



AMERICAN BENEFITS

COUNCIL

September 21, 2009

The Honorable Max Baucus
Chairman
Senate Finance Committee
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Finance Committee
Washington, DC 20510

Dear Chairman Baucus and Senator Grassley:

I am writing on behalf of the American Benefits Council (the “Council”) with our views on the Chairman’s mark and amendments to the mark that are soon to be considered by the Committee on Finance. The Council is a trade association representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans covering more than 100 million Americans.

The most successful and enduring public initiatives are those that are developed and approved with broad bipartisan support and we commend your tireless efforts to achieve that vital objective. The House of Representatives tri-committee bill and the Senate Health, Education, Labor and Pensions (HELP) Committee bill do not meet this standard, but the Chairman’s mark, while not perfect, remains the most promising vehicle for achieving broad agreement on health care reform this year.

We firmly believe that the best reform options are those that preserve and strengthen the voluntary role that employers play as the largest source of health coverage for most Americans. By keeping employers engaged as sponsors of health coverage, we also keep the innovation and expertise employers bring to the table in the collective effort to achieve broad-based, practical health system reform.

One of the many strengths of our voluntary employer-based system is that group purchasing lowers health care costs because employers, especially larger employers, are able to effectively pool the health risks of employees. In addition, employers are demanding purchasers of health care services. They are increasingly focused on

leveraging their health care dollars by partnering with those who can demonstrate proven value and improved health care status for employees and their families.

We remain committed to health care reform that improves health care quality, lowers costs and provides coverage to all Americans. However, to maintain employer-sponsored health coverage that now serves most Americans, we believe there are several fundamental issues that any legislation must get right.

Maintaining the ERISA Regulatory Framework

The regulatory framework established by the Employee Retirement Income Security Act of 1974 (ERISA) makes it possible for multi-state employers to provide uniform benefits to their employees and consistently administer these essential benefits without being subject to conflicting state or local regulation. All employers that offer health benefits to employees who live in different states -- and potentially every state -- consider the ERISA regulatory framework to be absolutely essential.

Importantly, the Chairman's mark maintains the ERISA framework and retains exclusive federal regulation of self-insured plans. We fully support the Chairman's mark with respect to maintaining the ERISA regulatory framework and urge that no amendment be adopted during your mark-up session that would undermine the ability of employers to maintain and administer their plans as uniformly and efficiently as possible.

We also support the provisions in the Chairman's mark to allow insurers to offer national health plans with uniform benefit packages across state lines, subject to state regulation for solvency and consumer protection purposes. This would allow those in the individual and small group markets who purchase these plans through the new health insurance exchanges to obtain a plan that would not change if they moved from state-to-state. It would also allow insurers to offer more efficient coverage, free of costly state benefit mandates. Similarly, we believe that any insurer offering coverage in an insurance exchange should be permitted to offer at least one plan that fully complies with federal requirements, but would not be subject to additional state benefit mandates.

Making Health Care More Affordable and Improving Quality

As President Obama has repeatedly stated, "when it comes to the cost of our health care, the status quo is unsustainable." We agree completely with the President's statement and we strongly support your efforts to make long overdue changes in how health care is delivered.

We also strongly support the many provisions included in the Chairman's mark to advance a national quality improvement agenda, working with the full range of

stakeholders who are now actively engaged in developing the tools and techniques needed to begin to align payment with performance and promote continuous quality improvement. Indeed, for many employers who already provide excellent health care coverage to millions of Americans, tangible success in improving health care quality and helping to make the cost of health care more sustainable is the most essential reform of all. We are fully committed to working with you to help achieve these objectives.

Specifically, we support the provisions in the Chairman's mark that build on the public-private collaborative efforts to advance the measurement, reporting and reimbursement of health care services on the basis of proven performance. Many of the central quality improvement provisions in the mark are consistent with the recommendations of the multi-stakeholder Stand for Quality coalition, a group where the Council serves as a steering committee member and one that has also commended the Chairman's mark for moving to put in place "game changing" reforms to improve health care practice and decision-making.

