



## AMERICAN BENEFITS COUNCIL

January 26, 2009

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

I am writing on behalf of the American Benefits Council concerning the temporary health care premium subsidy provisions in the Chairman's Mark for the economic stimulus bill. These provisions relate to continuation health coverage under the Consolidated Omnibus Reconciliation Act (COBRA) for those who involuntarily lose employment. The American Benefits Council represents employers and other organizations that collectively provide health and retirement benefits to over 100 million Americans.

We recognize that many Americans are experiencing significant hardship in the current economic crisis, including the loss of employer-sponsored health coverage. For those who involuntarily lose employment, we believe that the COBRA premium subsidy provisions in the Senate bill will provide an important source of support to allow these individuals to maintain health coverage during this difficult time.

While we believe that it is appropriate for the Committee to include short term assistance for those who lose health coverage due to involuntary termination from employment, we strongly urge that you maintain the current law 18 month period for COBRA coverage. We are particularly concerned about -- and would strongly urge that you not include -- provisions in the House economic stimulus bill which authorize an indefinite period of COBRA coverage for those who lose employment (voluntarily or involuntarily) and are 55 or older or who have 10 or more years of service with their employer.

COBRA health continuation coverage should be considered a short-term bridge to assist those who temporarily lose employment-based health coverage, not as a permanent source of health coverage for those no longer connected to the workforce. It is important to remember that the actual claims experience of COBRA beneficiaries is typically significantly higher than the premiums paid for the continuation coverage. These added costs will not be recovered under the new subsidy program since employers will only be permitted a payroll tax credit for the

amount of COBRA premiums not otherwise paid by eligible individuals. Employers will receive no reimbursement for the *actual* claims expenses of those who elect COBRA coverage which are frequently much higher than the maximum premium which may be charged. In fact, COBRA claims experience may often be 150% or higher than the premiums for continuation coverage, a shortfall which must be paid by employers and active employees. In addition, we believe that COBRA coverage is not the appropriate long term solution for individuals not covered by an employer health plan. These broader issues and solutions should be considered as part of health reform legislation rather than in the context of the immediate economic stimulus package.

We also have several recommendations related to the COBRA premium subsidy provisions in the Senate bill which we believe are needed to clarify certain provisions of the legislation and will help to meet the needs of those who lose employment during this economic downturn.

### **Recommendations Related to COBRA Subsidy Provisions:**

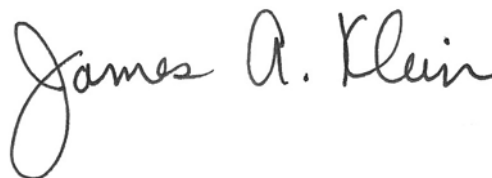
- 1. Provide a short-term transition for the start-up of subsidy.** The legislation calls for premiums to be reduced to 35% of the COBRA premium for those eligible for the assistance on or after the date of enactment. Because sufficient time will be needed to make billing systems changes to reflect the new lower premium amounts and to identify those who are eligible for the new lower premiums, we propose that there be a transition period to prepare for the implementation of the subsidy program. For example, if the subsidy program start date were to begin as of the first day of the second month beginning after enactment, this would provide a minimal transition time for making necessary administrative changes. Alternatively, if the legislation retains the more immediate effective date, then we would urge that the Committee include language that permits employers to collect the full COBRA premium for that interim period after enactment and then permit employers to credit the excess over 35% against future COBRA premium payments so that eligible individuals have a means to recapture the subsidies to which they were entitled at the start of the program.
- 2. Permit subsidy amounts for those who elect retiree health coverage from their employer or other plan options.** Some individuals who are eligible for the new premium subsidy may be entitled to both COBRA continuation health coverage and coverage under an employer-sponsored retiree health plan. We recommend that the subsidy also be available for retiree health coverage when individuals have the option to elect such coverage if they lose employment. Otherwise, an individual might face the difficult choice of opting for short term COBRA coverage because of the availability of the subsidy rather than a longer retiree health coverage which is likely to be more costly if the subsidy does not apply to both options. Similarly, for those who become eligible for the COBRA subsidy after the date of enactment, we recommend that they be given an opportunity to elect other lower cost plan options which may be available through their employer rather than only being permitted to continue the same plan option that they had prior to losing employment.
- 3. Clarify that employers who already subsidize COBRA premiums are also eligible for payroll tax credits.** In some cases, employers may be providing subsidized premiums for COBRA health continuation coverage for former employees. In these cases, the amount paid by individuals who elect COBRA coverage may be less than the 35% premium level

established by the legislation for “assistance eligible individuals”. We recommend that in instances where the employer is subsidizing premiums for eligible individuals that the employer be permitted to claim a payroll tax credit up to 65% of the applicable premium amount on the same basis as an employer that provides no premium subsidy. This would ensure that more generous employers are not penalized for agreeing to pay COBRA premiums for displaced workers.

4. **Provide a firm date for the issuance of Treasury Department guidance and a “good faith compliance standard” until guidance is issued.** We recommend that Treasury guidance on the new subsidy program be issued as quickly as possible and that the legislation include a timeframe such as 90 or 120 days after enactment for the issuance of required guidance. Until guidance is available, we also recommend that employers and others who administer COBRA coverage on their behalf be subject to a good faith compliance standard in recognition that they will need to implement the subsidy program without the immediate availability of guidance from the Treasury Department.
5. **Clarify that the applicable COBRA premium amount includes the permitted 2% administrative fee.** The legislation anticipates that individuals who are eligible for the new subsidy will be required to pay 35% of the COBRA premium for the duration of the subsidy period. Currently, the amount charged for COBRA also includes a 2% administrative fee. The legislation should clarify that the individuals will also be required to pay 35% of the administrative fee and that employer may claim the remainder of the fee as part of the payroll tax credit that they receive for the amount of the COBRA premium not paid by eligible individuals.
6. **Clarify the start date for the availability of the new subsidies.** The legislation is currently drafted to refer to the subsidy for COBRA coverage being available for a “period of coverage on or after the date of enactment”. Because coverage periods are generally on a monthly basis, we recommend that the legislation be clarified to refer to the “first day of the first month” after the date of enactment, unless a later effective date is provided in order to allow for a more adequate transition period as we recommend earlier.

We appreciate the opportunity to provide our views on this important legislation. We will continue to work closely with you and your staff on our recommendations for the new temporary premium subsidy program and again urge that no change be made in the current law 18 month duration of COBRA continuation health coverage.

Sincerely,



James A. Klein  
President