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- **SENATORS BOB CASEY (D-PA) AND SHERROD BROWN (D-OH) INTRODUCE A BILL TO RETROACTIVELY EXTEND ELIGIBILITY FOR FEDERAL COBRA SUBSIDIES**

Senators Bob Casey (D-PA) and Sherrod Brown (D-OH) recently introduced a bill that would retroactively extend eligibility (from June 1 through November 30th) for 6 months of federal COBRA subsidies. They originally offered the proposal as an amendment to a larger “jobs” bill that failed to pass the Senate. Congress allowed the unemployment benefits and COBRA subsidy eligibility period extension to lapse on May 31st.

IMPACT ON EMPLOYERS: Extending temporary federal COBRA subsidies would increase employers’ health plan expenses and administrative burden. Indefinite COBRA eligibility makes it less attractive for employers to offer health care benefits and more expensive for employers and employees knowing they might both be stuck with an indefinite liability for former employees’ health care costs. Even with a subsidy, those who select COBRA will be higher users of health care so they will still cost employers considerably more than they pay in contributions. However, a one-time extension to the end of the year or soon thereafter will minimize the administrative burden compared to the piecemeal extensions every couple months that Congress has recently enacted.

IMPACT ON EMPLOYEES: Extending temporary federal COBRA subsidies would lower former employees’ costs to temporarily continue their employer-sponsored health coverage. Current employees in health plans and their families would face significant cost increases to subsidize COBRA coverage for former employees because COBRA premiums, even with the federal subsidies, do not fully cover the health care costs of former employees and their dependents.

OUTLOOK: *Senate Majority Leader Harry Reid (D-NV) will consider a bill to extend unemployment benefits next week and another possible extension of federal COBRA subsidies before August. House Speaker Nancy Pelosi (D-CA) plans to consider additional Medicaid funding before any federal COBRA subsidies extension.*

BACKGROUND: The House removed the extension of COBRA provisions from an earlier “jobs” because fiscally conservative “Blue Dog” Democrats prefer to provide health care funding assistance to current workers and are generally concerned about recent levels of government spending and budget deficits.

In April, the President signed a second extension of the period of eligibility through May 31, 2010 for 15 months of federal COBRA subsidies. The first extension ended March 31, 2010. COBRA-eligible plan participants who were involuntarily terminated after the last eligibility period expired on March 31, 2010 could retroactively receive the 65% COBRA subsidy. Plan participants whose work hours were reduced and were later involuntarily terminated at any time from September 1, 2008 to May 31, 2010 were also eligible for COBRA subsidies.

NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THESE ISSUES: The Business Group believes that COBRA plays an important role in providing temporary health care coverage to former employees, however, unlimited COBRA makes it less attractive for employers to offer health care benefits and significantly increases employers’ and employees’ costs. The Business Group believes that Congress should extend eligibility for the federal COBRA premium subsidies until the end of the year to reduce the costs and administrative burden of COBRA.

➤ **WAR SUPPLEMENTAL BILL INCLUDES BAN ON DEALS THAT DELAY MARKET ENTRY OF GENERIC DRUGS**

Last week, the House passed a war supplemental bill that would make it illegal for brand and generic pharmaceutical manufacturers to make deals to delay the entry of generics into the market. However, the provision would also allow these deals to continue if either the brand or generic pharmaceutical companies could prove to the Federal Trade Commission (FTC) that the benefits of the deals outweigh the cost with “clear and convincing evidence”.

Senate Judiciary Antitrust Subcommittee Chair Herb Kohl (D-WI), who originally introduced the bill to ban these “pay for delay” deals, supports the provision but it faces considerable opposition from fellow Democrats in the Senate from states with sizeable pharmaceutical industry workforces.

<p>IMPACT ON EMPLOYERS: Employers and employees would greatly benefit from earlier access to lower cost generics.</p>
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IMPACT ON EMPLOYEES: Employees would reduce out-of-pocket health care expenses if they had earlier access to generic drugs.

OUTLOOK: *Unclear. The Senate may not include the provision banning deals that delay market entry of generic drugs in the war supplemental due to opposition from Republican and Democratic Senators and the brand and generic pharmaceutical industries.*

BACKGROUND: These deals arise because the original law that created a pathway for FDA approval of generic medications, the Hatch-Waxman law, allows the first to market

generic manufacturer a six month market exclusivity period, which some first-to-market manufacturer's trade away to the brand competitor for a price.

In 2009, an FTC study found that a ban on these deals would save American consumers \$35 billion over 10 years. The Congressional Budget Office (CBO) estimates that the federal government will save more than \$2.4 billion over 10 years from the ban in lower drug costs for Medicare, Medicaid, military and veterans' health programs.

The House's original health care "reform" bill included language banning "pay for delay" deals.

A number of brand and generic drug companies have faced steep fines for failing to inform the FTC of agreements reached to delay generic drug competition. Since 2005, the FTC has sought to use antitrust enforcement to stop such payments; however, court decisions have treated such agreements in drug patent settlements leniently and the FTC also faced opposition from the Justice Department.

NATIONAL BUSINESS GROUP ON HEALTH VIEW AND ACTIONS ON THESE ISSUES: The Business Group supports eliminating the barriers to timely access to affordable, equally effective generic drugs.

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 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.**

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