AMERICAN BENEFITS COUNCIL

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HEALTH CARE REFORM: THE NEED FOR PRAGMATIC, BIPARTISAN SOLUTIONS

For many years, the American people have sent two clear messages about the nation's healthcare system. First, Americans want to see change and improvements in both the cost and access to health care. And, second, Americans like the health benefits they receive through their employer.

The American people are right about both points. We do need health care reform. And we need pragmatic solutions that will reduce the cost of health care so that employers can continue to provide this valuable benefit to employees and their families.

As President Obama has said, "Soaring health care costs make our current course unsustainable." Employers completely agree. That is also why employers of all sizes – from the smallest family-owned firms to the largest national companies – are all working to achieve sensible health care reform. It is essential that we get it right because we cannot remain on a path where health care costs continue rising at rates that far exceed economic growth.

According to government estimates, over the period 2008-2018, average annual health spending growth (6.2%) is anticipated to outpace average annual growth in the overall economy (4.1%). By 2018, national health care spending is expected to double, reaching $4.4 trillion and comprise over one-fifth (20.3%) of GDP. For large employers, this rate of growth also translates into health care costs per employee more than doubling during the ten year period ending 2010.

If we fail to address these underlying costs and improve our health care system, rising health care costs will threaten the viability of U.S. businesses of all sizes and put job security, pay increases and other vital employee benefits at risk for millions of American workers.

Over the course of the past two years, employers have worked to make clear that there are several fundamental issues that health care reform must properly address to preserve our employment-based health care system, control costs and lead to our support. To date, employers have not seen legislative proposals where each of these core issues has been adequately resolved. Employers continue to work closely with the Senate Finance Committee where six senators led by Finance Committee Chairman Max Baucus (D-Montana) and the panel's ranking Republican Senator Charles Grassley (R-Iowa) are working to develop a bipartisan health reform proposal to be considered in September.

These are the core issues of concern to employers and where they currently stand in the House and Senate health reform proposals which have been considered so far:

ERISA

Employers strongly support and rely upon the predictability, flexibility and efficiency provided by the Employee Retirement Income Security Act (ERISA) framework, which has been a cornerstone of the employment-based healthcare system for nearly thirty-five years. ERISA provides a single set of federal rules that employers must meet when they offer benefits to all their employees. This makes it possible for employers to offer uniform benefits to all their employees, regardless of where they live, without being subject to differing and costly state law regulation of the content or administration of their benefit plans.

- The health care reform bill being considered in the House of Representatives, "America's Affordable Health Choices Act," H.R. 3200 would significantly increase employer burdens and costs by requiring all employers to meet highly detailed federal standards for health coverage after an initial five year "grace period".

- In addition, the House bill would require the federal government to waive ERISA's uniform regulatory framework for any state that enacts a "single-payer" health plan, which would force all residents in that state to obtain health coverage through a government-run plan and eliminate employer-sponsored coverage.

- The House bill also prohibits employers from making any modifications in retiree health coverage that results in a reduction of coverage or increase in retiree cost sharing. This provision overrides one of the most important principles in ERISA – the voluntary nature of employee benefits.

- Finally, not only does the House bill fail to include much-needed medical liability reform, it actually makes matters *worse* – creating more litigation and driving up the costs of health care services and coverage. It does this by applying unlimited state law remedies to employer-sponsored health coverage obtained in the future through newly-established health insurance exchanges.

Employer Mandates

Faced with a severe and continuing economic crisis, employers must continue to have the flexibility to determine an affordable level of benefits that meets the needs of their workforce. Both the House health care reform bill and a companion bill approved by the Senate Health, Education, Labor and Pensions Committee (HELP Committee) would require that employers either provide benefits that are consistent with prescriptive federal standards and make a minimum contribution to health coverage, or pay a penalty to the federal government for each employee in its total workforce.

One important reason that a "pay-or-play" approach would be an inappropriate coverage solution is that the myriad requirements that would inevitably be imposed on employers who might prefer to sponsor health coverage would ultimately, if unintentionally, result in a net <u>reduction</u> in employer-sponsored coverage by leading many companies over time 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.

In addition, employer mandates limit the flexibility and innovation that serves as the foundation of voluntary employer provided health care and do nothing to limit the overall growth in health care costs which is the primary reason why some employers are not able to offer health coverage to their workers.

The Public Plan

There is now widespread agreement that a reformed and well-regulated private insurance market is an essential component of health care reform. However, health care reform bills approved by the House Ways and Means Committee and the House Education and Labor Committee would require that private health plans also compete with a public health insurance plan option which would be permitted to pay health care providers and services using Medicare's artificially low payment rates.

The public health insurance plan would have an immediate and unfair competitive advantage if it is permitted to use Medicare's low payment rates. This would create two major problems:

- It would result in increased costs to employers and private health plans as health care providers would seek to make up for their lost revenue from the public plan option by cost-shifting to other payers. For example, according to a 2008 Milliman study, Medicare reimburses hospitals at an average of 70 percent of private plan reimbursements and pays physicians 78 percent of what they receive from private plans.

- It would inevitably destabilize the private health insurance market because individuals would be able to enroll in the public plan offered at below market premiums. This would leave individuals and employers with fewer and more costly private health plan choices.

By contrast, the reform legislation approved by the Senate Health, Education Labor and Pensions Committee and the House Energy and Commerce Committee would require that the public health insurance plan option negotiate with health care providers in setting payment rates, as private health plans do, which would help to establish a more "level playing field" between a public plan option and private insurers.

In a reformed health care system where individuals may enroll in any plan regardless of their personal health status and where new rating rules will apply, it is difficult to see the need for a public plan option in the marketplace. Rather than establish public health insurance plans options, vibrant competition among private health plan options in a reformed insurance market should be given every opportunity to succeed.

Taxation of Health Benefits

How to pay for the cost of health care reform could ultimately be the most difficult challenge of all. Some have recommended that health benefits should be taxed, either by taxing employees for some portion of the health benefits provided by an employer or by taxing the employer if it provides benefits above a certain threshold. While interest in the taxing employees for a portion of their health benefits appears to be declining, there is now growing interest in directly taxing employers if they provide "high cost" health coverage above a threshold that has yet to be specified. Either approach raises significant challenges and possible unintended consequences.

The cost of health coverage varies enormously based on geographic region and the age and health status of those in an insured group. Were benefits to be taxed, these common variations would lead to highly inequitable results, with some workers being taxed while their co-workers in other areas who are receiving the exact same coverage -- would not.

A number of other unintended consequences could result from taxing benefits. Younger workers could have an incentive to "opt out" of employer coverage, thereby destabilizing employer-sponsored group coverage. Moreover, a failure to adequately index the threshold where health benefits would be taxed would lead to more and more

Americans or employers being subjected to higher taxes over time -- just as the alternative minimum tax now captures far more people than originally contemplated. Other health-related benefits such as dental, vision and supplemental policies for particularly high-cost conditions such as cancer, as well as popular medical flexible spending arrangements, might need to be purchased on an after-tax basis – effectively making them much more expensive.

It is important to recognize that employers and employees are already paying the largest share of health care costs in this country. As a result, savings achieved by lowering health care costs and improving quality should continue to be the first and foremost sources of financing for health care reform.

Conclusion

As Congress considers health reform legislation, employers want to continue to work constructively to enact sensible solutions that first address the need make the cost of health care more sustainable while also retain the innovation and flexibility employers need to meet the needs of their employees. The best approach to achieving lasting health care reform is one that aims for broad bipartisan consensus which Americans deserve on such an important issue which will affect each of us personally for many years to come.