



AMERICAN BENEFITS  
COUNCIL

June 17, 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, 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.

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.

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. Achieving system reform that makes health care more affordable and improves health quality,
2. 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,
3. 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,
4. Providing private market health insurance plan choices to individuals who do not obtain coverage through their employer, and
5. Retaining sensible and supportive tax policy which helps millions of individuals to obtain more affordable health coverage.

### **Making Health Care More Affordable and Improving Quality**

As President Obama said again this week when meeting with the American Medical Association, “when it comes to the cost of our health care, the status quo is unsustainable.” And just yesterday, CBO Director Elmendorf cautioned that “large reductions in spending will not actually be achieved without fundamental changes in the financing and delivery of health care.” We agree completely with the President’s statement and with Director Elmendorf’s cautions about the difficulty of the challenges we face in making meaningful and long overdue changes in how health care is delivered and financed.

Your bipartisan leadership to improve the quality and affordability of health care has been vitally important as the Finance Committee prepares to tackle the dual challenges of extending health coverage to all Americans and placing health care on a more sustainable path for the future. Indeed, for many employers who already provide excellent health care coverage to millions of Americans, the most essential reform of all will be evidence of tangible success reducing the rate at which health care costs rise. We are fully committed to working with you to help achieve these improvements.

In particular, we commend you for working to make health care more efficient by investing in health information technology that will lead to a fully-integrated nationwide electronic

exchange of records in our health care system. You have also recognized that health reform needs to build on the public-private collaborative agenda of measurement, reporting and reimbursement on the basis of proven performance. We then need to make price and performance information more easily accessible to consumers and purchasers so they can identify health care providers with a proven record of delivering high-quality care. And we need to rapidly move to payment policies that reward added-value, not simply added-volume, of health care services. We also support reasoned reform of current medical liability rules, including reforms that reign in unwarranted attorney's fees and excessive damage awards while providing safe harbor protections for health care providers and payers for decisions and practices that are evidence-based. Finally, we urge that we significantly increase the nation's capacity to conduct independent, valid comparative research on the clinical and cost effectiveness of medical technology and services to help identify the treatment options and services that will help ensure that more patients receive the right care for their condition.

### **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 far 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**

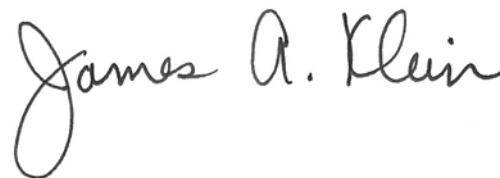
As Congress considers options to finance health care reform, it is very important to recognize that employers and employees are already paying the largest share of health care costs. In addition, we believe that the primary source of financing for health reform can and should come from savings achieved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