May 9, 2017

The Honorable Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Mr. Secretary:

Congratulations on your confirmation as Secretary of the Department of Labor. We look forward to working with you on issues of concern to employers as the administration seeks to match federal policy with the needs of today’s workplace and tomorrow’s. As you know, the Affordable Care Act (ACA) provides substantial regulatory authority to the Department of Labor, the Department of Health and Human Services, and the Treasury Department to interpret and administer the law. The HR Policy Association would like to meet with you to discuss how the new administration could use its authority, consistent with Executive Orders 13765 and 13771 to preserve employer-provided health care benefits by reducing unnecessary and costly burdens that increase costs for employees, limit flexibility, and restrain innovation.

The HR Policy Association is the lead organization representing chief human resource officers of more than 380 of the largest corporations doing business in the United States. The member companies provide generous health care benefits to more than 20 million employees, retirees, and their families. Collectively, member companies spend more than $100 billion annually on health care in the U.S.

It is important to remember that while the public debate over the ACA focuses on the 20 million Americans who are receiving coverage through its exchanges and Medicaid, the Act also significantly, and in many cases unnecessarily, increased the regulatory requirements and burdens on employment-based health care that covers more than 177 million Americans. Too little attention has been focused on this aspect of the ACA.

While we wholeheartedly agree that coverage for those who do not receive it through their employers is a critical priority, it is important to remember that innovations in large employer-sponsored health care benefits are helping to significantly reduce health care costs. As health care reform moves forward, federal policies should leverage and encourage the innovation of employer-sponsored health care benefits and support the flexibility necessary to enable large employers to continue to make these innovations. Such policies will be critical for making the Nation’s workforce healthier and more productive. Moreover, we believe the improvements driven by employer-sponsored plans and help make our health care system more fiscally sustainable – thereby enhancing American global competitiveness.
As Department of Labor prepares its health care regulatory reform plan, we urge you to carefully review all ACA-related regulations and guidance to reduce unnecessary and costly burdens on employer-provided health benefits that limit flexibility and restrain innovation. Specifically, we respectfully ask that you work with HHS, Treasury, and EEOC to:

- Protect the crucial ERISA preemption as state flexibility increases;
- Increase the transparency of underlying financial transactions and contractual commitments in services provided by health care vendors;
- Eliminate the limitations placed on use of HSAs, FSAs and HRAs, and clarify that “stand-alone” HRAs do not violate the ACA’s annual limit restrictions;
- Remove the “embedded” individual out-of-pocket limit in family health care plans that is clearly inconsistent with the statute;
- Remove the essential health benefit/minimum value requirements on self-insured employers that are not required by law;
- Enable employers to make opt-out payments to employees who decline enrollment in an employer's group health plan;
- Reduce unnecessarily burdensome requirements on employers’ internal and external claims appeal processes;
- Reduce all reporting burdens required by the ACA by allowing employers to certify compliance.
- Revise the EEOC’s wellness program rules;
- Limit the ACA’s open-ended preventive services mandate; and
- Simplify the non-discrimination rule to strike provisions not required by law, especially the language requirements.

Finally, we support the delay of the ACA’s 40 percent “Cadillac Tax” on employer health benefits in the American Health Care Act (H.R. 1628), and urge the administration to work with Congress to fully repeal this tax along with other ACA taxes and fees.

I would be delighted to meet with you to discuss the importance of the ERISA preemption to the stability and affordability of employer-provided health care benefits and other health care regulatory issues. Please have your staff contact Mark Wilson, Vice President, Health and Employment Policy, at (202) 315-5575, or at mwilson@hrpolicy.org to arrange a meeting at your convenience. HR Policy Association looks forward to working with you to reduce health care costs for all Americans.

Sincerely,

Daniel V. Yager
President and Chief Executive Officer