



For Immediate Release

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Enzi Concerned with Delays in H1N1 Vaccine, Warns Mandates on Small Business Not Prescription for Pandemic

Washington, D.C. – U.S. Senator Mike Enzi (R-Wyo.), Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Committee, today criticized the federal government's preparation and response to the H1N1 virus, saying vaccine production and distribution cannot continue to fall short of the public's need.

"The Administration promised vaccines that they have not delivered, and I have serious concerns that the vaccines that have become available are not reaching high risk populations," Enzi said at today's HELP Committee hearing titled, "**The Cost of Being Sick: H1N1 and Paid Sick Days.**"

"Families across the country are worried, and delays in distributing the vaccine are creating new fears about the federal government's ability to protect public health," Enzi continued.

Additionally, Enzi warned that legislation mandating paid sick days would further endanger the nation's fragile economy and undermine efforts employers are already taking to protect their workers.

"Many employers are not able to maintain current payrolls, which is evidenced by the rise in unemployment to a 26-year high at 10.2 percent. If this bill is enacted, employers will be forced to adjust somewhere either by reducing current healthcare or retirement benefits, or by downsizing their number of employees and adding to the ranks of the unemployed," he concluded.

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Statement of Michael B. Enzi, Ranking Member

Senate Committee on Health, Education, Labor and Pensions November 10, 2009

CHILDREN & FAMILIES SUBCOMMITTEE HEARING ON “THE COST OF BEING SICK: H1N1 AND PAID SICK DAYS”

Mr. Chairman, today Americans across the country are trying to protect themselves and their families from the threat of the flu pandemic that is threatening the lives of children and pregnant women around the world. Yet when they show up at the doctor they are being told that there are no more vaccines and that due to shortages in supply they will have to be put on a waiting list until the next shipment arrives. Mr. Chairman, they are learning that their government has failed to prepare the country for the threat of a flu pandemic that was foreseeable and preventable with better coordination and preparedness.

The 2009 H1N1 virus was first detected in Mexico in March of 2009 and a month later in the U.S. Today it is widespread in 48 states including my home state of Wyoming, yet most Americans who want to protect themselves by vaccination have been left in the lurch, and told that a supply of vaccines may not even be available before the pandemic is over.

This summer the Administration promised Americans that 80 to 120 million doses of the vaccine would be distributed by mid-October. Yet, here we are a month passed the deadline and only 36 million doses are available.

As for the doses that are available, the Administration appears to be taking inadequate precautions to ensure fair and appropriate distribution. The media is full of stories of vaccines going to populations that don't fit the high risk profile – such as terrorism suspects being held at Guantanamo Bay – instead of those populations at risk, such as small children and the pregnant women.

With deaths tolls rising and almost no access to the vaccine it is no wonder that we are concerned. Every person left unvaccinated is an opportunity for H1N1 to spread exponentially and mutate into a more deadly strain. I'm pleased that we have a representative of the Center for Disease Control here today to shed light on what has gone wrong and to tell us what improvements can be made.

I also want to welcome Dr. Scott Gottlieb to the Committee today to discuss some of the policies that have contributed to the vaccine shortage, and provide recommendations for way to improve our response to pandemic flu in the future.

Some of these issues include the decision at the Department of Health and Human Services (HHS) to order single dose instead of the more efficient multi-dose vials. Multi-dose vials are produced more quickly, and can out produce single-dose vials 10 to 1. We have also yet to approve the use of adjuvants in flu vaccines, which decrease the amount of the vaccine needed in a single dose – which would allow us to vaccinate more people with the same amount of vaccine. Adjuvants are currently used in the flu vaccine sold in Europe, but are not yet approved for use in flu vaccines in the U.S.

Another shortfall we face is regarding the production process. Today, the U.S. still depends on chicken eggs for their vaccine production, while other nations are using more advanced cell-based manufacturing processes that are not dependent on a supply of eggs

and can more quickly increase vaccine production. One way that the federal government can improve our production capabilities is through increases in funding for BARDA. We also need to approve the cell-based manufacturing process for the flu vaccine so that manufacturers will not need to wait for FDA approvals the next time our nation faces the threat of pandemic flu. It is imperative that the U.S. increase its capabilities to produce better technology that will increase our preparedness capabilities in the future.

