The ERISA Industry Committee

June 8, 2009

The Honorable Max Baucus
Chairman
Committee On Finance
U.S. Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Chuck Grassley
Ranking Member
Committee On Finance
U.S. Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Dear Chairman Baucus and Ranking Member Grassley:

The ERISA Industry Committee (ERIC) is pleased to take this opportunity to comment on Congressional health care reform proposals that are of critical importance to large employers.

ERIC is an association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive health benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that affect its members' ability to continue to deliver high-quality, cost-effective benefits.

ERIC strongly supports reforms to the nation's health care system that will increase its efficiency, reduce costs, and extend health care coverage to those who are uninsured or underinsured. Reining in health care costs is absolutely essential to this country's future economic success. Reforming the delivery and payment systems to achieve higher quality health care are important building blocks for health care reform as well.

ERIC is concerned, however, that some reform proposals could compromise the successful employer based system that currently provides health care to 170 million Americans who strongly support its continued viability. These plans form the backbone of America's health care system and are important to the ability of employers to attract and retain the talent they need to run their enterprises. When workers say that they value their health care plans, and when policy makers stress that employees may keep the plans they like, they are referring to employment-based health care.

Employer-sponsored plans provide quality health care to American workers and their families. These plans extend health coverage that does not discriminate, financially or otherwise, on the basis of gender, health status, age, or geographic location. Preexisting condition limitations are strictly controlled. Major employer plans, in particular, cover significant populations of employees that create a large pool, spreading risk and bringing down the cost of coverage for employers and employees alike.

1400 L Street, N.W.
Suite 350
Washington, DC 20005
T (202) 789-1400
F (202) 789-1120
www.eric.org

Employer-sponsored plans are the source of much of the innovation in the nation's health care practices, and these plans lead the way in implementing prevention and wellness programs that address chronic diseases and other core factors contributing to the escalation of health care costs in this country. The employer-based system has been the source of more innovation and efficiency and enjoys greater support among its beneficiaries than any other delivery system. The mechanisms and principles that make it successful should be extended to those businesses, workers, and individuals who currently cannot take full advantage of it.

ERIC is concerned that proposals addressing the following issues have the potential to seriously undermine the current employment-based system:

- Taxation of health care benefits,
- The creation of a public plan,
- Employer mandates,
- Employee opt-outs, and
- National uniformity and ERISA preemption.

ERIC's concerns with respect to each of these issues are detailed below.

TAXATION OF BENEFITS

Under current federal law, the value of employer-provided health benefits is not included in an employee's taxable income, nor are these benefits subject to payroll taxes. This favorable tax treatment generally extends only to benefits provided through group health plans and, thus, is not available for health insurance purchased by individuals; some proposals, such as ERIC's New Benefit Platform for Life Security, would extend the tax favored status of health care coverage to all Americans.

Several proposals have been made to curtail the favorable tax treatment of employer-provided health benefits. One proposal would eliminate the exclusion entirely. Others would impose a cap based on the value of health insurance, an individual's income, or a combination of the two. To our knowledge, no proposals are under consideration that would reduce an employer's ability to deduct expenses paid for employee health care.

ERIC has serious concerns with limiting the ability of an employee to exclude from income the value of employer-provided health insurance. If this exclusion were curtailed, employment-based insurance could suffer. Young, healthy employees would exit their employers' plans in search of cheaper coverage rather than pay taxes on a more expensive plan. A plan that once had a favorable and balanced risk pool would now be left with an older, sicker, more costly population whose premiums would eventually become unsustainable. Loss of a large, viable risk pool would greatly diminish an employer's ability to offer efficient and innovative health care coverage to its employees. As the cost of providing benefits increased, more employers would exit the system.

Some employers might feel pressure to increase wages to compensate employees for the additional taxation of their health benefits. Most employers, however, would be faced with the bleak choice of

severing some employees in order to increase the wages of others or taking no action in response to the increased taxes and diminished take-home pay of their employees.

Further, a proposal to limit the tax-favored treatment of employer-provided health insurance would raise difficult practical questions regarding the valuation of these benefits, especially when geographic, age, gender, firm size, and other distinctions are taken into account. Imposing a cap on the exclusion – let alone subjecting the entire benefit to taxation - would be very difficult, if not impossible, to accomplish in an equitable or efficient manner. Determining the "value" of a benefit package or a premium is an enterprise that has eluded the most sophisticated actuarial and economic modeling for decades. Indeed, an effort to do so many years ago – section 89 of the Internal Revenue Code – became so cumbersome and unpopular that it was repealed shortly after it was enacted.

The rationale for curtailing the exemption is principally that it would increase revenue to offset the cost of reform. Another rationale is that taxing workers on their coverage would encourage them to use the health care system in a more efficient manner. We are unaware of any comprehensive studies that indicate that increasing taxes on consumers would result in more responsible decision-making or health care consumption.

THE CREATION OF A PUBLIC PLAN

Although the parameters of a public plan have not been fully fleshed out – and in some cases the outlines differ radically from one proposal to another – the gist of this recommendation is that a government-run public plan would compete with the private sector to offer health care coverage.

We have several primary concerns with a government-run plan. First, the prospect of cost-shifting to private employers from a public plan, replicating the pattern of Medicare and Medicaid, is daunting. Under-reimbursing providers in a public plan will lead inevitably to higher provider bills for those in private plans. Health care costs are already rising at an unsustainable rate; an increased level of cost-shifting would accelerate the point at which employers would no longer be able to afford quality health care for their employees. Indeed, the example of Medicare's fiscal unsustainability should raise a warning flag.

Second, if a government-run plan were to be subsidized or otherwise able to operate on a non-level playing field with the private sector, this would lead to a weakening of private insurance. Eventually, cheaper public plans - not held to the same financial requirements or other standards as private plans - would "crowd out" private plans, and employees would be left with no viable option to a government-run health plan.

Crowding out would have an immediate adverse impact on the development of practices to improve the quality of health care and the pursuit of innovative strategies to bring health care costs under control that are core strengths of the employment-based system.

In addition, we question whether it is an appropriate role for the government to establish an enterprise to compete with private sector plans, particularly if these enterprises do not face the same economic and fiscal restraints to which private plans are subject.

EMPLOYER MANDATES

In some recent health care reform proposals, employer mandates have taken the form of "pay-or-play" mechanisms, whereby employers would be required to offer a specified level of health insurance coverage (as well as prescribed benefits) to their employees or pay a penalty. The coverage would need to meet a defined actuarial value (or some other specified minimum), and employers would need to contribute a certain percentage of the cost of the health insurance. Other forms of mandates have also been suggested; the hallmark of government mandates is the substitution of government-imposed rules for employer flexibility and innovation.

Our concerns with employer mandates center on costs, flexibility, and appropriate design. Employer mandates by definition will restrict the ability of employers to devise and operate health care plans that best meet the needs of employees. The imposition, for instance, of a minimum plan actuarial value would in many cases either increase costs for employers or force the realignment of health care dollars to pay for government-required benefits to the detriment of compensation and other benefits also highly valued by employees.

Employer mandates and punitive regulatory regimes will discourage employers from continuing to provide quality, affordable health care to their employees. For evidence of this, one need look no farther than to the defined benefit pension plan system, which once was the principal source of retirement savings for millions of American workers but which now provides a secure retirement to only a lucky few. A comparable impact on the employment-based health care system would leave millions of Americans with neither health care coverage nor a secure retirement.