We also support the inclusion of provisions in the Chairman's mark to authorize the establishment of a private, non-profit Patient-Centered Outcomes Research Institute to conduct comparative effectiveness research, but we believe that the program should not be funded by imposing a premium tax on insured and self-insured health coverage. Premium taxes directly translate into immediate higher costs for health coverage and are paid by the employers who remain "in the game" but not by those who do not offer health coverage to their employees. Moreover, establishing premium taxes for this purpose, however worthwhile, is likely to lead to utilizing this same approach for other revenue needs in the future, as it already has in many states.

Finally, we believe that real reform of our health care system must be accompanied by equally rigorous reform of our medical liability system. As this legislation moves forward, we strongly urge that this issue also be tackled so that we can help rein in excessive and costly litigation and reduce the level of defensive medicine that drives up health care costs due to tests and procedures that are ordered primarily to avoid potential liability. A solid first step in the right direction would be the establishment of liability "safe harbors" for medical or coverage decisions that are consistent with recognized evidence-based standards or consensus-based performance measures used for payment reform purposes.

Employer Responsibilities

We recognize that health care reform will also involve new responsibilities for employers and we believe the provisions in the Chairman's mark strike an appropriate balance between providing employers the essential flexibility they need to develop benefit plans that meet the unique needs of their workforce while still permitting employees to obtain income-based tax credits for coverage in a health insurance

exchange if the cost of their employer plan would exceed 13 percent of income or is below an actuarial value of 65 percent. The “free-rider” assessment approach in the mark – subject to a workforce wide cap of \$400 per employee – is also less onerous than the more costly, coercive and disruptive penalty provisions in either the Senate HELP Committee bill or the House tri-committee bill. These other approaches would penalize employers for not offering health coverage unless it meets highly prescriptive standards set by federal regulations.

One important reason we believe that a “pay or play” employer mandate is inappropriate is that it is likely to lead to a myriad of rigid new requirements on employer-sponsored coverage, as is already clearly evidenced in the health reform measures already approved by other committees of Congress. Ultimately, if unintentionally, the cumulative effect of these requirements will result in a net reduction in employer-sponsored coverage by leading some companies to simply “pay” rather than “play. This would lower the level of active employer engagement and their important role as innovative and demanding purchasers of health care services.

As the Committee considers the Chairman’s mark, we strongly urge that amendments be rejected that would move the employer responsibility provisions in the direction of either the Senate HELP Committee’s bill or the House tri-committee bill. We also urge that the Committee oppose any amendments to require employers to pay their “normal” premium contribution to a health insurance exchange or gateway if an employee opts- out of an employer plan. Opt-out provisions would be particularly problematic for self-insured employers who could be required to contribute significantly more to the exchange than what these employees may have actually cost the employer if they had remained in their plan. This would occur whenever younger, healthier employees opt-out of the employer plan and obtain coverage through the insurance exchange. In effect, employers would be required to both “play and pay” for those employees who opt-out of their employer-sponsored plan and obtain coverage elsewhere.

Public Health Plan Option

We recognize that public plan option issue and alternatives to it are still under consideration. Our views on this issue have consistently been that we believe that vibrant competition among private health plan options in a reformed market should be given every opportunity to succeed. Transitioning from the market rules in place today, to a reformed market with new insurance exchanges available in every state is a dramatic change in current practices. Achieving a reformed and well regulated private market is essential and should be a central focus of health care reform. This core element of health reform will be challenging enough without attempting to introduce public plan options that risk destabilizing the insurance market at the same time when it will be undergoing significant change and meeting demanding new standards.

We are confident that responsible federal insurance reform standards will lead to wide availability of private health plan options in all parts of the country. Finally, just as we have seen in the reform plan already in place in Massachusetts, a public plan option is not essential to changing market conduct or achieving more accessible and affordable coverage, indeed it will only be a distraction in accomplishing those goals.