Today's hearing will focus on the impact that H1N1 has on sick and healthy Americans every day. But let us not lose sight of the opportunity for Congress to learn from this experience and continue to force our nation to increase our preparedness capabilities. The alarm that the H1N1 virus has raised in many households also translates to our workplaces. Employers recognize that an outbreak of the epidemic among their employees could shut down a business for weeks or longer, and, in the absence of widespread access to the vaccine, they are taking steps to protect their employees. They are providing information about flu prevention, hand sanitation tools and similar products, preparing for telecommuting and running their operations with smaller staff. One of today's witnesses, Ms. Elissa O'Brien will testify about her company's vigorous H1N1 flu prevention efforts. Her company has also adopted a leave policy which generously provides a starting level of 26 days of paid leave and short term disability coverage – enough to accommodate the flu needs of every employee - but which would be upended if the one-size-fits-all Healthy Families Act became law. Reading through her testimony, I was reminded that Washington does not have a monopoly on good ideas; and that whenever we act prescriptively, we also decrease flexibility and creativity. What works in one place of business may not work in another; and, what we inflexibly mandate may not be best for all.

As we all remember, the Healthy Families Act bill was a heartfelt priority of our late Chairman, Senator Kennedy. Before I entered public service I was a small business owner so I am speaking from experience when I say the goal of the legislation is something we all share. In a small business, employees are like family members. Employers know that if they want to attract and keep good employees they must give them the flexibility they need care for their own health and their loved ones. Indeed, in the most recent member benefit survey conducted by the Society for Human Resource Management some 86% of the respondents reported that their companies provided paid sick leave either under a separate sick leave program, or as part of a general paid time off plan. Over 80% of the respondents also indicated that they provide both short-term and long-term disability insurance coverage; and, an increasing number utilize even more creative approaches such as paid time off, and sick leave banks, or pools.

The beauty of these creative approaches is that they are responsive to the needs and wants of employees, the changing costs of providing different benefits, and the ability of the employer to provide the benefits while staying in business. In contrast, the type of leave mandate by this and similar bills would create is completely inflexible. It also would add to the practical problems human resource officers deal with every day by importing intermittent leave and medical verification rules which have proven problematic in other statutes. In addition, this bill provides no deterrents for abuse of the leave entitlements and raises privacy concerns – two issues that employers have found innovative ways to resolve in the absence of a mandate.

Most employers provide sick leave benefits both because they know that a healthy workforce benefits their business; and, because they know that in a competitive labor market they must address this issue to attract and retain quality employees. Today, the average cost of employee benefits for all employers in the private sector is nearly \$8.02 an hour. Average benefits now comprise 30% of total payroll costs. While the number of employers finding ways to provide paid leave as part of their benefit package continues to increase, there are

some employees who do not have paid sick leave available to them at their place of work. The bulk of these individuals are employed by smaller employers who, especially in challenging times like these, are struggling to maintain current payrolls. And that is getting harder and harder. Friday's job numbers showed we lost another 190,000 jobs last month and the unemployment rate reached a 26-year high of 10.2 percent. Hitting small businesses and startups with new costs and unfunded mandates is never advisable, and it is even more irresponsible during a time when job creation should be a top priority.

It is a simple fact: whenever we impose unfunded mandates on employers the money necessary to pay those increased costs must come from somewhere. No matter how desirable the goal one cannot simply dismiss the cost as unimportant or inconsequential. Here, the costs are decidedly not inconsequential, particularly for smaller businesses. The pool of available labor dollars is not infinite, and when we mandate their expenditure for a specific purpose, we always run the risk of unintended consequence such as adding to the growing pool of unemployed workers. A dollar that must be spent here, often results in a dollar that will not be spent elsewhere. Imagine the irony for an employee who is granted sick leave under this bill, but whose employer decides to eliminate or reduce health plan benefits.

The H1N1 pandemic has raised concerns for Americans looking to protect themselves and their families, as well as for employers seeking to keep their businesses going and their employees healthy. These concerns, however, are layered on top of the economic worries that have recently plagued us, and the unemployment numbers which continue to rise. Now more than ever we should be lifting up America's small businesses to help create economic growth and to create sustainable jobs. This is not the time to compound the problems small businesses are facing with another unfunded, inflexible mandate from Washington. I thank the Chairman, and look forward to hearing from the witnesses.

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