7/19

Jenn O'-

Please take a look. Rosenthal believes this missing a big opportunity for us to be out front siting.

J.

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TO: Janice Enright

FROM: Beth Alpert for Tom Glynn

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ADDITIONAL COMMENTS:

IF YOU HAVE QUESTIONS REGARDING THIS FAX CALL: 202-219-6151 / PAT Nera

Congress wants to slash worker protections.

Last week, the House Appropriations Labor/HHS subcommittee -- which funds job training, education, and worker protection -- tried to reverse several decades of progress. Instead of fighting for working families, the subcommittee picked a fight with working families -- stripping worker protections of every kind. The new leadership says that deep cuts are necessary to reduce the federal deficit. But what they don't say is that all their worker protection cuts combined would reach only one-tenth of one percent of the deficit. This isn't about reducing the deficit. It's about reducing basic protections -- on health, safety, pensions, collective bargaining, and job discrimination – for tens of millions of working Americans.

TOTAL WORKER PROTECTION FUNDING ($ in millions)

FY 95	FY 96 House Mark	Decrease
1,010	826	- 170 (- 25%)

Here are five reasons we should care:

1. The health and safety of millions of working men and women will be threatened.

OSHA FUNDING ($ in thousands)

FY 95	FY 96 House Mark	Decrease
312,500	263,985	- 48,515 (-15%)

THE IMPACT:

50,000 more workplace injuries and deaths each year.

- Each day, some 6,000 American workers are injured on the job, which costs American businesses some $112 billion each year. And work-related accidents and injuries exact an even greater annual toll: more lives than the total number of Americans killed in battle during the entire Vietnam War.

- Consider only one week this June – seven days on the job in America.

  – Monday: a worker was crushed by a crane boom in Fruita, Colorado, a construction worker fell to his death off a balcony in Bellaire, Florida, and a worker in Haven, Wisconsin was pulled into a metal press;

– Tuesday: a logger was run over by a skidder in Flatrock, Alabama, a construction worker in Alexander, Arkansas was killed when he was struck by a trailer loading ramp, and a worker was killed in Orrington, Maine when he became tangled in a conveyor belt and was pulled through the 6-inch space between a roller and the conveyor belt's frame;

– Wednesday: a worker was electrocuted in Bradford, Pennsylvania, a worker burned to death in a truck accident in Scott City, Missouri, and 3 asbestos removal workers were injured by a chemical release in Savannah, Georgia;

– Thursday: a worker fell 15 floors to his death in an elevator shaft in Atlanta, three workers were killed in a head-on collision of a dump truck and a delivery truck, and a worker was crushed by a skid loader in Davis City, Nebraska.

– Friday: a worker was electrocuted in Miami, and another died from a fall off a ladder in Angston, Pennsylvania;

– Saturday: a worker was crushed to death underneath a forklift in Baton Rouge, and a water line inspector was asphyxiated inside a manhole in Kansas City;

– Sunday: a worker was electrocuted in St. Louis, another was electrocuted in Beaumont, Texas, and two workers were killed in a fuel tank explosion in Wichita Falls, Texas.

- But without OSHA's protective standards, the toll would have been far worse. Since the agency's inception, the workplace fatality rate has declined 57 percent. And in FY 94 alone, OSHA inspections helped make more than 40,000 workplaces safer for more than 2 million workers. Research shows that establishments that OSHA inspects subsequently reduce the number of accidents they experience.

- However, if the new Congress gets its way – the $48 million cut they're now proposing – OSHA would be forced to close half of its offices and shed half of its inspectors. Without a credible OSHA enforcement program, America's workers would suffer thousands more tragedies. For example, many more employers would take short cuts at workers' expense – like a New Jersey plastics manufacturer that stripped safety guards off its machines to speed up production, causing 10 injuries in 13 months. And OSHA would have been unable to prevent many accidents as it did at a Cleveland construction site in 1994: four days after the agency found workers 70 feet above the ground with no safety harnesses, and insisted they wear belts, the scaffolds collapsed – and the workers were saved by the new equipment.