Tax Policy

We are very concerned with the tax on “high cost” health plans on several levels. First, by the time the tax thresholds are put in place in 2013, the total cost of health coverage offered by many employers could already be above the limits and subject these plans to an extraordinary 35 percent excise tax and result in reductions in benefits offered by employers or increases in cost-sharing paid by employees and retirees at the time of service. Next, in future years, more employers are likely to face the prospect of exceeding the tax thresholds, not because they offer “Cadillac” or “gold-plated” plans, but simply because health care costs are increasing by an average of 7 or 8 percent a year while the tax thresholds would be indexed to CPI and therefore increasing by only 2 or 3 percent annually. This means that eventually a large number of employers could face payment of the 35 percent excise tax unless significant benefit changes are made to avoid these costs.

The consequences for retiree health coverage could be even more significant and immediate. Employers will have to immediately recalculate the present value of their future retiree health care liabilities if the excise tax is applied to these plans. These increased tax liabilities are likely to result in more restrictive and costly coverage for retirees and higher balance sheet liabilities for the companies that sponsor these plans. In addition, because the mark would not exempt retiree health coverage from the high cost tax, employers that sponsor these valuable benefits, particularly for pre-Medicare retirees, could soon face a large tax penalty for doing so, simply because the cost of health coverage increases with age.

We strongly urge that several changes be made in the “high cost” plan excise tax to make it fairer, less disruptive and less likely to result in unintended consequences for employers, employees and retirees:

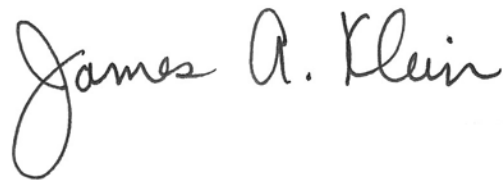
- Exempt retiree health plans from the excise tax so that employers who offer these valuable plans are not penalized for doing so and so that the tax does not further contribute to the costs of these benefits or employers’ liability for sponsoring them;
- Increase the tax thresholds to a higher initial level so that far fewer plans would face immediate taxation in 2013;
- Index the tax thresholds by the medical component of CPI, or at a minimum, by a blend the CPI and the medical component of CPI;

- Do not count employee contributions to health care coverage (whether paid by salary reduction on a pre-tax basis or an after-tax basis) in determining the amounts applied toward the thresholds;
- Do not count contributions to flexible spending arrangements, health savings accounts, dental, vision or other supplementary benefits in determining amounts applied toward the thresholds;
- Maintain the initial year increase in the thresholds for high-cost states on a permanent basis;
- Exempt employers from the excise tax if they offer multiple plan options that have an aggregate average value below the tax thresholds.

We also are very concerned that the majority of the total of \$13 billion in annual “fees” that the mark would require to be paid by insurers, pharmaceutical and medical device manufacturers and clinical laboratories will ultimately be paid by employers and employees in the form of increased health care premiums. In addition, the proposed taxation of subsidies employers receive for maintaining retiree drug programs that provide benefits at least actuarially equivalent to Medicare’s drug benefit will accelerate the reduction in employer sponsorship of retiree drug coverage. This reduction will lead to more Medicare-eligible retirees obtaining coverage in the Medicare Part D program resulting in unnecessarily higher and avoidable costs to taxpayers. Finally, we urge that the \$20 billion reinsurance program for the individual insurance market not be financed by an assessment on employer-sponsored coverage. Employers will already be contributing significantly to the costs of health care for their employees and health care reform and should not be subject to separate assessments to provide a new reinsurance mechanism in the individual insurance market.

In conclusion, as you move forward in considering vitally important health reform legislation, we urge that you keep these core issues in mind that will determine the future of employer-sponsored health coverage that now serves nearly 170 million Americans. We look forward to working with you to achieve health care reform this year.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive, flowing style with a large initial "J".

James A. Klein
President