THE WHITE HOUSE

May 12, 1994

The Honorable Bernard Sanders
U.S. House of Representatives
Washington, D.C. 20515

Dear ~~Congressman~~ Bernie Sanders:

Thank you for writing about the current dispute over whether ERISA affects the ability of states to implement single payer systems. I am aware that while opponents believe that ERISA currently precludes states from setting up single payer systems, courts have found that ERISA does not preempt state laws taxing citizens to provide medical benefits to them.

I have forwarded your letter to the Attorney General.

Sincerely yours,

Hillary

Hillary Rodham Clinton

BERNARD SANDERS
MEMBER OF CONGRESS
VERMONT, AT LARGE

213 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4501
TELEPHONE: 202-225-4115
FAX: 202-225-6790

Congress of the United States
House of Representatives
Washington, DC 20515-4501

COMMITTEES:
BANKING, FINANCE AND URBAN AFFAIRS
GOVERNMENT OPERATIONS

1 CHURCH STREET, SECOND FLOOR
BURLINGTON, VT 05401-4417
TELEPHONE 802-862-0697
TOLL FREE: 800-339-9834
FAX: 802-860-6370

January 7, 1994

The Honorable Hillary Rodham Clinton
The White House
Washington, DC 20500

Dear Mrs. Clinton:

As you know, I am one of over 90 members of the House who has co-sponsored Rep. Jim McDermott's single payer health care proposal. I have also been supportive of the provision of the President's legislative proposal which provides a local option for each state to establish a single payer system. Some states like my state of Vermont are considering health care reform legislation right now, well before Congress has the opportunity to take up the President's proposal.

As that state-level battle heats up, opponents of the state single payer option have been claiming that ERISA (The Employee Retirement Income Security Act, 29 U.S.C. § 1001 et.seq.) stands in the way of immediate implementation of single payer health care reform in the states. They claim that the provisions of 29 U.S.C. § 1144(a) which provides that ERISA supersedes "all state laws insofar as they may now or hereafter relate to an employee benefit plan" will also apply to a state single payer plan, and that we must await Congressional amendment to proceed.

It is my view that this ERISA preemption argument is part of a serious disinformation campaign being advanced to thwart momentum toward health care reform. I am writing to enlist the immediate assistance of the Clinton Administration in helping to stop this disinformation.

A formal legal Opinion of the Attorney General concurring with our analysis that ERISA does not stand in the way of immediate implementation of health care reform, is vital. The Hawaii health care case has already decided this issue. Standard Oil vs Agsalud 5663 F.2d 760 (9th Cir. 1980), aff'd 454 U.S. 801, 102 S.Ct. 79, 70 L.Ed. 2d 75 (1981). While ERISA was held to supersede Hawaii's employer mandate legislation, the court was quick to distinguish it from "a state administered fund rather than funds established or maintained by employers" such as the Rhode Island Catastrophic Health Insurance Plan which required the payment of money "to the State as a State." 633 F.2d at 765.

Hon. Mrs. Clinton
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Other Court decisions have held that a state tax of general application which applies to employers or employees with ERISA plans without regard to their status as ERISA participants, is not preempted by ERISA. Firestone Tire and Rubber Co. vs. Neusser 810 F.2d 550, 556 (6th Cir. 1987). Where a state statute of general application does not affect the structure, the administration, or the type of benefits provided by an ERISA plan, the mere fact that the statute has some economic impact on the plan does not require that it be invalidated and is not preempted by ERISA. Rebaldo vs Cuomo 749 F.2d 133 (1984).

In a single payer plan, a State uses its taxing and spending powers to establish a benefits plan to which all citizens are entitled. The states currently assess taxes on employers, including those with ERISA health plans, to fund school nurses, public health programs, state hospitals, and the states' share of Medicaid. In our view a single payer system is simply more comprehensive -- akin to public education where taxes are levied to support a system in which everyone is entitled to participate and would be unaffected by ERISA.

I recognize that the Justice Department cannot speak for the Courts, and that in their final analysis this issue can and should be settled by the President's health care reform legislation. However, we need the administration's involvement now. An opinion letter by the Attorney General concurring with our analysis would be given great deference and respect, and would be helpful in keeping my own and other states on the health care reform track.

Thank you for your consideration.

Sincerely,

Bernard Sanders
Member of Congress

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