2. America's miners will encounter deadly new risks.

MSHA FUNDING ($ in millions)

FY 95	FY 96 House Mark	Decrease
200.6	185.2	- 14.5 (-8%)

THE IMPACT

Fewer mines will be inspected, exposing even more miners to injury and death.

- The Mine Safety and Health Administration (MSHA) is charged with a vital mission: protecting the lives and well-being of America's miners by encouraging compliance with health and safety standards, issuing penalties, and investigating accidents.

- Yet despite MSHA's vigorous efforts and decades of technological progress, mining – a $54 billion, 360,000 worker industry – remains one of the most hazardous industries in America. Since 1989, 30 miners have been killed in coal and dust explosions, and 90 have been killed in roof falls. And between 1968 and 1990, some 55,000 miners died of black lung disease.

- Mines present dangers unlike those at any other worksite – but MSHA is making them more safe. Largely because of MSHA's enforcement efforts, coal miners are five times less likely to be killed on the job than they were in 1969, and metal workers are twice less likely to die.

- Consider the fate of one miner just last month. Early one morning, he yelled that the mine roof was about to collapse – and in five seconds, a section of the roof (six feet thick, 20 feet wide, 10 feet long, and 50 tons heavy) crashed toward the ground. It completely covered the equipment in which he was working, and the miner was trapped inside. But he was protected by a canopy that MSHA requires all underground mines to install. Thanks to the canopy, the miner suffered only bruises and a fractured rib. Without it, he would have been killed instantly.

- But if Congress imposes its deep cuts on MSHA, more miners will meet the fate of the West Virginia underground coal miner who, in May, was crushed by a collapsing roof. The reason? He violated a fundamental MSHA rule by working under an unsupported roof.

3. Working families' hard-won pensions will be endangered.

PWBA FUNDING ($ in millions)

FY 95	FY 96 House Mark	Decrease
69.3	64.1	- 5.2 (-7.5%)

THE IMPACT

Working families will lose $100 million in pension benefits.

- Today, there are roughly 5.2 million private pension and health plans that cover more than 200 million Americans and control more than $3 *trillion* in assets. Not surprisingly, this mountain of money is an inviting target for quick-buck artists and their Ponzi schemes, embezzlement plans, and derivative scams.

- Fortunately, there's a watchdog guarding working families' hard-won rewards – the Pension and Welfare Benefits Administration. Last year, PWBA responded to 158,000 requests for assistance; its cases resulted in 141 criminal indictments and restored $482 million in pension wealth to workers.

- And this watchdog is lean and mean. A recent Brookings Institution report concluded that "PWBA is surely the most highly leveraged operation in the entire government . . . with just 621 employees." That's one person overseeing every *$4.8 billion* in assets.

- But if the Congress imposes its $5.2 million cut, here's what the consequences would be: $100 million that belongs to working families won't be recovered. One out of five pension criminals the agency would have indicted will be able to commit fraud with no repercussions. And 30,000 requests for information and assistance from working families concerned about their health care and pension benefits won't be answered.

4. It will be easier for unscrupulous employers to rip off our most vulnerable workers.

ESA FUNDING ($ in thousands)

FY 95	FY 96 House Mark	Decrease
277,149	251,793	- 25,356 (-9%)

THE IMPACT

35,000 workers will not recover $15 million in back wages that have been illegally withheld.

- The Employment Standards Administration makes sure ordinary Americans get a fair shake at the workplace – that people can exercise their legal right to time off work to care for a sick relative or new child, that employers don't discriminate against on the basis of race, sex, or national origin, that minors aren't pressed into dangerous or illegal work, and that people who work overtime get paid what they deserve.

- But if Congress has its way, the ability to ensure basic fairness in the workplace will be impaired. For instance, when a Miami woman asked for time off to deliver her baby, her employer fired her and cancelled her health insurance. But ESA stepped in, advised the employer and employee of the law – and reinstated her health insurance and recovered her lost wages. Taking those kinds of common sense actions will become more difficult.

