

## HEALTH CARE

Mr. ENZI. Mr. President, before coming to Washington, I ran a shoestore in Gillette, WY. I stocked the shelves. I worked with customers to fit them with shoes. I ran the cash register. I placed the orders with suppliers. I swept the floors. I cleaned the toilets. I did the bookkeeping. In short, I was a one-man show. That is not quite accurate. My wife was there, and we had a couple of clerks. We all had the same responsibilities. My wife helped and actually grew the business while I was mayor of Gillette. We were a one-family show. I know firsthand the struggles and challenges America's small businesses face. We faced them on a daily basis. That is why I am so concerned about the recent action by the Obama administration.

Earlier this week, the administration published a 121-page interim final rule that will have a major negative impact on millions of small businesses across the country. This new rule, which implements just two pages of the health care law pertaining to grandfathered health plans, will increase the costs these businesses will pay for health insurance. This new rule violates the President's repeated promises from last year and the year before that under the new health care law, if you like what you have, you can keep it.

A chart on page 54 of the rule states that the Departments of Treasury, Labor, and Health and Human Services estimate that between 39 and 69 percent of the businesses will lose their grandfathered health plan status. This means these businesses' health plans will not be able to keep their current plans but, rather, will be required to comply with one of the expensive mandates included in the new law. This will, in turn, drive up the costs for these plans, making them even more unaffordable for small businesses. As a former small business owner, I understand how small businesses are struggling every day to find the resources to provide health insurance to their employees. Rather than making it easier for these businesses to continue to provide this coverage, the new regulation will actually make it more likely that employers will simply drop their health insurance coverage altogether.

I have a copy of the chart to show the folks back home. This chart shows the administration's own estimates, which indicate that only about half of Americans will be able to keep what they have. The picture, of course, is even worse for small businesses. Health and Human Services estimates that by 2013, up to 80 percent of small businesses could lose their grandfather status. The plans that do lose their grandfather status will have to abide by a whole slew of new Federal mandates, many of which have not even been written yet.

These are the low estimates of how many people are going to take it again. This is a midrange estimate by the administration and then a high estimate

for small employer plans, large employer plans, and all employer plans. The low-end estimate is 49 percent of them will have to go to something different if they cannot be grandfathered, the midrange estimate is 66 percent, while the high-end estimate is 80 percent of small employer plans will have to give up what they have right now because there are more federally mandated requirements they have not been meeting. In my home State, more than 50 percent of the people will have to change to a different insurance. I have to tell you, almost all of them who have insurance are happy with the insurance they have and really thought they could keep what they have if they like what they have. This chart shows that is not going to be the case.

During my days as a shoestore owner, I would not have had the luxury to read a 121-page interim final rule and try to determine what I needed to do to keep my health insurance plan. And if my small business was one of the 80 percent of small businesses that the administration thinks will lose their current status, then I would be forced to pay for a lot more coverage.

One of the most disturbing aspects of this new rule is it will actually make it harder for employers to make changes that could hold down the cost of their health care. Once this interim final rule becomes effective, which will be July 12 of this year—less than a month from now—large and small businesses will have few options for both keeping costs in check and maintaining their grandfather status. If an employer does any one of the following things to manage their costs, they lose the health care they have: If they eliminate any benefits, they lose their grandfather status. If they increase coinsurance rates, they lose their grandfather status. If they increase deductibles or out-of-pocket limits beyond minimum levels, they lose their grandfather status. If they increase copayments beyond minimum levels, they lose their grandfather status. If they decrease the employer share of the premium by more than 5 percent, they lose grandfather status. If they add an annual limit or decrease the lifetime or annual limit, they lose grandfather status. If they change their health insurance carrier, they lose their grandfather status.

Which is the most important one of those? The very last one. If they change their health insurance carrier, they lose their grandfather status. The only way you have a chance of holding those costs down is to bid out the insurance. It made a huge difference in our business. The first time we bid it out—and we were several years staying with the same company and having very huge increases—the first time we bid it out, we found out we could save very substantially, and so we bought the lower bid insurance.

