

**Health Care Policy Recommendations
to the 107th Congress**

Developed by the American Benefits Council
(formerly APPWP – The Benefits Association)

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Patients' Bill of Rights

Both the House and Senate approved separate versions of the Patients' Bill of Rights during the 106th Congress. The most pronounced differences in the legislative proposals concern how broadly the House and Senate bills would expand the legal remedies available to individuals who believe they were harmed as a result of an erroneous health care coverage decision.

The House-passed Norwood-Dingell bill would allow lawsuits against employers, insurers and others to be brought in state courts based on legal standards and remedies developed in individual states. ***In most cases, this would mean unlimited financial damages, including punitive damages, could be awarded for the first time in health benefits lawsuits, resulting in higher health care costs, a decrease in the number of employers willing to sponsor health coverage, and more uninsured Americans.*** The Senate took a much different approach, initially approving an extensive independent external review process to make final coverage decisions health plans would be required to implement and by imposing penalties on those who fail to abide by the independent reviewers' decisions. Later, the Senate approved legislation that provided capped damage limits under uniform federal law for certain specific violations of key Patients' Bill of Rights provisions. Ultimately, the differences between the two widely different enforcement schemes approved by the House and Senate could not be resolved and a final conference agreement could not be concluded before the end of the 106th Congress.

Actions Recommended

- The Council urges Congress to resist expanded financial liability for health coverage decisions -- especially under differing state law standards.
- Near the end of the regular session of the 106th Congress, Senators John Breaux (D-LA) and Susan Collins (R-ME) recommended future Patients' Bill of Rights legislation be based on the many consensus provisions the House and Senate bills had in common, including a strong, enforceable independent external review process. The Council recommends that Congress give serious consideration to this approach as it may hold real promise for the enactment of sensible health reform that avoids extreme expansions in liability for health care coverage decisions that would likely have significant adverse consequences for health care costs and coverage.

Expanding Health Coverage for Uninsured Americans

A recent American Benefits Council/Harris Interactive survey showed benefits professionals believe increasing the number of Americans who have health insurance is one of its top two legislative priorities. Since the end of the national debate over comprehensive health reform in 1994, a broad, bipartisan agreement has developed that the issue of health care coverage should be addressed on an incremental basis. Our survey shows that an overwhelming 82 percent of respondents agree.

Several important initial steps have already been achieved, such as the enactment of the Health Insurance Portability and Accountability Act (HIPAA) intended to safeguard the ability of individuals to move from job to job without losing continuous coverage or facing new pre-existing condition waiting periods before coverage begins. In addition, for children from low-income families, Congress adopted the Children's Health Insurance Program (CHIP), significantly expanding the availability of health coverage to this vulnerable group. Moreover, in the final tax bill considered by the 106th Congress, several additional provisions were intended to enhance health coverage. These included the immediate acceleration of a 100 percent tax deduction for the health insurance expenses of self-employed individuals, a phased-in deduction for individuals who must pay more than half of their health insurance costs on their own, and a limited expansion of medical savings accounts (MSAs).

Actions Recommended

- The Council recommends Congress consider supporting legislation to expand health care coverage on an incremental basis and this should be targeted to those who are most in need, such as the millions of Americans who have no connection to the workforce, are self-employed or who work for companies that cannot afford to provide health coverage.
- Any changes Congress makes in existing tax policy for health coverage, however, must be carefully designed so they do not undermine the current employer-based system that serves over 100 million Americans.
- The Council urges Congress to support needed legislation to allow insurers to offer health coverage free of state-mandated benefits so that more affordable coverage options may enter the marketplace. At the same time, Congress should also firmly resist further efforts to adopt mandated benefits at the federal level.

Confidentiality of Health Information

Congress missed the August 1999 deadline for passing legislation providing for the privacy of individually identifiable medical records, as called for under the Health Insurance Portability and Accountability Act (HIPAA). As a result, the Department of Health and Human Services (HHS) published proposed confidentiality rules in November 1999. After receiving over 50,000 comments, HHS recently released final rules. Congress was unable to reach consensus on this issue, with federal preemption of state confidentiality laws and expanded liability for regulated organizations being two particularly contentious issues.

