The Chamber of Commerce
Of the
United States of America

R. Bruce Josten
Executive Vice President
Government Affairs

1615 H Street, N.W.
Washington, D.C. 20062-2000
202/463-5310

September 23, 2009

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

The U.S. Chamber of Commerce, the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region looks forward to working with members of the Senate Finance Committee to help strengthen “America’s Healthy Future Act,” which is the most balanced health reform proposal to be marked up by Congress to date. The Chamber believes that this bill represents a genuine effort to build a bipartisan, measured proposal that addresses problems in America’s health care system while attempting to address skyrocketing costs. However, the Chamber urges you to improve this bill in several areas.

The legislation includes a number of provisions that could be helpful to increasing choice and competition, improving quality, and helping more Americans get health insurance coverage while preserving the parts of the system that currently work well. However, it also contains a number of highly problematic provisions that would increase costs for employers, hamper economic recovery, and make health insurance more expensive for most Americans.

Accordingly, the Chamber supports the following concepts:

- **No government-run health plan.** While the Chamber has significant reservations about the creation of new government-funded co-ops, we acknowledge the Chairman’s work to accommodate the goal of offering more choices. Chamber members remain opposed to a government-run health plan, regardless of how such an entity would be created.

- **Reasoned approach to preserving employer participation.** This legislation takes a reasoned approach to preserving employer participation in the financing of health insurance. The Chamber supports efforts to encourage employers to offer health insurance, but strongly opposes efforts which would mandate employers to provide such coverage. Employers must be provided the freedom and flexibility they currently possess under ERISA or workers will lose the coverage they have. While the Chamber acknowledges that the approach taken by Chairman Baucus aims to keep employers in
the system and not force them to pay, we do have serious concerns with the legislation. The Chamber opposes efforts to allow employees to take Exchange credits and force employers to fund them. The more employees who are allowed to do so, the more likely it is that employer plans will cease to operate. The Chamber also opposes the government dictating the scope and level of coverage that employers would be required to offer.

- **Building on successful wellness programs.** The legislation includes provisions not only preserving the workplace wellness programs that have become so successful, but building upon them. The Chamber strongly supports tax credits for small businesses that create such programs, as well as providing the Secretary of Health and Human Services authority to expand the amount that premiums may vary as to incent good behavior and participation in healthful activities.

- **Establishment of an Exchange.** The Act creates a new marketplace for individuals and small groups to shop for coverage, under the auspices of Exchanges and the SHOP structure. The Chamber supports creating streamlined, centralized places to compare coverage on an apples-to-apples basis. These provisions could be strengthened if the bill created one national Exchange in which individuals from any state could purchase coverage from any other state and in which groups could pool through associations or small business health plans and a national Exchange would ensure portability.

- **Multi-State Compacts.** The Chamber supports the bill’s provisions that allow multiple states to enter into interstate compacts through which residents could purchase health insurance across state lines. These provisions could be strengthened by requiring states to enter into compacts with other states. Such provisions could be the key to creating more choices for individuals and businesses and to fostering true competition in the health insurance industry.

- **National Plans.** There are provisions allowing the operation of “national plans” in which the same insurance plan could be purchased in any state. These plans would not be burdened with as many onerous state coverage mandates as current plans often are – a very positive step. The Chamber believes states should not be permitted to opt-out, thereby taking choice away from their residents. Further, these plans should be available to all individuals and small businesses.

- **Reasonable rating rules.** The legislation creates rating rules that allow sufficient flexibility for insurers to accommodate the needs of the old and young, the healthy and the sick. The Chamber believes that there must be sufficient room preserved in age rating (5:1 at a minimum) to allow young people to receive affordable coverage. New rating rules are greatly needed, but if they are too restrictive they will cause the young and healthy to shun insurance, and may price them out of it completely. The Chamber urges the Committee to retain the 7.5:1 included in the mark.

- **Cafeteria plans.** New rules regarding Section 125 Cafeteria plans would allow many more small businesses and individuals to obtain tax equity and use pre-tax dollars to
purchase health insurance. The full SIMPLE Cafeteria Plan Act should be included to further this shared goal.

- **Long-Term Care.** The Chamber supports provisions allowing the use of pre-tax dollars to purchase long-term care. Rather than creating a massive new bureaucracy and entitlement like the CLASS Act, the legislation is instead employing tax incentives to fix the private market. This change would help reduce medical bankruptcies and get more Americans the coverage needed for health security as they age.

- **Other improvements.** The bill also includes provisions to help with administrative simplification, streamlining enrollment in existing programs, increasing care coordination and patient-centered medical homes, moving to value-based purchasing and pay-for-performance, and creates new entities that will help control the costs and improve the quality of existing federal programs. All of these provisions are needed steps in the right direction.

