



November 18, 2009

Nancy-Ann DeParle, Esq.  
Director  
White House Office of Health Reform  
1600 Pennsylvania Avenue, NW  
Washington, DC 20502

Dear Ms. DeParle:

On behalf of the National Small Business Association (NSBA), we are writing to thank you and your staff for taking the time to discuss the concerns and goals of small businesses in the current health care reform deliberations. The Nov. 3 meeting with us, as well as the subsequent meeting on Nov. 12 with other small business stakeholders, illustrates the kind of commitment needed by the Administration to address the needs of small businesses for health care reform.

NSBA is the nation's oldest small-business advocacy group representing employers in every state. As a strictly non-partisan organization, we reach over 150,000 employers in all sectors and industries of the U.S. economy from retail to trade to technology—our members are as diverse as the economy that they fuel. We pride ourselves on being a constructive voice in the public policy arena, and we look forward to continuing that tradition to achieve comprehensive health care reform this year for our nation's 29.6 million small businesses.

Small businesses clearly have a lot riding on the prospects of health care reform. NSBA has invested heavily in the health care reform deliberations – striving for meaningful reform that provides the proper balance of policies that will serve all Americans properly by lowering health care cost, improving quality, and expanding access. Indeed, this is not an easy task from any perspective. NSBA has taken the keen business acumen of our membership to ascertain the impact of the current health care proposals on small businesses to ensure that they enhance the ability of small business to grow, create jobs and fuel our nation's economy, and not the opposite.

There are many positive and constructive elements in the various health care reform proposals advanced so far. The following includes, but is not limited to, the positive components of current health care reform proposals for small businesses that should be embraced as legislation is finalized:

*Insurance Market Reforms:*

- While NSBA opposed the *Affordable Health Care for America Act* (H.R. 3962), the House proposal, as well as the Senate Committee proposals, does provide for

improvements in the insurance market, including reforms to ensure guaranteed issue policies and the elimination of rating based on preexisting conditions and health status. NSBA supports these critical insurance market reforms in combination with a strong individual mandate to carry insurance.

- *Health Insurance Exchanges* – Exchanges proposed in both chambers are not a panacea to small-business health insurance woes – insurance pools also depend on the make-up of the pool, not simply its size, which is often cited as the benefit of exchanges. Nonetheless, exchanges should provide for greater ease in shopping and comparing insurance products for small businesses and their employees, particularly if they can link in with the expertise and established connections of preexisting organizations and pools.

#### *Affordability:*

- *Small Business Tax Credit* – NSBA is pleased that House and Senate proposals include tax credits for small businesses which provide health insurance to their employees. It must be noted, though, that the tax credits are neither the cure-all for small businesses' health insurance woes nor a replacement for good policies on cost-containment that make health care more affordable. In addition, the tax credits have limited eligibility and sunset extremely quickly. NSBA encourages expanded eligibility for any credit and a significant expansion in the number of years it is made available.
- *Section 125 Plans* – NSBA is encouraged that the Senate Finance Committee included an expansion of Section 125 Plans in order to provide greater affordability to smaller employers. All except the smallest employers would offer a Section 125 Cafeteria Plan under the Senate Finance Committee bill. Section 125 Cafeteria plans allow employees to pay their health insurance premiums through their employer's payroll deduction and use pre-tax dollars to purchase health insurance. Premiums paid with pre-tax dollars are not subject to Federal and state taxes. By offering Section 125 plans, employers would make it easier and cheaper for their workers to purchase insurance, but there needs to be greater use and flexibility of Section 125 plans for owners themselves to participate in the plan in order to pay for their own health coverage. This is a major obstacle that must be overcome if small companies are ever to take full advantage of the potential of these plans.
- *Cost-containment* – All the proposals make a gesture in the direction of addressing the short and long-term cost of health care – small businesses' number one concern. NSBA is pleased that these are goals of reform and, in particular, that there was initially a great amount of attention given to delivery system reform. However, more must be done at a faster pace (see below).

