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May 22, 2009

The Honorable Max Baucus
Chairman
U.S. Senate Committee on Finance
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
U.S. Senate Committee on Finance
Washington, D.C. 20510

Dear Chairman Baucus and Ranking Member Grassley:

Thank you for the release of the Senate Finance Committee's May 14 policy options paper on proposals to provide affordable coverage to all Americans. Retailers applaud your open, inclusive approach to crafting a health care reform bill and greatly appreciate the opportunity to respond to your proposed solutions.

The Retail Industry Leaders Association (RILA) promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers – which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Preserve ERISA Preemption

Because of the Employee Retirement and Income Security Act (ERISA), nearly 170 million people in the United States enjoy health care benefits sponsored by employers. Retailers recognize the value in providing our workforces with quality, affordable plans and are committed to continuing to offer coverage so long as the program design flexibility and streamlined compliance costs inherent in ERISA are maintained. RILA member companies are all multi-state corporations voluntarily offering self-insured health plans to millions of employees and their families.

Many of RILA's member companies have a presence in Hawaii, Massachusetts and the city of San Francisco where exemptions from ERISA's preemption clause are already on the books. Our experience in these states and city is the same: erosion of the current risk pool and significant monetary investments to comply with each location's individual reporting obligations. The eligibility differences, the additional funding mandates and the constantly changing compliance requirements are causing such hardships on our bottom line that, if the trend were to continue in other states and localities, could mean our member companies would no longer offer health insurance to employees.

We greatly appreciate your recognition of the importance of ERISA's preemption clause and encourage you to stay the course in supporting this important law.

Support a Health Insurance Exchange for the Uninsured

Our companies' experiences in Massachusetts lend great insight into the idea of a national health insurance exchange. We agree with the Committee that an exchange, or insurance connector, could be a positive step toward providing individuals who are not eligible for employer-sponsored coverage a single access point to make informed choices about health coverage plan options if implemented properly. However, our experience in Massachusetts leaves us with significant concerns about employer mandates to report proof of coverage or to pay for an employee to participate in an exchange when his or her employer offers sufficient coverage.

Even if an individual mandate were enacted today, employees with insurance currently have enough information to provide the Internal Revenue Service (IRS) with proof of insurance in the form of an insurance card, mailed statements, employee web portals, paycheck stubs, etc. In an industry such as ours with large turnover rates, part-time workers and seasonal hires, our experience in Massachusetts has shown that the requirements for proving coverage to the state are overly burdensome and duplicative because the individual employee ultimately bears the liability for not securing health insurance. Retailers in Massachusetts will spend millions of dollars over the next several years to execute the state's quarterly reporting requirements, money that could otherwise be spent offering more generous plans to our employees.

In addition, we believe that the purpose for creating a health insurance connector is to increase coverage options for those individuals who do not have access to an employer-sponsored plan. As RILA will outline in our next letter to the Committee on financing options, we are open to discussions about capping the currently limitless employer tax exclusion for health benefits in order to help individuals in need of financial assistance to purchase a plan on the private market. However, we cannot support any proposal which requires employers to pay a subsidy to individual employees who turn down employer-sponsored coverage so that they can participate in the connector.

Finally, RILA member companies want to insure as many of our eligible employees as possible and support Medicaid subsidies which would allow working adults to better afford employer-sponsored health plans. The retail experience is that most individuals will choose the health plan which is least expensive for their current life stage. Therefore, Medicaid subsidies that only allow dollars to be used to purchase a connector-based plan (and not an employer-sponsored plan) will mean that a significant number of working adults will be less inclined to participate in employer-sponsored plans. In turn, the employer's risk pool will diminish as will the likelihood that the retailer could continue offering coverage. Further, options to increase the Federal Poverty Limits to determine eligibility for Medicaid subsidies will only exacerbate the problem of decreased employer-sponsored coverage take-up rates among working adults if individuals eligible for employer-sponsored coverage are not given the option to use Medicaid dollars to pay for the employer's plan.

Allow for Benefit Design Flexibility

Retailers recognize that ERISA self-insured plans do not have much federal oversight regarding the minimum benefits that must be offered. Our industry is open to ideas that will help achieve our shared goal of ensuring more Americans have meaningful coverage. However, retailers and other employers need the flexibility to design plans that fit the unique needs of our individual workforces.

One idea retailers would like to see explored further by the Committee is the creation of an independent board modeled after the U.S. Preventative Services Task Force, which has representatives from a broad swath of stakeholders. This new board would have the authority to design and evaluate a minimum benefits standard which is indexed to inflation, enacted by fully insured and self-insured organizations both inside and outside of the connector through an actuarial equivalent standard, and applicable to full-time employees who work an average of 30 hours per week or more. This new board would also have the authority to communicate with employers regarding the crucial administrative and readiness questions that will inevitably arise.