In its comments on the proposed regulations, the American Benefits Council specifically noted the proposed rules would place a significant and unwarranted burden on employers, health plans, protected individuals and others to determine the relationship between the federal requirements and those enacted by state and local governments. The Council recommended HHS take responsibility for determining which existing state laws and regulations would be saved from preemption since the proposed regulations would allow any state standard to remain in place unless it prevented the application of the new federal rules. The Council also noted the ambiguity when the rules apply to employers acting on matters outside their roles as sponsors of health coverage to their employees. Finally, the Council expressed great concern that the proposed regulations would significantly expand the liability risk employers face in their voluntary decision to sponsor benefit plans and in the administration of those plans with their business partners.

Actions Recommended

- Once final rules have been thoroughly examined, it may be determined that congressional action will be needed, especially if the final regulation further restricts the exchange of information needed for authorized purposes or creates broad liability exposure for employers or others responsible for complying with the new standards.
- If corrective legislation is needed, Congress should consider it as quickly as possible to reduce the uncertainty employers and others will face as they attempt to comply with the HHS regulations. The Council supports a sensible, balanced approach to individual health information privacy and will work closely with Congress and the new Administration to help achieve this objective.

Medicare Reform / Prescription Drug Coverage

While providing a prescription drug coverage is a priority (70 percent) for American business according to a recent American Benefits Council/Harris Interactive survey, of more pressing urgency is reforming the Medicare system itself (95 percent) to ensure financial solvency.

Last year, the House narrowly approved the “Medicare Rx Act of 2000” (H.R. 4680) after a difficult partisan battle. Some others generally support expanding the Medicare entitlement program by adding a prescription drug benefit to the existing Medicare package, whereas others favor a more market-based approach where competing private health plans would offer drug coverage.

Under the House-passed GOP plan, Medicare beneficiaries could select from at least two private prescription drug plans (PDPs) offered by insurers or pharmaceutical benefit managers (PBMs) or a managed care plan that offers drug coverage through the Medicare+Choice program. This new federal program would also allow employers who offer at least comparable drug coverage for their retirees to qualify to have a portion of their higher-than-average prescription drug costs reinsured. In the Senate, the Finance Committee was developing a state-based coverage program for seniors, similar to elements of the proposal discussed by President-elect Bush.

Actions Recommended

The American Benefits Council continues to evaluate the specific Medicare prescription drug plans and various structural reform proposals. The Council offers to Congressional policy makers the following guide to the views of employers on these important issues:

- ***Expanded drug coverage for Medicare beneficiaries should go hand-in-hand with broad structural reforms*** in the Medicare program based on proven market principles and greater consumer choice. Clearly, a successful bipartisan solution to the issue of expanded drug coverage is likely to involve *both* fully-funded, competing private market alternatives from which most beneficiaries will be able to select coverage that meets their individual needs and a clearly defined and appropriate role for the federal government. However, even if the ultimate federal role is focused primarily on providing prescription drug coverage to lower-income beneficiaries, it should still integrate well-tested techniques developed in the private sector. For example, incentives should be built in from the start to encourage efficient mail-order purchasing, the appropriate use of generic products and the use of disease management programs to help determine the most effective approaches to treat a disease or medical condition.
- ***Increasing the Medicare eligibility age would have significant negative consequences*** for employer-sponsored health plans and retirees’ health care coverage. Since many employers who provide retiree health benefits provide them from early retirement to the age of Medicare eligibility, changing the eligibility age

would force these employers to pay for additional years of benefits, which they did not intend to pay for when the original promise was made. Even *gradually* increasing the Medicare eligibility age would have an *immediate* adverse impact on companies providing retiree health benefits since under Financial Accounting Standard (FAS) 106, companies are required to estimate their liabilities for all future retiree health benefits and “book” the present value of these liabilities.

Medicare Reform / Prescription Drug Coverage (continued)

- Proposals to extend new benefits to Medicare beneficiaries ***should not include mandates on employers***. Mandates on employers who provide retiree health benefits are particularly unfair since many other employers either no longer provide retiree health coverage due to its escalating cost or have never offered this benefit to their retirees.
- Medicare reforms and prescription drug coverage should be financed from broad-based sources such as dedicated budget surpluses and appropriate cost-sharing by beneficiaries. ***Increasing the payroll tax on both employers and employees is not a solution***. It does not address the structural problems in the Medicare system and only offers a “quick fix” without addressing fundamental problems.
- ***Medicare’s recently updated internal and external appeals procedures should be used to resolve any prescription drug coverage issues in the future***, rather than to rely on approaches that expand liability for those administering the expanded benefits.