

# Washington-Business Health Update

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## ➤ **SENATE AND HOUSE ECONOMIC RECOVERY BILLS DIFFER OVER PERMANENT EXTENSION OF COBRA**

The House-passed an economic recovery bill earlier this week with new COBRA extensions, which would be a big problem for employers, and the Senate will soon consider its version that would also change COBRA.

While the government subsidies would be temporary, the House bill also includes permanent extensions of COBRA:

- **Permanent COBRA Extensions:** The House bill would **permanently** extend COBRA benefits to people who become unemployed and are 55 or older or have at least 10 years' tenure in their jobs until they either get new jobs offering health coverage or reach age 65 and qualify for Medicare.

Both the House and Senate bills' have the following additional COBRA provisions in common:

- **Temporary Federal COBRA Subsidies:** The economic recovery/stimulus bill will likely require the federal government to temporarily pay up to 65% of COBRA premiums for newly unemployed people losing their jobs between September 1, 2008 and December 31, 2009. The Senate would require the government to subsidize COBRA for at least 9 months while the House would require it for one year. Employees would still be responsible for 35% of COBRA premiums.
- **Payroll Tax Credits:** Unpaid COBRA premiums, after the 35 percent required from those eligible for federal COBRA subsidies, would be credited against employers' requirements to pay payroll taxes. The Treasury Secretary would pay plans any excess amount that exceeds the amount of payroll taxes.

- **Subsidies Would End with Eligibility for Other Coverage:** Federal COBRA subsidies would end when recipients become eligible for coverage under other group health plans (other than dental, vision, counseling, referral services, coverage under a health reimbursement arrangement or a health flexible spending arrangement or coverage of treatment in an on-site medical facility maintained by employers for first-aid services, prevention, wellness or similar service), become eligible for Medicare, or reach the maximum COBRA time requirements.
- **Plans' Notice Requirement for Eligibility for Federal Subsidies:** ERISA plans' notice requirements to people regarding eligibility for COBRA coverage would be required to include information on potential eligibility for federal COBRA subsidies (premium reductions). Group health plans would also be required to amend current notices or include a new notice that would include the plan administrator contact, the time-frame for eligibility for federal COBRA subsidies, responsibilities for those eligible for subsidies, recipient penalties for failure to notify plans when no longer eligible for subsidies and the availability of COBRA premium reductions. The Secretaries of Labor, HHS and Treasury would provide model notices 30 days after passage of the bill.
- **Recipients' Notification Requirement:** "Assistance eligible individuals" need to notify group health plans in writing if they gain other coverage or exhaust the time requirements for federal COBRA subsidies. The Secretary of Labor could impose a penalty of 110 percent of the premium reduction provided after termination of eligibility for federal COBRA subsidies on people who fail to notify group health plans as required.
- **Extended 60-Day Window for COBRA Subsidies:** "Assistance eligible individuals" who were involuntarily terminated between September 1, 2008 and the date of enactment but declined to elect COBRA within 60 days would receive an additional 60 days to elect COBRA and receive subsidies.
- **Expedited Review of Denials of COBRA Subsidies (Premium Assistance):** The Secretaries of Labor, Health and Human Services (HHS) and Treasury People would grant expedited review (within 10 business days of receiving a request) to people found ineligible for COBRA subsidies. The Secretaries would also establish the notification standards for expedited reviews.
- **COBRA Subsidies Would Not Count as Income for Other Federal and State Program Eligibility:** Other federal and state programs would not consider the COBRA subsidies as income in determining people's eligibility.

The Senate bill also includes two COBRA provisions not currently included in the House version:

- **Employers May Offer Different Plans with the Same or Lower Premiums to COBRA Beneficiaries:** The Senate's version would allow employers the option to offer people eligible for federal COBRA subsidies plans that provide the same or lower health insurance premiums than their previous coverage, first suggested by Helen Darling in a letter to Congress.

Link to the Business Group COBRA letters:

<http://www.businessgrouphealth.org/pdfs/011209%20Economic%20Stimulus%20Letter%20to%20Congress.pdf>

<http://www.businessgrouphealth.org/pdfs/012109.pdf>

- **Effective Date Extension:** The Senate bill would also delay the effective date of the COBRA subsidies until the first day of the first month that begins 30 days after enactment to allow employers adequate time to administer the COBRA changes. The House bill would have the COBRA provisions take effect immediately upon enactment.