Encourage Participation in Employer-Based Plans

Employees in Massachusetts have a choice of whether to participate in an employer's health plan or to purchase a plan offered in the state's insurance exchange. Retailers recognize that choice in plans can drive competition, which lowers the costs of coverage for everyone, and can help employees to better appreciate the value of the plan in which they choose to enroll. Yet, even with the exchange option, large retail stores operating in Massachusetts have noted a very low take up rate (typically 1% or less) by employees who have a choice as to whether to participate in the insurance connector or purchase one of our companies' plans. We believe this is a clear signal that employees are satisfied with the coverage offered by their employers and prefer to keep the health plans they now have.

Because state-based health plans are heavily regulated, employer-sponsored options typically offer benefits at a level of coverage most appropriate for the employee at the most affordable price. We understand that there will always be individuals who need more or a different level of care and would never stand in the way of an employee wishing to purchase coverage elsewhere. Employers work hard to craft the best possible plan(s) for as many employees as possible and constantly search for ways to reduce systemic costs. Asking employers to pay into a health insurance connector with no say in benefit levels or cost controls will only reduce the resources available to employees participating in the employer's plan(s).

Increase Wellness Program Incentives

Many large retailers are investing in wellness programs and noticing real results in the form of healthier, more productive workforces and reduced health care costs. One of the biggest lessons we have learned is that it is more important to motivate individuals to take part in their own health than it is to motivate employers to offer programs. With this idea in mind, we urge the Committee to consider the following three proposals to bolster wellness programs:

- Current gift tax laws require that employees to pay tax on any employer-provided subsidy or reward for participating in a wellness program with a value \$25 or more. We propose increasing the limit to \$250 to encompass programs that produce real results such as such as subsidized gym memberships, weight loss classes and participation rewards such as personal electronic devices and gift cards.
- In a 2006 final rule issued by the Department of Health and Human Services clarifying wellness programs allowable under HIPAA, the Department placed a 20% limit on the discount that employers can offer employees who undergo diagnostic testing, quit smoking and make other qualifying healthy lifestyle choices. Our member companies have found this monetary discount to show real results in employee participation. We urge the Committee to consider increasing the premium discount to allow a 50% premium reduction for healthy lifestyle programs authorized under the existing HIPAA regulation.
- RILA supported passage of the Genetic Information Nondiscrimination Act (GINA). However, an unintended consequence of the bill is that patients are no longer able to be informed of their high risk of developing common genetically-linked diseases such as diabetes, thereby reducing the likelihood that the individual seeks out preventative care. We would urge the Committee to consider amending GINA in such a way that allows patients to be informed of their risks without jeopardizing their coverage eligibility.

Support Convenient Care Clinics

Academic studies repeatedly show that patients who get care sooner will require less expensive treatments in the long run. In-store and worksite clinics offer quality, inexpensive and convenient care for common illnesses and ailments by highly trained, state regulated nurse practitioners and physician assistants. Retail clinics decrease barriers that patients face in seeking out primary care by diminishing the long appointment wait and visit times that patients often experience at traditional physicians' offices. Retail clinics also offer a more convenient option for patients who need assistance treating routine chronic medical conditions, free up medical doctors to use their expertise treating more severe cases, and provide access to frontline care for rural residents without ready access to a hospital or a physician. Further, because retail clinics are typically located inside of or next to a pharmacy, patients can fill needed prescriptions easily and begin treatment for their diagnosis without delay.

RILA member companies urge the Committee to consider ensuring that all types of Medicare and Medicaid are accepted at clinics for treatment of routine diseases and ailments. True coordination of care and changes in delivery begin with increasing access options for the patient. If a patient's insurance plan does not cover a range of options to seek out care for routine ailments and illnesses, the patient is less likely to get treatment, ultimately driving up systemic costs further when the patient's condition grows worse and requires more extensive—and expensive—medical treatment. Reimbursing a broader range of qualified medical service providers will enhance the patient experience and reduce overall costs.

Further, RILA member companies support federal solutions which would help expand the number of in-store and worksite clinics. Suggestions include:

- Many states prohibit general business corporations from providing medical services. However, our experience in states that do allow retailers to independently own and operate retail clinics that the owner of the business does not interfere with the medical judgment of a Nurse Practitioner (NP) or Physician Assistant (PA). Legislation which includes language to allow a federal exemption for retail clinics to provide limited health services by professional health care providers would allow us to expand access to quality, affordable and convenient care in many more states.
- Clarification as to the basic duties that can be performed by a NP or PA will allow these individuals to provide more of the routine care they are highly qualified to perform (i.e., dispense drugs pursuant to written protocols, administer immunization shots, annual physical exams)
- Allow insurers to reduce (or waive entirely) co-payments for visits to retail clinics over other, more expensive, options including emergency room and specialist visits.

Retailers are committed to providing millions of Americans with access to health insurance coverage, affordable prescription drugs, wellness programs and other options for increasing the overall wellbeing of our society. We look forward to working with you to provide any insight you may need to craft a responsible healthcare reform bill. Should you have additional questions or concerns, please do not hesitate to make me aware. My telephone number is 703-600-2012 and my e-mail address is john.emling@rila.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John Emling". The signature is fluid and cursive, with the first name "John" and last name "Emling" clearly distinguishable.

John G. Emling
Senior Vice President, Government Affairs