



Working Group of State Legislators for Health Reform

<http://statelegislatorsforhealthreform.com/>

November 19, 2009

Hon. Harry Reid
Senate Majority Leader
528 Hart Senate Office Building
Washington, DC 20510

Dear Senator Reid:

We write as state legislators from across the country who strongly support your efforts to enact meaningful health reform. We have worked for years to expand health access and protect consumers from insurance abuses, and thus we are compelled to bring to your attention language in the Senate health reform legislation that seriously undermines these goals and existing state law.

It is critical that health reform legislation preserve existing state consumer protections and assure that new federal protections are enforceable. Unfortunately, the “choice compact” provision of the Senate Finance bill [subsection 2227(a)] does neither. Its passage would harm consumers, prevent effective regulatory oversight, and do nothing to advance the goal of making the marketplace more competitive. Moreover, this language completely undercuts the very protections that form the core of the insurance reforms in the Senate legislation. We urge you to remove this language from the merged Senate bill.

Lowest common denominator will be promoted. This provision would allow states to form so-called “health care choice compacts” to allow insurers to sell individual health insurance policies across state lines. A policy would be deemed to be “issued in” a state **chosen by the insurer**, making it subject only to that state’s laws with limited exceptions. Allowing these arrangements will encourage a “race to the bottom,” allowing health plans to operate out of the states with the least restrictive rating and benefit standards. **Any state law that exceeds the compact’s lowest common denominator would no longer have any binding effect.**

New rating standards will be undermined. One consequence would be that the new federal rating rules, which were intended as the “floor,” would become the “ceiling” for state regulation. For example, if the federal limit for age rating is set at 4:1, while state law sets the limit at 1.5 to 1, insurers would be free to disregard those limits by using the laws of a different state. This will enable these insurers to target the youngest customers at the expense of older consumers who would be left paying higher prices than before the reform. It would be a zero-sum game, and do nothing to address the underlying problem of rising health care costs.

Prompt pay and minimum benefit standards will be evaded. In many states, insurance regulators engage in a vigorous process to review and monitor rates and

policies to make sure insurance companies are not making excessive profits at the expense of consumers. Insurers could avoid these requirements. Other laws that could be evaded include requiring prompt payment of claims, prohibiting insurers from going back more than a year to recover payments to providers, and establishing minimum benefit standards such as coverage of mammography, bone density screening, and diabetes care. Even policy areas that are supposedly saved from preemption - such as provider network adequacy - may be undermined by the compact provision, because it simply may not be possible to apply those standards in a meaningful way to contracts written under the laws of a different state.

Litigation will increase. Furthermore, the fragmentation of oversight and enforcement responsibilities will lead to a litigation nightmare, with constant disputes over which laws of which State apply. State regulators' hands will be tied because they are unable to interpret the laws of another state. The language attempts to preserve some state oversight in specified areas, but the scope of that will be determined by the National Association of Insurance Commissioners (NAIC) and will likely be insufficient to guarantee consumers the protections they are afforded today. For example, many states have laws, such as those requiring external independent reviews of denied claims, that exceed NAIC models. In addition, these compacts will create new and fertile opportunities for fraud as unscrupulous players in the market exploit inconsistencies and ambiguities between primary state, secondary state, federal, and NAIC rules.

It won't really be "voluntary." While the interstate compact provision purports to be "voluntary," because states would need to act affirmatively to enter into a compact, the reality is that industry pressure coupled with a federal endorsement will give many state legislatures a powerful incentive to enter into these compacts. This pressure is already intense now; with passage of federal law including this language, it will be difficult to maintain hard-fought consumer protections beyond the most basic level. It would be a sad irony if passage of health care reform results in reduced protections for consumers, but that result appears likely.

Market gains are illusory. The "new competitors" that would supposedly be brought into the market are an illusion: insurers are already allowed to do business in multiple states. Some of the reasons certain insurers do not do so, such as company size, familiarity with the local market, and limited provider networks, have nothing to do with the legal environment. Establishing national minimum standards is a more appropriate way to remove existing barriers to interstate operations. The fact is, many "out-of-state" insurers are owned by the same large insurance conglomerate as insurers already doing business in the local market. Bringing those affiliates in to take advantage of more favorable out-of-state laws would add no value, and would be at the expense of the local affiliate.

If this provision is enacted, the federal government will be allowing insurance companies to operate with an unprecedented lack of accountability and transparency – at the same time that the health reform legislation is supposed to be doing just the opposite. The compact provision places consumers and taxpayers at

Working Group Letter to Majority Leader Reid, November 19, 2009

unnecessary risk. The interstate sales concept is fundamentally flawed, and the so-called “choice compact” provision needs to be removed from the health reform bill in order to advance its consumer protection goals.

Thank you again for your hard work and steady hand moving health care reform forward. As state legislators who share the same goals, we appreciate your efforts, and stand ready to help.