- So will actions like fining a New Orleans company $2.3 million for flagrantly denying low-wage workers overtime they deserved – and securing for those workers one-third of a million dollars in back pay. And so will measures like ESA's investigation of a California fashion contractor that refused to pay its garment workers the minimum wage – which ultimately won workers back wages equal to full pay at the minimum wage plus time-and-a-half for overtime.

- Or imagine the fate of a group farm workers in South Carolina. These low-paid laborers were working and living in intolerable conditions – large piles of trash that attracted flies and rodents, septic tanks overflowing with kitchen waste and human refuse, facilities with no toilets or hot water. But ESA stepped in, slapped a large fine on the company – and forced them to clean up their worksite and clean up their act. If these cuts go into effect, basic standards of human decency could be compromised.

5. Working people will have a tougher time bargaining collectively for higher wages and better benefits.

NLRB FUNDING ($ in millions)

FY 95	FY 96 House Mark	Decrease
176	123	- $53 (-30%)

THE IMPACT

Worker rights that have been an integral part of American law for more than a half-century will be undermined.

- The National Labor Relations Board is the independent board that resolves disputes between private sector employers and unionized employees. One of the sturdiest institutions in workplace policy, the NLRB guards against unfair labor practices both by employers and employees, and protects the right of workers to organize.

- With President Clinton's appointments, the NLRB has been re-energized – issuing more injunctions in the last six months than in the last six years.

- The funding cuts of 30 percent and the legislative language restricting the NLRB's authority to use its enforcement tools is a direct attack on the basic right of employees to organize unions.

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U.S. Department of Labor

Assistant Secretary for
Pension and Welfare Benefits
Washington, D.C. 20210

DATE: 12-5-95

TO: Jennifer O'Connor

AGENCY: _____

TELEPHONE NUMBER: _____ *FAX:* 456-7929

FROM: ***MEREDITH A. MILLER***
Deputy Assistant Secretary for Policy
Pension and Welfare Benefits Administration
U. S. Department of Labor
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Washington, DC 20210

COMMENTS:

NUMBER OF PAGES INCLUDING COVER SHEET 13

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Labor -
Medical/Medicare Budget negotiations

Budget Reconciliation: Medicare/Medicaid Secondary Payer Data Bank Provisions

The Administration's budget proposal will likely require employers to report information they do not routinely collect to an HHS data bank for purposes of identifying whether employers are primary or secondary payers of Medicare and Medicaid benefits. Under this provision, employers, on a quarterly basis, would report personal identification information about employees, spouses and dependents including social security numbers and birth dates. The data bank is designed to save the government money by better coordinating benefits between private plans and Medicare/Medicaid and by determining who is the primary payer before the claim is paid-out.

The Department of Labor's policy position in formal comments (Secretary Reich to Rivlin) and informal comments to the White House and HHS has been that we support the policy thrust of such an initiative but have serious concerns about employer opposition and the lack of consultation with the employer community. The Department is aware of objections raised in the past by employers and the Taft-Hartley union plans about the administrative and cost burdens this provision would impose. This provision is a significant money raiser at $1.2 billion over 7 years.

The data bank itself was written into law under OBRA '93 but never funded through the appropriations process because of employer opposition and a GAO report that found the reporting requirement imposed significant administrative burdens and expenses on employers as well as cost burdens on HHS.

The House budget contained a provision to repeal the reporting requirement but it was not accepted in conference because of the Byrd rule. It is our understanding that it is not funded in the Labor/HHS appropriations bill so if it came out of a final budget, the White House would be the identified as the supporter. Last week, the Ways and Means Committee passed a bill to repeal the data bank.