#### *Shared Responsibility*

- *Individual Mandate* – NSBA has endorsed an individual mandate to carry health insurance since the early 1990s. It is a central tenet of NSBA's health care proposal

and is critical to ensure that all individuals can participate in the system without driving up costs to unsustainable levels.

While the aforementioned improvements over the status quo merit recognition, there are serious concerns by the small business community with the pending health care reform proposals that also must be outlined. In follow-up to our recent meetings with you and your staff, we have summarized NSBA's concerns under the current state of health care reform.

### *Affordability*

- *Cost-reduction and containment provisions* – The driving goals for health care reform have been to expand access to the uninsured and underinsured, improve the quality of care, and reduce the cost of health care. While the first has been adequately addressed in health care reform proposals, the latter two have not. The cost of health care has been the number one concern for small businesses, and should be the top priority of any final legislation.

As previously mentioned, all proposals include some elements of cost containment; however, they fail to alter the interaction of consumers with the health care system. Consumer decisions on who, what, when, where and why they access the health care system is the only true dynamic that will “bend the health care costs curve” in the long run.

Consumers can be expected to make sound decisions only when they have a stake in their long-term health care, when they truly understand what products and services they are purchasing as well as its' quality, and when they understand the cost as well as what alternatives may exist.

In order to address these concerns, NSBA has supported limits on the value of employer-provided health coverage that is excludible from gross income based on a minimum benefit package. This approach would encourage greater consumer behavior, decrease utilization of the system, and lead to a decrease in the aggregate cost of health care. Insurance now frequently covers (on a tax-free basis) non-medically necessary services, which would otherwise be highly responsive to market forces. It is unfortunate that this model of cost-containment has been disregarded on political grounds. Nonetheless, there are other opportunities to address health care costs that should not fall on political lines.

NSBA is pleased with the Senate Finance Committee's approach and direction on delivery system reform. However, NSBA encourages the accelerated implementation of successful Medicare pilot projects, enhanced bundling payment reforms, comprehensive reform to the delivery system, and the establishment of a commission to propose options to improve and sustain entitlement programs.

- *Tort Reform* – Medical malpractice reform should be a component of any health care reform legislation. We encourage detailed medical malpractice language that provides

for comprehensive tort reform beyond the sense of the Senate language included in the Senate Finance Committee proposal. The Congressional Budget Office estimates that medical malpractice reform could save \$54 billion over ten years. Unfortunately Congress has failed to pursue this option, despite President Obama's encouragement, apparently because of political reservations. Sensible tort reform would be better at discouraging bad care than the current system and would provide more relief to more victims of bad medical care.

- *Basic Benefit Package and Small-Business Representation* – Essential to affordability is a truly basic, yet meaningful benefit package along with small-business input into what such a package would look like. NSBA has repeatedly commented on the need for legislative language identifying small-business representation and consultation on an anticipated independent commission or health benefits advisory council created under pending comprehensive health care reform legislation. These councils or commissions would recommend and develop an essential benefits package or minimum credible coverage package sold to small-business owners, their employees and their dependents; thus, it is imperative that small businesses have an ongoing role in this regulatory process and subsequent deliberations to ensure that what is considered credible coverage is feasible for small businesses and retains incentives for individuals to make sound choices about their care.
- *Tax Equity for the Self-Employed* – NSBA strongly encourages the inclusion of language to allow self-employed business owners to fully exclude from payroll taxes the cost of health insurance in order to bring immediate relief and equity to the self-employed. *Equity for Our Nation's Self-Employed Act (S. 725/H.R. 1470)* would address the current inequity that exist for the self-employed and allow our nation's roughly 21.3 million self-employed business owners to stop paying an extra 15.2 percent tax on top of already excessive insurance premiums—a tax that no other worker or business owner pays.

