

National Retiree Legislative Network
Washington D.C. Fly – IN Legislative Agenda Priorities
September 15–17, 2009

HEALTH CARE INCLUDING PRESCRIPTION DRUGS

NRLN retirees are absorbing catastrophic reductions and cancellations of health care benefits. Corporate actions, aided by the EEOC rule of 2007, and biased bankruptcy court rulings have shifted costs, eroded purchasing power, forced personal bankruptcies and stripped away retiree self-respect. Congress must act.

- NRLN proposes **Maintenance Of Cost Payments (MCP)** pegged to the cost of employer health care benefits at retirement. Employers would pay MCP's if benefits were reduced but would receive tax credits in return. MCP's and tax credits would dissolve as next generation retirees enter retirement.

The House Education and Labor Committee health care reform bill, H.R. 3200, Section 165, bars the reduction of retiree benefits post-retirement and prohibits Reservation Of Rights clauses as a defense, "unless such reduction is also made with respect to active participants." The **NRLN opposes the quoted exception and proposes a 12-31-08 effective date.**

- NRLN supports legislation that enables **importation** of prescription drugs, **competitive bidding** of Medicare-D prescription drugs; funding the FDA to **reduce generic drug backlogs**, stopping brand drug makers from **paying generic drug manufacturers** to withhold generic drugs off the market.

The four initiatives above will **save \$600 billion over ten years** that can be used to pay for the **elimination of the "doughnut hole"** in the Medicare Part-D prescription drug plan and a new **Medicare catastrophic benefit** .

- NRLN supports adding **catastrophic coverage** to Medicare. As employers eliminate health care plans, retirees lose "catastrophic coverage" which limits out-of-pocket medical expenses to a fixed amount, such as \$1,500.

The House Education and Labor Committee health care reform bill, H.R. 3200, Section 164, creates a temporary reinsurance program for retirees age 55 or older, to pay claims exceeding \$15,000, up to \$90,000. Section 164 excludes coverage for Medicare-eligible retirees. The NRLN will support this incentive **if Section 164 is changed to include Medicare eligible retirees.**

- NRLN supports **buying into Medicare at cost**. Pre Medicare retirees are unable to access affordable health care. Access to Medicare at cost would create affordable coverage and lower Medicare overhead. Competitive plans that offer limited age-rating and catastrophic coverage could be alternatives.

Go to www.nrln.org and click on the link to read the NRLN's complete Legislative Agenda. To read the NRLN testimony by Bill Kadereit on health care for retirees before the House Education & Labor Committee in September 2008, go to <http://www.nrln.org/NRLN%202008%20Action%20%20Accomplishments%20Handouts.pdf>



HR 3200: Provisions Central to Support by Retirees and Seniors

The National Retirees Legislative Network (NRLN) – a coalition of 25 retiree associations representing the interests of over 2 million retired Americans is vitally interested in three key provisions of H.R. 3200, *America's Affordable Health Choices Act of 2009*. The NRLN strongly urges the House leadership to both include and strengthen the following Sections of the TriCommittee bill when it is reconciled in preparation for a vote by the full House:

➤ **Section 164: Retiree Reinsurance Fund**

Retirees not yet eligible for Medicare are one of the costliest groups to insure, pushing more and more companies to drop coverage. This provision encourages employers to continue covering early retirees by funding a temporary \$10 billion trust to pay catastrophic claims between \$15,000 and \$90,000.

➤ **Section 165: Protection Against Post-Retirement Cutback of Health Benefits**

Prohibiting the post-retirement termination or reduction of promised health care benefits for *current* retirees is the NRLN's #1 priority – and must be considered an essential element of any "comprehensive" health care reform. It's devastating to both early and older retirees on fixed incomes to lose promised benefits that were *earned* over decades of faithful service.

➤ **Section 1181: Closing the Medicare Part D Coverage Gap ('Donut Hole')**

Currently the 70% of Americans 65 and older who lack employer-provided prescription drug coverage fear falling into Medicare Part D's 'donut hole,' making medicine unaffordable for many. Although we believe the closing of this coverage gap should be phased in more rapidly, NRLN supports legislating this in HR 3200. We also strongly support a provision to allow Medicare to negotiate drug prices collectively on behalf of Part D providers.

