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To: U.S. Chamber Board of Directors

From: Tom Donohue

Subject: Health Care Reform—What Happens Next?

With health care legislation now signed into law, the administration and Congressional supporters have begun an all-out public relations campaign to convince a skeptical public and the business community that we should applaud what they have done. As you will see, it's going to be a hard sell.

President Obama and his team certainly deserve credit for their tenacity and perseverance. After a long battle, they secured House passage of the "Patient Protection and Affordable Care Act" on March 21 by a very close vote of 219-212. Several days later, the Senate threw parliamentary tradition aside and used the reconciliation process to approve, without the possibility of a filibuster, a series of so-called fixes demanded by House Democrats. These "fixes" make the underlying bill even worse.

As for the Chamber, we are disappointed with the outcome. But we have no regrets about taking on this critical fight.

Our outstanding staff and many committed business and association partners worked tirelessly and never gave up. The dedicated state, metro, and local chambers in our federation worked with us day and night to rally their business communities and help generate an avalanche of calls, emails, and letters to Congressional offices. We came farther than anyone could have expected a year ago, removing even more onerous provisions from the legislation, mobilizing a powerful grassroots movement that can be called upon in the future, and playing a major voter education role in the Senate election in Massachusetts.

The lopsided make-up of the House meant that peeling off 34 Democrats to vote against the bill—no small achievement—was still not enough. Unlike the administration and House leadership, we could not promise expanded deliveries of water to California's Central Valley, millions of dollars for airport improvements in Michigan, or $100 million in additional Medicaid money to Tennessee—to name just a few of the "special arrangements" that secured the last votes for passage.

Though the President promised a new bipartisan, "transformative" politics during his campaign, his administration won this victory the old-fashioned way—by making backroom deals with legislators to secure votes, using the bully pulpit of the presidency to demonize an entire industry, and by playing tough political hardball with Democrats and Republicans alike.

The Chamber's Plan Going Forward

So what happens next and where do we go from here?

The Chamber is going to carry a message across the country that says the health care debate is not over. Over the past year, President Obama emphasized again and again that reform must extend quality, affordable care to all Americans and must bend the cost curve downward to address the deficit. The newly enacted bill fails to meet the President's own standards. It is a major step in the wrong direction and will prove to be a serious drag on our economy and the nation's fiscal solvency.

Repealing the bill outright is not realistic. Instead, the Chamber will embark on a multifaceted strategy that we believe can be more effective and deliver results.

First, we will launch a significant communications program to educate Americans—and no doubt many members of Congress who voted for it without reading it—about what's really in this 2,800 page bill and how it will impact our health care system and the capacity of our economy to generate new jobs and innovations. Through this effort we can keep the heat on lawmakers and build momentum for change. (I will return to this subject in a moment.)

Next, we will assign a team of our most skilled and experienced staff to participate in the years-long process of writing the thousands of pages of federal regulations that will implement the many provisions in this legislation.

We will be submitting comments, proposing language, and seeking changes in an effort to minimize the potentially harmful impacts of this bill on our members and the country. Should federal regulators attempt to exceed legislative mandates or try for end-runs around the lawful rulemaking process, Chamber lawyers will take legal action. Regulatory clarity, transparency, and common sense are absolutely critical.

We will also seek legislative improvements at every opportunity. This and future Congresses will have to return to the legislative well again and again in the coming months and years. Why? Because given the bill's vague and sloppily-worded provisions as well as its unrealistic policy and financial assumptions, corrections will be needed.

Glitches are already popping up. For example, at the bill signing ceremony the President trumpeted a provision he said would take effect almost immediately, which prevents insurers from turning down children with pre-existing conditions. A day later, the White House had to admit that the provision wasn't written properly. The administration says it will attempt to achieve through regulatory fiat what it inadvertently failed to achieve legislatively.

In addition, the Chamber will make health care a major focus of our voter education and issue advocacy activities leading up to the 2010 elections. We plan to spend at least $50 million this summer and fall to ensure that voters in pivotal House and Senate races understand exactly where lawmakers stand on health care and other vital issues.

Finally, we will continue to vigorously advocate genuine health care reforms that build on the best features of our private, employer-based system. We must expand choice and competition in the health marketplace, limit frivolous lawsuits, emphasize prevention and wellness, implement health IT, level the tax playing field for those who pay their own premiums, and prevent over-testing and medical mistakes—all part of a critical effort to control spiraling costs as millions of baby boomers age and continue to retire.

