

**Advocacy letter from 46 undersigned organizations regarding
wellness outcomes and insurance premiums**

September 24, 2009

Dear Senator:

The undersigned organizations support provisions in America's Healthy Future Act of 2009 that encourage health promotion and disease prevention in the workplace. However, we have significant concerns about pending amendments from Senator Carper (Carper #C-2) and Senator Ensign (Ensign #C-7 and #C-8). These amendments would expand authority provided under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that allow for increased premium variation based on health status for employee wellness programs. While we appreciate the amendments' intent to encourage healthy behaviors, we believe that allowing employers to vary premiums by up to 50 percent of the total cost of employee coverage could lead to discriminatory practices and make health coverage unaffordable for those who need it the most. We strongly urge you to oppose the Carper C2 and Ensign C7 and C8 amendments.

One of the most important set of provisions included in HIPAA were those that prohibited a group health plan from treating members differently based on health status. Although the law provided a narrow exception for employer-sponsored wellness programs of health promotion and disease prevention, regulations issued by the Clinton Administration in 1997 stipulated that "wellness discounts" could be applied only on the basis of *participation* in a "bona fide" employer-sponsored wellness program. Almost ten years later, the Bush Administration re-wrote these regulations to allow wellness discounts to be applied on the basis of health status.

The Chairman's mark codifies current regulatory policy but, in addition, includes important new provisions that require the Secretary of Health and Human Services, the Secretary of Treasury and the Secretary of Labor to evaluate and report on the impact of these programs and make a determination as to whether there is a threshold or ceiling of premium increases, above which any additional increase would be punitive and discriminatory in nature. The provisions also insure that wellness programs are reasonably designed and allow for increases up to 30 percent if empirical evidence shows that an increase would not be punitive and would lead to behavior change.

We have three specific concerns about the pending amendments that have been offered to the Chairman's mark.

Affordability Concerns. Under current regulatory authority there are no limits on premium variation related to so-called "participation only" programs. However, for programs that are based on an individual satisfying a standard related to health factors, employers may vary each employee's health premium by 20 percent of the combined total of the employer and employee contribution.

In 2009, the average premium for a family plan in 2009 totaled \$13,375, therefore allowing employers to vary premiums by an average \$2,675. However, under the proposed amendments, premiums could vary by as much as 50 percent – allowing for average variation of \$6,688. These premium adjustments may be additive to those already in the Chairman's mark for age and

tobacco use, and could include a range of measures including weight, blood pressure, high cholesterol, waist circumference or others. There are no specific limits in the regulations pertaining to the kinds of risk factors that may be included as long as they “have a reasonable chance of improving the health of or preventing disease in participating individuals.”

Affordability becomes a critical issue when the costs of providing incentives to one group of employees is financed by raising base costs of the policies – harming in particular those who fail to qualify for the wellness incentives. This can be a significant problem for low-income individuals who may have more than one job – manage work and family – or have limited access to healthy food. These are the individuals that need coverage the most to help them address risk factors for chronic disease and other health issues.

Lack of Evidence. There is no peer-reviewed research evidence documenting the such major increases in premium incentives – called for in the amendments - would encourage employees to live healthier lives and, as a result, reduce health care costs. Evidence does show that an incentive in the range of \$50-600 can be an effective tool encouraging employee participation in a worksite wellness activity – amounts that are well within what is allowed by current HIPAA regulation (particularly since there is no limit on programs that are participation only.) There is no evidence, however, that larger incentives or penalties will increase employee participation in a health assessment activity, or have a further beneficial effect on their behavior or health. Therefore, employers can continue all practices known to be effective without any change to HIPAA.

There is extensive research however, that shows that patients are far less able to manage chronic conditions such as hypertension or diabetes when their deductibles or co-payments are too high. Savings from wellness programs should be the result of improved employee health and not merely cost-shifting or measures to divert employees to alternative coverage.

Privacy Issues. Privacy issues are of considerable concern to employees who prefer to share personal medical information only with their physicians. Measuring adherence to health targets can require cheek swabs, detailed medical examinations, blood tests and other forms of health tests and measurements. While employers are subject to privacy protections restricting the release of personal medical information, non-medical companies that offer questionnaires or screenings may not be. Some health risk assessments are lengthy and invasive, both for the individual and their families. Unfortunately, however, failure to provide this information or even complete a health risk assessment can result in higher premiums even in participation only programs.

There are many unanswered questions about how these programs work in practice and, until these can be addressed, increasing the allowable percentage threshold simply poses many potential risks for employees. It is also important to see these amendments both within the context of legislative history and through the prism of fairness.

As noted above, at the center of the landmark HIPAA legislation were provisions that prohibit a group health plan from treating members differently based on health status, including pre-existing conditions and risk factors. More than 30 years later, a primary goal of meaningful

health care reform is to extend this principle to all Americans – in exchange for a mandate requiring them to have health coverage. We believe that provisions increasing premium variations allowed under current law can – if used unwisely – be a back door to making coverage to the sick unaffordable. Charging more or denying coverage to people based on pre-existing conditions – in any form – is a sad chapter that health care reform must close once and for all.

In conclusion, we strongly urge you to oppose the specific amendments identified above and to support the workplace wellness and other prevention related provisions in Chairman Baucus' mark.

Sincerely,

AIDS Action Council
AFL-CIO
Alpha-1 Foundation
American Federation of State, County and Municipal Employees (AFSCME)
American Cancer Society-Cancer Action Network
American Diabetes Association
American Heart Association/American Stroke Association
American Hospice Foundation
American Nurses Association
American Public Health Association
American Social Health Association
Americans for Democratic Action
Association for Ambulatory Behavioral Healthcare
Autism Society
Bazelon Center for Mental Health Law
Campaign for Mental Health Reform
CANN – Community Access National Network
Center for Independence of the Disabled, NY
Center for Medicare Advocacy
Childbirth Connection
Consumers Union
Consumers' CHECKBOOK/Center for the Study of Services
Consumer Watchdog
Council for Responsible Genetics
Families USA
Health Care for All
HIV Medicine Association
Lung Cancer Alliance
Medicare Rights Center
National Alliance on Mental Illness
National Association for Children's Behavioral Health
National Council of Jewish Women

**National Foundation for Mental Health
National Health Law Program
National Patient Advocate Foundation
National Partnership for Women & Families
National Women's Health Network
National Spinal Cord Injury Association
New Yorkers for Accessible Health Coverage and CIDNY
Northwest Federation of Community Organizations
OWL - The Voice of Midlife and Older Women
Raising Women's Voices for the Health Care We Need
Representative Cindy Rosenwald, Committee Chair, Health, Human Services and Elderly
Affairs, New Hampshire House of Representatives
Service Employees International Union (SEIU)
United Spinal Association**