



January 7, 2009

The Honorable Harry Reid
Majority Leader
U.S. Senate
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232 US Capitol
Washington, D.C. 20515

Dear Majority Leader Reid and Madam Speaker Pelosi:

We are writing on behalf of the National Small Business Association (NSBA) to suggest needed revisions to the health care reform proposals currently being merged in Congress from the Senate-passed *Patient Protection and Affordable Care Act (H.R. 3590)* and the House-passed *Affordable Health Care for America Act (H.R. 3962)*.

NSBA is the nation's oldest small-business advocacy group representing employers in every state. As a strictly non-partisan organization, we reach over 150,000 employers in all sectors and industries of the U.S. economy from retail to trade to technology—our members are as diverse as the economy that they fuel. NSBA's policy positions and priorities are strictly formulated through robust volunteer leadership, communicated by NSBA staff, and reflective of our nation's 29.6 million small businesses. Indeed, health care reform has dominated the member-driven legislative priority agenda at NSBA for years, and NSBA has been an outspoken leader on the topic.

NSBA has invested in the health care reform debate for decades. NSBA's volunteer leadership, with guidance from several experts, published *Small Business Health Care Reform—A Long-Term Solution for All* in 2004. This proposal sought to achieve universal coverage, focus on individual responsibility and empowerment, the creation of the right market-based incentives, and a relentless focus on improving quality while driving out unnecessary, wasteful, and harmful care.

NSBA has been persistent in outlining these goals over the years, and particularly over the last several months. In fact, NSBA has provided over a dozen formal written comments to members of Congress and their staffs', as well as administration officials and agency staff since deliberations began with the Senate Finance Committee's Roundtables in April 2009. Moreover, NSBA and its members have continued to meet with lawmakers and their staffs, as well as offer themselves as resources, partners, and sounding boards to reflect the impact potential policies could have on small businesses, their employees, and their families in an effort to develop the best health care reform policy. However, despite the effort put forth by proponents of health care reform, more revisions are needed to gain the endorsement of NSBA.

The politics surrounding health care reform can often seem overwhelming. It is unfortunate that good public policy has been overwhelmed by political gamesmanship—from both sides—in many areas. Politics aside, we strongly believe that the following ideas are the best long-term public policies and should be part of any good reform bill. A final House-Senate merged bill thus needs to address the following issues, beginning with the most important for small businesses: health care costs.

Health care cost reduction and containment

The number of uninsured in the United States is a big problem that needs to be addressed, but the uninsured are not a homogeneous group and they are uninsured for several different reasons. However, one common element that runs through the entire health care system, for those insured or not, is the cost of health care. In fact, the impetus for health care reform was sold on the need to address spiraling cost by altering the increasing health care cost trend. Unfortunately, this founding tenet of reform has been lost through deliberations. The nonpartisan Congressional Budget Office has reported that neither the House nor the Senate proposal alters the unsustainable long-term health inflation trends to the level needed to make a significant enough difference in premiums five, 10 or 15 years down the road.

The interaction of consumers with the health care system should be the priority. Consumer decisions on who, what, when, where and why they access the health care system is the only true dynamic that will “bend the health care costs curve” in the long run. Consumers can be expected to make sound decisions only when they have a stake in their long-term health care, when they truly understand what products and services they are purchasing as well as its quality, and when they understand the cost as well as what alternatives may exist.

The following address preferences of varying provisions in the House and Senate proposals.

Delivery system reform

- Health care provider reimbursement reforms

NSBA supports aggressive health care provider reform toward paying for quality instead of quantity. Rapid implementation of provisions from the Senate proposal to include hospitals and other post-acute care providers in value-based purchasing programs should be included in a final bill. Related provisions on primary care and workforce investment are critical to the revamping of the delivery system. Similarly, adjustments to the sustainable growth rate formula for physicians and other providers in Medicare Part B should be addressed within the context of health care legislation and not assumed as separate from health care reform. The Senate bill provides for such a provision.

- Independent Payment Advisory Board

NSBA supports the inclusion of Senate section 3403 providing for an Independent Payment Advisory Board. NSBA encourages revisions expanding the Board’s scope to include all providers and facilities in order to bring down health care costs across the continuum of care. Moreover, NSBA urges the inclusion of small business representatives as part of the Board’s membership, as well as the Consumer Advisory Council.

- Medicare Pilot Projects

All Medicare pilot projects in the House and Senate proposals, particularly those testing for Accountable Care Organizations, Medical Homes, bundled payments, care transition, and independence at home should be adopted expeditiously. Greater cost-containment can be gained through shortening the timelines for implementation and strengthening the incentives and penalties with respect to participation and compliance.