In general, many of the proposals and options now under consideration – including a limitation on the tax exclusion for employer-provided health care - ignore the fact that employers provide health care coverage and other benefits as a workforce retention and recruitment tool (as well as a key element in fostering enhanced workforce productivity), offering competitive advantages over other companies to attract and retain valued workers. To the extent that government intervention diminishes an employer's ability to provide attractive benefit plans targeted to the needs of its workforce, this ability to recruit and retain employees and enhance productivity will be seriously undermined. We are concerned that, these proposals, if enacted, will discourage employers from sponsoring benefits.

EMPLOYEE OPT-OUTS

We are especially concerned that employer "pay-or-play" mandates would permit employees to *opt out* of their employer's plan and *opt in* to a public plan or another plan offered through an exchange mechanism. Under such a scheme, employees could choose either to receive employer-provided coverage or opt out of employer coverage and pay for alternative coverage secured through an exchange. The employer would be required to pay to the exchange on behalf of these workers the amount that otherwise would have been paid for their health care had they stayed in the employer's plan.

Allowing employees to opt out of employer-provided coverage will likely result in adverse selection. Young, healthy employees who are looking for cheaper alternatives to employer-based coverage will

be the first to opt out if the public plan rates are held artificially lower and thus have an unfair competitive advantage with employer plans. The problem would be exacerbated by loss of favorable tax treatment accorded employer-provided health care coverage.

This exodus of young, healthy employees from the employer plan will rob the plan of the most favorable elements of its risk pool, undermine the fundamental insurance principles of the employer's coverage, and leave older, sicker employees in the employer plan. As time passes, premium costs for those left in the plan will grow ever higher; if employees are allowed to make an annual choice between an exchange plan and their employer's plan, the employer plans are likely to serve as a haven for those employees with the worst risk profiles. Eventually the plan could be harmed to the point where the employer would be compelled to end coverage and force any remaining participants into alternative coverage provided through the exchange.

Another problem attributable to opt-outs would be created if state control of health exchanges resulted in benefits that differed depending on the employee's state of residence or employment. Workers and their families who were transferred from one state to another by their employer (a common practice) could suffer significant disruption in their benefits if they opted out of a national, uniform employer plan and into a plan that varied from state to state, an effect that does not currently occur under our nationally uniform system of employer coverage. This would compromise the benefits of ERISA for both employers and workers that potentially would need to deal with 50 different state exchanges.

PREEMPTION

The national uniformity and preemption doctrine of ERISA has meant that self-insured employers need adhere only to one set of federal rules and not to 3000+ sets of rules and regulations that potentially could be promulgated by states and municipalities in the absence of an overarching federal regime.

Preemption is the *sine qua non* of employment-based multistate health care coverage. Without it, the vast majority of employer health plans simply could not exist because of the administrative and other costs necessary to comply with multiple sets of rules and the consequences of having to offer different benefits to employees performing the same work but not living in the same location. The original Congressional sponsors of ERISA all recognized the critical nature of the preemption provision. We hope that preemption will continue to be accorded a top priority.

IN CONCLUSION

We appreciate the considerable time and effort that has been devoted in Congress and elsewhere to the goal of developing recommendations for the reform and improvement of the nation's health care system. Having been intimately involved in the health reform efforts of the last 30 years, we appreciate the difficulties inherent in this task, and we remain committed to the effort. We believe that the control of health care costs and the expansion of health care coverage are essential to this country's economic prosperity. At the same time, we are firmly convinced that the high quality, affordable, innovative health care provided to 170 million Americans must not be undermined or diminished by this effort.

We are submitting these comments in the spirit of trying to play a constructive role in health care reform. In this context, we have also developed a comprehensive "New Benefit Platform for Life Security" that would extend the advantages of our members' success to all employers, both large and small, the self employed, and those individuals who have not been able to afford coverage. (The Platform is available at www.eric.org. We would be happy to provide you a copy if you request one.) We have been, and continue to be, proactively engaged in the reform effort and will support proposals that further our common goals.

ERIC would welcome the opportunity to work with you and your staff to develop these proposals further. For more information, please contact me or Gretchen Young, Vice President, Health Policy, at (202) 789-1400.

Sincerely,

Mark J. Ugoretz
President

cc: Senate Finance Committee
Senate Health, Education, Labor, and Pensions
House Ways & Means
House Energy and Commerce
House Education and Labor

The ERISA Industry Committee

June 8, 2009

The Honorable Edward M. Kennedy
Chairman
Committee On Health, Education,
Labor and Pension
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael B. Enzi
Ranking Member
Committee On Health, Education,
Labor and Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Kennedy and Ranking Member Enzi:

The ERISA Industry Committee (ERIC) is pleased to take this opportunity to comment on Congressional health care reform proposals that are of critical importance to large employers.

ERIC is an association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive health benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that affect its members' ability to continue to deliver high-quality, cost-effective benefits.

ERIC strongly supports reforms to the nation's health care system that will increase its efficiency, reduce costs, and extend health care coverage to those who are uninsured or underinsured. Reining in health care costs is absolutely essential to this country's future economic success. Reforming the delivery and payment systems to achieve higher quality health care are important building blocks for health care reform as well.

ERIC is concerned, however, that some reform proposals could compromise the successful employer based system that currently provides health care to 170 million Americans who strongly support its continued viability. These plans form the backbone of America's health care system and are important to the ability of employers to attract and retain the talent they need to run their enterprises. When workers say that they value their health care plans, and when policy makers stress that employees may keep the plans they like, they are referring to employment-based health care.

Employer-sponsored plans provide quality health care to American workers and their families. These plans extend health coverage that does not discriminate, financially or otherwise, on the basis of gender, health status, age, or geographic location. Preexisting condition limitations are strictly controlled. Major employer plans, in particular, cover significant populations of employees that create a large pool, spreading risk and bringing down the cost of coverage for employers and employees alike.

1400 L Street, N.W.
Suite 350
Washington, DC 20005
T (202) 789-1400
F (202) 789-1120
www.eric.org

Employer-sponsored plans are the source of much of the innovation in the nation's health care practices, and these plans lead the way in implementing prevention and wellness programs that address chronic diseases and other core factors contributing to the escalation of health care costs in this country. The employer-based system has been the source of more innovation and efficiency and enjoys greater support among its beneficiaries than any other delivery system. The mechanisms and principles that make it successful should be extended to those businesses, workers, and individuals who currently cannot take full advantage of it.

ERIC is concerned that proposals addressing the following issues have the potential to seriously undermine the current employment-based system:

- Taxation of health care benefits,
- The creation of a public plan,
- Employer mandates,
- Employee opt-outs, and
- National uniformity and ERISA preemption.

ERIC's concerns with respect to each of these issues are detailed below.

TAXATION OF BENEFITS

Under current federal law, the value of employer-provided health benefits is not included in an employee's taxable income, nor are these benefits subject to payroll taxes. This favorable tax treatment generally extends only to benefits provided through group health plans and, thus, is not available for health insurance purchased by individuals; some proposals, such as ERIC's New Benefit Platform for Life Security, would extend the tax favored status of health care coverage to all Americans.

