

National Coalition on

BENEFITS

July 9, 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D. C. 20515

The Honorable John A. Boehner
House Minority Leader
U.S. House of Representatives
Washington, D. C. 20515

Dear Madam Speaker and Minority Leader Boehner:

The House of Representatives is proceeding on an ambitious schedule for consideration of the “Tri-Committee” health care reform legislation. Before the formal process of mark-up and voting begins in the committees of jurisdiction, the Steering Committee of the National Coalition on Benefits (NCB) believes it is critical for the Members of the House of Representatives to continue seeking input from the employer community, which currently provides health insurance for over 170 million Americans. The National Coalition on Benefits is a coalition of 185 business trade associations and employers who have joined together to work with Congress to maintain uniform health and retirement benefits to employees and retirees across states and localities.

During the week of June 22nd, several major employer groups testified before the House Ways and Means, Energy and Commerce and Education and Labor Committees. While each of these employer groups provided a unique perspective, there were several common themes communicated that we hope will guide the mark-up process and lead to an improved bill for the full House to consider.

The employer community is united in the belief that the reform effort must find a way to control healthcare costs. As the U.S. Chamber of Commerce pointed out in its testimony, “the business community has been supportive of reform for some time now, as health care costs have continued to rise much faster than the rate of inflation.”

The NCB itself stated in previous testimony before the House Energy and Commerce Health Subcommittee, "a strategy to control costs must be the foundation of any effort to improve the health care system." The Business Roundtable added: "Simple mathematics dictates that effective health care reform must start with reducing the rate of increase in health care costs." The American Benefits Council expressed the same point, arguing that "projections make it abundantly clear that no matter who ultimately pays the bill, health care must be made more affordable, or it cannot be made more available." The ERISA Industry Committee, (ERIC) warned: "The relentless increases in the cost of health care threaten the viability of U.S. corporations in a global economy, while the upward spiral in the costs of Medicare and Medicaid threatens our national solvency."

The need to control the relentless increases in healthcare costs, particularly when evidence abounds that as much as one-third of health care spending is unnecessary, is why the employer community has been so proactively engaged in the reform effort. Unfortunately, we do not believe the House Tri-Committee bill, taken as a whole, achieves meaningful, long-term control of U.S. health care costs. To do so requires both significant changes in the way we pay for services from a system based on volume to one based on accountability and outcomes and encourages continued employer sponsorship of health benefits by making health care more affordable and sustainable.

The testimony of the leading employer groups articulates our key concerns on five core issues. Unless changes are made in each of these areas, we believe the legislation will harm the future viability of employer-based health coverage, which provides benefits to over 170 million Americans. The five core issues are:

1. ERISA
2. Employer Mandates
3. The Public Plan
4. Minimum Benefits Package
5. Financing/Tax Exclusion

ERISA

For several years, the employer community has made clear that ERISA is a critical cornerstone in the employment-based system. The Business Roundtable expressed our shared concern on the Tri-Committee bill with respect to ERISA by pointing out that "preservation of ERISA is critical if reforms are to be built on the employer-based system. The Tri-Committee health care reform proposal would erode the flexibility in ERISA by requiring all health insurance coverage to ultimately meet similar requirements with which insurers must comply."

The National Coalition on Benefits also strongly opposes provisions in the Tri-Committee bill that alter the federal ERISA law remedy regime. The existing structure encourages early, out-of-court resolution of disputes, and provides a national uniform legal framework to provide both employers and employees with consistency and certainty. The current draft of the legislation would replace this successful structure with differing remedy regimes depending on where employers and employees obtain health coverage. The House bill would create three differing enforcement regimes: state law for coverage obtained INSIDE an exchange, ERISA's federal law regime for coverage obtained OUTSIDE an exchange, and, Medicare's federal law regime for coverage obtained from the public plan option. All these differing bodies of law are likely to result in differing decisions about plan determinations and would expose employers who obtain coverage through the exchanges to unlimited state law liability. Employers would be faced with understanding and administering plans to comply with 50 distinct remedies regimes. Instead of relying on the precedents of one federal regime, employers would need to become experts on the remedies laws, and the resulting court decisions, in every state where they employ workers.

Employer Mandate

As a coalition whose mission it is to strengthen the employment-based system, the NCB has consistently argued that an employer-mandate is counterproductive. The American Benefits Council's testimony before the House Education and Labor Committee underscored that point in noting, "One important reason we believe that a "pay or play" employer mandate approach would be an inappropriate coverage solution is that the myriad requirements that would inevitably be imposed on those who might prefer to sponsor health coverage would ultimately, if unintentionally, result in a net reduction in employer sponsored coverage by leading some companies to simply "pay" rather than "play". This would lower the level of active employer engagement and their important role as innovative and demanding purchasers of health care services."