ADMINISTRATION TO SEEK 18-MONTH DELAY IN MEDICARE/MEDICAID DATA BANK START-UP

WASHINGTON (BNA) -- The Clinton administration will seek legislation to delay implementation of the Medicare/Medicaid Data Bank by 18 months, which could kill the proposal pending the outcome of health care reform, administration officials told a Senate committee May 6.

However, until a delay is legislated, the administration still wants employers to provide the information for the data bank -- essentially describing all employees' health care coverage -- and has issued detailed preliminary compliance guidance.

The Senate Committee on Governmental Affairs also was told by the General Accounting Office that the data bank statute should be delayed, following its investigation that found the bank would not save Medicare and Medicaid money and would impose a costly paperwork burden on employers.

Appearing before the committee, Sally Katzen, administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget, said the administration's legislation also would propose new Medicare secondary payer provisions that would save the program $350 million, partially offsetting the loss of nearly $1 billion the data bank was supposed to save Medicare and Medicaid.

Sen. Joseph I. Lieberman (D-Conn), an outspoken critic of the data bank, told Katzen that he would work with the administration to get a bill through Congress to delay the data bank, but he also expressed support for an outright repeal of the statute. Several bills have been introduced in Congress to repeal the data bank statute.

Compliance Still Requested

While the administration works to get the repeal legislation passed, Katzen urged employers to comply with the data bank requirements, which were included in the Omnibus Budget Reconciliation Act of 1993.

The Health Care Financing Administration May 9 was expected to publish in the Federal Register a "guidance notice" informing employers of what they must do to meet the data bank requirements.

An advance copy of the preliminary guidance notice obtained by BNA May 6 contained few changes from a draft recently circulated by HCFA. The notice described the information sought by HCFA from employers, including the name and taxpayer identification number of the employee electing health insurance; the type of group health plan elected; the name, address, and identification number of the group health plan; the name and TIN of every covered dependent; the period during which such coverage is elected; the name and address and TIN of the employer.

Employers must report employee health plan information for calendar years 1994 through 1997. Reports for calendar year 1994 have to be filed by Feb. 28, 1995, the notice said.

Employers with fewer than 50 workers with a health plan other than a multiemployer or multiple employer plan, could request that a third party, such as an insurer, file the information with HCFA. Insurers of larger companies could opt to send the required information either to HCFA or the employer, the notice stated. The penalty for failing to report would be $50 per instance, to a maximum of $250,000, it added.

Katzen said after the hearing that the 18-month delay would start Jan. 1, 1994, and continue until July 1995. This delay appears to effectively eliminate the requirement that employers collect health care information on their workers in 1994, Robert Roth, an attorney with Dechert Price & Rhoads, Washington, D.C., told BNA.

Katzen told the committee the administration would use the delay to determine what types of health care information would be needed under reform and whether the data bank would be an effective way to gather such information.

But the data bank most likely would not be needed if a national electronic information network were established as a result of reform, Nan D. Hunter, deputy general counsel for the Department of Health and Human Services, told the committee.

Ending The "Pay And Chase" Mentality

Such an information network would end the "current pay and chase mentality by instantly coordinating benefits between Medicare and health plans," Hunter stated. "In essence, the claim is paid by the correct payer the first time, eliminating the need for Medicare secondary payer collection activities, such as that contained" in the data bank, she added.

The data bank was designed to save Medicare and Medicaid money by ensuring the two programs do not pay erroneously health care claims that should be covered by third-party insurers. Under the law, all employers required to file a W-2 that provide health insurance coverage to their employees would submit selected information to the data bank.

Employers were scheduled to begin submitting reports to HCFA on Feb. 28, 1995. However, Congress did not provide funding for staff to handle the information on 160 million employees and their dependents submitted to the bank. The administration in its fiscal 1995 budget request is seeking $15 million for the bank's implementation.

The data bank has been highly controversial among employers, who have complained that it would require them to establish costly new data collection systems to collect information on a small percentage of their workers. Only about seven million workers with health insurance also are covered by Medicare and Medicaid, according to GAO.

