ideas on a smaller scale and sharing information garnered through experimentation to inform other state decisions. Working with the NAIC the states have been striving to put into place a system with the uniformity needed to permit insurance companies to market in many states while preserving unique features that each state deems necessary to protect its market.

West Virginia has recently initiated several programs to achieve many of the results sought by the Enzi bill. In 2004, the West Virginia Legislature enacted a bill to allow insurers to market plans to small businesses using Public Employee Insurance Agency ("PEIA") provider reimbursement rates, thereby reducing the cost of the product. This year the legislature passed a broad ranging proposal for reform that was promoted by Governor Manchin. That program permits the sale of plans without mandates, but, significantly, it limits these sales to persons who were previously uninsured, thereby minimizing adverse affects on the market. A clinic based pilot project to provide affordable preventive and primary care was also part of that package. Governor Manchin's program also creates an Interagency Health Council to comprehensively study the health care delivery system in West Virginia and to recommend the best approach to providing health care to all West Virginians. These initiatives require time to develop and bear fruit. But most essentially, they are being nurtured at a local level where the benefits to West Virginians can most closely be monitored and protected.

I believe the Enzi bill poses a danger to health care in West Virginia that far outweighs its benefits. I understand that the Congress has worked with state officials to resolve many of their concerns and that further work is forthcoming. Nonetheless, I am persuaded that this legislation will only harm the health care delivery system in West Virginia and, as a result, it is my duty to inform you of my opposition to it.

Thank you for taking the time to consider my thoughts.

Sincerely,


Jane L. Cline
West Virginia Insurance Commissioner

JLC/MJP/ew

cc: Joel Ario, Insurance Administrator, Oregon Insurance Division
Mila Kofman, Associate Research Professor, Health Policy Institute
Brian Kastick, Office of the Governor's Office of the State of WV
SE Zone Commissioners
Brett Palmer, Managing Director, NAIC