#### *Shared Responsibility*

- *Strong Individual mandate* – A *strong* individual mandate is a central tenet to success health care reform. Critical to a viable individual mandate is a penalty for noncompliance. NSBA has concerns that changes made to the Senate Finance Committee's proposal could undermine the viability of the individual mandate and result in higher premium costs for small businesses, their employees, and their families. The combination of lowering the penalty for noncompliance with the individual mandate, lowering the affordability threshold that applies to the individual mandate, and implementing the insurance market reforms with tighter age rating ratios could persuade individuals to game the system. A young, healthy individual could reason that paying the penalty for noncompliance is more financially attractive than paying the cost of the premium associated with the individual mandate. The consequences of the Senate Finance Committee's amendments could destabilize the remainder of the health insurance market thus resulting in inflated costs for small businesses over current trends.

- *No Employer Mandates* – It is clear that any new financial obligation handed down to small businesses who currently do not offer health insurance coverage to their employees, or who offer less than what is deemed acceptable in some proposals, would have a negative impact on the business, the employees and their families, and consumers.

The reactions of small businesses to increased health care premiums in recent years illustrate the potential impact of any new financial obligations created by an employer mandate. Small businesses have seen a significant impact from recent premium increases, including 61 percent of small-business owners not giving salary increases for employees and 31 percent holding off on hiring new employees. The potential of pervasive employer mandates to be exacerbated under the proposed health care reform scenarios, which includes insufficient cost-containment provisions, is concerning.

Employer mandates are also unnecessary. An individual mandate, coupled with more affordable premiums, would give a huge competitive advantage to employers that offered insurance. Small businesses would certainly respond. Those that still could not afford insurance would at least be creating jobs. A mandate on employers to provide coverage would, by definition, destroy those businesses and the jobs that go with them.

*Credible Coverage* – Many small businesses offer health savings accounts in combination with high-deductible health plans, or health reimbursement accounts. It is unclear at this point whether a final bill would honor these benefit structures as meeting credible coverage criteria. In the case of meeting a minimum coverage criterion, NSBA strongly supports legislation that provides employers flexibility in working with their employees to ascertain what is the best benefit package for their workplace. Normal changes in plan design must be permissible without forfeiture of “grandfathered” status.

Moreover, it seems unsound to entertain a discussion of meeting credible coverage criteria when there is no unbiased, sound data that defines the implications of the comprehensive proposal being considered. NSBA strongly urges the Congressional Budget Office, the Joint Committee on Taxation, or some other balanced entity to delineate the implications of the proposed legislation on small businesses before such legislation is passed.

#### *Public Option vs. CO-OP vs. Private Market*

- It is unclear what impact the advantages – reduced capital needs, low administrative costs, etc. – enjoyed by a proposed public health insurance option would have on the private market. Since many small businesses receive health insurance products through the private market, the proposed legislation should take steps to study and ascertain the impact such reforms would have on the remainder of the market. Small businesses already receive the brunt of cost-shifting as a result of the uninsured and reduced Medicare and Medicaid reimbursement rates. The last thing needed in reform is to worsen these trends.

### *Revenue Raisers*

- *Excise Tax on High-Cost Insurance Plans* – NSBA’s has two primary reservations with the Senate Finance Committee’s proposed excise tax on high-cost insurance plans. First, it seems unavoidable that the tax will be passed down to all small businesses in the form of higher premiums. The excise tax appears counterintuitive to the goals set forth by the President and members of Congress to lower health care costs for small businesses, their employees, and their families.

Following the same argument, NSBA has significant concerns with the Senate Finance Committee proposal to impose an aggregate tax of \$6.7 billion per year on “any U.S. health insurance provider,” in proportion to market share, whether for profit or not for profit, but not on employers who “self fund” their employees’ coverage. The tax would fall heavily and disproportionately on small employers who need to buy coverage from insurance companies. Similar to the excise tax on high-cost insurance plans, this tax will surely be passed through to the policy holders or their employees. Estimates show that it will be paid by 89 million insured Americans at a cost of about \$75 per person per year.

