SEVEN QUESTIONS FOR ERISA WAIVER ADVOCATES TO ANSWER ABOUT PROBLEMS CAUSED BY STATE-BY-STATE REFORM

1. *Doesn't state-by-state governance of the health care system significantly increase government regulation by subjecting many consumers, health care providers, insurers and employers to overlapping, inconsistent and incompatible state laws?*

ERIC Comment: Many individuals live in one state but cross state lines to work or seek health care in another. Many health care providers do business in multiple states or see patients who reside in different states. Many insurers do business in multiple states and insure individuals who cross state lines to work or seek care. Many employers (of all sizes) do business in multiple state or employ workers who live in different states. **How can overlapping, inconsistent and incompatible state regulation be avoided if states are granted ERISA waivers and we get 50-plus different health care systems as a result?**

2. *If states are permitted to each take a unique approach to financing health care reform (including employer mandates), won't serious inequities result?*

ERIC Comment: Under state-by-state reform there is no guarantee that each state will choose to finance health care costs in the same manner. The differences could cause substantial inequities in the financing burden borne by similarly-situated individuals. The inequities become particularly pronounced in communities that span state boundaries. For example, if Virginia chose an income tax, the District of Columbia chose a payroll tax, and Maryland chose a tax on hospital and physician services to finance their state-based health care systems, then a resident of suburban northern Virginia who worked in the District and went to Johns Hopkins in Maryland for a surgical procedure would pay all three taxes, but a resident of suburban Maryland who worked in suburban northern Virginia and went to Georgetown in the District of Columbia for the identical procedure would pay none of the three taxes. The Congressional Budget Office (CBO) observed, in the context of the employer mandate trigger included in the Mitchell health reform bill, that state-by-state imposition of employer mandates will not work. **In a broader context, how can financing inequities be avoided if states are granted ERISA waivers and we get 50-plus different health care systems as a result?**

3. *What happens when business, providers, insurers and/or patients are tempted to go out of state to avoid onerous state requirements? Won't state-by-state reform engender disputes among states and unhealthy competition among states?*

ERIC Comment: Several years ago, Minnesota attempted to finance modest health reforms with a 2% tax on health care services, concerns were raised that residents would go to neighboring states to seek care and avoid the tax. So the state sought to collect the tax on services provided to Minnesota residents by out-of-state providers, sparking an inter-state dispute. Just as states compete for business relocations now by offering tax rebates and other financial incentives, states could begin altering their health care requirements to compete against one another. **How can these kinds of disputes and competitive situations be averted if states are granted ERISA waivers and we get 50-plus different health care systems as a result?**

4. ***Is it realistic to believe that states are uniformly capable of running the entire health care system within their borders?***

ERIC Comment: Have states historically done such a sterling job running Medicaid, workers compensation, unemployment insurance, work place safety and other programs that there is reason to expect they can all handle running health care systems that are bigger than their current state budgets in many cases? As far back as 1995 the Government Accounting Office (GAO) issued a report that said states' regulation of insurance varied greatly in scope and quality. This unstable and conflicting environment remains in place to this day. **How can such variable quality of regulatory oversight be avoided if states are granted ERISA waivers and we get 50-plus different health care systems as a result?**

5. ***Since health care is immersed in interstate commerce, won't state-by-state reform artificially segment the health care system along state lines, fragmenting natural markets and undermining competition and efficiency?***

ERIC Comment: For markets to work efficiently, competitors in the same market must be subject to the same rules. Natural medical markets are not limited by state boundaries. Many metropolitan areas are located on state boundaries. In addition, many residents of rural communities travel to neighboring states for health care services because they are closer than same-state alternatives. Further, some patients travel across country to be treated at academic medical institutions or other centers of excellence (such as the Mayo Clinic, the Cleveland Clinic, and others). If each state imposes its own rules on its segments of natural medical markets that are not limited by state lines, competitors will be subject to different rules and they will not be competing on a level playing field. As a result, competition will decrease, markets will be less efficient, and the cost of health care coverage will increase. **How can such barriers to efficient markets be avoided if states are granted ERISA waivers and we get 50-plus different health care systems as a result?**

6. ***Doesn't fragmentation of the health care system inhibit innovation and experimentation?***

ERIC Comment: Employers, insurers and health care providers interacting in local medical markets are the real "laboratories" for improving health care quality and cost-effectiveness -- not government (at either the federal or state level). The high overhead costs imposed on the health care system by 50-plus different sets of overlapping, inconsistent and incompatible rules impedes creativity and innovation. In contrast, the administrative efficiency of nationally uniform standards that promote competition and efficiency in private markets frees valuable resources for other purposes, and the more consistent, stable and predictable environment makes experimentation less risky. Less experimentation and innovation slows efforts to make health care delivery more efficient, undermining cost containment now and in the future. **How can**

innovation and experimentation be encouraged if states are granted ERISA waivers and we get 50-plus different health care systems as a result?

7. Won't a multiplicity of regulatory systems make it harder for individuals to enforce their rights?

ERIC Comment: When laws and regulations governing health care coverage vary state-by-state, the rights and obligations of individuals, employers, insurers and providers vary state-by-state as well. This means that when legal disputes arise, determining which state's law controls could have a significant effect on the outcome of the dispute. Resolving such conflicts of law would be particularly complex, time-consuming and expensive in the context of employer-provided health care coverage -- where it is not uncommon for employees and covered dependents, the employer's home office, an insurer, health care providers, a third party administrator, the plan's fiduciaries and other parties connected to the health plan to be located in different states. Such a conflict-of-laws quagmire would make it difficult (if not frequently impossible) for many individuals to enforce their rights in the absence of the current federal legal framework governing employer-provided health plans (the Employee Retirement Income Security Act). **How can individuals effectively enforce their rights if states are granted ERISA waivers and we get 50-plus different health care systems as a result?**