



## AMERICAN BENEFITS COUNCIL

November 30, 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 Majority Leader Reid and Republican Leader McConnell:

As the Senate prepares to consider the Patient Protection and Affordable Care Act, I am writing to share the views of the American Benefits Council (Council) – an association representing primarily large employers and other organizations that sponsor directly or administer health and retirement plans covering more than 100 million Americans.

While the Patient Protection and Affordable Care Act addresses several important concerns of employers – particularly as compared with the recently approved bill from the House of Representatives – we believe that significant improvements are needed in the Senate measure to protect and preserve employer-sponsored health coverage that now serves over 160 million Americans.

We continue to believe that fundamental health reform is essential, but it must be done right. Both during the current challenging economic period and in the future, the nation needs a more affordable and sustainable health care system that does not threaten jobs, undermine our ability to compete globally, or compromise our core economic stability.

The Council also believes it is essential that we not limit the flexibility and innovation that are the foundation of our employer-based system. In particular, we must not destabilize employer-sponsored coverage by making it more costly or burdensome for the vast majority of employers who want to continue to provide health coverage for their employees, but might no longer be able to do so if faced with unrealistic new requirements or financial commitments.

We endorse the requirement that all Americans have health coverage and we believe that properly structured health insurance exchanges should lead to more affordable and accessible health coverage for millions more Americans, particularly those who do not have coverage through an employer or who work for a small employer where health care coverage is beyond its reach.

The Council strongly supports the Senate bill provisions that maintain the long-standing federal regulatory framework established by the Employee Retirement Income Security Act of 1974 (ERISA). That framework makes it possible for multi-state employers to provide uniform benefits to their employees and consistently administer essential benefits without being subjected to conflicting state or local regulations.

We also applaud inclusion of provisions that address the bipartisan consensus on the need to move the health care purchasing system to one that rewards value, rather than simply the volume of services rendered. Likewise, we commend the provision that increases the financial incentives employers may offer to encourage employees to participate in wellness programs. Employment-based wellness programs should play a central role in health care reform and help to improve health, increase productivity, reduce costs, and promote personal responsibility for leading a healthier life.

However, the Council also has very serious concerns with the bill in its current form and we are troubled by reports of possible amendments that may be offered during its consideration that would be highly objectionable for employers. We also have significant concerns that the initial ten year cost estimates for the Senate bill seriously understate its actual long term costs because the coverage obligations and subsidies under the legislation would not begin until 2014 while several of the revenue provisions and spending reductions begin sooner. Maintaining these commitments will be certain to place considerable new obligations on employers, individual taxpayers and all major health industry stakeholders far into the future.

The following issues are of particular concerns to employers:

- **Employer Responsibilities** -- We are very concerned that ultimately, if unintentionally, the cumulative effect of rigid “pay-or-play” requirements will lead some companies to decide simply to “pay” a penalty rather than “play (i.e. sponsor a health plan). This would reduce active engagement by employers and their important role as innovative and demanding purchasers of health care services. In particular, we strongly urge that the Senate not approve any amendments that would penalize employers unless they meet prescriptive, “one-size-fits-all” coverage requirements or make minimum contributions to coverage. We also urge that employers not be penalized for short initial waiting periods up to 90 days (a particularly important issue for high turnover industries) and that the definition of “full-time” employees exclude temporary and seasonal workers.
- **Taxation of Retiree Drug Subsidies** – The Senate bill eliminates the current law tax exemption for the retiree drug subsidies provided to employers that maintain prescription drug coverage for retirees that is at least the same value as the Medicare Part D benefit. These subsidy payments and the tax exclusion for them were established by Congress as part of the Medicare Modernization Act of 2003 specifically to encourage employers to maintain these valuable benefits for their retirees. Moreover, this tax treatment was approved because it saves federal funds since it costs more for Medicare to provide the same benefits to its beneficiaries than what it spends to encourage employers to maintain this coverage. Taxing these subsidy payments will unquestionably result in more retirees losing prescription drug coverage under their employer plan, thereby increasing Medicare’s costs.

Moreover, under Financial Accounting Standard rules, companies that provide these benefits will be required to immediately restate their financial liabilities as of the date of enactment of health reform legislation to reflect the discounted present value of the loss of the current tax treatment. This serious and wholly unintended and inappropriate consequence of the tax change will result in a significant increase in liabilities for these companies – and commensurate losses in their earnings.

- **Annual Taxes on Insurers, Self-insured Plans and Other Stakeholders** – The Senate bill includes more than \$100 billion in “fees” over the next ten years to be paid by insurers, third-party administrators of self-insured health plans, and pharmaceutical and medical device manufacturers. These amounts would initially apply to revenues received in 2009 resulting in an immediate disruptive effect in the marketplace. The Congressional Budget Office has correctly advised Congress that these taxes are highly likely to be passed along in the form of higher prices to employers and employees for health care services. We strongly urge that these taxes, which will directly add to health care costs, be removed from the Senate bill.
- **High Cost Plan Excise Tax** – The Senate bill includes a 40 percent excise tax on the total value of all health-related coverage above \$8,500 (singles) and \$23,000 (families). Large numbers of employer plans (both public and private) are certain to exceed the new tax thresholds, not because they offer “Cadillac” or “gold-plated” benefits, 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 by one percent over the Consumer Price Index (CPI + 1) and therefore will increase at a much lower rate than health care costs. Health plan costs may also be higher than average due to geographic variations, the average age of the workforce and for health benefits offered to retirees. Because of these factors, eventually a large number of employers could face payment of the 40 percent excise tax unless significant benefit changes are made to avoid these costs.