Then the company we had been dealing with for several years came to us and said: Why did you change?

I said: We got a much lower price.

They said: Why didn't you come back to us and ask for a lower price?

I said: That is not the way we sell shoes; that is not the way you should sell insurance.

If they change their health insurance carrier, they will lose their grandfather status even if they provide the same things the other one was providing, which is what you do in a bid. In an attempt to keep health care costs down and avoid having to do the other things we mentioned, you would lose your grandfather status. In short, if employers do anything to help slow the growth of their health insurance costs, they will lose the limited protections against the expensive new mandates in the bill.

It is worth noting that 2 pages in the law—just 2 pages; it was 2,700 pages, but 2 pages are causing all this—that create the grandfathered plans are a blank slate. The law does not say anything about cost-sharing requirements or coinsurance rates.

The administration made up all these provisions and requirements. They did not have to write these rules that preclude half of Americans from keeping what they have. The reality is that the administration does not want you to keep what you have. They certainly like that talking point—it keeps people from getting very nervous—but they do not actually want you to keep what you have. They do not want grandfathered plans to exist. They want to force all Americans to buy only insurance plans that are defined and approved in Washington. It is just one more Washington takeover.

Throughout the rule, the administration makes the assumption that a large number of plans will place a high value on the remaining grandfathered plans. Why do they make this assumption? Because the administration recognizes that employers realize the mandates and burdens included in the health care bill will drive up premiums and drive up costs for large businesses, small businesses, and individuals. The Congressional Budget Office estimates that costs will increase 10 to 13 percent for Americans purchasing coverage on their own. That represents a \$2,100 increase for families purchasing coverage.

Page 112 of the rule lists the 13 new mandates included in the health care law that do not apply to grandfathered plans. However, based on the administration's own calculations, it looks as if 39 to 69 percent of employers will now be forced to comply with these new 13 mandates when they lose their grandfather status.

Even for the small number of plans that manage to keep their grandfather status, the reality is that the new law will still impose expensive new mandates that will increase their costs. The new health care law requires all plans, including grandfathered health plans, to comply with certain provisions in the new health care law. Page 112 of the interim final rule has five

sections detailing the new mandates that apply to grandfathered health plans for plan years beginning on or after September 23 this year. Another section becomes effective in 2014.

This bill was sold as letting people keep what they have, but the devil is always in the details. Do a little digging and it is clear that Americans will not be able to keep what they have.

I would like to read a paragraph from page 112 of the regulation. It says:

Provisions applicable to all grandfathered health plans. The provisions of Public Health Service Act section 2711 insofar as it relates to lifetime limits, and the provisions of Public Health Service Act—

And it lists several of them—

apply to grandfathered health plans for plan years on or after September 23, 2010. The provisions of Public Health Service Act section 2708 apply to grandfathered health plans for plan years beginning on or after January 1, 2014.

This means health plans are now prohibited from having lifetime limits on the dollar value of benefits for any participant or beneficiary. Even though this section becomes effective after September 23 of this year, the Department has not issued any regulations or guidance telling plans how to implement this new requirement.

Section 2712 says that health plans shall not rescind such plan or coverage, except that this section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact. We have not seen any guidance or regulations on that section either.

Section 2714 says that all kids under the age of 26 can stay on their parents' health insurance policy. This popular provision got a lot of attention from the media and the administration. Because of the popularity, this is one area where the administration has actually written an interim final rule which becomes effective July 12 this year even though the comments are not due until August 11 of this year. The final rule goes into effect July 12, but the comments are not due until August 11. In other words, they are not going to read any of the comments before that goes into effect.

In the rule, the administration includes an analysis saying that this provision is expected to increase premiums by 1 percent. That might not sound like a lot on its own, but remember that this is only one of the six provisions with which all health plans, even grandfathered plans, will be forced to comply. If each of the other five provisions also drives up premiums by similar amounts, that would equal a 6-percent increase on top of whatever increase results from normal medical inflation.

Section 2715 says all plans must give enrollees a government-approved summary of benefits and coverage explanation describing the benefits included in the plan.

