



## AMERICAN BENEFITS COUNCIL

June 10, 2009

The Honorable Edward Kennedy  
Chairman  
Senate HELP Committee  
Washington, DC 20510

The Honorable Michael Enzi  
Ranking Member  
Senate HELP Committee  
Washington, DC 20510

Dear Senators Kennedy and Enzi:

I am writing on behalf of the American Benefits Council, 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 retirement and health plans covering more than 100 million Americans.

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 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.

Because employers have a strong interest in the health and productivity of their workforce, they work hard to identify solutions that improve productivity, reduce chronic illness, and lower disability costs. These investments in the health of their workforce not only include broad access to primary care and specialty services, they increasingly have engaged employees in innovative health coaching and healthy lifestyle programs, cost and quality transparency initiatives, pharmaceutical management programs, and value-based health plan designs.

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.

These priority employer concerns are:

1. maintaining the ERISA regulatory framework which 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;
2. avoiding mandates on employers, including “pay or play” mandates which would lead to more costly coverage and, ultimately, to fewer employers willing or able to sponsor health benefits;
3. providing private market health insurance plan choices to individuals who do not obtain coverage through their employer; and
4. retaining sensible and supportive tax policy which helps millions of individuals to obtain more affordable health coverage.

### **The ERISA Regulatory Framework**

All employers that offer health benefits to employees who live in different states -- and potentially every state -- consider the regulatory framework established by the Employee Retirement Income Security Act of 1974 (ERISA) to be absolutely essential.

ERISA has two essential elements which have been critical to the widespread availability of employer-sponsored coverage for most Americans. First, ERISA’s federal regulatory framework allows employers to offer their employees a uniform set of benefits that are not subject to state mandates. This translates into more affordable coverage for employers and employees and encourages a fundamentally fair approach to health coverage where employees are entitled to the same set of benefits regardless of where they live. A second key element of ERISA is that it permits employers to administer their plans uniformly without being subject to state regulation. This makes it possible for employers to adopt innovative, consistent strategies to improve the health of their employees on a nationwide basis.

As essential as ERISA’s federal framework is to employer-sponsored health coverage, it is important to keep in mind that it would be eroded if burdensome new requirements are added to ERISA itself. Making health coverage more affordable for employers of all sizes is the best way to ensure the continuation of the extremely high participation levels by larger employers in offering health coverage and increase the level of participation by smaller employers.

### **Pay or Play Requirements**

One important reason we believe that a “pay or play” approach would be an inappropriate coverage solution is that the myriad requirements that would inevitably be imposed on those who might prefer to sponsor health coverage would ultimately, if unintentionally, 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.

We also believe that a federal minimum benefit standard is needed only for the purpose of determining whether individuals have enrolled in qualified health coverage and have met their individual coverage obligation. Once this standard is defined, employers will have strong incentives to ensure that their plans meet or exceed the minimum coverage standard applied to individuals. To not do so would leave their employees without adequate levels of coverage and subject to year-end penalties. Individuals who enroll in these employer plans will therefore satisfy their individual coverage obligation and those without employer coverage will be able to enroll in a wide range of health plan choices in the reformed insurance marketplace.

Further, we recommend that a safe harbor be available for qualified high deductible health care coverage. By doing so, individuals who enroll in a high deductible plan that meets existing federal standards would be assured of fulfilling their individual coverage obligation. This also helps ensure that high deductible plans are not required to become more costly and retains this affordable health plan choice.

Finally, we are concerned about provisions which could require employers to pay their “normal” premium contribution to a health insurance exchange or gateway if an employee opts out of an employer plan. In particular, it would be inappropriate for such opt-out requirements to apply where employees are offered qualified coverage through an employer plan to satisfy their individual coverage obligation. Opt-out provisions would be particularly problematic for self-insured employers who could be required to contribute significantly more to the exchange than what some of 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 Insurance Plan Option**

We recognize that several public plan alternatives are still under consideration. These alternatives range from permitting a “Medicare-like” plan to compete with private health plan options in the reformed health insurance market, to having a third party administrator (TPA) or public cooperative organize networks of health providers and negotiate payment rates for public plan options that would compete with private health plans, or possible fallback options similar to the approach Congress adopted as part of the Medicare Part D program.

We believe the better alternative is to focus on the conditions needed to achieve a reformed and well regulated private market, which will be challenging enough without attempting to introduce public plan options that risk destabilizing the insurance market at the time when it will be undergoing significant change and meeting demanding new standards. Moreover, 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, as it did for plans providing the Medicare prescription drug benefit. In short, we believe that vibrant competition among private health plan options in the reformed market should be given every opportunity to succeed.

## Tax Policy

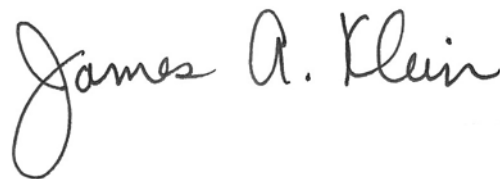
As Congress considers options to finance health care reform, we believe it is very important to recognize that employers and employees are already paying the largest share of health care costs. In addition, we believe that the primary source of financing for health reform can and should come from savings achieved by making the health care system more efficient, accountable and higher quality.

The current tax treatment of employer-provided health coverage benefits workers at all income levels – and most especially benefits low and moderate income level workers – because the coverage equates to a comparatively higher share of their total income.

There can be little doubt that the current tax policy also makes possible essential coverage for a significant majority of American families. Limiting the employee tax exclusion based upon the value of some level of coverage also raises a number of complex issues since the cost of coverage varies by factors such as geographic area, average age of the plan participants and variations in benefit designs. A methodology to adjust for each of these factors would be extraordinarily difficult, yet without such adjustments, some individuals with the same set of benefits could be subject to taxation while others are not. Alternatively, taxing health benefits based on income would be little more than a slightly less transparent way of simply raising taxes for these employees.

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

Sincerely,

A handwritten signature in cursive script that reads "James A. Klein". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

James A. Klein  
President