The Public Plan

The NCB believes a public plan, particularly combined with the impact of Medicare, Medicaid, and other public plans, cannot operate on a level playing field and compete fairly if it acts as both a payer and a regulator. The public plan's unfair competitive position, both by its size and regulatory authority, will merely shift additional costs to the private sector and employees covered by private plans.

The testimony of the U.S. Chamber of Commerce before the House Education and Labor Committee pointed out that "Recent studies continue to find that government cannot and would not compete on a level playing field with private competitors in the insurance market. Government programs tend to hide administrative costs by outsourcing to various other departments and agencies,

forcing individuals, enrollees, and participating businesses to pick up the slack. Government costs are artificially low due to cost-shifting to private payers – the consulting firm Milliman recently found that private insurance costs 20-30 percent more because of underpayment by government payers ... The fact that this proposal would directly use Medicare rates is extremely dangerous.”

We are also concerned about the adverse selection that would be experienced if individual participants in employer-sponsored plans were permitted to opt out of the employer plan and into a public plan, especially if the employer were compelled to pay for the individual’s participation in the public plan and/or finance any subsidy given low-income individuals who opted out. If permitted, an opt-out would undermine the demographic fairness of a large risk pool that is a feature of employer plans. Over time, young, healthy employees would seek cheaper coverage outside of the employer’s plan, and older, sicker employees would remain in the plan. Eventually, employer plans would become havens for employees with the worst risk profiles, and this would be reflected in ever-higher premium costs. At some point, employers would no longer be able to provide affordable coverage to their workers.

Minimum Benefits Package

The Tri-Committee bill would impose minimum benefit requirements on our employees. Large employers have already designed innovative plans – including wellness and prevention initiatives– that have been tremendously successful at helping employees take greater control over their health. This approach has real potential to reduce national health care costs. And yet such programs – critical to the success of health care reform – would be jeopardized by new federally mandated benefit laws.

The National Association of Manufacturers’ (NAM) letter on the Tri-Committee bill “strongly encourage(s) the Committee to exempt ERISA plans from all actuarial and design mandates, and to minimize other group plan requirements to a reasonable actuarial value with broad categories of coverage. This will provide employers with maximum flexibility to continue offering innovative and customized benefit designs that meet the needs of their business and workforce.”

Financing/Tax Exclusion

To date, the Tri-Committee bill does not fully explain how the legislation will be financed. This is an obvious concern that employers share with doctors, hospitals, insurers and the American people. As the financing options are considered, however, the NCB has expressed concern specifically over changes to the so-called “tax exclusion.”

The ERIC testimony before the House Education and Labor Committee expresses our shared serious concerns with limiting the ability of an employee to

exclude from income the value of employer-provided health insurance: “If this exclusion were curtailed, many large employers would follow one of two approaches. Some would redesign their plans to meet the new cost standard in the legislation, below which taxation would not be imposed. This would necessarily mean that their employees would be provided with less generous health coverage. Other employers would choose to keep their existing plans; if the value of the plan exceeded the standard in the legislation, employees would face taxation on the “excess” value. If this were to occur, employment-based insurance would suffer. Young, healthy employees would either seek to exit their employers’ plans in search of cheaper coverage rather than pay taxes on a more expensive plan or pressure their employers to reduce coverage. If younger workers sought cheaper coverage elsewhere, an employer plan that once had a favorable and balanced risk pool would now be left with an older, sicker, more costly population whose premiums would eventually become unsustainable. Loss of a large, viable risk pool would greatly diminish an employer’s ability to offer efficient and innovative health care coverage to its employees. As the cost of providing benefits increased, more employers would exit the system.”

In summary, the NCB believes the proposal in its current form needs serious revision. We remain concerned about any provisions that would make health care more costly for employers and employees, destabilize our employer-based system of health coverage, or restrict the flexibility of employers to provide innovative health plans that meet the needs of their employees.

As Congress moves to formal consideration of legislation, we want to continue to work with all Members of Congress to enact reforms that not only allow Americans to keep the coverage they have today if they like it – and for most Americans, that means their employer-based coverage -- but make it possible for them to count on it being there tomorrow when they need it.

Sincerely,

The Steering Committee of the National Coalition on Benefits