**IMPACT ON EMPLOYERS:** COBRA costs employers and still-active employees who participate in employer plans up to 150% more than the COBRA premium, and it adds to the administrative burden. Both current employees and their employers would face significant cost increases to finance the House's proposals to permanently extend COBRA coverage for former employees who have worked for 10 years or until they are 65—particularly when premiums do not fully cover the rising health care costs of former employees and their dependents.

**IMPACT ON EMPLOYEES:** Federal COBRA subsidies would temporarily lower former employees' costs to continue their employer-sponsored health coverage. Employees still working would share with employers the increased plans' costs of these COBRA changes in the form of higher premiums or premium equivalents.

**OUTLOOK:** *The House passed COBRA changes in its version of the economic recovery/stimulus this week. The Senate's version will include the COBRA subsidies but not the permanent extensions of COBRA for the 55-65 year olds. The final bill will likely follow the Senate's version and President Barack Obama will likely sign the economic recovery/stimulus bill into law by the end of February.*

**BACKGROUND:** The 1986 Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers with at least 20 employees to offer temporary continuation of health coverage to covered employees and their covered dependents for at least 18 and up to 36 months in certain circumstances when they would otherwise lose health coverage. Last year, the Senate failed to extend COBRA coverage for people from ages 55-65 as part of a larger reauthorization of the Trade Adjustment Assistance (TAA) program.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND RECENT ACTION ON THIS ISSUE:** The National Business Group on Health believes COBRA plays an important role in providing temporary health care coverage and understands the federal government needs to provide temporary subsidies during this historic economic crisis to assist former and displaced employees without health care coverage for limited periods of time. However, permanent extensions of COBRA eligibility will significantly increase the administrative burden on employers and raise health care costs for employers and current employees.

The National Business Group on Health has communicated our deep concerns about the **unprecedented** proposed extension of COBRA changes directly to the House Ways and Means Committee and the Senate Finance Committee staff.

➤ **RECOVERY BILL TO INCLUDE \$20+ BILLION FOR HEALTH INFORMATION TECHNOLOGY (HIT)**

Both the House-passed and the proposed Senate economic recovery/stimulus bills have similar HIT provisions, including:

- **Significant Federal Funding for HIT:** The House bill includes \$2 billion in grants to the states and \$20 billion in funding to help physicians, hospitals and other health care providers cover computer, software, and training costs to implement HIT, including certified electronic medical records (EMRs), to share health care information among providers and between patients and providers. The Senate version would provide \$5 billion in grants to the states and \$22.9 billion total towards these efforts. Recipients could use funds for HIT that meets current interoperability, security and privacy standards.
- **Medicare Incentives:** The House bill would provide \$41,000-\$65,000 per physician in Medicare incentives to adopt HIT while the Senate bill would provide \$44,000-\$65,000 per physician. Hospitals could also qualify for several million dollars a-piece in HIT incentives. Both bills would phase in penalties for physicians and hospitals that do not adopt EMRs by reducing Medicare payments beginning in fiscal year 2015.
- **Timetable for Interoperability Standards:** Both bills would require HHS to develop a schedule for the assessment of federal HIT standards 90 days after enactment. Federal HIT standards would be tested by the National Institute for Standards and Technology. The HHS Secretary would adopt an initial set of federal HIT standards by December 31, 2009. Both bills would require the federal government to adopt the HIT standards for its own health programs. Private health providers may voluntarily adopt them.
- **Permanent National Coordinator for Health Information Technology:** Both bills would permanently establish the HIT office within HHS to coordinate national HIT efforts.
- **HIT Privacy Provisions:** Both the House and Senate bills also include similar HIT privacy provisions that would:
  - Create a new national federal privacy officer;
  - Regulate business associates under current privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA);
  - Require breach notifications for unlawful disclosure of people's protected health information (PHI) by HIPAA-covered entities, business associates and vendors of personal health records;

- Require breach notifications be disclosed to the media on the HHS website for breaches involving records of 500 people or more;
- Prohibit the sale of PHI without patients' consent;
- Require patients' consent for HIPAA-covered entities and for business associates to market health care products or services to them;
- Guarantee patients' copies of their electronic PHI;
- Increase civil penalties for wrongful disclosure of PHI up to \$1.5 million; and
- Allow state Attorney Generals to enforce the civil penalties for violators of the new privacy provisions.

The House bill would also allow people who pay the full out-of-pocket costs for health care services to restrict providers' disclosure of their electronic PHI without their consent for payment and "health care operations" but not for treatments.