Several proposals have been made to curtail the favorable tax treatment of employer-provided health benefits. One proposal would eliminate the exclusion entirely. Others would impose a cap based on the value of health insurance, an individual's income, or a combination of the two. To our knowledge, no proposals are under consideration that would reduce an employer's ability to deduct expenses paid for employee health care.

ERIC has serious concerns with limiting the ability of an employee to exclude from income the value of employer-provided health insurance. If this exclusion were curtailed, employment-based insurance could suffer. Young, healthy employees would exit their employers' plans in search of cheaper coverage rather than pay taxes on a more expensive plan. A plan that once had a favorable and balanced risk pool would now be left with an older, sicker, more costly population whose premiums would eventually become unsustainable. Loss of a large, viable risk pool would greatly diminish an employer's ability to offer efficient and innovative health care coverage to its employees. As the cost of providing benefits increased, more employers would exit the system.

Some employers might feel pressure to increase wages to compensate employees for the additional taxation of their health benefits. Most employers, however, would be faced with the bleak choice of

severing some employees in order to increase the wages of others or taking no action in response to the increased taxes and diminished take-home pay of their employees.

Further, a proposal to limit the tax-favored treatment of employer-provided health insurance would raise difficult practical questions regarding the valuation of these benefits, especially when geographic, age, gender, firm size, and other distinctions are taken into account. Imposing a cap on the exclusion – let alone subjecting the entire benefit to taxation - would be very difficult, if not impossible, to accomplish in an equitable or efficient manner. Determining the "value" of a benefit package or a premium is an enterprise that has eluded the most sophisticated actuarial and economic modeling for decades. Indeed, an effort to do so many years ago – section 89 of the Internal Revenue Code – became so cumbersome and unpopular that it was repealed shortly after it was enacted.

The rationale for curtailing the exemption is principally that it would increase revenue to offset the cost of reform. Another rationale is that taxing workers on their coverage would encourage them to use the health care system in a more efficient manner. We are unaware of any comprehensive studies that indicate that increasing taxes on consumers would result in more responsible decision-making or health care consumption.

THE CREATION OF A PUBLIC PLAN

Although the parameters of a public plan have not been fully fleshed out – and in some cases the outlines differ radically from one proposal to another – the gist of this recommendation is that a government-run public plan would compete with the private sector to offer health care coverage.

We have several primary concerns with a government-run plan. First, the prospect of cost-shifting to private employers from a public plan, replicating the pattern of Medicare and Medicaid, is daunting. Under-reimbursing providers in a public plan will lead inevitably to higher provider bills for those in private plans. Health care costs are already rising at an unsustainable rate; an increased level of cost-shifting would accelerate the point at which employers would no longer be able to afford quality health care for their employees. Indeed, the example of Medicare's fiscal unsustainability should raise a warning flag.

Second, if a government-run plan were to be subsidized or otherwise able to operate on a non-level playing field with the private sector, this would lead to a weakening of private insurance. Eventually, cheaper public plans - not held to the same financial requirements or other standards as private plans - would "crowd out" private plans, and employees would be left with no viable option to a government-run health plan.

Crowding out would have an immediate adverse impact on the development of practices to improve the quality of health care and the pursuit of innovative strategies to bring health care costs under control that are core strengths of the employment-based system.

In addition, we question whether it is an appropriate role for the government to establish an enterprise to compete with private sector plans, particularly if these enterprises do not face the same economic and fiscal restraints to which private plans are subject.

EMPLOYER MANDATES

In some recent health care reform proposals, employer mandates have taken the form of "pay-or-play" mechanisms, whereby employers would be required to offer a specified level of health insurance coverage (as well as prescribed benefits) to their employees or pay a penalty. The coverage would need to meet a defined actuarial value (or some other specified minimum), and employers would need to contribute a certain percentage of the cost of the health insurance. Other forms of mandates have also been suggested; the hallmark of government mandates is the substitution of government-imposed rules for employer flexibility and innovation.

Our concerns with employer mandates center on costs, flexibility, and appropriate design. Employer mandates by definition will restrict the ability of employers to devise and operate health care plans that best meet the needs of employees. The imposition, for instance, of a minimum plan actuarial value would in many cases either increase costs for employers or force the realignment of health care dollars to pay for government-required benefits to the detriment of compensation and other benefits also highly valued by employees.

Employer mandates and punitive regulatory regimes will discourage employers from continuing to provide quality, affordable health care to their employees. For evidence of this, one need look no farther than to the defined benefit pension plan system, which once was the principal source of retirement savings for millions of American workers but which now provides a secure retirement to only a lucky few. A comparable impact on the employment-based health care system would leave millions of Americans with neither health care coverage nor a secure retirement.

In general, many of the proposals and options now under consideration – including a limitation on the tax exclusion for employer-provided health care - ignore the fact that employers provide health care coverage and other benefits as a workforce retention and recruitment tool (as well as a key element in fostering enhanced workforce productivity), offering competitive advantages over other companies to attract and retain valued workers. To the extent that government intervention diminishes an employer's ability to provide attractive benefit plans targeted to the needs of its workforce, this ability to recruit and retain employees and enhance productivity will be seriously undermined. We are concerned that, these proposals, if enacted, will discourage employers from sponsoring benefits.

EMPLOYEE OPT-OUTS

We are especially concerned that employer "pay-or-play" mandates would permit employees to *opt out* of their employer's plan and *opt in* to a public plan or another plan offered through an exchange mechanism. Under such a scheme, employees could choose either to receive employer-provided coverage or opt out of employer coverage and pay for alternative coverage secured through an exchange. The employer would be required to pay to the exchange on behalf of these workers the amount that otherwise would have been paid for their health care had they stayed in the employer's plan.

Allowing employees to opt out of employer-provided coverage will likely result in adverse selection. Young, healthy employees who are looking for cheaper alternatives to employer-based coverage will

be the first to opt out if the public plan rates are held artificially lower and thus have an unfair competitive advantage with employer plans. The problem would be exacerbated by loss of favorable tax treatment accorded employer-provided health care coverage.

This exodus of young, healthy employees from the employer plan will rob the plan of the most favorable elements of its risk pool, undermine the fundamental insurance principles of the employer's coverage, and leave older, sicker employees in the employer plan. As time passes, premium costs for those left in the plan will grow ever higher; if employees are allowed to make an annual choice between an exchange plan and their employer's plan, the employer plans are likely to serve as a haven for those employees with the worst risk profiles. Eventually the plan could be harmed to the point where the employer would be compelled to end coverage and force any remaining participants into alternative coverage provided through the exchange.

Another problem attributable to opt-outs would be created if state control of health exchanges resulted in benefits that differed depending on the employee's state of residence or employment. Workers and their families who were transferred from one state to another by their employer (a common practice) could suffer significant disruption in their benefits if they opted out of a national, uniform employer plan and into a plan that varied from state to state, an effect that does not currently occur under our nationally uniform system of employer coverage. This would compromise the benefits of ERISA for both employers and workers that potentially would need to deal with 50 different state exchanges.

PREEMPTION

The national uniformity and preemption doctrine of ERISA has meant that self-insured employers need adhere only to one set of federal rules and not to 3000+ sets of rules and regulations that potentially could be promulgated by states and municipalities in the absence of an overarching federal regime.