Sections 164 and 165 both seek to maintain current levels of employer-paid coverage for retirees and should be considered inseparable. The provisions reflect the recognition that employers need an incentive to maintain retirement health care benefits, and that the promised health care benefits of current retirees should have ERISA protection.

Section 165 requires that employers maintain promised coverage levels after an individual retires – and protects both current and future retirees. Section 164 lowers the plan sponsor's costs of maintaining coverage by reinsuring catastrophic claims, although the subsidy is unfortunately limited to early retirees (age 55 to 64). The NRLN strongly believes that both sections must be included in the final legislation – and that both require some fine tuning in order to provide the desired protection for retirement health care benefits.

Section 165: Changes Needed to Protect Current Retirees and Avoid Unintended Harms

A large number of employers have eliminated health care benefits when retirees turned age 65 and became eligible for Medicare and others will do so in the future unless prevented by legislation. This trend, devastating to older retirees on fixed incomes, has been greatly exacerbated by the detrimental EEOC rule that eliminated the potential for age discrimination lawsuits when employers eliminate health care benefits only for Medicare-eligible retirees.

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Section 165, added in markup by the Education & Labor Committee, would amend ERISA to expressly bar employer-sponsored health care plans from reducing medical, surgical, hospital and prescription drug benefits for retirees and beneficiaries after an individual retiree. It is critical that Section 165 is explicit in stating that the anti-cutback protections apply to all Americans who retired with coverage prior to the effective date. In addition, we believe the language should be fine tuned in three respects:

- ***Effective Date Prior to Enactment:*** Section 165 should protect individuals who retire on or after Dec. 31, 2008, since many retirees lost coverage as of Jan. 1, 2009 – and in any case the legislation would not want to incent plans to cut or reduce benefits prior to enactment.
- ***Add Collective Bargaining Exemption:*** Unions are concerned that as written, Section 165 limits their flexibility in collective bargaining. NRLN has no objection to an exemption for any benefit change negotiated pursuant to a collectively-bargained health plan.
- ***Eliminate Linkage to Active Worker Benefits:*** Inexplicably, Section 165 prohibits plans from reducing benefit levels post-retirement “unless such reduction is also made with respect to active participants.” This perversely encourages employers to eliminate or reduce the benefits of active workers. This exception should be deleted, delinking the two groups. Compensation for active employees is disciplined by labor markets and might be offset with higher wages; non-represented retirees are completely vulnerable to unilateral cuts in promised benefits.

Section 164: Incentives to Maintain Retiree Coverage Should Extend to All Retirees

HR 3200 limits payments from the Retiree Reinsurance Fund to covered retirees who are *not* eligible for Medicare. This limitation should be removed. Older retirees do not have catastrophic coverage via Medicare and are even more likely to lose their employer-provided coverage than early retirees as costs rise. This trend toward capping and/or canceling post-65 retiree coverage has been exacerbated by the recent EEOC rule allowing employers to eliminate coverage for Medicare-eligible retirees while maintaining it for younger retirees.

Recent experience with Medicare Part D demonstrates that even a fairly modest public subsidy can arrest the trend of employers dropping or greatly reducing retiree health coverage. Under Part D, employers who continued to provide prescription drug coverage – rather than dumping their retirees into Part D – received a subsidy equal to 26% of the cost. As a result, very few retirees lost their superior private coverage – and roughly 30% of Medicare enrollees today have no ‘donut hole’ coverage gap problem. Likewise, a modest subsidy to offset some of the cost of catastrophic claims could slow or even stop the loss of health benefits for millions of older retirees on fixed incomes.