The second concern with the excise tax is what appears to be an administrative quagmire for small-business owners. Small businesses with multiple vendors would face extraordinary administrative burdens in order to comply with the proposed mechanism for assigning tax responsibilities. Given that 30 percent of small businesses use 3 or more vendors, some as many as 12 different vendors, this could represent a significant new administrative burden on small business.

In addition, there appears to be language in the Senate Finance Committee proposal that would be harmful to family plans that choose to maintain their grandfathered status and do not meet the proposed essential benefit plan requirements. In this case, these family plans are treated as single plans; thus, they would be subject to a 40 percent tax over the single cap rate of \$8,000, which is certain to impact many grandfathered family plans obtained by small businesses, their employees and their families.

While the tax on insurers is intended to be invisible to consumers—despite the absence of safeguards to ensure such is the case--it will certainly not be invisible to employers.

- *Surtax on High-Income Individuals and Families* – The House legislation would be financed heavily by a 5.4 percent income tax surcharge on high-income taxpayers with adjusted gross incomes in excess of \$500,000 for single filers and \$1 million for married individuals filing jointly. While the surtax thresholds in House are significantly higher than those in the earlier House proposal (increased from \$280,000/single, \$350,000/married filing jointly), the new thresholds are not indexed for inflation, which means that an increasing number of individuals would become

subject to the surtax over time. This would raise the top marginal rate in 2011 from 39.6 percent under current law to 45 percent—a new effective top rate.

The proposed surtax is a tax on income, not on wealth, and would fall heavily on small business owners in pass-through entities. Many, if not most, of these business owners do not actually take all of this “income” home, but instead reinvest it in creating new jobs. This tax will certainly reduce that investment.

- *Medicare tax* – Recent discussions from the Senate negotiations indicate that a final melded bill could include changes to the Federal Insurance Contributions Act (FICA) for individuals making over \$250,000. The change would require workers who earn more than \$250,000 to pay more FICA taxes toward the Social Security Trust Fund. We believe these provisions are bad public policy; therefore, they should be opposed in any form.
- *Corporate Information Reporting* – NSBA also has significant concerns with the proposed corporate information reporting provision. Under current law, service recipients are only required to send 1099 forms to non-corporation service providers. For each non-corporation service provider, the service recipient is required to issue two 1099 forms—one to the IRS and one to the service provider. Sen. Baucus’ proposal would expand the Form 1099 filing system by requiring businesses that pay more than \$600 annually to corporate providers of property and services to file an information report with each provider and with the IRS.

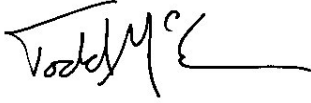
If enacted, every small-business owner will face increased paperwork and administrative burden for each additional 1099 Form prepared. Increased costs are incurred for mailing additional forms and for hiring outside assistance to ensure that businesses are correctly complying with the law. Furthermore, if a business previously has not been required to utilize the Form 1099 filing system, greater difficulty with compliance is likely to ensue. While the proposal seeks to capture non-compliant corporations, it clearly places the burden on the wrong taxpayer—the compliant small-business.

We look forward to offering our endorsement to comprehensive health care reform legislation that meets the criteria set forth in NSBA’s 2004 health care reform proposal: *Small Business Health Care Reform—A Long-Term Solution for All*. This proposal for broad reform of the health care system seeks to achieve universal coverage, focus on individual responsibility and empowerment, the creation of the right market-based incentives, and a relentless focus on improving quality while driving out unnecessary, wasteful, and harmful care. NSBA has been persistent in outlining these goals over the years, and particularly over the last several months. Reform that does not get at the issues of cost and quality is not reform that small business can support or the country can afford.

In closing, we commend your efforts to provide an open dialogue with the small-business community on issues important to small-business owners, their employees, and their families.

With the debate and negotiations coming down to the 11<sup>th</sup> hour, we are hopeful that the aforementioned concerns can be addressed before the final consideration of legislation.

Sincerely,



Todd O. McCracken  
President



Keith A. Ashmus  
Chairman

Cc:

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Dr. Meena Seshamani, Director of Policy Analysis, Department of Health and Human Services Office of Health Reform