



STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

March 24, 2006

The Honorable Michael Enzi
United States Senator
Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, D.C. 20510

Re: S.1955

Dear Senator Enzi:

I am writing to oppose S.1955, the Health Insurance Marketplace Modernization and Affordability Act of 2005. Unfortunately, I believe this legislation, rather than helping consumers and small businesses, will result in many being priced out of the health insurance market. The bill simply does not, as claimed by those supporting it, solve the problem of affordability. In addition, if enacted in its current form, the bill will adversely affect the safety net and result in states having to pick up more health care costs.

Specifically I have the following concerns.

1. S.1955 does nothing to help control health care costs. It will most likely shift increased health care costs to the sicker and older population. If these individuals are not able to cover these costs, the costs of covering them will fall to state and local governments, and ultimately the federal government.

2. As you are aware, there is a proliferation of health plans that do not cover maternity, basic and preventive services such as annual physicals, mammograms, colonoscopies, diabetic care services and supplies, and other documented positive therapies. After much debate, review and analysis, the California Legislature decided that these are minimum benefits that should be included in every healthcare plan sold in California. All of these, and other preventive health care protections, are guarantees that consumers in California and nationwide will lose if S.1955 is passed. Again, as plans



drop their maternity or other benefits, and as employees are priced out of coverage, the various Medicaid programs, and other health care programs in the states will become even more overburdened than they already are.

3. I am concerned S.1955 will price the less healthy and older employees out of the market. I know others have commented on their belief that preemption of state rating laws will destroy the small group market. I, too, share this view. As California Insurance Commissioner John Garamendi expressed in his March 7, 2006, letter to you, our experience is that California's current rate bands at +/- 10% have provided relative equity and stability in the small group market since the mid-1990's. The California Department of Insurance's experience shows that insurers tend to rate very small employers (those with five or fewer employees) at the highest rates allowed by law because they lack credible medical loss data for such small groups. It is only logical that because of this lack of data, insurers will continue to rate such employers at the highest rate allowed. Thus, increasing the legal rate bands to +/- 25% would result in pricing many small employers out of the market with a concomitant increase in the number of uninsured employees. I do not believe this meets the stated goal of S.1955, nor should it be the result of any insurance reform legislation passed by Congress.

4. Congress should not preempt state mandated benefits. While not perfect, allowing the states to set their own mandated benefits not only allows the states to deal with issues and health concerns of particular importance to their citizens, it also sets a level of care standard that every policy offer must meet. The level playing field of benefits within a state means there is less segmentation in the small group insurance market, and employers offering insurance are equally covering their employees, leading to more uniform pricing. Increased segmentation will inevitably and quickly lead to higher rates for many, if not most, small businesses, and the coverage offered by insurers will provide their employees with only the minimum possible coverage.

5. By causing consumers to lose the rights they currently have under state laws when alleging unfair claims handling practices by insurers, S.1955 seems to be moving toward federal preemption of market standards and policy approval. These have always been within the purview of the states, and Congress should not change a system that has worked very well for over a century. The mere fact that insurers would prefer a nationwide marketplace on their terms is not a legitimate reason to change our constitutionally-created federal system which leaves to the states the police power to regulate those activities that affect the daily lives of their citizens. As Commissioner Garamendi said in his letter, "these are issues that should be left to the states who have more expertise, more knowledge of market issues in their jurisdiction, and are more accountable to consumers."

The Honorable Michael Enzi
March 24, 2006
Page 3

In sum, what is good and adequate health care in Maine, may not be good and adequate health care in California. Differences in population, climate and economy result in different needs. As you know, different states are currently trying differing programs to get insurance coverage to many of their citizens who are currently uninsured. Congress should not enact legislation that will prevent continued innovation. Nor should it adopt legislation that will result in even fewer citizens being able to get health insurance because their small business employers will not be able to afford to offer health insurance for their employees and their families. Working together, the states and Congress should strive to develop a policy on insurance that addresses the issue of access to affordable health insurance, so that more - and not fewer - citizens have such coverage.

For all the reasons stated above, I must oppose S.1955. Thank you for considering my views.

Sincerely,


BILL LOCKYER
Attorney General

cc: Senator Dianne Feinstein
Senator Barbara Boxer