For years the NRLN has advocated a retiree health tax credit for employers, tied to a “maintenance of contribution” requirement. The tax credit (or, under HR 3200, the Reinsurance Fund subsidy) is the ‘carrot’ to compensate plan sponsors for the ‘stick’ of requiring they keep their promises – and not cut benefits for individuals after retirement. The combination of Sections 164 and 165 can accomplish this same public policy goal – *but only if both are included and strengthened in the final legislation.*

We see a great skepticism among our retiree members about the health reform effort in Congress. Including these amended provisions in the final House legislation would show senior citizens that health reform is truly comprehensive and will benefit them as well.



**PRESCRIPTION DRUG COSTS AND EXPENDITURES
A CALL FOR ACTION
EXECUTIVE SUMMARY**

The NRLN believes that taking immediate steps to implement the initiatives below will create immediate and measurable ways to generate savings needed to reach a positive solution to unjustifiably high prescription drug costs. These initiatives will simultaneously create hundreds of billions of dollars in savings that can be spent to offset national health care reform costs. These savings will end up in the hands of American consumers and will stimulate the US economy and long-term economic growth for our country.

The NRLN has advocated free market competition while also advocating safety in the production and marketing of prescription drugs. Congress should enable the safe and controlled importation and competitive bidding of prescription drugs and robust formularies. Furthermore, Congress should ensure that the FDA accelerates access to generic prescription drugs. Backlogs of generic drugs awaiting approval have exceeded five (5) years and must be eliminated by providing for user fees and the staff needed to expedite approvals. Equally important, agreements that restrain competition between brand and generic manufacturers such as pay-offs that keep lower-priced generic drugs off the market, must be outlawed.

The NRLN projects that if Congress acts to implement these initiatives, 18% of the nation's \$3,567 billion in projected prescription drug expenditures over the next ten (10) years can be saved. This 18% savings would amount to \$630 billion:

<u>Recommended Initiatives</u>	<u>\$ Savings</u>	<u>% Savings</u>
Importation, Re-importation	\$178 billion	5%
Competitive Bidding	\$ 178 “	5%
Generic Drug Market Share Growth of 16%	\$ 203 “	6%
Elimination of Restraint if Trade Practices	<u>\$ 71</u> “	<u>2%</u>
TOTALS	\$ 630 “	18%

If the pledge of \$80 billion in savings by the pharmaceutical industry in June of 2009 will close 50% of the Medicare D doughnut-hole, then Congress could allocate \$160 billion of this \$630 billion savings for the virtual elimination of the doughnut hole. This would leave more than \$400 billion that could offset the \$1 trillion or higher cost of national health care reform over the next ten (10) years. In other words, this \$630 billion savings could potentially close 100% if the Medicare D doughnut hole and pay the equivalent of 40% or more of the bill for national health care reform.

Testimony by Bill Kadereit, NRLN President
U.S. House of Representatives
Committee on Education And Labor
Hearing on “Safeguarding Retiree Health Benefits”
September 25, 2008

Good morning, Chairman Miller and Members of the Committee. My name is Bill Kadereit and I am from Heath, Texas. I appear before you this morning as President of the National Retiree Legislative Network or NRLN, an organization that represents more than 2 million retirees across America. I commend you, Mr. Chairman, and the Committee for focusing on this vitally important topic and appreciate this opportunity to spend a few minutes with you this morning.

Our retiree organizations serves a cross section of the top Fortune 500 companies such as Boeing, IBM, Johns Manville, Alcatel Lucent, Prudential, Raytheon, Detroit Edison, Pacific Bell, GM, Ford, Chrysler, AT&T, and a dozen more.

Our members live in all 50 states and over 300 Congressional Districts. Although the majority of our membership is retired management employees, over 15% are retired union workers. Most of them feel betrayed by their former employers.

At the heart of this betrayal is that so many employees, even retired managers, were unaware that their former companies could break their promises to their retirees. For example, many retired managers say they were not aware that the lump sum pension payments offered as inducements to older workers to retire often came from workers' own pension plan assets. Nor did they realize that health care benefit plans contained statements that reserved to the company the right to reduce or cancel health care benefits. Retiree exit interviews ended with a handshake and the passing of an envelope stuffed with benefit promises.

Sandy a retired IBM Manager who saw his own insurance bill triple in 2004 put it this way: “I feel I misled a lot of people, that I’ve lied to people;” then he said, “It does not sit well with me at all.”

