



The  
ERISA  
Industry  
Committee

September 22, 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

RE: America's Healthy Future Act of 2009

Dear Chairman Baucus and Ranking Member Grassley:

The ERISA Industry Committee (ERIC) would like to share with you our concerns with the Chairman's Mark of the "America's Healthy Future Act of 2009." ERIC is a nonprofit association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members sponsor group health plans that provide comprehensive health benefits directly to some 25 million active and retired workers and their families.

First, however, we would like to reiterate our support for real healthcare reform that meets the following objectives:

- 1) a significant reduction in the number of Americans without health coverage;
- 2) a transition to a healthcare system that emphasizes quality, efficiency, and transparency; and
- 3) a future in which healthcare costs begin to consume a DECREASING share of the U.S. economy rather than a future in which healthcare costs threaten our economic viability as individual companies and as a national competitor in the global marketplace.

ERIC has been working toward those goals for several decades and developed a nationally uniform and comprehensive proposal in 2007 that would accomplish those goals through a "*New Benefit Platform for Life Security*."

We would also like to express our appreciation to you for your efforts in this regard. While we have several significant concerns with the Chairman's Mark released on September 16, 2009, as described below, we appreciate the fact that the Mark does not include three provisions that would seriously, perhaps irreparably, harm the current employer-based healthcare system. Most importantly, the Mark does not violate the core precepts of ERISA preemption and national uniformity. Thus, the Mark generally preserves the ability of multistate employers to offer a uniform plan to all employees. We understand that there are some who would permit States to obtain waivers of ERISA preemption, thwarting the ability of employers to administer their plans under nationally uniform rules; we would strongly oppose any legislation that undermines in any way the national uniformity now provided by the Employee Retirement Income Security Act.

Second, the Mark does not impose a mandate upon employers that would limit their essential flexibility to tailor their health plans to the needs of their employees.

Last, the Mark does not include a public plan option that could eventually result in the demise of the private insurance market and would inexorably lead to a level of cost-shifting that would burden employer plans beyond the point of viability.

We also express our grave concerns with three elements of the Mark: the excise tax on high-cost plans; the \$20 billion assessment levied on all insurers, presumably including self-insured employer plans, to pay for a reinsurance program for high-risk individuals; and the curtailment of the deduction for retiree drug costs.

*Excise tax on high-cost plans:* The Mark imposes a staggering excise tax on health plans that exceed a specified threshold for individual and family coverage. After implementation, the thresholds are to be indexed in accordance with the CPI-U. Thus, unless health costs exhibit an unprecedented downward trend in the next few years, a very high percentage of employer-provided health plans will be subject to this tax. If the thresholds in the bill are increased or the index altered, taxation will be delayed but not avoided.

This tax ultimately will be borne by employers and employees. This additional tax burden will not be paid out of some hidden pot of money that employers maintain for rainy days. Rather, it is a cost that must reduce wages, benefits, or the number of employees on the employer's payroll. This is a provision that will cost jobs and weaken, not strengthen, the nation's healthcare system.

We would also note that this excise tax provision, as presently drafted, is imposed in a highly inequitable manner in part because the threshold is based on premiums and not actuarial value. Thus, employers with an older, sicker workforce, or whose employees are located in high cost areas, will be taxed long before employers who offer an identical plan but whose employees are younger and healthier. This would dramatically affect employers sponsoring health plans for pre-Medicare-eligible retirees. In addition, similarly situated employees in high versus low cost geographic areas would end up with different benefits or increased co-pays and/or deductibles. Other demographic and geographic variations in a company's workforce and location produce similar inequities.

*Assessment for high-risk individuals:* According to the Mark, as a condition of issuing health insurance policies or administering major medical benefit plans for 2013, 2014, and 2015, all health insurance issuers, including self insured employer plans, would be required to contribute a total of \$20 billion for a new high-risk pool for individuals. It is unfathomable to us why employers with self-insured plans should be forced to subsidize the insurance industry. Employers already cover high-risk employees in their own plans that are more efficient and more effective than the individual market, and thus should not be required to pay an assessment to cover other high-risk individuals. Additional cost burdens on employers are not appropriate under current economic conditions and, like the two provisions described above and below, will accelerate the unraveling of the nation's employer-based healthcare system.

*Curtailement of the deduction for retiree drug costs:* The Mark would raise \$4 billion by curtailing the employer's deduction for the costs they pay for prescription drug claims of Medicare beneficiaries who participate in the employer's qualified retiree prescription drug plan. The amount of this deduction was set in the 2003 law that created the Medicare Part D prescription drug program and was intended to encourage employers to continue to offer prescription drug benefits to their retirees rather than shift this burden to federal taxpayers. A reduction of the amount that employers may deduct will, of course, correspondingly decrease an employer's incentive to continue to provide prescription drug benefits for their retirees.

Again, we commend you for your efforts to achieve national healthcare reform, and we thank you for your consideration of our concerns. We would be pleased to discuss these issues with you or members of your staff.

Very truly yours,

Mark J. Ugoretz  
President