



AMERICAN BENEFITS COUNCIL

September 30, 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 revenue provisions in 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.

For several reasons, the Council is very concerned with the proposed tax on "high cost" health plans. We wish to further articulate those concerns and offer suggestions for mitigating their impact.

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. This will subject these plans to an extraordinary 40 percent excise tax and result in reductions in vital benefits offered by employers or increases in cost-sharing paid by employees and retirees at the time they receive health services. Moreover, in future years, more employers are likely to face the prospect of exceeding the tax thresholds, not because they offer so-called "Cadillac" or "gold-plated" plans, but simply because health care costs are increasing by an average of 7 or 8 percent per year while the tax thresholds would be indexed to CPI + 1% and therefore would increase at a much lower rate. Eventually a large number of employers could face payment of the 40 percent excise tax unless significant benefit changes with adverse consequences to working Americans are made to avoid these costs.

The negative implications 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 Chairman's mark would not exempt retiree health coverage from the high cost tax, employers sponsoring 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 commend the Chairman for the changes in the excise tax that were included as modifications to the Chairman's mark on September 22. These included increases in the tax thresholds for retirees and those in high risk occupations, changing the index in the tax thresholds to CPI + 1% and permitting coverage for pre-65 and post-65 retirees to be combined when determining the value of coverage offered to retirees.

We strongly urge that further changes be made in the high cost plan excise tax to make it fairer, less disruptive and less likely to result in diminished coverage for employees and retirees, including the following amendments proposed by members of the Committee:

- **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 (Stabenow F-1 amendment);
- **Index the tax thresholds by the medical component of CPI, or at a minimum, by a blend of the CPI and the medical component of CPI** (Ensign F-6 amendment);
- **Do not count employee contributions to health care** in determining the amounts applied toward the thresholds (Hatch F-4). In particular, amounts paid by employees on an after-tax basis should not be included in the thresholds since these employee payments have already been taxed;
- **Do not count contributions to flexible spending arrangements, health savings accounts, dental, vision or other supplementary benefits** in determining amounts applied toward the thresholds (Roberts/Hatch F-2; Hatch F-3 amendment);

We also recommend that further changes be made to moderate the impact of the high cost plan excise tax on employer-sponsored health benefits:

- **Increase the tax thresholds** to a higher initial level so that far fewer plans would face immediate taxation in 2013;
- **Provide a multi-year transition rule for plans already above the thresholds in tax year 2010;**

- **Adjust the tax thresholds for age** (in addition to geography) to appropriately recognize that health costs vary by age. To keep these adjustments relatively simple, the age variations in the thresholds could be grouped in several age range brackets;
- **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 which have an aggregate average value below the tax thresholds.**

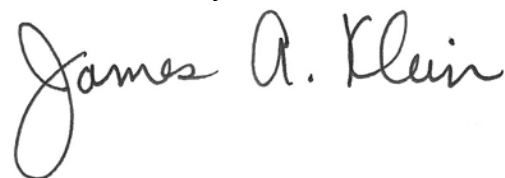
We also are very concerned that the majority of the \$13 billion in annual “fees” which the mark would require to be paid by insurers, pharmaceutical and medical device manufacturers and clinical laboratories will ultimately be paid by employers and employees in the form of increased health care premiums. Therefore we support amendments to address that problem. (Grassley F-1 and F-2 amendments; Kyl F-1, F-2, F-3 and F-4; Cornyn F-1 and F-2)

In addition, we support maintaining the current law tax exclusion for the subsidies employers receive for maintaining retiree drug programs that provide benefits at least actuarially equivalent to Medicare’s drug benefit. Eliminating the exclusion will accelerate the reduction in employer sponsorship of retiree drug coverage. Taxation of these amounts will lead to more Medicare-eligible retirees obtaining coverage in the Medicare Part D program resulting in unnecessarily higher and avoidable costs to taxpayers. Therefore we support Senator Grassley’s amendment to address that problem. (Grassley F-6 amendment).

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 for 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 consider these changes in the revenue provisions of the Chairman’s mark which will determine the future of employer-sponsored health coverage which 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