



**National  
Business  
Group on  
Health**

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*Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow*

June 20, 2011

The Honorable Orrin Hatch  
U.S. Senate  
104 Hart SOB  
Washington, DC 20510

The Honorable Erik Paulsen  
U.S House of Representatives  
127 Cannon HOB  
Washington, DC 20515

Dear Senator Hatch and Representative Paulsen:

The National Business Group on Health writes to support the Family and Retirement Health Investment Act of 2011 that would encourage more employers to offer and more employees to use their health accounts to maintain health and prevent disease. Current tax laws for health accounts significantly limit their usefulness to employees and their families and we believe that your bill would go a long way toward helping employees improve or maintain their health status while simultaneously lowering their health care costs. ***We also strongly recommend that your bill extend its wellness provisions to include tax-favored status and use of health accounts to pay for weight management and nutritional counseling expenses too to be more effective in combating obesity.*** The U.S. Preventive Services Task Force (USPSTF) has found that counseling interventions can produce medium to large changes in the average daily intake of the core components of a healthy diet in adult patients at increased risk of diet-related chronic diseases.

The National Business Group on Health represents approximately 330, primarily large, employers (including 64 of the Fortune 100) who voluntarily provide health care benefits and other health programs to over 55 million American employees, retirees, and their families.

Specifically, we support your bill's provisions that would allow:

- Health Savings Account (HSA) qualified plans to cover an expanded number of prescription medications, to prevent and treat chronic conditions, illnesses or diseases before the deductible;
- Spouses to make catch-up contributions to the same HSA account;
- HSA-eligible seniors enrolled in Medicare Part A only (which covers hospital expenses) to make contributions to their HSAs;
- Employers the option to suspend the "use-it-or-lose-it" rule and permit employees to carry-forward \$500 in unused Flexible Spending Account (FSA) funds annually to pay for their future health care needs;

- Employees to resume using their FSAs, health reimbursement arrangements (HRAs), and HSAs to pay for their over-the-counter (OTC) medications without prescriptions; and
- Employees to use health accounts to pay for up to \$1,000 annually for equipment for physical exercise, physical exercise programs and fitness facilities dues. ***We believe that you could make this concept even stronger in support of health and wellness if you expanded the IRS definition of “qualified medical expenses” under Section 213(d) to also include expenses for weight management and nutritional counseling so that our policy is aligned toward combating obesity.***

The National Business Group on Health strongly supports the bill’s provision that would expand the prescriptions that HSA-qualified plans could offer to prevent and treat chronic conditions, illnesses or diseases before the deductible. Employers have a strong interest in encouraging employees to seek and obtain effective preventive care. Preventive care can reduce future costly health care, disability costs, and lost productivity due to avoidable adverse health conditions. Currently, the IRS only considers certain types of prescription drugs that HSA-qualified plans can offer as “preventive care” to employees before they meet the deductible. These medications include drugs taken by people who have developed risk factors for diseases that have not yet manifested (or not yet become clinically apparent), or to prevent the reoccurrence of diseases from which people currently have recovered. While somewhat helpful, the limited flexibility for HSA-qualified plans to offer preventive medications creates a barrier to people with chronic conditions from using their HSAs to treat their conditions with prescription drugs.

The National Business Group on Health also supports the bill’s provision allowing spouses to double their catch-up contributions to the same HSA account. Under current law, spouses 55 or older can only deposit catch-up contributions into separate HSA accounts even if both spouses are eligible. When only one spouse has an HSA, the federal government should allow the other dependent spouse, who meets the eligibility requirements for catch-up contributions, to contribute to that HSA as well. The bill’s change would help lower out-of-pocket expenses for older workers and their families who have not yet become eligible for Medicare.

Similarly, the National Business Group on Health supports the bill’s provision allowing HSA-eligible seniors enrolled in Medicare Part A only (which covers hospital expenses) to make contributions to their HSAs. The IRS allows active employees over age 65 to contribute to HSAs so long as they do not enroll in Medicare. However, the federal government automatically enrolls people in Medicare Part A upon reaching age 65 even though their employers’ plans typically will continue to cover their medical expenses until they retire. Accordingly, the federal government should allow older workers who participate in HSAs to continue to contribute to their accounts even though the federal government automatically enrolled them in Medicare Part A as long as they do not enroll in Parts B (which covers medical expenses) or D (which covers prescription drug expenses).

Despite the tax savings, only one in five (20%) employees contributed to FSAs in 2010. Currently, employees must “use-or-lose” employee-funded FSA balances during the current calendar year under Section 125 of the Internal Revenue Code. By making tax changes and clarifications for FSAs, the federal government would make these health benefits more valuable to employees and their families and increase employees’ contributions to these accounts. Given current economic conditions, job losses, and turnover, allowing employees to keep their own money to cover health expenses makes sense. In addition, more FSA participation, with higher average elections, will also reduce employers’ payroll taxes and free up revenues to potentially expand hiring.