Sincerely,

| | | |
|---------------------------------|--|--------------------------------------|
| Sen. Bettye Davis (AK) | House Majority Leader John Piotti (ME) | Rep. Joseph A. Wagner (ME) |
| Sen. Johnny Ellis (AK) | Rep. Sharon Anglin Treat (ME) | Rep. Seth Berry (ME) |
| Rep. Merika Coleman (AL) | Rep. Anne Perry, NP (ME) | Rep. Stacy Dostie (ME) |
| Sen. Joyce Elliot (AR) | Rep. Andy O’Brien (ME) | Rep. John Hinck (ME) |
| Rep. Kathy Webb (AR) | Rep. Margaret Rotundo (ME) | Rep. Bruce MacDonald (ME) |
| Rep. Kyrsten Sinema (AZ) | Rep. Anna D. Blodgett (ME) | Rep. Jim Campbell (ME) |
| Asm. Ma Fiona (CA) | Rep. James M. Schatz (ME) | Sen. Linda Berglin (MN) |
| Rep. John Kefalas (CO) | Rep. Paul Gilbert (ME) | Sen. Kathy Sheran (MN) |
| Rep. Chris Donovan (CT) | Rep. Pat Jones (ME) | Sen. Yvonne Prettner Solon (MN) |
| Rep. Elizabeth Ritter (CT) | Rep. Adam Goode (ME) | Rep. Thomas Huntley (MN) |
| Sen. Nan Orrock (GA) | Rep. Linda Sanborn, MD (ME) | Rep. Margaret Anderson Kelliher (MN) |
| Sen. Valencia Seay (GA) | Rep. Helen Rankin (ME) | Rep. Erin Murphy (MN) |
| Sen. Robert Brown (GA) | Rep. Teresea Hayes (ME) | Rep. Tishaura Jones (MO) |
| Sen. Gloria Butler (GA) | Rep. Pamela Jabar Trinward (ME) | Rep. Jonathan Windyboy (MT) |
| Sen. Vincent Fort (GA) | Rep. Patsy Crockett (ME) | Rep. Diane Sands (MT) |
| Sen. Emanuel Jones (GA) | Rep. Andrea M. Boland (ME) | Rep. Verla Insko (NC) |
| Rep. Pat Gardner (GA) | Rep. Nancy E. Smith (ME) | Rep. Pricey Harrison (NC) |
| Rep. Gloria Frazier (GA) | Rep. Terry K. Morrison (ME) | Sen. Steve Goss (NC) |
| Rep. Alisha Morgan (GA) | Rep. Robert N. Eaton (ME) | Sen. Sylvia Larsen (NH) |
| Sen. Matt Rector (Guam) | Rep. Charles Kruger (ME) | Sen. Kathleen Sgambati (NH) |
| Rep. Roy Takumi (HI) | Rep. Peter Stuckey (ME) | Rep. Cindy Rosewald (NH) |
| Sen. Jack Hatch (IA) | Rep. Jane Eberle (ME) | Rep. Rich DiPentima (NH) |
| Sen. Joe Bolkcom (IA) | Rep. Robert S. Duchesne (ME) | Asm. Herb Conaway (NJ) |
| Rep. Mark Smith (IA) | Rep. Melissa Walsh Innes (ME) | Sen. Dede Feldman (NM) |
| Rep. Susana Mendoza (IL) | Rep. James R. Martin (ME) | Sen. Eric Greigo (NM) |
| Rep. Sara Feigenholtz (IL) | Rep. Patricia Sutherland (ME) | Sen. Tim Keller (NM) |
| Rep. Elizabeth Coulson (IL) | Rep. Ann. E. Peoples (ME) | Sen. Maggie Carlton (NV) |
| Rep. Barbara Ballard (KS) | Rep. Mark Eves (ME) | Asm. Richard Gottfried (NY) |
| Rep. Louis Ruiz (KS) | Rep. Richard V. Wagner (ME) | Asm. Felix Ortiz (NY) |
| Rep. Karen Carter Peterson (LA) | Rep. Herbert E. Clark (ME) | Rep. Michael Skindell (OH) |
| Sen. Richard Moore (MA) | Rep. Timothy Driscoll, RN (ME) | Rep. Michael Foley (OH) |
| Rep. Steve D’Amico (MA) | Rep. Michael A. LaJoie (ME) | Rep. Ted Celeste (OH) |
| Rep. Matthew C. Patrick (MA) | Rep. Charles K. Theriault (ME) | Sen. Laurie Monnes Anderson (OR) |
| Rep. Mark Falzone (MA) | Rep. Edward J. Mazurek (ME) | Rep. Jefferson Smith (OR) |
| Del. Ana Sol Gutierrez (MD) | Rep. Cynthia Dill (ME) | Rep. Jules Kopel Bailey (OR) |
| Del. Heather Mizeur (MD) | Rep. Elspeth Flemings (ME) | Rep. Josh Shapiro (PA) |
| Del. Roger Manno (MD) | Rep. John L. Martin (ME) | Rep. Rosita Youngblood (PA) |
| Del. Tom Hucker (MD) | Rep. Sara Stevens (ME) | Rep. Keith McCall (PA) |
| Del. Dan Morhaim (MD) | Rep. David C. Webster (ME) | Rep. Todd Eachus (PA) |
| Sen. Justin Alford (ME) | | |
| Speaker Hannah Pingree (ME) | | |

Working Group Letter to Majority Leader Reid, November 19, 2009

Rep. Mark Cohen (PA)
Sen. Luz Arce Ferrer (PR)
Rep. Amy Rice (RI)
Rep. Arthur Handy (RI)
Rep. Anton Gunn (SC)
Rep. Joe Armstrong (TN)
Rep. Garnet F. Coleman (TX)
Sen. Leticia Van De Putte (TX)

Sen. Peter Shumlin (VT)
Rep. Shap Smith (VT)
Rep. Paul Poirier (VT)
Rep. Suzy Wizowaty (VT)
Rep. Michael Fisher (VT)
Sen. Karen Keiser (WA)
Sen. Kevin Ranker (WA)
Sen. Margarita Prentice (WA)

Rep. Eileen Cody (WA)
Rep. Bob Hasegawa (WA)
Rep. Brendan Williams (WA)
Rep. Steve Conway (WA)
Rep. Jeanne Kohl-Welles (WA)
Sen. Jon Erpenbach (WI)