

October 26, 2009

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Republican Leader  
United States Senate  
Washington, DC 20510

Dear Senators Reid and McConnell:

As the Senate prepares to consider health care reform legislation, we are writing at this critical time to once again convey that employers of all sizes and all industries believe that fundamental health reform is essential. Maintaining the *status quo* is both unacceptable and unsustainable. Employers clearly understand that unless we bring the nation's health care costs under control, the current health system threatens jobs, our ability to compete at home and globally, and ultimately the core of our economy.

But not any health reform will do. We also must get the fundamentals of health reform right. Legislation that does not bend the cost curve for both public and private health plans is not accomplishing its goal and contradicts the strong bipartisan consensus that has driven the case for health care reform. Legislation limiting the flexibility and innovation in the private sector would erode parts of the system that are now working. And, legislation that creates a public health plan would inevitably shift costs onto the private sector, and would therefore fail to achieve the bipartisan goal of controlling overall health care costs.

As you move forward with health reform, we will continue to work with you - as we have over the last two years - to help craft legislation that builds on what works, fixes what is broken and makes health care more affordable and accessible for all.

As legislation advances through the Senate, these are the priority issues and standards that employers believe are necessary for health care reform:

- **Bending the Cost Curve** – The foundation of any effort to improve the health care system must be an effective strategy to control overall health care costs and reform the delivery of care to promote effectiveness and efficiency. This is where the president started the nation down the path to health reform, and we must not lose sight of this objective. No matter who pays the bills – individuals, employers or the government – we must have reform that leads to relief in health insurance premiums, results in a more sustainable rate of growth in health costs and sets us on an irreversible path of paying for value, not volume. This also means we must protect against the damaging effects of cost-shifting, whether from excessive reductions in government payments for health services or excessive taxes and fees which the Congressional Budget Office (CBO) has correctly noted are certain to be passed along to purchasers and consumers in the form of higher premiums.
- **Maintaining a Level Playing Field** – A public plan, particularly when combined with Medicare, Medicaid and other government plans, would be highly disruptive and destabilizing to the private health care marketplace. Under a public plan option, the government would soon become the largest health care purchaser in the under-65 health care market, as it already is for seniors. Soon there would be tremendous pressure for the new public plan to pay below market rates, just as we have seen in Medicare and Medicaid, even if initially the public plan is directed to pay “negotiated” rates. This would result in enormous cost-shifts to private payers, undercut market-based insurance reforms, and reduce innovation in our health care system. These problems remain regardless of whether the public option is “triggered” or if states are allowed to opt out. Focusing on achieving a more competitive and responsible private health insurance market is the right approach. Indeed, this approach will be challenging enough without the added burden to the government of establishing and administering another major health insurance program of its own.
- **Safeguarding Employer Flexibility and Innovation** – More than 160 million Americans now obtain health care coverage through an employer. Employers already shoulder substantial financial and administrative duties as sponsors of health benefits today. These responsibilities are only likely to increase after health reform is enacted. Employer pay-or-play requirements or other mandates have no place in health care reform. Neither

should changes be made in ERISA's regulatory framework that multi-state employers rely on to offer uniform benefits to their employees regardless of where they may live. Provisions to permit state regulation of employer-sponsored health plans will increase costs for employers and employees and eliminate the ability to offer uniform coverage. These provisions would also limit the flexibility and innovation that are the foundation of our employer-based system. Similarly, employer coverage mandates are coercive and sweep too broadly, inevitably leading to more costly restrictions on the vast majority of employers who intend to continue to provide health coverage to their employees while taxing other employers who are unable to offer coverage. Finally, we must not destabilize employer coverage by proposals that would create incentives for employees to opt-out of their employer plan, leaving those employees who remain in the plan without the benefit of the premiums paid by those who leave and rapidly driving up the costs of coverage for these plans.

- **Reforming the Health Insurance Market** -- Health insurance exchanges, if done properly, will lead to a more rational and streamlined health insurance market. Exchanges can help foster competition, structure choices and provide Americans better tools to compare and purchase affordable coverage that meets their needs. In addition, health insurers should be allowed to offer both national and local plans in any state, free of state benefits mandates, to help make more affordable coverage available in all markets. Achieving broad participation in the insurance market requires a combination of affordable coverage – including low-cost catastrophic coverage – and adequate financial incentives to encourage as many individuals as possible to obtain and maintain continuous health coverage. Also, employee populations vary greatly and care should be taken to provide flexibility in enrollment in employer-sponsored plans. Finally, proven health plan designs such as health savings accounts (HSAs), health reimbursement arrangements (HRAs), flexible spending accounts (FSAs) and cafeteria plans should continue to play an important role in a reformed health care system and give individuals greater control over how they spend their health care dollars.
- **Promoting Wellness and Healthier Lifestyles** – Employers understand that employees are their most important asset. 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). 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 encouraging more Americans to begin to lead healthier lives. We strongly support provisions to strengthen employment-based wellness programs and will continue to work to remove barriers that could hinder their success.
- **Reining in Medical Liability** – No version of health care reform 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. More importantly, 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.

We look forward to continuing to work with you on achieving responsible and practical health care reform legislation and on getting the fundamentals right for all Americans. Employer support going forward will depend on how well these concerns are addressed as the legislative process continues to unfold.

Sincerely,

American Benefits Council  
Corporate Health Care Coalition  
The ERISA Industry Committee  
U.S. Chamber of Commerce  
National Association of Manufacturers  
National Association of Wholesaler-Distributors  
National Coalition on Benefits  
National Retail Federation  
Retail Industry Leaders Association