



AMERICAN BENEFITS
COUNCIL

July 14, 2008

The Honorable Howard McKeon
United States House of Representatives
Washington, DC 20515

Dear Mr. McKeon:

We are writing to urge the Education and Labor Committee not to act on H.R. 2851 (Michelle's Law) as a stand alone measure because it would create unintended adverse consequences. If the Committee proceeds on consideration of the bill, then we recommend specific changes to mitigate the problems the legislation would create.

We understand the concern the bill seeks to address, namely ensuring that ill or injured college students are able to maintain their health coverage during leaves of absence. While we completely appreciate the compelling circumstances that brought about this legislation, H.R. 2851 raises serious potential problems for health plans covering millions of Americans.

For example, the bill treats different plans inequitably. The legislation would not apply where the student was the primary participant (as opposed to being a dependent) as is the case with college/university coverage. If the policy intent of the bill is to allow seriously ill or injured students a 12-month coverage extension, then the source of coverage and the individual's status as a dependent under the health plan should not determine the application of the legislation. As the bill is currently written some students with a qualifying leave of absence would have coverage but others would not.

The lack of consideration of the potential adverse implications is evidenced by the fact that there have been no hearings on this legislation in any of the committees of jurisdiction, so that employers, universities and others could have an opportunity to discuss their perspectives and current practices. Important issues of this nature could set precedents and have an impact beyond the specific circumstances regarding college students, and would be much more appropriately addressed in the broader debate on health care reform anticipated for next year, rather than through piecemeal proposals.

Recommendations

Should the committee nonetheless act on the bill, we recommend the following two changes:

1. *Add a provision that the student first enroll in a university plan if not otherwise covered as a dependent on another plan.* This requirement would be consistent with the policy goal that college students should have health coverage. We believe that many colleges and universities use an automatic enrollment process into the college health plan with waivers that allow an “opt-out” if the student shows proof of other coverage. This change would be a logical first step to ensuring that college students have health coverage when they need it.
2. *Remove the rebuttable presumption based on the physician certification or make it contingent on the college/university granting a medical leave of absence.* Colleges and universities typically have procedures in place for a student to request a leave of absence. Such procedures generally include review of a physician’s certificate, which is the evidence required by the bill in order for the student to claim a rebuttable presumption. The change we propose would impose a higher standard but not an unreasonable one. Furthermore, this would still provide an independent process to allow students to qualify for the 12-month extension yet would ensure a logical nexus between the leave of absence from the school and the necessary extension of health coverage arising from such leave.

Other Serious Concerns

In addition to our general concerns and specific recommendations to amend the bill, we understand there are certain amendments that we would strongly oppose that may be offered during Committee consideration.

1. *We oppose any amendments that would change existing ERISA requirements for enforcement, remedies, notice or preemption.* ERISA’s success rests on the critical balance of protecting participant rights while encouraging employers to voluntarily sponsor employee benefit plans. The carefully-crafted framework relating to notice, enforcement, remedies and preemption that has made possible the delivery of health coverage to tens of millions of Americans over the course of many years, and that has consistently been revalidated by Congress and the courts, should not be dismissed in the context of a bill that has not even been the subject of hearings.

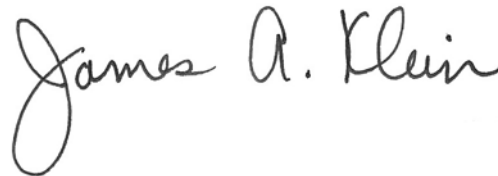
Moreover, there is no justification for the lack of parity that would result if a special set of remedies were established for health care coverage for college students than applies to the vast majority of the more than 130 million Americans covered by health plans governed by ERISA. Even other laws with specific group health plan access requirements which were previously added by Congress to Part 7 of ERISA do not provide differing remedies for plan

participants (e.g. the Newborns' and Mothers' Health Protection Act, the Mental Health Parity Act and the Women's Health and Cancer Rights Act. 29 U.S.C. §§ 1185, 1185a, and 1185b).

2. *We oppose lowering the standard for continuation of coverage from "severe health condition" to "serious health condition."* The term "serious health condition" is not appropriate in the context of this legislation and is a lower standard than the "severe health condition" standard used by the sponsors when H.R. 2851 was introduced. Protection of coverage is intended to be limited to "severe" health conditions that necessitate a student's leave of absence and should not be extended for any other purpose beyond those conditions. Broadening this term to include "serious health condition" would likely prove to be difficult since the term could encompass such a wide range of situations, many of which would be inconsistent with the parameters used by colleges and universities to determine whether a student needs a leave of absence or change in enrollment status and would likely result in inconsistencies that are confusing.

Thank you for the opportunity to share our views on this important legislation. We appreciate your consideration of these issues.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive style with a large, looping initial "J".

James A. Klein
President