Preemption is the *sine qua non* of employment-based multistate health care coverage. Without it, the vast majority of employer health plans simply could not exist because of the administrative and other costs necessary to comply with multiple sets of rules and the consequences of having to offer different benefits to employees performing the same work but not living in the same location. The original Congressional sponsors of ERISA all recognized the critical nature of the preemption provision. We hope that preemption will continue to be accorded a top priority.

IN CONCLUSION

We appreciate the considerable time and effort that has been devoted in Congress and elsewhere to the goal of developing recommendations for the reform and improvement of the nation's health care system. Having been intimately involved in the health reform efforts of the last 30 years, we appreciate the difficulties inherent in this task, and we remain committed to the effort. We believe that the control of health care costs and the expansion of health care coverage are essential to this country's economic prosperity. At the same time, we are firmly convinced that the high quality, affordable, innovative health care provided to 170 million Americans must not be undermined or diminished by this effort.

We are submitting these comments in the spirit of trying to play a constructive role in health care reform. In this context, we have also developed a comprehensive "New Benefit Platform for Life Security" that would extend the advantages of our members' success to all employers, both large and small, the self employed, and those individuals who have not been able to afford coverage. (The Platform is available at www.eric.org. We would be happy to provide you a copy if you request one.) We have been, and continue to be, proactively engaged in the reform effort and will support proposals that further our common goals.

ERIC would welcome the opportunity to work with you and your staff to develop these proposals further. For more information, please contact me or Gretchen Young, Vice President, Health Policy, at (202) 789-1400.

Sincerely,

Mark J. Ugoretz
President

cc: Senate Finance Committee
Senate Health, Education, Labor, and Pensions
House Ways & Means
House Energy and Commerce
House Education and Labor

The ERISA Industry Committee

June 8, 2009

The Honorable Charles B. Rangel
Chairman
Committee On Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable David Camp
Ranking Member
Committee On Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rangel and Ranking Member Camp:

The ERISA Industry Committee (ERIC) is pleased to take this opportunity to comment on Congressional health care reform proposals that are of critical importance to large employers.

ERIC is an association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive health benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that affect its members' ability to continue to deliver high-quality, cost-effective benefits.

ERIC strongly supports reforms to the nation's health care system that will increase its efficiency, reduce costs, and extend health care coverage to those who are uninsured or underinsured. Reining in health care costs is absolutely essential to this country's future economic success. Reforming the delivery and payment systems to achieve higher quality health care are important building blocks for health care reform as well.

ERIC is concerned, however, that some reform proposals could compromise the successful employer based system that currently provides health care to 170 million Americans who strongly support its continued viability. These plans form the backbone of America's health care system and are important to the ability of employers to attract and retain the talent they need to run their enterprises. When workers say that they value their health care plans, and when policy makers stress that employees may keep the plans they like, they are referring to employment-based health care.

Employer-sponsored plans provide quality health care to American workers and their families. These plans extend health coverage that does not discriminate, financially or otherwise, on the basis of gender, health status, age, or geographic location. Preexisting condition limitations are strictly controlled. Major employer plans, in particular, cover significant populations of employees that create a large pool, spreading risk and bringing down the cost of coverage for employers and employees alike.

1400 L Street, N.W.
Suite 350
Washington, DC 20005
T (202) 789-1400
F (202) 789-1120
www.eric.org

Employer-sponsored plans are the source of much of the innovation in the nation's health care practices, and these plans lead the way in implementing prevention and wellness programs that address chronic diseases and other core factors contributing to the escalation of health care costs in this country. The employer-based system has been the source of more innovation and efficiency and enjoys greater support among its beneficiaries than any other delivery system. The mechanisms and principles that make it successful should be extended to those businesses, workers, and individuals who currently cannot take full advantage of it.

ERIC is concerned that proposals addressing the following issues have the potential to seriously undermine the current employment-based system:

- Taxation of health care benefits,
- The creation of a public plan,
- Employer mandates,
- Employee opt-outs, and
- National uniformity and ERISA preemption.

ERIC's concerns with respect to each of these issues are detailed below.

TAXATION OF BENEFITS

Under current federal law, the value of employer-provided health benefits is not included in an employee's taxable income, nor are these benefits subject to payroll taxes. This favorable tax treatment generally extends only to benefits provided through group health plans and, thus, is not available for health insurance purchased by individuals; some proposals, such as ERIC's New Benefit Platform for Life Security, would extend the tax favored status of health care coverage to all Americans.

Several proposals have been made to curtail the favorable tax treatment of employer-provided health benefits. One proposal would eliminate the exclusion entirely. Others would impose a cap based on the value of health insurance, an individual's income, or a combination of the two. To our knowledge, no proposals are under consideration that would reduce an employer's ability to deduct expenses paid for employee health care.

ERIC has serious concerns with limiting the ability of an employee to exclude from income the value of employer-provided health insurance. If this exclusion were curtailed, employment-based insurance could suffer. Young, healthy employees would exit their employers' plans in search of cheaper coverage rather than pay taxes on a more expensive plan. A plan that once had a favorable and balanced risk pool would now be left with an older, sicker, more costly population whose premiums would eventually become unsustainable. Loss of a large, viable risk pool would greatly diminish an employer's ability to offer efficient and innovative health care coverage to its employees. As the cost of providing benefits increased, more employers would exit the system.

Some employers might feel pressure to increase wages to compensate employees for the additional taxation of their health benefits. Most employers, however, would be faced with the bleak choice of

severing some employees in order to increase the wages of others or taking no action in response to the increased taxes and diminished take-home pay of their employees.

Further, a proposal to limit the tax-favored treatment of employer-provided health insurance would raise difficult practical questions regarding the valuation of these benefits, especially when geographic, age, gender, firm size, and other distinctions are taken into account. Imposing a cap on the exclusion – let alone subjecting the entire benefit to taxation - would be very difficult, if not impossible, to accomplish in an equitable or efficient manner. Determining the "value" of a benefit package or a premium is an enterprise that has eluded the most sophisticated actuarial and economic modeling for decades. Indeed, an effort to do so many years ago – section 89 of the Internal Revenue Code – became so cumbersome and unpopular that it was repealed shortly after it was enacted.

The rationale for curtailing the exemption is principally that it would increase revenue to offset the cost of reform. Another rationale is that taxing workers on their coverage would encourage them to use the health care system in a more efficient manner. We are unaware of any comprehensive studies that indicate that increasing taxes on consumers would result in more responsible decision-making or health care consumption.

THE CREATION OF A PUBLIC PLAN

Although the parameters of a public plan have not been fully fleshed out – and in some cases the outlines differ radically from one proposal to another – the gist of this recommendation is that a government-run public plan would compete with the private sector to offer health care coverage.

We have several primary concerns with a government-run plan. First, the prospect of cost-shifting to private employers from a public plan, replicating the pattern of Medicare and Medicaid, is daunting. Under-reimbursing providers in a public plan will lead inevitably to higher provider bills for those in private plans. Health care costs are already rising at an unsustainable rate; an increased level of cost-shifting would accelerate the point at which employers would no longer be able to afford quality health care for their employees. Indeed, the example of Medicare's fiscal unsustainability should raise a warning flag.

Second, if a government-run plan were to be subsidized or otherwise able to operate on a non-level playing field with the private sector, this would lead to a weakening of private insurance. Eventually, cheaper public plans - not held to the same financial requirements or other standards as private plans - would "crowd out" private plans, and employees would be left with no viable option to a government-run health plan.