We acknowledge that several adjustments have been made in these provisions from the version of the legislation initially approved by the Senate Finance Committee; however, these modifications are not sufficient to avoid substantial disruption to employer-sponsored plans, and inequitable results for employees and retirees. We strongly urge that additional changes be made. In particular, we urge that the thresholds be increased further, an annual index be used that reflects increases in health costs, retiree health coverage and employee contributions to coverage not be subject to the tax, and that supplementary benefits not be included for tax purposes.

- **Employer “Vouchers” for Employees Who Leave their Plan** -- Under the House-approved health reform bill and the Senate Patient Protection and Affordable Care Act, an employee may decline coverage under an employer plan, and elect coverage through the newly-established health insurance exchanges. It would be highly destabilizing to employer-sponsored coverage, however, if those who leave their plan were entitled to a “voucher” from their employer to purchase coverage in the insurance exchanges, as Senator Wyden has proposed be included in the Senate bill.

Employers should not be required to subsidize employees who decline coverage under an employer plan and opt to obtain coverage elsewhere. Under this approach, employees who

remain in the employer's plan would lose the value of the premium contributions from their co-workers who opt-out and obtain coverage in the insurance exchanges. This would result in higher costs for the plan sponsor as well as the employees who participate in the employer plan.

A more appropriate solution, in addition to any possible modifications to eligibility for subsidies in the exchanges, would be to allow those individuals who are not able to afford coverage offered under an employer plan to purchase low-cost catastrophic coverage (which includes comprehensive coverage for preventive care and access to primary care services). This approach is similar to one proposed by Senator Snowe during the Finance Committee's consideration of health care reform legislation and would make these low-cost plans affordable to those who might otherwise be uninsured.

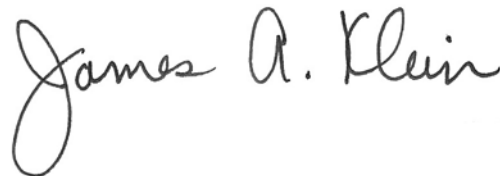
- **The Public Plan Option**– A public plan, particularly when combined with Medicare, Medicaid and other government plans, could be highly disruptive to the private health care marketplace. Under a public plan option, the government could become the largest health care purchaser in the under-65 health care market, as it already is for seniors. There would be tremendous pressure for the new public plan to pay below market rates, just as has been the case for 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. Focusing on achieving a more competitive and responsible private health insurance market is the right approach. Indeed, working toward that goal and fulfilling the significant new regulatory responsibilities that the government will be assuming in a reformed system will be challenging enough without the added burden to the government of establishing and administering another major health insurance program of its own.
- **Encouraging All Individuals to Obtain Coverage** -- A reformed and stable insurance market requires broad participation so that individuals do not wait to obtain health insurance only when they have an imminent need for medical care. 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. The Senate bill appropriately makes lower cost catastrophic coverage available to young adults and those who are not able to afford more comprehensive plans. But we encourage these plans to be more broadly available to allow more individuals to have coverage that meets their needs and ability to afford coverage. We are very concerned that the assessments for not obtaining coverage under the Senate bill are likely to be insufficient to encourage early and continuous enrollment in health coverage by as many individuals as possible.
- **Medical Liability Reform** – No version of health care reform, including the Senate bill has yet met the test of achieving the kind of real reform that is urgently needed in our medical liability system. Moreover, not only does the legislation not curtail medical liability, we are concerned that efforts might be made to amend the Senate bill in ways that expose employers and health plans to even greater liability than exists under current law. This would clearly represent a movement in the wrong direction and would be a strong signal to employers to cease sponsoring health plans for their workers and families.

The Congressional Budget Office has recently confirmed that there would be substantial savings to the federal government if meaningful 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. Responsible health reform legislation simply must not ignore this pressing issue. Therefore we continue to support efforts to include provisions to achieve meaningful liability reform as the legislation moves forward.

- **CLASS Act** – While we support public and private efforts to better meet the long-term care needs of the elderly and disabled individuals, we believe that the CLASS Act and other approaches to meeting these needs should be more thoroughly examined by Congress before the establishment of a major new entitlement obligation for the federal government. This is particularly important since Social Security and Medicare already face critical shortfalls and will likely compete for adequate resources with the new commitment in health reform legislation to adequately fund the premium subsidies needed to assist those with incomes up to 400 percent of the federal poverty level.

We appreciate that our concerns involve many difficult issues. However, we continue to believe that it is possible to achieve responsible and practical health care reform legislation that gets the fundamentals right for all Americans. We continue to be prepared to support such a bill. Much work will be needed during the full and open floor debate in the Senate in the weeks ahead to achieve a bill that employers can support, and we share your conviction to try our best to reach that goal.

Sincerely,

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

James A. Klein  
President

cc: Senate Members