

**The  
ERISA  
Industry  
Committee**

November 3, 2008

The Honorable Max Baucus  
Chairman  
Senate Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Senate Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Mike Enzi  
Ranking Member  
Senate Committee on Health,  
Education, Labor and Pensions  
United States Senate  
428 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Ron Wyden  
Member  
Senate Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Ben Nelson  
Senator, Nebraska  
720 Hart Senate Office Building  
United States Senate  
Washington, DC 20510

Dear Chairman Baucus, Ranking Members Grassley and Enzi, and Senators Wyden and Nelson:

Thank you for the invitation to comment on the discussion draft of proposed legislation that would require employers to disclose health plan premium costs on the Form W-2. We have worked with your staffs on a variety of health care and pension reform issues in the past, and look forward to doing so over the next legislative session.

The ERISA Industry Committee (ERIC) is a non-profit association committed to representing the advancement of the employee retirement, health, and compensation plans of America's largest employers. ERIC's members provide benchmark retirement, health care coverage, compensation, and other economic security benefits directly to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their cost and their effectiveness, as well as the role of those benefits in the American economy.

ERIC sent an advisory to our members, with the discussion draft summary of your proposal attached, to ask them what impact the proposed required disclosures might have. We received many responses from companies in a wide cross section of industries.

In general, there was consensus among respondents that:

- The requirements would likely be unnecessarily burdensome in that they would require that employers conform the statements they already offer to employees describing their "total compensation" to a specific timetable and mode of computation.

- Moreover, companies often coordinate communications to employees with enrollment periods during which employees elect plan participation options. As a result, the prescribed timetable may even be counterproductive if the time of year that employees make decisions about their health care coverage options does not align with the time of year that they see their W-2 statements.
- It is unlikely that disclosing this information in the manner mandated would have significant impact on beneficiaries' health care decision making. Employees already receive information concerning their benefit plans in the form of Summary Plan Descriptions (SPDs) as well as other voluntary information from their employers. The problem is getting workers to read important information they already receive, not necessarily in getting employers to provide it.
- There is no evidence to support the premise, upon which this policy proposal is based, that an employer's benefit cost-sharing is interchangeable with wages and that health care dollars spent by employers would otherwise go to increasing workers' salaries.

In sum, ERIC members who reviewed this proposal do not believe that requiring W-2 reporting, and its administrative costs, would result in improvements to efficiency or effectiveness of employer group health plans; better value for beneficiaries; or that employees would make the connection between information reported on Form W-2 and their health care utilization. There are better ways to accomplish the ends that are sought and we would be pleased to discuss the matter with you.

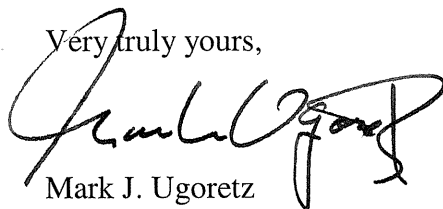
Many respondents also expressed strong disagreement with the notion that employers' sponsorship of health coverage is a form of "deferred compensation" that, in the absence of health coverage, would otherwise be provided to employees as wages. Employers that are able to offer group coverage do so for a number of business-related reasons. These include attracting and retaining valued employees, combating absenteeism, enhancing employee morale, and utilizing the purchasing power of large employers to provide employees with better coverage options than they would find in the individual market. We are not aware of any evidence that wages paid by comparable companies that do not provide health care coverage are greater than those companies that do provide coverage.

Our members support legislative measures that will increase the transparency of cost-driving elements in our medical system. ERIC also strongly supports increased disclosure about how provider reimbursement and prices for medical technologies and diagnostic technologies are set. We support efforts to develop interoperable electronic medical records that would also contribute to better information availability. We have advocated for increased transparency with regard to the comparative effectiveness of competing treatment options, in terms of health and cost benefits as well as evidenced based medicine. This information should be provided to health consumers who already have comparable information about other consumer goods and services.

The recordkeeping requirement of W-2 reporting is neither necessary nor productive while other information reporting would be far more efficient and effective and we would be prepared to discuss a different approach that would accomplish our common goals.

For your further information, I have attached as an addendum to this letter, a one-page summary of illustrative responses from our members to the discussion draft you released in October. We hope to continue this discussion with you and your colleagues through the next legislative session to incorporate meaningful and effective transparency-of-cost reforms in any health care package that comes up for consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark J. Ugoretz', with a stylized, flowing script.

Mark J. Ugoretz  
President & CEO

Feedback from ERIC Members to Questions Regarding Senators Baucus-Grassley-Enzi-Wyden-Nelson Proposal

- About three quarters of our respondents said employees have access to a “total value” statement, “summary annual report”, or “compensation and benefits” statement, that contain a range of information from the full premium for similarly situated group health plan participants and in some cases total medical expenditures by the company on an employee’s behalf. Policy makers should review these forms of information as among a variety of approaches that would be available and more effective.
- Some respondents talked about the timing of these statements to employers. As one respondent put it, “The total healthcare cost for employees in a calendar year ending 12/31 could not be evaluated in time for the printing of the W-2 statements. Our payroll department indicated that the normal deadline for preparation of printing is December 15<sup>th</sup>... If the number does not accurately reflect the same period as the W-2 how effective is the information?”
- “The Form W-2 requires exact reporting that does not easily lend to the complexity of calculating an amount related to the benefits provided under an employer-sponsored health care plan. Complications include factors such as coordination of benefits, subrogation, claim lag, subsequent litigation, Medicare Part D subsidies, and prescription drug rebates.”
- “This proposed legislation is reminiscent of Section 89 [of the Internal Revenue Code containing anti-discrimination tests for employer welfare benefit plans], which was repealed after employers objected to the significant, oppressive and costly challenges of plan valuations similar to the proposed reporting of health care costs on Forms W-2.”
- None of our respondents said they were convinced that disclosure of this information to employees would have any lasting impact to warrant the administrative burden of reporting it on the Form W-2. While some conceded there might be an initial shock value, many argued it would “confuse and distract employees.”
- It is an incorrect assumption that money spent on health care is “deferred compensation” and that health plan savings would be instantly transferred to regular earnings. Any policy that creates this impression, in the opinion of respondents, is counterproductive.