Crowding out would have an immediate adverse impact on the development of practices to improve the quality of health care and the pursuit of innovative strategies to bring health care costs under control that are core strengths of the employment-based system.

In addition, we question whether it is an appropriate role for the government to establish an enterprise to compete with private sector plans, particularly if these enterprises do not face the same economic and fiscal restraints to which private plans are subject.

EMPLOYER MANDATES

In some recent health care reform proposals, employer mandates have taken the form of "pay-or-play" mechanisms, whereby employers would be required to offer a specified level of health insurance coverage (as well as prescribed benefits) to their employees or pay a penalty. The coverage would need to meet a defined actuarial value (or some other specified minimum), and employers would need to contribute a certain percentage of the cost of the health insurance. Other forms of mandates have also been suggested; the hallmark of government mandates is the substitution of government-imposed rules for employer flexibility and innovation.

Our concerns with employer mandates center on costs, flexibility, and appropriate design. Employer mandates by definition will restrict the ability of employers to devise and operate health care plans that best meet the needs of employees. The imposition, for instance, of a minimum plan actuarial value would in many cases either increase costs for employers or force the realignment of health care dollars to pay for government-required benefits to the detriment of compensation and other benefits also highly valued by employees.

Employer mandates and punitive regulatory regimes will discourage employers from continuing to provide quality, affordable health care to their employees. For evidence of this, one need look no farther than to the defined benefit pension plan system, which once was the principal source of retirement savings for millions of American workers but which now provides a secure retirement to only a lucky few. A comparable impact on the employment-based health care system would leave millions of Americans with neither health care coverage nor a secure retirement.

In general, many of the proposals and options now under consideration – including a limitation on the tax exclusion for employer-provided health care - ignore the fact that employers provide health care coverage and other benefits as a workforce retention and recruitment tool (as well as a key element in fostering enhanced workforce productivity), offering competitive advantages over other companies to attract and retain valued workers. To the extent that government intervention diminishes an employer's ability to provide attractive benefit plans targeted to the needs of its workforce, this ability to recruit and retain employees and enhance productivity will be seriously undermined. We are concerned that, these proposals, if enacted, will discourage employers from sponsoring benefits.

EMPLOYEE OPT-OUTS

We are especially concerned that employer "pay-or-play" mandates would permit employees to *opt out* of their employer's plan and *opt in* to a public plan or another plan offered through an exchange mechanism. Under such a scheme, employees could choose either to receive employer-provided coverage or opt out of employer coverage and pay for alternative coverage secured through an exchange. The employer would be required to pay to the exchange on behalf of these workers the amount that otherwise would have been paid for their health care had they stayed in the employer's plan.

Allowing employees to opt out of employer-provided coverage will likely result in adverse selection. Young, healthy employees who are looking for cheaper alternatives to employer-based coverage will

be the first to opt out if the public plan rates are held artificially lower and thus have an unfair competitive advantage with employer plans. The problem would be exacerbated by loss of favorable tax treatment accorded employer-provided health care coverage.

This exodus of young, healthy employees from the employer plan will rob the plan of the most favorable elements of its risk pool, undermine the fundamental insurance principles of the employer's coverage, and leave older, sicker employees in the employer plan. As time passes, premium costs for those left in the plan will grow ever higher; if employees are allowed to make an annual choice between an exchange plan and their employer's plan, the employer plans are likely to serve as a haven for those employees with the worst risk profiles. Eventually the plan could be harmed to the point where the employer would be compelled to end coverage and force any remaining participants into alternative coverage provided through the exchange.

Another problem attributable to opt-outs would be created if state control of health exchanges resulted in benefits that differed depending on the employee's state of residence or employment. Workers and their families who were transferred from one state to another by their employer (a common practice) could suffer significant disruption in their benefits if they opted out of a national, uniform employer plan and into a plan that varied from state to state, an effect that does not currently occur under our nationally uniform system of employer coverage. This would compromise the benefits of ERISA for both employers and workers that potentially would need to deal with 50 different state exchanges.

PREEMPTION

The national uniformity and preemption doctrine of ERISA has meant that self-insured employers need adhere only to one set of federal rules and not to 3000+ sets of rules and regulations that potentially could be promulgated by states and municipalities in the absence of an overarching federal regime.

Preemption is the *sine qua non* of employment-based multistate health care coverage. Without it, the vast majority of employer health plans simply could not exist because of the administrative and other costs necessary to comply with multiple sets of rules and the consequences of having to offer different benefits to employees performing the same work but not living in the same location. The original Congressional sponsors of ERISA all recognized the critical nature of the preemption provision. We hope that preemption will continue to be accorded a top priority.

IN CONCLUSION

We appreciate the considerable time and effort that has been devoted in Congress and elsewhere to the goal of developing recommendations for the reform and improvement of the nation's health care system. Having been intimately involved in the health reform efforts of the last 30 years, we appreciate the difficulties inherent in this task, and we remain committed to the effort. We believe that the control of health care costs and the expansion of health care coverage are essential to this country's economic prosperity. At the same time, we are firmly convinced that the high quality, affordable, innovative health care provided to 170 million Americans must not be undermined or diminished by this effort.

We are submitting these comments in the spirit of trying to play a constructive role in health care reform. In this context, we have also developed a comprehensive "New Benefit Platform for Life Security" that would extend the advantages of our members' success to all employers, both large and small, the self employed, and those individuals who have not been able to afford coverage. (The Platform is available at www.eric.org. We would be happy to provide you a copy if you request one.) We have been, and continue to be, proactively engaged in the reform effort and will support proposals that further our common goals.

ERIC would welcome the opportunity to work with you and your staff to develop these proposals further. For more information, please contact me or Gretchen Young, Vice President, Health Policy, at (202) 789-1400.

Sincerely,

Mark J. Ugoretz
President

cc: Senate Finance Committee
Senate Health, Education, Labor, and Pensions
House Ways & Means
House Energy and Commerce
House Education and Labor

The ERISA Industry Committee

June 8, 2009

The Honorable George Miller
Chairman
Committee On Education & Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable Howard "Buck" McKeon
Ranking Member
Committee On Education & Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

The ERISA Industry Committee (ERIC) is pleased to take this opportunity to comment on Congressional health care reform proposals that are of critical importance to large employers.

ERIC is an association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive health benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that affect its members' ability to continue to deliver high-quality, cost-effective benefits.

ERIC strongly supports reforms to the nation's health care system that will increase its efficiency, reduce costs, and extend health care coverage to those who are uninsured or underinsured. Reining in health care costs is absolutely essential to this country's future economic success. Reforming the delivery and payment systems to achieve higher quality health care are important building blocks for health care reform as well.

ERIC is concerned, however, that some reform proposals could compromise the successful employer based system that currently provides health care to 170 million Americans who strongly support its continued viability. These plans form the backbone of America's health care system and are important to the ability of employers to attract and retain the talent they need to run their enterprises. When workers say that they value their health care plans, and when policy makers stress that employees may keep the plans they like, they are referring to employment-based health care.

Employer-sponsored plans provide quality health care to American workers and their families. These plans extend health coverage that does not discriminate, financially or otherwise, on the basis of gender, health status, age, or geographic location. Preexisting condition limitations are strictly controlled. Major employer plans, in particular, cover significant populations of employees that create a large pool, spreading risk and bringing down the cost of coverage for employers and employees alike.

