AMERICAN BENEFITS COUNCIL

November 5, 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker and Minority Leader Boehner:

As the House of Representatives prepares to consider health care reform legislation, I am writing on behalf of the American Benefits Council (the Council) to express our opposition to H.R. 3962, the Affordable Health Care for America Act. We believe the bill does not accomplish the bipartisan goal of controlling health care costs and will significantly add to the burdens and costs for employers who are the primary source of health coverage for more than 160 million Americans. As a result, we believe that the bill is likely to destabilize employer-sponsored health coverage which has driven much of the innovation and progress toward quality improvement in our health care system today.

The American Benefits Council is a trade association representing primarily large employers and other organizations that directly sponsor or provide services to health and retirement benefit plans serving over 100 million Americans. The Council firmly believes that the best reform options are those that preserve and strengthen the role employers play as the largest source of health coverage for most Americans. By keeping employers engaged as sponsors of health coverage, we also retain the expertise and commitment employers bring to the table in the collective effort to find practical, focused solutions to the challenges facing our health care system.

The president has repeatedly called for reform legislation that will reduce health care costs for individuals, employers, the government and the American economy. Employers have universally embraced that goal and agree that it is essential to make health care more affordable, especially if we are to make it more accessible. With health care costs increasing each year by three or four times the rate of inflation, the current path we are on is simply not sustainable. Without a solution to this problem, health care costs will continue to threaten jobs, restrict much-needed investments by employers and weaken our economic security. We commend the House bill for aiming to reach our shared goals of extending health coverage to all Americans, including by establishing an individual responsibility to obtain and maintain coverage and by helping to make health insurance more accessible through new health insurance exchanges and other market reforms. Unfortunately, the legislation does not provide the needed solutions for controlling health care costs and, in fact, includes numerous provisions that would make it more difficult and costly for employers to continue to sponsor health benefits for their employees, including:

**Employer Responsibilities**

Employers recognize that health care reform will also involve new shared responsibilities, but the "play-or-play" requirements in the House bill are overly restrictive for the vast majority of employers who might otherwise intend to continue to provide health coverage to their employees. One important reason we believe that a "pay or play" employer mandate is inappropriate is that the myriad new requirements that the House bill would place on those who would choose to continue coverage will ultimately, if unintentionally, lead many companies to "pay" rather than "play". The loss of employer sponsorship of health coverage also means the loss of the critical role employers play as innovative and demanding purchasers of health care services.

These problems remain despite the legislation's five-year "grace period" during which many of the new standards in the legislation would not apply to employer-sponsored plans. However, it is during this five-year period when employers would need to begin to prepare for and start to confront the new sweeping requirements that would be applied if this legislation is enacted, including the minimum benefit standards for "acceptable coverage", the minimum actuarial value standards, the minimum premium contribution requirements and the market-wide insurance reform provisions that have been included in H.R. 3962. The cumulative impact of these requirements make it all but certain that many employees who are now very satisfied with the coverage from their employer will end up having to purchase health coverage on their own through an insurance exchange. This would occur despite the many statements that have been made that if Americans like their current coverage they will be able to keep it after health reform legislation is enacted.

**Retiree Health**

Two provisions of the House bill are likely to have the unintended effect of discouraging employer-sponsored retiree health coverage, thereby placing the cost and burden of providing this vital coverage onto the federal government.

Section 110 of the House bill significantly restricts the ability of employers to modify retiree health benefits after an individual retires, overriding provisions in many such plans that call for cost sharing between employers and retirees to respond to continued increases in health care costs. It would be disastrous for millions of Americans still covered by retiree health plans to see these plans severely limited or eliminated altogether if employers seek to avoid being locked in to a particular benefit indefinitely.

Section 534 of the House bill eliminates the current tax exclusion for the subsidy employers receive from the federal government when they provide post-65 retirees with prescription drug coverage that is at least equivalent in value to the Medicare Part D benefit. The current tax treatment was included in the Medicare Modernization Act of 2003 precisely to encourage employers to continue sponsoring drug coverage. Importantly, current law also results in savings for the federal government when employers provide this benefit rather than having these individuals obtain prescription drug coverage under a Part D plan where the government's costs are higher than its subsidy payments to employers. As with the "lock-in" provision in Section 110, this new tax on retiree drug benefits could well lead to an unintended and precipitous decline in some of the most comprehensive health coverage protection for retirees available today.

Also, Congress has not considered that both of these changes would impose substantial increases in liabilities on the financial statements for companies that sponsor retiree health coverage. Under Financial Accounting Standards, these liability increases would be required to be reflected on company balance sheets immediately upon enactment of the legislation -- even if the effective dates of the provisions are delayed -- and would be particularly ill-advised and disruptive in the current economic environment.

**The Public Health Plan**

Despite provisions that have been included in the House bill that would require the public plan to negotiate payment rates with health care providers, there is little evidence or confidence that such a policy would be sustained. Medicare and Medicaid both pay health providers well below market rates, resulting in significant cost shifts to employers when health providers seek to make up the difference with higher rates charged to private payers. It would not be long before a public health plan option would begin to follow the practices of these other government programs and shift additional costs to employers and other private payers. H.R. 3962 would necessarily usher in countless new requirements for the government to regulate numerous aspects of a dramatically reformed health care system. It is simply not practical, nor advisable, for government to both regulate and then compete directly with the private marketplace.

We continue to strongly believe that the right approach is to focus on achieving a competitive and reformed private health care market rather than diverting resources and attention away from that primary goal by having the government establish and administer a health insurance program that would compete with those in the private market.

**Employee Wellness Programs**
Employers have made tremendous strides in helping employees and their families engage in programs and activities promoting good health. Positive provisions were included on a bipartisan basis in both of the Senate committee bills to help employers encourage participation in wellness programs while keeping in place all of the current law privacy and non-discrimination protections under the Health Insurance Portability and Accountability Act (HIPAA). Unfortunately, when comparable provisions were proposed in the House Energy and Commerce Committee they were rejected. Realigning incentives in our health care system is an important and fundamental part of health care reform, but perhaps none are more important than those that would encourage more Americans to begin to lead healthier lives.

**Liability Reform**
No version of health care reform, including the House bill, has yet met the test of achieving the kind of real reform that is urgently needed in our medical liability system. The Congressional Budget Office has recently confirmed that there would be substantial savings to the federal government if liability reform were included as part of health reform legislation and that the savings in the private marketplace would be even greater than those for the federal government. Health reform legislation simply must not ignore this pressing issue. We therefore will continue to support efforts to include provisions to achieve meaningful liability reform as the legislation moves forward.

Not only does the House bill fail to seriously tackle liability reform, it includes a provision that will actually expand liability for coverage obtained in an insurance exchange. Specifically, Section 251 of the House bill applies "state law rights and remedies" to health insurance coverage purchased by employers in a health insurance exchange. State law remedies are typically unlimited and the inclusion of this provision will expose group health coverage purchased through an exchange to significantly higher levels of costly litigation and state law damages that will ultimately be passed along to employers and employees in the form of increased premiums.

While we cannot support the Affordable Health Care for America Act that the House is soon to consider, we will continue to work with you as legislation moves forward to help achieve our mutual goals of enacting responsible health reform legislation that provides quality, affordable coverage for all Americans.

Sincerely,

James A. Klein

James A. Klein
President