What the Bill Means to Business, Health Care, and the Country

In the meantime, companies, families, seniors, providers, and states are all scrambling to figure out what the current health care legislation will meant to them. The deeper we dig into all 2,800 pages, the more troubled we are by the bill's intended and unintended consequences. Here are some key impacts:

This health care legislation will significantly worsen the already perilous fiscal condition of our country.

Much has been made of the nonpartisan Congressional Budget Office's (CBO) estimate that the bill will reduce the federal deficit by $138 billion over 10 years and by an even more fanciful $1.1 trillion over 20 years. In fact, deficits will expand as a result of this legislation.

CBO can only answer the questions it is asked, based on the policy assumptions it is given. The bill's supporters engineered positive CBO findings by submitting unrealistic assumptions regarding future Medicare savings and taxes on high-cost health plans, as well as by front-loading new revenues while back-loading new expenses.

For example, subsequent to its initial findings, CBO disclosed that <u>all</u> of the savings claimed by the administration would disappear if the government extends the current Medicare doctor payment rate instead of allowing it to expire (resulting in a 21% cut in reimbursements to doctors). The administration and Congressional leaders have <u>already</u> signaled that they intent to extend the current payment rates, thus wiping out any purported savings in the bill.

In fact, we have to keep doctors in their practices and we want them to keep treating Medicare patients. Extending the current payment rates is therefore justified. Our objection is that the administration and its Congressional allies tried to hide this cost, which they know is coming, as part of an effort to falsely claim their health care plan actually reduces the federal deficit.

Another primary revenue source for the program is the 40 percent excise tax on high-cost plans effective in 2018. It is widely believed that future Congresses will never allow this tax to take effect as written.

The bill's authors also made their legislation look more fiscally responsible by using the first 10 years of revenue to pay for 6 years of spending. Fully funding the program for the entire 10 years will take an annual expenditure of $114 billion—an expense not included in the CBO's deficit reduction calculations.

Then there are the inconvenient facts of history. Government health and entitlement programs almost always end up costing exponentially more than their drafters anticipate—or are willing to admit. For example, when Medicare was enacted in 1965 it was projected to cost $9 billion by 1990. Instead it cost $67 billion in 1990—and $521 billion today.

The bottom line is that while the bill's cost has been advertised as $950 billion, its true cost will be closer to $2 trillion. Even before it passed, the country was on track to more than doubling the national debt over the next decade to $20 trillion. This health care bill will only hasten America's descent into national bankruptcy unless serious corrective action is taken soon.

This health care legislation will dramatically expand entitlement programs that are already going broke.

Along with Uncle Sam, states across America are also drowning in red ink. Now they must grapple with a huge federal mandate that could add as many as 15 million people to state-run Medicaid programs, while reducing the states' flexibility to trim other Medicare benefits and costs. Within days of the bill's passage, more than a dozen states have announced they will file lawsuits contesting this and other provisions in the new health care bill.

Americans with incomes up to 133% of poverty level will be able to enroll in Medicaid. Once an individual mandate takes effect requiring most Americans to buy health insurance, families with annual incomes of over $88,000 will be able to qualify for new federal subsidies to help pay their premiums. This marks a major expansion of the welfare and entitlement state at a time when existing programs already face massive unfunded liabilities.

The health care bill also creates a new long-term health care insurance program called the Class Act. The anticipated $70 billion in revenues are counted as deficit reduction, because the benefits are assumed not to be paid out in the first 10 years. Yet the CBO has said that the Class Act will be "unsustainable" in the long-term, adding hundreds of billions in unfunded entitlement spending to the deficit.

This health care legislation imposes $569 billion in new and higher taxes on businesses and individuals, as well as costly, complicated mandates on employers and insurers. Together, these provisions will eliminate jobs, stifle health care innovation, raise premiums for all, and drive millions from employer-based care to government programs.

There are new taxes on medical devices, prescription drugs, and health insurers. Make no mistake—these taxes will be passed on to every American in the form of higher prices and premiums. As I have mentioned, the bill also includes a 40 percent excise tax on high-cost plans, which would bend the premium cost curve upward unless benefit packages for those plans are cut.

Restrictions and mandates on insurance plans that employers now offer to workers – such as covering children under their family plan until age 26, and ending disqualifying factors such as pre-existing conditions—probably sound reasonable to many Americans. But they will unquestionably drive premiums up even more.

Upper income earners will see their Medicare payroll taxes go up. In addition, a new 3.8% "Medicare" tax on non-wage income would be placed on high earners, income from interest, dividends, capital gains, and some profits from investments in partnerships and S-corporations. These savings and investment earnings will no longer be available to fund new enterprises and create new jobs.

