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April 19, 2002

The Honorable Elaine L. Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Chao:

We are writing to urge the Department of Labor to take immediate steps to revise the ERISA group health plan claims procedure regulation issued during the last days of the Clinton Administration.

Last summer, the Department extended the rule's compliance period for group health plans because action on Patients' Bill of Rights legislation (S. 1052 and H.R. 2563) addressed the same claims processes covered by the regulation. We fully supported this needed extension, as resolution of the Patients' Bill of Rights was indeed potentially likely.

As you know, these new health plan rules will take effect beginning on or after July 1, 2002 but not later than January 1, 2003. It is our strong belief that implementation of this rule will cause great uncertainty for health plan participants, beneficiaries, sponsors and administrators because of the ongoing efforts of Congress and the White House to draft their own adjudication rules in the patients' rights legislation.

Specifically, we are concerned about provisions in the final rule that go even further than the patients' rights bills passed by the Congress. For example, the Department's final rule:

- encourages frivolous new lawsuits by upsetting the settled judicial doctrines that plan participants must exhaust plan remedies before bringing lawsuits (both S. 1052 and H.R. 2563 have provisions that require exhaustion);

Secretary Chao
April 19, 2002
Page 2

- promotes a costly patchwork of state-to-state regulation of health plan claims practices by declaring that federal rules governing internal and external review do not supersede conflicting state insurance laws (H.R. 2563 creates uniform federal claims rules), and
- undermines 60 years of federal policy under the Federal Arbitration Act which promotes alternative dispute resolution procedures by prohibiting ERISA plans from requiring that benefits disputes be subject to arbitration (S. 1052 does not preclude arbitration).

We are aware that portions of the rule regarding ERISA plans other than health plans have already gone into effect. Because some or all of the rule's provisions dealing with exhaustion, arbitration and preemption also govern ERISA plans other than health plans, we are concerned that the regulation may already be establishing adverse precedents on these key provisions.

As you know, the House and Senate have not yet convened a formal Conference Committee to reconcile differences between S. 1052 and H.R. 2563. When the Conference will begin is uncertain. However, in the interim period, we strongly believe that the Administration should take steps to ensure that the Department's regulations reflect the Administration's policy as expressed in the negotiations and debate on the Patients' Bill of Rights.

As such, we urge you to consider revising the entire claims regulation. We believe that the best way to accomplish this would be to delay the effective date for group health plans and provide additional opportunities for comment before issuing a revised rule. The Department should also consider issuing interim guidance with respect to ERISA plans other than health plans to clarify the application of exhaustion and other key provisions so that rule can remain effective.

The Administration's effort to speak with one voice on the Patients' Bill of Rights and surrounding issues is of the utmost importance to the Congressional work on this issue. We appreciate your assistance and look forward to continued work with you on these matters.

Sincerely,

JOHN A. BOEHNER
Chairman
Education and the Workforce Committee

SAM JOHNSON
Chairman
Subcommittee on
Employer-Employee Relations