Little Or No Savings Seen

The GAO in a report released at the hearing agreed, saying the bank was "likely to achieve little or no additional savings" to Medicare and Medicaid and questioned whether the bank "would provide any useful information beyond what is being collected under HCFA's ongoing data match process."

HCFA's data match program cross references information from the Social Security Administration and the Internal Revenue Service to identify beneficiaries who have potential for health insurance coverage through their or a spouse's employer.

In addition to more effectively capturing secondary payer information, the data match program is less costly to administer, GAO said in the report, and HCFA could be forced to choose one program over the other if additional funds are not found. HCFA has budgeted $20 million for the data match program in fiscal 1995 and $18 million in fiscal 1996. The data bank program will cost $15 million to implement and up to $30 million annually to administer, GAO said.

The first copy of the report, Medicare/Medicaid: Data Bank Unlikely to Increase Collections From Other Insurers (GAO/HEHS-94-147), is free; additional copies are available for $2 each from GAO, P.O. Box 6015, Gaithersburg, Md. 20884; (202) 512-6000.

ERIC . . LEGISLATIVE BULLETIN

THE ERISA INDUSTRY COMMITTEE
1400 L Street NW Suite 350 Washington, DC 20005 (202) 789-1400 FAX — (202) 789-1120

TO: MEDICARE/MEDICAID DATA BANK COALITION MEMBERS

FROM: ANTHONY KNETTEL, DIRECTOR, HEALTH POLICY

DATE: MAY 6, 1994

SUBJECT: ADMINISTRATION ACCEDES TO EMPLOYER DEMAND TO ADDRESS MEDICARE/MEDICAID DATA BANK CONCERNS

SUMMARY: The Administration announced today that it will transmit to Congress in the near future legislation to delay implementation of the Medicare/Medicaid Data Bank for 18 months. Sally Katzen, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), stated today during testimony before the Senate Governmental Affairs Committee that bill language is already being drafted.

Pending enactment of such legislation, however, the Health Care Financing Administration (HCFA) will proceed with the publication of preliminary guidance for employers who are required to report information to the data bank under current law. Such guidance has been cleared by the Administration and transmitted to the *Federal Register*; it is likely to published on either May 10th or 11th.

STATE-OF-PLAY: Coalition representatives met with House Ways & Means, House Energy & Commerce and Senate Finance Committee staff this week. In each case staff indicated their respective committees are not opposed to repeal or delay so long as sufficient revenues are raised to offset any revenue loss resulting from repeal or delay. Katzen said in her testimony that the Administration's bill will include provisions to make it revenue neutral (the revenue provisions do not affect employers). After the hearing, OMB staff indicated that the Administration intends to ask Congress to place the bill on its consent calendar for expedited consideration.

In a separate but related development, on May 5th Representative Earl Pomeroy (D-ND) and seven cosponsors introduced another bill (H.R.4365) to repeal the data bank.

COALITION ACTIVITIES: Coalition members will meet with Administration and congressional staff as soon as possible to discuss bill language and urge timely action by Committees with jurisdiction to move the bill at the first available opportunity. Copies of proposed bill language, as well as HCFA's preliminary guidance, will be made available to Coalition members as soon as we obtain it.

COALITION ON EMPLOYER HEALTH COVERAGE REPORTING AND THE MEDICARE/MEDICAID DATA BANK

Contact: Anthony Knettel (202-789-1400)

June 17, 1994

COALITION ANALYSIS:

NEW EMPLOYER HEALTH COVERAGE REPORTING REQUIREMENT IMPOSES MASSIVE ADMINISTRATIVE AND FINANCIAL BURDEN ON EMPLOYERS BUT FAILS TO REMEDY HCFA'S SECONDARY PAYER PROBLEMS

The Coalition's analysis has concluded that the new employer health coverage reporting requirement,[1] which is intended to provide data for a Medicare/Medicaid Data Bank, neither successfully addresses the concerns of the Health Care Financing Administration (HCFA) regarding mistaken primary payments nor justifies the burdens imposed on employers.