Capping and cancelling health care liabilities in the 90's was the beginning of a disturbing trend that continues to this day. International Paper used FASB 106 to book health care liabilities and then introduced caps. The effect was \$18.7 million in earnings gains each year through 2000. In 2000, 2001 and 2002 they capped benefits of newly acquired companies and through 2004 benefited by another \$65 million. Sears implemented caps during the 90's and fed \$383 million to earnings since 1997.

IBM implemented caps in 1999 that affected 190,000 retirees. It took three years for retiree health care costs to reach the \$625 cap but in 2002 retiree premiums increased nearly 67% and another 29% in 2003.

Adding the greatest insult to this injury is the heinous Equal Employment Opportunity Commission, or EEOC rule of 2007 which permits companies to discriminate against over-age-65 retirees who can have their benefits eliminated completely with companies claiming necessity in order to maintain benefits for younger workers. There are over 10,000,000 retirees over age 65.

Over-age-65 GM retirees will be forced onto Medicare without the catastrophic, dental, vision, or hearing insurance they now have, effective January 1, 2009. A GM retiree, who must purchase supplemental insurance, plus the four elements just cited, will be in the hole over \$400 a month starting in January 2009. A retiree on a fixed income pension of \$36,000 is going to lose between 18-20% of his or her after tax income if they replace all lost coverage. Ford, Chrysler and GM are casting a big shadow over the retirement landscape. Singling out over age 65 retirees sets an example that will lead to more companies targeting them.

It is ironic that retirees under age 65 are no better protected now than before the EEOC rule became effective.

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I am not blaming the Big Three. The trend is universal. The EEOC rule and the fact that ERISA does not vest retiree benefits are the real culprits.

For this reason, maintenance of health care benefits in effect on the day of retirement is a top NRLN priority.

Congress must address the problem of catastrophic insurance for all retirees and Medicare eligible Americans. It is not just uninsured people who are vulnerable.

Robert, a 66-year-old Dallas retiree, has brain cancer. He gets free supplies of a tumor-fighting drug through a program for low-income families. His premiums have jumped by \$365 a month, his deductible and co-pays and other out of pocket expenses are on top of that; "it eats up all the pension" which is \$850 a month his wife, LaRue, says. They have cashed in his 401(k) account and taken out a second mortgage on their home.

Two other NRLN priorities are the inclusion of catastrophic coverage in Medicare and the creation of a Medicare buy-in option, at cost, for all under age 65 retirees

Elizabeth Warren, a Harvard Law School professor and one of the authors of Consumer Bankruptcy Project, examined a sampling of noncommercial bankruptcies from 1991 to 2007, and people 65 and up were more than twice as likely to file and the filing rate for those 75 and older more than quadrupled. This is very real and frightening!

So given all of this, what can Congress do to provide greater safeguards for retiree health benefits? The NRLN has three main recommendations:

First, prevent broken promises to retirees and mitigate the harm from the EEOC ruling by offering incentives to companies but requiring them to maintain their existing level of health care contributions for retirees. This incentive could take the form of tax credits that would offset part of the cost. The NRLN calls this Maintenance of Cost Protection (MCP).

Second, amend ERISA to prohibit the use of defined benefit pension plan assets to make lump-sum severance payments—an operating expense that should be paid from a restructuring reserve or from operating revenues. This will ensure that any pension fund surplus can be applied to retiree health care costs through use of IRS Sec 420 transfers to 401(h) trusts, as long as a cushion of 120% of current assets is maintained in the pension fund.

Third, in 1986, Congress passed the "Medicare Catastrophic Act of 1988" that provided catastrophic insurance that would protect fixed income seniors from devastating health care bills. But it was attacked by seniors who declared it prohibitively expensive at the time. The law was repealed in 1989. Now is the right time to work out a new bill that solves the catastrophic dilemma.

Thank you, Mr. Chairman and members of the Committee. We stand ready to work with you and your staffs on these and other legislative proposals that you may consider. I'd be happy to answer any questions you or the Committee members may have.