Since employees often have unpredictable medical expenses they may need more in some years than in others. By changing the “use-it-or-lose it” rule, employees will be able to put away larger amounts to fund their anticipated health care needs without fear of losing up to \$500. In addition, employees would no longer have to spend money on unnecessary health care at the end of the year to avoid losing their money. Accordingly, the National Business Group on Health strongly supports the bills’ provision to allow employers the option to permit employees to carry forward \$500 in unused FSA amounts into subsequent years without penalty.

The National Business Group on Health also supports the bill’s provision that would promote wellness, healthy lifestyles, and disease prevention by allowing people with health accounts to pay for the purchase of exercise equipment, physical exercise programs and fitness facilities dues.

***To strengthen the current bill, we also recommend including expenses for weight management and nutritional counseling under the IRS definition of “qualified medical expenses”.*** Overweight and obesity associated prevalence of 11 chronic conditions grew 180% from 1997-2005 (8 Years). As previously stated, the USPSTF has found that medium- to high-intensity counseling interventions can produce medium to large changes in the average daily intake of the core components of a healthy diet (including reduced consumption of saturated fat and increased consumption of fiber, fruits, and vegetables) in adult patients at increased risk of diet-related chronic diseases.

Finally, the National Business Group on Health supports the bill’s provision reversing the prohibition on the use health accounts to pay for OTC medications without prescriptions. This reversion to the prior situation would remove a burden for people and lower their health care costs. The Patient Protection and Affordable Care Act made OTC nonprescription drugs more expensive and taxable and, ironically, created incentives to use often more expensive brand-name prescription drugs even when OTC drugs are often just as safe and effective. It also encourages additional visits to doctors simply to obtain prescriptions, which adds unnecessarily to health care costs.

For these reasons, we strongly support the Family and Retirement Health Investment Act of 2011 to enhance the use of health accounts and provide additional flexibility to employers who want to provide affordable and effective benefits to their employees. However, we also strongly recommend that your bill extend its wellness provisions to

include tax-favored status and the use of health accounts to pay for weight management and nutritional counseling expenses too. A number of studies have found that nutritional counseling has a high benefit-to-cost ratio. For example, a U.S. Department of Agriculture found a \$10.64/\$1.00 benefit-cost ratio for a Food and Nutrition Education Program in Virginia and a University of Iowa State University study found a \$10.75/\$1.00 benefit-cost ratio for a similar program in Iowa which shows that nutrition counseling can produce a significant return-on-investment (ROI).

Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,



Helen Darling  
President

cc:

The Honorable Marco Rubio, U.S. Senate  
The Honorable Jon Kyl, U.S. Senate  
The Honorable James M. Inhofe, U.S. Senate  
The Honorable Judy Biggert, U.S. House of Representatives  
The Honorable Kevin Brady, U.S. House of Representatives  
The Honorable Dan Burton, U.S. House of Representatives  
The Honorable Jason Chaffetz, U.S. House of Representatives  
The Honorable John Culbertson, U.S. House of Representatives  
The Honorable Charles Dent, U.S. House of Representatives  
The Honorable John Fleming, U.S. House of Representatives  
The Honorable Trent Franks, U.S. House of Representatives  
The Honorable Scott Garrett, U.S. House of Representatives  
The Honorable Louie Gohmert, U.S. House of Representatives  
The Honorable Kay Granger, U.S. House of Representatives  
The Honorable Jamie Herrera Beutler, U.S. House of Representatives  
The Honorable Leonard Lance, U.S. House of Representatives  
The Honorable Robert Latta, U.S. House of Representatives  
The Honorable Blaine Luetkemeyer, U.S. House of Representatives  
The Honorable Cythia Lummis, U.S. House of Representatives  
The Honorable Daniel Lungren, U.S. House of Representatives  
The Honorable Donald Manzullo, U.S. House of Representatives  
The Honorable Kenny Marchant, U.S. House of Representatives  
The Honorable Patrick McHenry, U.S. House of Representatives  
The Honorable Cathy McMorris Rodgers, U.S. House of Representatives  
The Honorable Ron Paul, U.S. House of Representatives  
The Honorable Steven Pearce, U.S. House of Representatives

## NATIONAL BUSINESS GROUP ON HEALTH

The Honorable Thomas Rooney, U.S. House of Representatives  
The Honorable Peter Roskam, U.S. House of Representatives  
The Honorable Patrick Tiberi, U.S. House of Representatives  
The Honorable Lynn Westmoreland, U.S. House of Representatives