Tax credits for small businesses

- Tax credits are neither the cure-all for small businesses' health insurance woes nor a replacement for good policies on cost-containment that make health care more affordable; nonetheless, NSBA supports the version of tax credits outlined in the Senate proposal.
- Sole proprietors are currently excluded under the Senate and House proposals. This inequity should be remedied by allowing sole proprietors to be eligible for the tax benefits afforded to other small businesses.
- NSBA supports the Senate's methodology for determining full time employees over the House proposal.

Equity for the self employed

- NSBA strongly encourages the inclusion of language to allow self-employed business owners to fully exclude from payroll taxes the cost of health insurance in order to bring immediate relief and equity to the self-employed.

Tort Reform

- The Congressional Budget Office estimates that medical malpractice reform could save \$54 billion over ten years. Sensible tort reform would be better at discouraging bad care than the current system and would provide more relief to more victims of bad medical care.
- The Senate language that provides modest grants for state demonstration projects for tort reform, which could identify state level models for malpractice reform, is a good first step, but more must be done.

Shared Responsibility

Individual mandate

- A strong individual mandate is a central tenet to successful health care reform. Critical to a viable individual mandate is a penalty for noncompliance. NSBA supports the model outlined by the House proposal to ensure there would not be risk selection as healthy individuals opt-out until they need coverage.

Employer mandate

- It is clear that any new financial obligation handed down to small businesses who currently do not offer health insurance coverage to their employees, or who offer less than what is deemed acceptable in some proposals, would have a negative impact on the business, the employees and their families, and consumers. NSBA strongly

opposes House-passed language providing onerous employer mandates to provide health insurance to employees or pay a fee.

- Employer mandates are unnecessary. An individual mandate, coupled with more affordable premiums, would give a huge competitive advantage to employers that offered insurance. Small businesses would certainly respond. Those that still could not afford insurance would at least be creating jobs. A mandate on employers to provide coverage would, by definition, destroy those businesses and the jobs that go with them.
- Nevertheless, in the paradigm of picking between the two evils of mandates, the Senate proposal would be less burdensome on small businesses.
- NSBA strongly opposes language contained in the Senate proposal that excludes the construction industry from the overall small business exemption to the mandate that employers provide a minimum standard of health insurance to their employees. In addition, the lack of a clear definition of the term “construction employer” in current statute or regulation could mean that this provision would impact any small supplier, distributor or manufacturer whose business is dependent on the construction industry.

Insurance Accessibility, Affordability, and Regulation

Insurance Market Reforms

- While NSBA agrees with provisions in the House and Senate bill to ensure guaranteed issue policies and the elimination of rating based on preexisting conditions and health status, we favor the inclusion of Senate passed language providing for a 3:1 age rating rule.

Exchanges

- Exchanges proposed in both chambers are not a panacea to small-business health insurance woes – insurance pools also depend on the make-up of the pool, not simply its size, which is often cited as the benefit of exchanges. In addition, proponents argue that administrative expenses would be reduced through the use of exchanges. However, health insurance inflation is more closely tied to the actual cost and frequency of health care being consumed, not merely the administrative costs. Nonetheless, exchanges should provide for greater ease in shopping and comparing insurance products for small businesses and their employees, particularly if they can link in with the expertise and established connections of preexisting organizations and pools.
- NSBA supports Senate language providing for state-based health insurance exchanges in lieu of the House proposed national exchange.
- NSBA supports the blending of the individual market and the small group market as is suggested in the House proposal.

Free choice voucher

- NSBA is skeptical of the free choice voucher provision included in the Senate bill, which could set a bad precedent where adverse selection could occur and negatively impact other employees.

Essential coverage

- Essential to affordability is a truly basic, yet meaningful, benefit package along with small-business input into what such a package would look like. NSBA has repeatedly commented on the need for legislative language identifying small-business representation and consultation on an anticipated independent commission or health benefits advisory council created under the House and Senate proposals
- NSBA supports the minimum actuarial value specified in the Senate proposal (60 percent) and encourages final legislation to include the flexibility provided by health savings accounts and health reimbursement accounts in combination with high-deductible plans as acceptable coverage. After many years of finding the right mix of benefits for their employees, current out-of-pocket and FSA caps could prove restricting to small businesses' ability to access affordable health care.
- NSBA supports Senate language providing for “young invincible” policies, and encourages the expansion of eligibility for more small businesses.
- Again, in the paradigm of picking the lesser of two evils, Senate language using HSA models setting limits on out of pocket spending is preferable to the House proposal.