Employers with over 50 employees (including, in many circumstances, seasonal and part-time employees) will be forced to offer coverage or pay a $2,000-per-employee fine. Businesses will also face a $3,000-per-employee fine if the coverage they offer is deemed "unaffordable" for employees (defined as such if and when the employee opts-out and gets a subsidy in exchange).

It is estimated that nearly 220,000 small businesses could be subject to the employer mandate. The percentage of employees employed by small businesses which could be subject to the employer fine is projected to be 26.4 million workers or, 22 percent of the entire private-sector workforce.

As premiums on existing plans rise and complexity grows, how many of these businesses will decide that it makes more sense to pay the fine, end employer-sponsored coverage, and have their workers move to government programs? In fact, according to the CBO, 8-9 million Americans will lose their employer-sponsored plans over the next decade. They will lose the health plans they like and want and be added to government programs instead.

The legislation will do nothing to slow rising costs, but will instead lead to reduced choice, quality and the availability of some services.

The government's role in U.S. health care will grow and the innovative private sector's role will shrink—according to plan. Indeed, positive features of our current system which were designed to promote individual initiative and private sector efficiency—such as Health Savings Accounts, Medicare Advantage, and tax incentives for large employers to offer prescription drug benefits to retirees—were singled out for attack and curtailment in this bill.

Allowable deposits into tax-exempt Health Savings Accounts will be reduced beginning next year. Some $206 billion in cuts will be made to the Medicare Advantage program, which will increase premiums and reduce benefits for the 11 million seniors who have chosen this program as an attractive alternative to traditional Medicare.

The bill will have huge negative effects on employers who currently provide retiree benefits. These companies now receive a subsidy to help pay for their Medicare Part D prescription drug costs, which saves the taxpayers billions of dollars annually. The legislation will end the tax exclusion on the subsidies—making them taxable for the first time.

This will have a negative impact on companies' cash flows, decreasing cash available for new investments and jobs. In just the last few days, major companies have formally reported the anticipated hit on their earnings. This is potentially devastating news for unemployed Americans who are waiting for the job-creating engine of our economy to rev up again.

It is also an early embarrassment for the bill's supporters, who have claimed the new legislation would actually help companies. In a shameless move, Rep. Henry Waxman has scheduled a hearing in April to investigate and intimidate companies who are simply complying with financial reporting rules by saying they will take a financial hit. That is not a message Rep. Waxman and others can afford to let the American people hear, so they are searching for a way to blame these businesses for a mess that the lawmakers themselves have made.

While Medicare reforms and cost-savings are sorely needed, program officials have said that the cuts in this bill are unrealistic and would drive as many as 20 percent of doctors and hospitals into serious financial distress. Many providers say they would stop taking Medicare patients altogether or even leave the profession, leading to service scarcities and the rationing of care. As government further squeezes doctors and hospitals, additional costs will be shifted to the private sector in the form of higher prices, thus driving premiums even higher.

This legislation is the wrong prescription for America. We must "reform the reform."

With all the costs and burdens I have outlined, one might at least expect the bill to finally solve the problem of America's uninsured. But it does not. New federal subsidies and expanded Medicaid eligibility will not even start until 2014. Even then, millions will be left without coverage.

Many Americans will be surprised to find that they are not simply being handed free health care coverage, but rather they will be ordered to go find it, buy it, and prove they have it *–all under the watchful eye of 16,500 new IRS employees that will be hired to enforce this legislation.*

Many will find the subsidies inadequate, the hit on their take-home pay still too high, and the process of complying too complex. Some will decide to pay the relatively small fines instead. Or, they will wait until they are sick and then sign up with an insurer who can no longer legally refuse to cover them.

For those already insured, they will see their premiums and other costs continue to rise. Employers will not only face higher premium costs but burdensome new reporting requirements. It will be the employer's responsibility to demonstrate their own compliance with the new law as well as to provide the documentation their workers will need to prove that they are covered.

Sadly, this legislation fails to fix what is broken and will break what already works well in American health care. The need for genuine health care reform is as real and urgent as it has ever been. Going forward, we will be sharing new information and developments with you, our broader membership, and the public. Our purpose is not to re-fight old battles, but to work constructively to save and improve what once was and can be again the very best health care in the world. Americans deserve no less.

Please don't hesitate to contact me with any questions or concerns. In my absence, please call Chamber COO David Chavern at (202) 463-3101.