**IMPACT ON EMPLOYERS:** Effective implementation of HIT and incorporation into routine medical practice will help to lower employers' health care costs and improve quality. Increased use of HIT by hospitals and physicians will provide safer, higher quality, more affordable and efficient health care which will increase the value of employer dollars spent on health care and reduce the amount wasted.

**IMPACT ON EMPLOYEES:** Employees, retirees, and dependents will benefit from the increased use of HIT in the delivery of care through improved quality and more affordable health care.

***OUTLOOK: The House passed its HIT and health information privacy provisions as part of the economic recovery/stimulus bill. The Senate bill will pass in the next week and include more funding for HIT adoption. President Barack Obama will likely sign the bill into law by the end of February.***

**BACKGROUND:** Congress and President-elect Obama are working on an economic stimulus bill that includes billions in HIT. Congress has tried to pass HIT legislation for at least 4 years. Former President Bush established temporary offices for the promotion of HIT within HHS.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND RECENT ACTION ON THIS ISSUE:** The National Business Group on Health believes that the United States urgently needs a nationwide electronic health-information infrastructure to enable providers to improve the quality of health care and to modernize the nation's health care delivery system. However, efforts to extend privacy provisions beyond the existing HIPAA standard will unnecessarily inhibit realization of the full potential of HIT.

We recently submitted a letter to the Senate Judiciary Committee re-iterating our views on the importance of HIT to effective and efficient care and cautioned against restricting or going beyond current HIPAA privacy provisions for electronic PHI.

Link to the letter:

<http://www.businessgrouphealth.org/pdfs/012709%20Letter%20to%20the%20Senate%20Judiciary%20Committee%20on%20Privacy%20and%20Security%20Standards%20for%20Health%20Information%20Technology.pdf>

➤ **RECOVERY PACKAGE WOULD ALSO SIGNIFICANTLY BOOST FEDERAL FUNDS FOR EFFECTIVENESS OF MEDICAL INTERVENTIONS**

Both the House and Senate economic recovery/stimulus bills include an additional \$1.1 billion—up from the current \$30 million—for clinical comparative effectiveness research (CER) at the Agency for Health, Research and Quality (AHRQ), the National Institutes of Health (NIH) and Office of the HHS Secretary. They would use the additional funds for studies to determine what treatments work the best and to eliminate less effective and duplicative health care services. Both bills would also create a federal body to coordinate such research.

The House economic recovery/stimulus bill also would direct federal agencies to take into account cost savings as well as clinical outcomes when comparing the effectiveness of alternative treatments. The Senate bill does not include the cost-effectiveness language; instead, it focuses on studying clinical effectiveness of what treatment works the best without regard to costs when comparing alternative treatments. The Congressional Budget Office's projections also incorporate the cost-effectiveness of CER to determine the eventual federal cost savings of this research.

**IMPACT ON EMPLOYERS:** Employers will benefit from the increase in credible comparative research on medical alternatives that would reduce employers' health care costs as less effective and duplicative health care services are eliminated, quality and safety improved, and plan sponsors use evidence to decide what should be covered benefits.

**IMPACT ON EMPLOYEES:** Employees will have more useful information to make better decisions among treatment options and could expect to pay less for their share of health care costs as quality improves and less effective and duplicative care is reduced.

**OUTLOOK:** *The House and Senate will likely agree to include the \$1.1 billion increase in CER funding in the final economic recovery/stimulus bill to be signed by President Obama in February. Congress will also attempt to create an independent CER Institute in the future.*

**BACKGROUND:** Currently, AHRQ, NIH and the Veterans' Administration conduct a limited amount of independent, reliable studies of the comparative effectiveness of medical treatments. While Congress recently doubled federal funding for comparative effectiveness research from \$15 million to \$30 million annually, it represents a very small percentage spent on health care each year in this country. The Senate introduced two versions of a CER bill last year including one with an "assessment" on private health plans to fund a CER Institute that failed to pass the Senate and one with only government funding that was withdrawn for procedural reasons. The failed House SCHIP expansion bill last year also included its comparative effectiveness research provisions.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND RECENT ACTION ON THIS ISSUE:** We believe that the capacity for CER studies should be significantly expanded to produce reliable, independent information on medical treatments through a transparent and accountable process. We prefer federal financing of CER.