1400 L Street, N.W.
Suite 350
Washington, DC 20005
T (202) 789-1400
F (202) 789-1120
www.eric.org

Employer-sponsored plans are the source of much of the innovation in the nation's health care practices, and these plans lead the way in implementing prevention and wellness programs that address chronic diseases and other core factors contributing to the escalation of health care costs in this country. The employer-based system has been the source of more innovation and efficiency and enjoys greater support among its beneficiaries than any other delivery system. The mechanisms and principles that make it successful should be extended to those businesses, workers, and individuals who currently cannot take full advantage of it.

ERIC is concerned that proposals addressing the following issues have the potential to seriously undermine the current employment-based system:

- Taxation of health care benefits,
- The creation of a public plan,
- Employer mandates,
- Employee opt-outs, and
- National uniformity and ERISA preemption.

ERIC's concerns with respect to each of these issues are detailed below.

TAXATION OF BENEFITS

Under current federal law, the value of employer-provided health benefits is not included in an employee's taxable income, nor are these benefits subject to payroll taxes. This favorable tax treatment generally extends only to benefits provided through group health plans and, thus, is not available for health insurance purchased by individuals; some proposals, such as ERIC's New Benefit Platform for Life Security, would extend the tax favored status of health care coverage to all Americans.

Several proposals have been made to curtail the favorable tax treatment of employer-provided health benefits. One proposal would eliminate the exclusion entirely. Others would impose a cap based on the value of health insurance, an individual's income, or a combination of the two. To our knowledge, no proposals are under consideration that would reduce an employer's ability to deduct expenses paid for employee health care.

ERIC has serious concerns with limiting the ability of an employee to exclude from income the value of employer-provided health insurance. If this exclusion were curtailed, employment-based insurance could suffer. Young, healthy employees would exit their employers' plans in search of cheaper coverage rather than pay taxes on a more expensive plan. A plan that once had a favorable and balanced risk pool would now be left with an older, sicker, more costly population whose premiums would eventually become unsustainable. Loss of a large, viable risk pool would greatly diminish an employer's ability to offer efficient and innovative health care coverage to its employees. As the cost of providing benefits increased, more employers would exit the system.

Some employers might feel pressure to increase wages to compensate employees for the additional taxation of their health benefits. Most employers, however, would be faced with the bleak choice of

severing some employees in order to increase the wages of others or taking no action in response to the increased taxes and diminished take-home pay of their employees.

Further, a proposal to limit the tax-favored treatment of employer-provided health insurance would raise difficult practical questions regarding the valuation of these benefits, especially when geographic, age, gender, firm size, and other distinctions are taken into account. Imposing a cap on the exclusion – let alone subjecting the entire benefit to taxation - would be very difficult, if not impossible, to accomplish in an equitable or efficient manner. Determining the "value" of a benefit package or a premium is an enterprise that has eluded the most sophisticated actuarial and economic modeling for decades. Indeed, an effort to do so many years ago – section 89 of the Internal Revenue Code – became so cumbersome and unpopular that it was repealed shortly after it was enacted.

The rationale for curtailing the exemption is principally that it would increase revenue to offset the cost of reform. Another rationale is that taxing workers on their coverage would encourage them to use the health care system in a more efficient manner. We are unaware of any comprehensive studies that indicate that increasing taxes on consumers would result in more responsible decision-making or health care consumption.

THE CREATION OF A PUBLIC PLAN

Although the parameters of a public plan have not been fully fleshed out – and in some cases the outlines differ radically from one proposal to another – the gist of this recommendation is that a government-run public plan would compete with the private sector to offer health care coverage.

We have several primary concerns with a government-run plan. First, the prospect of cost-shifting to private employers from a public plan, replicating the pattern of Medicare and Medicaid, is daunting. Under-reimbursing providers in a public plan will lead inevitably to higher provider bills for those in private plans. Health care costs are already rising at an unsustainable rate; an increased level of cost-shifting would accelerate the point at which employers would no longer be able to afford quality health care for their employees. Indeed, the example of Medicare's fiscal unsustainability should raise a warning flag.

Second, if a government-run plan were to be subsidized or otherwise able to operate on a non-level playing field with the private sector, this would lead to a weakening of private insurance. Eventually, cheaper public plans - not held to the same financial requirements or other standards as private plans - would "crowd out" private plans, and employees would be left with no viable option to a government-run health plan.

Crowding out would have an immediate adverse impact on the development of practices to improve the quality of health care and the pursuit of innovative strategies to bring health care costs under control that are core strengths of the employment-based system.

In addition, we question whether it is an appropriate role for the government to establish an enterprise to compete with private sector plans, particularly if these enterprises do not face the same economic and fiscal restraints to which private plans are subject.

EMPLOYER MANDATES

In some recent health care reform proposals, employer mandates have taken the form of "pay-or-play" mechanisms, whereby employers would be required to offer a specified level of health insurance coverage (as well as prescribed benefits) to their employees or pay a penalty. The coverage would need to meet a defined actuarial value (or some other specified minimum), and employers would need to contribute a certain percentage of the cost of the health insurance. Other forms of mandates have also been suggested; the hallmark of government mandates is the substitution of government-imposed rules for employer flexibility and innovation.

Our concerns with employer mandates center on costs, flexibility, and appropriate design. Employer mandates by definition will restrict the ability of employers to devise and operate health care plans that best meet the needs of employees. The imposition, for instance, of a minimum plan actuarial value would in many cases either increase costs for employers or force the realignment of health care dollars to pay for government-required benefits to the detriment of compensation and other benefits also highly valued by employees.

Employer mandates and punitive regulatory regimes will discourage employers from continuing to provide quality, affordable health care to their employees. For evidence of this, one need look no farther than to the defined benefit pension plan system, which once was the principal source of retirement savings for millions of American workers but which now provides a secure retirement to only a lucky few. A comparable impact on the employment-based health care system would leave millions of Americans with neither health care coverage nor a secure retirement.

In general, many of the proposals and options now under consideration – including a limitation on the tax exclusion for employer-provided health care - ignore the fact that employers provide health care coverage and other benefits as a workforce retention and recruitment tool (as well as a key element in fostering enhanced workforce productivity), offering competitive advantages over other companies to attract and retain valued workers. To the extent that government intervention diminishes an employer's ability to provide attractive benefit plans targeted to the needs of its workforce, this ability to recruit and retain employees and enhance productivity will be seriously undermined. We are concerned that, these proposals, if enacted, will discourage employers from sponsoring benefits.

EMPLOYEE OPT-OUTS

We are especially concerned that employer "pay-or-play" mandates would permit employees to *opt out* of their employer's plan and *opt in* to a public plan or another plan offered through an exchange mechanism. Under such a scheme, employees could choose either to receive employer-provided coverage or opt out of employer coverage and pay for alternative coverage secured through an exchange. The employer would be required to pay to the exchange on behalf of these workers the amount that otherwise would have been paid for their health care had they stayed in the employer's plan.

Allowing employees to opt out of employer-provided coverage will likely result in adverse selection. Young, healthy employees who are looking for cheaper alternatives to employer-based coverage will

be the first to opt out if the public plan rates are held artificially lower and thus have an unfair competitive advantage with employer plans. The problem would be exacerbated by loss of favorable tax treatment accorded employer-provided health care coverage.