The interesting thing about this section is that Secretary Sebelius has until next March to publish the standards the plans have to use when they draft these documents, but the plans have to give their enrollees the documents this September. How is that possible? If plans do not have these documents ready, they can be fined up to \$1,000 per enrollee. The standards will not be ready until next year, but the plans have to comply this year or face a \$1,000-per-enrollee fine. Common sense rode a horse right out of Washington. Maybe it was never here to begin with.

Section 2718 says all plans for big businesses have to spend at least 85 cents out of every premium dollar they get paying claims, and plans for small businesses and individuals have to spend at least 80 cents out of every premium dollar they get paying claims. This may sound like a good idea, but, again, the devil is in the details.

The National Association of Insurance Commissioners is responsible for defining the terms used in these calculations and coming up with some recommendations about how to implement this section. The Secretary asked them to make these recommendations earlier than when the law says, but they have been having some difficulty. The difficulty is that States know that implementing these provisions will put health plans out of business—out of business. When the plans go out of business, the Americans enrolled in these plans will lose their coverage. This is a real problem with which the insurance commissioners are grappling. Unfortunately, Republicans warned our colleagues on the other side about this problem last December but we were ignored.

Section 2708 becomes effective in 2014 and says that plans cannot apply waiting periods that exceed 90 days. Again, this provision sounds like a great idea, and some States are already doing this, but this is one more thing that will drive up costs.

No single raindrop thinks it is responsible for the flood. These provisions may sound like good ideas when looked at by themselves but, when taken together, they drive up premiums to the point health care is unaffordable.

All these sections I have been talking about are mandates that apply to all plans, even grandfathered plans. There is a whole list of mandates that do not apply to grandfathered plans but apply to the new plans. Page 112 of the rule. I would refer you to that. I won't read it here. It has a lot of references again, and even though these sections aren't supposed to apply to grandfathered plans, as this rule points out, about half of all Americans will lose their grandfathered plan and they will be forced to buy a plan that includes the additional mandates.

But if you are enrolled in a union health plan, have no fear. Different rules apply to you. The administra-

tion's favorite special interest group gets special treatment under this rule. This is exactly the kind of political cynicism this administration campaigned against 2 years ago. Page 48 of the rule says:

This estimate does not take into account collectively bargained plans, which can change issuers during the period of collective bargaining agreement without loss of grandfather status.

Keep reading, because page 50 says:

For fully insured group health plans, another change that would require a plan to relinquish grandfather status is a change in issuer.

The bottom line: Big labor can change issuers, but small businesses cannot change issuers. The ability to change issuers is something that keeps insurance companies competing against each other to see who can offer the best product at the lowest price.

THE PRESIDING OFFICER. The Senator's time has expired.

MR. ENZI. I ask unanimous consent to speak for 2 more minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

MR. ENZI. I thank my colleagues.

The ability to change issuers is something that keeps insurance companies competing against each other to see who can offer the best product at the lowest price. Take that competition away, and prices will go up—for everyone but union plans.

The simple truth is, because this new rule will drastically tie the hands of employers, few employers are expected to pursue grandfather status. That means more than half of Americans who like what they have won't be able to keep it. As I said earlier, this is not a mistake. This is exactly what the President and the majority controlling Congress want. They want all Americans to be forced to buy the kind of health insurance they think you should have. Never mind that you can't afford it. Never mind that employers faced with the choice of either paying for health insurance or paying a new penalty will be less likely to hire new workers and will probably even lay off workers. Simply put, this rule States: Washington knows best. Never mind the President promised Americans who like what they have can keep it. This new rule is pretty clear: If you like what you have, you can't keep it.

MR. PRESIDENT, I yield the floor.

THE PRESIDING OFFICER. The Senator from Rhode Island.

MR. WHITEHOUSE. Mr. President, I ask unanimous consent that we continue in morning business and that Senator BROWN of Ohio and myself be allowed to engage in a colloquy for the next 15 minutes.

THE PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### ESTATE TAX

MR. WHITEHOUSE. Mr. President, Senator BROWN and I have come to the