We continue to meet with Senate Finance and Budget Committee staff to discuss a bill to create an independent CER Institute.

We continue to work with the Alliance for Better Health Care, a coalition of representatives of consumers, employers, health care providers, health plans, pharmacists, research organizations, unions, and other stakeholders to urge Congress to expand federal comparative effectiveness research.

Link to the Business Group Position Statement on Comparative Effectiveness Research:

<http://www.businessgrouphealth.org/pdfs/comparativeeffectivenesspositionstatement.pdf>

➤ **SENATORS INTRODUCE BILL TO SHED LIGHT ON HEALTH INDUSTRY GIFTS TO PHYSICIANS**

Senators Herb Kohl (D-WI) and Charles Grassley (R-IA) recently re-introduced a bill that would require drug, device, and biologics companies to report to HHS all payments to physicians, including gifts, funding for continued medical education and grants for research that total more than \$100 annually, beginning in 2011. Companies would also have to report ownership in publicly traded mutual funds or securities held by physicians or their immediate family members. HHS would post companies' self-reported data online for the public and those that do not comply with the reporting mandate would face up to \$1 million in fines.

**IMPACT ON EMPLOYERS:** Publicly disclosing information about the financial relationships of providers will increase transparency of financial relationships that health care providers may have with drug and medical device companies and any potential conflicts of interest.

**IMPACT ON EMPLOYEES:** Increased transparency makes it easier for employees to make informed choices and meaningful comparisons when selecting a health plan, hospital, doctor, or when choosing among treatment options.

**OUTLOOK:** *Senators Kohl and Grassley will attempt to attach this bill to a larger health care reform bill later this year. The House has no similar bill at this time.*

**BACKGROUND:** In November 2008, MedPAC made recommendations to Congress to require similar disclosures of financial relationships between physicians and drug and device companies, as well as hospitals. MedPAC expects to include the recommendations in a future report to Congress. Senator Grassley is reviewing MedPAC's recommendation that such disclosures be extended beyond physicians to medical organizations, hospitals, pharmacy benefit managers, pharmacists and pharmacies, continuing medical education groups, and medical schools.

The Senate did not pass a previous version of the bill, introduced in 2007.

Several states have laws requiring pharmaceutical companies to disclosure payments and gifts, including Maine, Massachusetts, Minnesota, Vermont, West Virginia, and the District of Columbia.

Health care suppliers are increasingly voluntarily curtailing gifts to providers and voluntarily disclosing financial arrangements.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND RECENT ACTION ON THIS ISSUE:** We believe that all health care providers and facilities should publicly disclose, in a user-friendly format, all relevant information about the price, quality, safety, and efficiency of health care as well as any other information that may impact care decisions, such as financial arrangements and clinical guidelines for treatment. Patients and their families should receive information that will help them make informed choices and meaningful comparisons when selecting a health plan, hospital, doctor, or when choosing among treatment options.

We will send a letter of support for the Senators' new transparency bill.

Link to the text of the bill:

<http://aging.senate.gov/letters/ppsabill2009.pdf>

Last year, we sent a letter of support to Senator Grassley for a similar bill focused on the disclosure of the financial relationships between physicians and medical imaging companies.

Link to our previous Business Group support letter for Senator Grassley's earlier transparency bill on the financial relationship between physicians and medical imaging companies:

<http://www.businessgrouphealth.org/pdfs/081908ImagingLetterC.pdf>

Link to the Business Group's position statement on transparency:

<http://www.businessgrouphealth.org/pdfs/transparencypositionstatement.pdf>

If you would like more details on these or other issues or would like a phone briefing on legislation, or want to express concerns about specific issues, please contact Steven Wojcik, Vice President, Public Policy at [wojcik@businessgrouphealth.org](mailto:wojcik@businessgrouphealth.org) or 202-585-1812. **Also, as part of our "Ask a Benefits Question" service, we are happy to respond within 24 hours to any health benefits question on policy, regulations or legislation.**

*This material is provided for information purposes only and is not a substitute for legal advice.*

**Steven Wojcik**  
**Vice President, Public Policy**  
**National Business Group on Health**  
**202-585-1812**  
**[wojcik@businessgrouphealth.org](mailto:wojcik@businessgrouphealth.org)**

**Michael Baxter**  
**Policy Analyst, Public Policy**

**National Business Group on Health**  
**202-585-1813**  
**[baxter@businessgrouphealth.org](mailto:baxter@businessgrouphealth.org)**