This exodus of young, healthy employees from the employer plan will rob the plan of the most favorable elements of its risk pool, undermine the fundamental insurance principles of the employer's coverage, and leave older, sicker employees in the employer plan. As time passes, premium costs for those left in the plan will grow ever higher; if employees are allowed to make an annual choice between an exchange plan and their employer's plan, the employer plans are likely to serve as a haven for those employees with the worst risk profiles. Eventually the plan could be harmed to the point where the employer would be compelled to end coverage and force any remaining participants into alternative coverage provided through the exchange.

Another problem attributable to opt-outs would be created if state control of health exchanges resulted in benefits that differed depending on the employee's state of residence or employment. Workers and their families who were transferred from one state to another by their employer (a common practice) could suffer significant disruption in their benefits if they opted out of a national, uniform employer plan and into a plan that varied from state to state, an effect that does not currently occur under our nationally uniform system of employer coverage. This would compromise the benefits of ERISA for both employers and workers that potentially would need to deal with 50 different state exchanges.

PREEMPTION

The national uniformity and preemption doctrine of ERISA has meant that self-insured employers need adhere only to one set of federal rules and not to 3000+ sets of rules and regulations that potentially could be promulgated by states and municipalities in the absence of an overarching federal regime.

Preemption is the *sine qua non* of employment-based multistate health care coverage. Without it, the vast majority of employer health plans simply could not exist because of the administrative and other costs necessary to comply with multiple sets of rules and the consequences of having to offer different benefits to employees performing the same work but not living in the same location. The original Congressional sponsors of ERISA all recognized the critical nature of the preemption provision. We hope that preemption will continue to be accorded a top priority.

IN CONCLUSION

We appreciate the considerable time and effort that has been devoted in Congress and elsewhere to the goal of developing recommendations for the reform and improvement of the nation's health care system. Having been intimately involved in the health reform efforts of the last 30 years, we appreciate the difficulties inherent in this task, and we remain committed to the effort. We believe that the control of health care costs and the expansion of health care coverage are essential to this country's economic prosperity. At the same time, we are firmly convinced that the high quality, affordable, innovative health care provided to 170 million Americans must not be undermined or diminished by this effort.

We are submitting these comments in the spirit of trying to play a constructive role in health care reform. In this context, we have also developed a comprehensive "New Benefit Platform for Life Security" that would extend the advantages of our members' success to all employers, both large and small, the self employed, and those individuals who have not been able to afford coverage. (The Platform is available at www.eric.org. We would be happy to provide you a copy if you request one.) We have been, and continue to be, proactively engaged in the reform effort and will support proposals that further our common goals.

ERIC would welcome the opportunity to work with you and your staff to develop these proposals further. For more information, please contact me or Gretchen Young, Vice President, Health Policy, at (202) 789-1400.

Sincerely,

Mark J. Ugoretz
President

cc: Senate Finance Committee
Senate Health, Education, Labor, and Pensions
House Ways & Means
House Energy and Commerce
House Education and Labor

The ERISA Industry Committee

June 8, 2009

The Honorable Henry A. Waxman
Chairman
Committee On Energy & Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Barton
Ranking Member
Committee On Energy & Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman and Ranking Member Barton:

The ERISA Industry Committee (ERIC) is pleased to take this opportunity to comment on Congressional health care reform proposals that are of critical importance to large employers.

ERIC is an association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive health benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that affect its members' ability to continue to deliver high-quality, cost-effective benefits.

ERIC strongly supports reforms to the nation's health care system that will increase its efficiency, reduce costs, and extend health care coverage to those who are uninsured or underinsured. Reining in health care costs is absolutely essential to this country's future economic success. Reforming the delivery and payment systems to achieve higher quality health care are important building blocks for health care reform as well.

ERIC is concerned, however, that some reform proposals could compromise the successful employer based system that currently provides health care to 170 million Americans who strongly support its continued viability. These plans form the backbone of America's health care system and are important to the ability of employers to attract and retain the talent they need to run their enterprises. When workers say that they value their health care plans, and when policy makers stress that employees may keep the plans they like, they are referring to employment-based health care.

Employer-sponsored plans provide quality health care to American workers and their families. These plans extend health coverage that does not discriminate, financially or otherwise, on the basis of gender, health status, age, or geographic location. Preexisting condition limitations are strictly controlled. Major employer plans, in particular, cover significant populations of employees that create a large pool, spreading risk and bringing down the cost of coverage for employers and employees alike.

1400 L Street, N.W.
Suite 350
Washington, DC 20005
T (202) 789-1400
F (202) 789-1120
www.eric.org

Employer-sponsored plans are the source of much of the innovation in the nation's health care practices, and these plans lead the way in implementing prevention and wellness programs that address chronic diseases and other core factors contributing to the escalation of health care costs in this country. The employer-based system has been the source of more innovation and efficiency and enjoys greater support among its beneficiaries than any other delivery system. The mechanisms and principles that make it successful should be extended to those businesses, workers, and individuals who currently cannot take full advantage of it.

ERIC is concerned that proposals addressing the following issues have the potential to seriously undermine the current employment-based system:

- Taxation of health care benefits,
- The creation of a public plan,
- Employer mandates,
- Employee opt-outs, and
- National uniformity and ERISA preemption.

ERIC's concerns with respect to each of these issues are detailed below.

TAXATION OF BENEFITS

Under current federal law, the value of employer-provided health benefits is not included in an employee's taxable income, nor are these benefits subject to payroll taxes. This favorable tax treatment generally extends only to benefits provided through group health plans and, thus, is not available for health insurance purchased by individuals; some proposals, such as ERIC's New Benefit Platform for Life Security, would extend the tax favored status of health care coverage to all Americans.

Several proposals have been made to curtail the favorable tax treatment of employer-provided health benefits. One proposal would eliminate the exclusion entirely. Others would impose a cap based on the value of health insurance, an individual's income, or a combination of the two. To our knowledge, no proposals are under consideration that would reduce an employer's ability to deduct expenses paid for employee health care.

ERIC has serious concerns with limiting the ability of an employee to exclude from income the value of employer-provided health insurance. If this exclusion were curtailed, employment-based insurance could suffer. Young, healthy employees would exit their employers' plans in search of cheaper coverage rather than pay taxes on a more expensive plan. A plan that once had a favorable and balanced risk pool would now be left with an older, sicker, more costly population whose premiums would eventually become unsustainable. Loss of a large, viable risk pool would greatly diminish an employer's ability to offer efficient and innovative health care coverage to its employees. As the cost of providing benefits increased, more employers would exit the system.

Some employers might feel pressure to increase wages to compensate employees for the additional taxation of their health benefits. Most employers, however, would be faced with the bleak choice of

severing some employees in order to increase the wages of others or taking no action in response to the increased taxes and diminished take-home pay of their employees.

Further, a proposal to limit the tax-favored treatment of employer-provided health insurance would raise difficult practical questions regarding the valuation of these benefits, especially when geographic, age, gender, firm size, and other distinctions are taken into account. Imposing a cap on the exclusion – let alone subjecting the entire benefit to taxation - would be very difficult, if not impossible, to accomplish in an equitable or efficient manner. Determining the "value" of a benefit package or a premium is an enterprise that has eluded the most sophisticated actuarial and economic modeling for decades. Indeed, an effort to do so many years ago – section 89 of the Internal Revenue Code – became so cumbersome and unpopular that it was repealed shortly after it was enacted.