Public Option vs. CO-Ops vs. OPM National Plan

- It is unclear what impact the advantages – reduced capital needs, low administrative costs, etc. – enjoyed by a House-passed public health insurance option would have on the private market. Since many small businesses receive health insurance products through the private market, the proposed legislation should take steps to study and ascertain the impact such reforms would have on the remainder of the market. Small businesses already receive the brunt of cost-shifting as a result of the uninsured and reduced Medicare and Medicaid reimbursement rates. The last thing needed in reform is to worsen these trends.
- It is also unclear what benefit will be derived from Consumer Operated and Oriented Plans (CO-Ops) under the Senate proposal; however, NSBA is receptive to testing their effectiveness.
- Similarly, NSBA is unclear on what impact Senate language requiring the Office of Personnel Management (OPM) to contract with health insurers to offer at least two multi-state qualified health plans will have on small businesses. More information and testing is needed to ascertain its impact.

Simple Cafeteria plans

- NSBA supports the inclusion of Section 9022 in the Senate bill to establish simple cafeteria plans for small businesses. While providing aforementioned language on equity for the self-employed is strongly favored, this is a step in the right direction.

Paying for Reform

Excise Tax on Cadillac Health Plans vs. Medicare HI Tax vs. Tax on the wealthy

- NSBA's has two primary reservations with the Senate proposed excise tax on high-cost insurance plans. First, it seems unavoidable that the tax will be passed down to all

small businesses in the form of higher premiums. Second, it appears to be an administrative quagmire for small-business owners to administer the tax.

Instead of the proposed excise tax model, NSBA has supported limits on the value of employer-provided health coverage that is excludible from gross income based on a minimum benefit package. This approach would encourage greater consumer behavior, decrease utilization of the system, and lead to a decrease in the aggregate cost of health care. Insurance now frequently covers (on a tax-free basis) non-medically necessary services, which would otherwise be highly responsive to market forces. It is unfortunate that this model of cost-containment has been disregarded on political grounds.

- Senate language proposing a 0.9 percent Medicare HI tax on wages in excess of \$200,000 (single)/\$250,000 (joint) is bad public policy and is opposed by NSBA
- House language providing a 5.4 percent surcharge on income in excess of \$500,000 (\$1 million for joint returns) is similarly ill-conceived in lieu of identifying cost saving within the health care system, and which is not indexed to inflation. The proposed surtax is a tax on income, not on wealth, and would fall heavily on small business owners in pass-through entities. Many, if not most, of these business owners do not actually take all of this “income” home, but instead reinvest it in creating new jobs. This tax will certainly reduce that investment. If possible, any pass through income that is left in the business should be totally exempt from any surcharge.

Fees on medical devices and health insurers

- NSBA opposes these taxes because the Congressional Budget Office noted that new taxes on medical devices and health insurers will merely be passed down to consumers in the form of higher premiums.
- Additionally, small medical device entrepreneurs should be granted some type of exemption from these taxes to encourage their engaging in innovation and investment in new medical device technology that could eventually decrease costs and improve quality.

Limiting Contributions to FSAs and scope of HSAs

- Small businesses use flexible spending accounts (FSA) and health savings accounts (HAS) as flexible means to achieve affordable health care. NSBA opposes limitations on FSAs and HSAs.

Corporate Reporting

- The House and Senate language requiring corporate information reporting clearly places the burden on the wrong taxpayer—the compliant small-business. NSBA opposes House and Senate corporate reporting requirements.

Apart from the aforementioned criteria we have outlined to gain the endorsement of NSBA, we are generally concerned with the lack of consistency provided in each proposal with respect to the timing of implementation of various provisions. Instituting revenue raising or other compliance provisions prior to realizing other elements of the bill is not good public policy. We encourage you to streamline these provisions in order to help our nation’s small

businesses ascertain the mechanics of such historic legislation that would impact every American's life.

NSBA appreciates the opportunity to provide a small-business perspective to the pending health care reform legislation merger. We hope to continue to work with you and your staff as a constructive participant on these issues as they progress. Please do not hesitate to contact us or NSBA staff to provide additional information or insight into the health care challenges faced by our nation's small businesses.

Sincerely,



Todd O. McCracken
President



Keith A. Ashmus
Chairman

Cc:

The Honorable Mitch McConnell, US Senate Minority Leader
The Honorable Richard Durbin, US Senate Majority Whip
The Honorable Jon Kyle, US Senate Minority Whip
The Honorable John Boehner, House Minority Leader
The Honorable Steny Hoyer, House Majority Leader
The Honorable Eric Cantor, House Minority Whip
The Honorable Max Baucus, Chairman, Senate Finance Committee
The Honorable Charles Grassley, Ranking Member, Senate Finance Committee
The Honorable Tom Harkin, Chairman, Senate Health, Education, Labor, and Pensions Committee
The Honorable Mike Enzi, Ranking Member, Senate Health, Education, Labor, and Pensions Committee
The Honorable Charles Rangel, Chairman, House Ways and Means Committee
The Honorable Dave Camp, Ranking Member, House Ways and Means Committee
The Honorable Henry Waxman, Chairman, House Energy and Commerce Committee
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