**The Chamber is concerned with the following provisions:**

The Chamber opposes provisions that would levy damaging new taxes on employers and taxpayers and place onerous new requirements on employers, potentially dismembering the employer-sponsored system. Further, as CBO has projected, the proposed new taxes on health benefits, health insurance, prescriptions, medical devices, and reduced payment to hospitals would result in significant cost increases that will be passed on directly to employers and workers making health insurance more expensive, not less expensive.

- **Employer Penalties.** Employers who offer coverage will be penalized if low-wage employees seek out government credits. This is contrary to the goals of the legislation. The modified mark could lead to more Americans losing their employer-sponsored coverage.

- **Tax on “High-Value” Benefits.** The massive tax on “high-value” benefits will expand faster than inflation. It will result in millions of Americans paying at its inception, and millions more eventually facing new taxes. Changes in the modified mark would slightly slow the tax’s expansion, but also increase the tax from 35 to 40 percent. The Chamber opposes taxes on benefits hidden by applying them to employers and insurers instead of the policy-holders, who will pay the actual costs.

- **State Waivers.** The modified mark contains a provision allowing states to seek waivers from federal laws in order to enact their own reforms. If this provision includes waivers to ERISA, it would force employers to comply with a mismatched patchwork of state rules and taxes and it would disrupt the employer-sponsored system.

- **Subsidies.** Rather than getting the costs of health insurance under control and creating “affordable” plans for all Americans, this bill would redistribute nearly half a trillion dollars from taxpayers in the form of subsidies for lower income earners to purchase
insurance. This spending will never be reduced, and will burden the federal budget (and taxpayers’ wallets) for generations to come.

- **Medical Liability Reform.** Medical liability is a significant cost-driver in the medical system that has not been addressed in existing legislation. Meaningful health reform must take on this subject by implementing caps on punitive damages that punish doctors and hospitals, creating specialized health courts, allowing medical expert panels to dismiss frivolous cases, making the loser of medical torts pay the other side’s legal expenses, and capping excessive trial lawyer reimbursements. Jurisdictional issues should not prevent inclusion of medical liability reform provisions – even if the Judiciary Committee must be brought into the process. The Department of Health and Human Services estimates that medical liability reform and reductions in defensive medicine could save up to $500 billion over a decade. This issue is yet another reason not to rush through legislation.

- **Onerous Reporting Requirements.** The bill includes onerous new reporting requirements that will be devastating to small businesses, increasing their taxes by more than $17 billion. The Chamber opposes provisions that disadvantage small businesses that already are facing a difficult economic environment and increasingly cannot afford the stifling costs of health insurance.

- **Value-Driven Health Plans.** The Chamber supports value-driven plan designs like Health Savings Accounts (HSAs) and Flexible Spending Arrangements (FSAs). Unfortunately, this bill makes these options less attractive, limits their usefulness, and further insulates them from the true costs of health care. Such a move will not help control health care costs in the long run but will move us in the wrong direction over time, only compounding the problems that have led to the extreme costs of health care. The Chamber opposes any attempts to outlaw or weaken these plan designs, including setting unreasonable actuarial value requirements for plans to meet new standards.

- **Medicare Part D.** Retirees who have health coverage through their employer may lose their plans due to tax changes that disadvantage companies who offer Part D prescription drug plans for their retired workers and their dependents. Employers should be encouraged, not discouraged, to offer retiree health plans and Part D supplemental coverage. Further, disadvantaging companies from offering prescription drug plans will only shift more cost burdens onto the federal government.

- **Unrelated Issues.** Comprehensive health reform is a complex and wide-ranging issue. It would be a disservice to the American people to further muddy the waters by introducing radical changes to unrelated or tangential issues like executive compensation, auto insurance, and workers compensation.

Although The Chamber believes much work remains for the Committee, the mark is the best bill to be considered by Congress so far. We applaud the efforts of Chairman Baucus and the other five Senators who worked toward a compromise. However, it is unfortunate that a true bipartisan compromise could not be reached.
It is critical that the health care system be reformed, but passing this bill without serious modifications would be counterproductive. The Chamber urges Congress to start over with a different framework and recommends that the Committee focus on three areas: controlling the costs of health care and insurance, reforming the way insurance companies do business, and creating a vibrant, transparent marketplace in which people can shop for insurance. These steps could be taken in a bipartisan way that is far more affordable, that would achieve the goals the Chamber and the business community share with the President, and that could be understood and supported by the public.

The current bill is unacceptable in many areas and a number of proposed amendments could make it even more objectionable. Nevertheless, the Chamber hopes the markup serves as an opportunity to come to consensus on health care issues in the Committee and looks forward to working with you to enact comprehensive health reform legislation.

Sincerely,

R. Bruce Josten

Cc: The Members of the Senate Committee on Finance