The rationale for curtailing the exemption is principally that it would increase revenue to offset the cost of reform. Another rationale is that taxing workers on their coverage would encourage them to use the health care system in a more efficient manner. We are unaware of any comprehensive studies that indicate that increasing taxes on consumers would result in more responsible decision-making or health care consumption.

THE CREATION OF A PUBLIC PLAN

Although the parameters of a public plan have not been fully fleshed out – and in some cases the outlines differ radically from one proposal to another – the gist of this recommendation is that a government-run public plan would compete with the private sector to offer health care coverage.

We have several primary concerns with a government-run plan. First, the prospect of cost-shifting to private employers from a public plan, replicating the pattern of Medicare and Medicaid, is daunting. Under-reimbursing providers in a public plan will lead inevitably to higher provider bills for those in private plans. Health care costs are already rising at an unsustainable rate; an increased level of cost-shifting would accelerate the point at which employers would no longer be able to afford quality health care for their employees. Indeed, the example of Medicare's fiscal unsustainability should raise a warning flag.

Second, if a government-run plan were to be subsidized or otherwise able to operate on a non-level playing field with the private sector, this would lead to a weakening of private insurance. Eventually, cheaper public plans - not held to the same financial requirements or other standards as private plans - would "crowd out" private plans, and employees would be left with no viable option to a government-run health plan.

Crowding out would have an immediate adverse impact on the development of practices to improve the quality of health care and the pursuit of innovative strategies to bring health care costs under control that are core strengths of the employment-based system.

In addition, we question whether it is an appropriate role for the government to establish an enterprise to compete with private sector plans, particularly if these enterprises do not face the same economic and fiscal restraints to which private plans are subject.

EMPLOYER MANDATES

In some recent health care reform proposals, employer mandates have taken the form of "pay-or-play" mechanisms, whereby employers would be required to offer a specified level of health insurance coverage (as well as prescribed benefits) to their employees or pay a penalty. The coverage would need to meet a defined actuarial value (or some other specified minimum), and employers would need to contribute a certain percentage of the cost of the health insurance. Other forms of mandates have also been suggested; the hallmark of government mandates is the substitution of government-imposed rules for employer flexibility and innovation.

Our concerns with employer mandates center on costs, flexibility, and appropriate design. Employer mandates by definition will restrict the ability of employers to devise and operate health care plans that best meet the needs of employees. The imposition, for instance, of a minimum plan actuarial value would in many cases either increase costs for employers or force the realignment of health care dollars to pay for government-required benefits to the detriment of compensation and other benefits also highly valued by employees.

Employer mandates and punitive regulatory regimes will discourage employers from continuing to provide quality, affordable health care to their employees. For evidence of this, one need look no farther than to the defined benefit pension plan system, which once was the principal source of retirement savings for millions of American workers but which now provides a secure retirement to only a lucky few. A comparable impact on the employment-based health care system would leave millions of Americans with neither health care coverage nor a secure retirement.

In general, many of the proposals and options now under consideration – including a limitation on the tax exclusion for employer-provided health care - ignore the fact that employers provide health care coverage and other benefits as a workforce retention and recruitment tool (as well as a key element in fostering enhanced workforce productivity), offering competitive advantages over other companies to attract and retain valued workers. To the extent that government intervention diminishes an employer's ability to provide attractive benefit plans targeted to the needs of its workforce, this ability to recruit and retain employees and enhance productivity will be seriously undermined. We are concerned that, these proposals, if enacted, will discourage employers from sponsoring benefits.

EMPLOYEE OPT-OUTS

We are especially concerned that employer "pay-or-play" mandates would permit employees to *opt out* of their employer's plan and *opt in* to a public plan or another plan offered through an exchange mechanism. Under such a scheme, employees could choose either to receive employer-provided coverage or opt out of employer coverage and pay for alternative coverage secured through an exchange. The employer would be required to pay to the exchange on behalf of these workers the amount that otherwise would have been paid for their health care had they stayed in the employer's plan.

Allowing employees to opt out of employer-provided coverage will likely result in adverse selection. Young, healthy employees who are looking for cheaper alternatives to employer-based coverage will

be the first to opt out if the public plan rates are held artificially lower and thus have an unfair competitive advantage with employer plans. The problem would be exacerbated by loss of favorable tax treatment accorded employer-provided health care coverage.

This exodus of young, healthy employees from the employer plan will rob the plan of the most favorable elements of its risk pool, undermine the fundamental insurance principles of the employer's coverage, and leave older, sicker employees in the employer plan. As time passes, premium costs for those left in the plan will grow ever higher; if employees are allowed to make an annual choice between an exchange plan and their employer's plan, the employer plans are likely to serve as a haven for those employees with the worst risk profiles. Eventually the plan could be harmed to the point where the employer would be compelled to end coverage and force any remaining participants into alternative coverage provided through the exchange.

Another problem attributable to opt-outs would be created if state control of health exchanges resulted in benefits that differed depending on the employee's state of residence or employment. Workers and their families who were transferred from one state to another by their employer (a common practice) could suffer significant disruption in their benefits if they opted out of a national, uniform employer plan and into a plan that varied from state to state, an effect that does not currently occur under our nationally uniform system of employer coverage. This would compromise the benefits of ERISA for both employers and workers that potentially would need to deal with 50 different state exchanges.

PREEMPTION

The national uniformity and preemption doctrine of ERISA has meant that self-insured employers need adhere only to one set of federal rules and not to 3000+ sets of rules and regulations that potentially could be promulgated by states and municipalities in the absence of an overarching federal regime.

Preemption is the *sine qua non* of employment-based multistate health care coverage. Without it, the vast majority of employer health plans simply could not exist because of the administrative and other costs necessary to comply with multiple sets of rules and the consequences of having to offer different benefits to employees performing the same work but not living in the same location. The original Congressional sponsors of ERISA all recognized the critical nature of the preemption provision. We hope that preemption will continue to be accorded a top priority.

IN CONCLUSION

We appreciate the considerable time and effort that has been devoted in Congress and elsewhere to the goal of developing recommendations for the reform and improvement of the nation's health care system. Having been intimately involved in the health reform efforts of the last 30 years, we appreciate the difficulties inherent in this task, and we remain committed to the effort. We believe that the control of health care costs and the expansion of health care coverage are essential to this country's economic prosperity. At the same time, we are firmly convinced that the high quality, affordable, innovative health care provided to 170 million Americans must not be undermined or diminished by this effort.

We are submitting these comments in the spirit of trying to play a constructive role in health care reform. In this context, we have also developed a comprehensive "New Benefit Platform for Life Security" that would extend the advantages of our members' success to all employers, both large and small, the self employed, and those individuals who have not been able to afford coverage. (The Platform is available at www.eric.org. We would be happy to provide you a copy if you request one.) We have been, and continue to be, proactively engaged in the reform effort and will support proposals that further our common goals.

ERIC would welcome the opportunity to work with you and your staff to develop these proposals further. For more information, please contact me or Gretchen Young, Vice President, Health Policy, at (202) 789-1400.

Sincerely,

Mark J. Ugoretz
President

cc: Senate Finance Committee
Senate Health, Education, Labor, and Pensions
House Ways & Means
House Energy and Commerce
House Education and Labor