



## AMERICAN BENEFITS COUNCIL

October 30, 2007

### PROPOSED CHANGES TO 2002 TRADE ACT'S HEALTH PROVISIONS ON COBRA AND HEALTH CARE TAX CREDIT

Two committees of the House of Representatives recently proposed several changes to the health provisions under The Trade Act of 2002. The 2002 Trade Act created a health care tax credit of 65% of the cost of qualified health insurance coverage for certain workers who were terminated due to globalization. The Act also gave these workers a second COBRA election period.

Two bills that would either expand the COBRA rights for these workers or change the tax credit provisions are working their way through House Committees.

- H.R. 3796 – The Early Warning and Health Care for Workers Affected by Globalization Act was marked up and reported out of the Education and Labor Committee on October 18, 2007. This bill expands the COBRA provisions under the 2002 Trade Act, but does not change the tax credit or requirements for "qualified health insurance."
- H.R. 3920 – The Trade and Globalization Assistance Act of 2007 was marked up and reported out of the Ways and Means Committee on October 24, 2007. This bill revises the health care tax credit provisions under the 2002 Trade Act, but does not change the COBRA provisions.

It is expected that the two bills will be merged and brought to a vote on the House floor later this year.

The major health provisions of the bills approved by the Committees are summarized below, along with the current provisions of the 2002 Trade Act.

#### **COBRA Provisions**

##### *Current Law*

The 2002 Trade Act provides a second COBRA election for certain workers who did not elect COBRA coverage when they terminated employment. The second election

opportunity applies to individuals: (1) who receive a trade adjustment allowance under certain provisions of the Trade Act of 1974 as a result of losing their jobs due to import competition or shifts of production to other countries ("Eligible TAA Recipients"); or (2) who receive an alternative trade adjustment allowance ("Eligible Alternative TAA Recipients").

The new COBRA election period begins on the first day of the month in which the individual becomes eligible for the trade adjustment allowance, as long as the individual elects COBRA within six months of termination. Coverage elected during the second election period commences as of the beginning of the new election period and may extend 18 months (or 36 months for qualified dependents who experience a second COBRA qualifying event).

### ***H.R. 3796***

H.R. 3796, as approved by the Education and Labor Committee, would change the maximum coverage period under COBRA for Eligible TAA Recipients who, as of the date of termination of employment, have attained age 55 or have completed 10 years of service with the employer. The bill amends COBRA to remove the 18-month maximum coverage period, so that these workers would be entitled to COBRA continuation coverage until the earlier of becoming entitled to Medicare or other group health plan coverage (or until the employer's plan ends or the individual fails to pay premiums, if earlier).

This COBRA extension only would apply to Eligible TAA Recipients who are age 55 or have completed 10 years of service (note that the requirement is either/or). Eligible TAA Recipients who do not meet the age or service requirements still would only qualify for 18 months of COBRA (or 36 months for qualified dependents who experience a second qualifying event). The extension would not apply to Eligible Alternative TAA Recipients.

The bill also would amend COBRA to specify that the Secretary of Labor may use unobligated funds available under the Immigration and Nationality Act to provide financial assistance toward the payment of COBRA premiums.

### ***H.R. 3920***

The bill does not change the 2002 Trade Act's COBRA provisions.

## **HIPAA Break in Coverage Rule**

### ***Current Law***

The 2002 Trade Act provides that, for individuals who elect COBRA coverage during the new election period, the period between the date the individual lost health coverage and the beginning of the new election period should be disregarded for

purposes of determining whether the individual has experienced a 63-day break in coverage for HIPAA purposes.

#### ***H.R. 3796***

H.R. 3796 does not change the requirements related to HIPAA's break in coverage rule.

#### ***H.R. 3920***

H.R. 3920 would revise this provision so that a break in coverage for Eligible TAA Recipients cannot be counted during the period starting from the date the individual loses health coverage through five days after the postmark of the notice by the Secretary that the individual is eligible for qualified health insurance.

### **Health Care Tax Credit**

#### ***Current Law***

The 2002 Trade Act provides a tax credit equal to 65% of the cost of "qualified health insurance" for (1) Eligible TAA Recipients; (2) Eligible Alternative TAA Recipients; or (3) individuals who are at least 55 years old and receive pension benefits paid by the Pension Benefit Guarantee Corporation ("Eligible PBGC Recipients").

"Qualified health insurance" includes COBRA continuation coverage, certain state-based coverage, and certain employer-sponsored coverage available to the worker's spouse. The 2002 Act allows the credit to be "advanced" to providers of qualified health coverage upon certification by the Department of Labor or Pension Benefit Guarantee Corporation that the coverage is "qualified health insurance."

#### ***H.R. 3796***

H.R. 3796 does not change the health care tax credit.

#### ***H.R. 3920***

H.R. 3920 would increase the health care tax credit percentage to 85%. The bill also would allow Eligible TAA Recipients and Eligible Alternative TAA Recipients to receive the tax credit retroactively to their date of separation from employment, beginning January 1, 2008.

In addition, the bill would allow a qualifying family member to continue to receive the tax credit even after the worker or family member has stopped being eligible for the tax credit due to the worker's entitlement to Medicare, divorce, or death. The qualifying family member would be entitled to the health care tax credit for up to an additional 36 months, counted from the date of Medicare entitlement, divorce, or death.

For divorce or death, the credit only would be available with respect to individuals who were qualifying family members immediately before the divorce or death. (Note that the bill does not extend the COBRA coverage period for the qualifying family member, just the tax credit. However, the tax credit may be earned with respect to other types of coverage as well.)

### **Qualified Health Insurance**

#### *Current Law*

One type of "qualified health insurance" that is eligible for the tax credit under the 2002 Trade Act is coverage provided by a state, such as state continuation coverage, a state-operated plan, or coverage under an arrangement between a state and a health insurance issuer or employer. The 2002 Act requires that this state coverage be guaranteed issue, nondiscriminatory, and not impose preexisting condition exclusions.

The 2002 Act provides that, to qualify for state-based coverage, an individual must have at least 3 months of creditable coverage, as defined by HIPAA.

#### *H.R. 3796*

H.R. 3796 does not change the requirements for "qualified health insurance."

#### *H.R. 3920*

With regard to state arrangements with health insurance issuers for state-based coverage, the bill would add a new rating requirement. Specifically, the maximum rate that may be charged for premiums must be based on a community rating system or must be based on a rate-band system where the maximum rate cannot exceed 150% of the standard rate.

The bill also would remove the requirement that individuals have at least 3 months of creditable coverage in order to qualify for state-based coverage. Under the bill, Eligible TAA Recipients and Eligible Alternative TAA Recipients only would need "a period of creditable coverage," with no minimum time period. Eligible PBGC Recipients simply must enroll for coverage within 90 days of the last day of the first month the individual is eligible to be a PBGC pension recipient (with no creditable coverage requirement).

### **Effective Date / Sunset**

#### *H.R. 3796*

The bill would take effect for plan years beginning on or after January 1, 2008.

#### *H.R. 3920*

The bill generally would take effect for taxable years beginning on or after January 1, 2008. The new rating requirements would apply to taxable years beginning on or after April 1, 2008.

The bill includes a sunset provision of December 31, 2009, except for individuals who have qualified as eligible individuals for a continuous period of months prior to this date.