- ***First, in many cases it will be impossible for employers to fully comply with the law.*** Collection of such information from employees is even harder for employers than it is for the government to obtain it directly from Medicare and Medicaid beneficiaries. Obtaining information about dependents, in particular, will be very difficult, time consuming, expensive, and in many cases impossible -- especially for employers with high work force turnover. Further, employers' ability to collect certain information (*e.g.*, dependents' social security numbers) may be limited by privacy laws. Collection of information in cases where employers contribute to, but do not administer, Taft-Hartley multi-employer health plans will also be difficult, if not impossible.

- ***Second, the administrative and financial burden imposed on employers by full compliance with the law is enormous.*** A significant portion of the information to be reported to the data bank is not currently maintained by employers for any business purpose. In many cases it will have to be compiled manually, at tremendous cost.

- ***Third, requiring employers to collect the data for HCFA is incredibly inefficient.*** The data to be reported by employers was intended to be matched against government records in an effort to identify mistaken reimbursements for health care services by Medicare and Medicaid. But only a minute amount of the information employers will report would be of any use for this purpose because only a small fraction (less than 5 percent) of employees and their dependents are Medicare or Medicaid beneficiaries. In many cases the data reported by employers will still not be sufficient to enable HCFA (by its own admission) to identify or prevent mistaken payments. Moreover, it is unlikely HCFA

[1] Beginning January 1, 1994, employers must report the health insurance coverage status of employees and their dependents to a data bank to be administered by the Health Care Financing Administration (HCFA). This reporting requirement was created by last year's budget reconciliation bill (OBRA'93, P.L.103-66).

Coalition Analysis, continued:

will be able to process the information fast enough to meet applicable claims filing deadlines to recover mistaken payments.

- ***Fourth, the government has been unable to make use of the relevant information that it currently receives; it would be more efficient to help HCFA manage the information that it already has rather than burden employers to provide additional information.*** HCFA already receives, when claims are filed, much of the information that it would receive through the employer reporting requirement. This is because the UB-92 and other claim forms require secondary payer information to be included. In fact, secondary payer information has been sent to HCFA for years, but HCFA has not been successful at fully incorporating this information into its systems. HCFA has also been unable to take full advantage of additional information it receives from other sources, such as new beneficiary questionnaires and the Medicare Secondary Payer data match. It would be far more efficient to have HCFA make better use of the information that it currently receives than to overwhelm it with data generated by the employer reporting requirement.

- ***Fifth, not only has the federal government imposed an unclear and unworkable reporting requirement on employers, it also has compounded the problem with an unrealistic effective date.*** Due to several vague provisions in the statutory language, as well as the lack of adequate timely guidance from HCFA, many employers either are unaware that they have an obligation to report this data or cannot determine with any certainty what their obligation is. It is already too late to provide the comprehensive guidance employers need to rewrite payroll computer programs, modify health plan open season election forms, and otherwise prepare to collect and report data on employees' health coverage status as of January 1, 1994. As a result, there will be near-universal noncompliance for 1994 and for an indeterminable period following the publication of guidance.

This reporting requirement effectively forces employers to perform HCFA's program administration, enforcement and compliance responsibilities in a very inefficient manner. Further, even if the reporting requirement itself were feasible -- which it emphatically is not -- employers who spend (in aggregate) hundreds of millions of dollars annually attempting to comply with the law in good faith will find their effort and expense squandered since the data received by HCFA will be incomplete, incompatible, or unusable due to the impossibly short effective date and the lack of adequate timely guidance.

difficult at present to assess the prospects of payroll taxes or other revenue measures associated with the bill, they said.

Aides said tax issues are not the main focus of members of Congress, although staff has been considering those issues.□

Employee Benefits

McCAIN INTRODUCES BILL TO REPEAL MEDICARE/MEDICAID DATA BANK STATUTE

Hoping to quiet a growing chorus of employer opposition to the Medicare/Medicaid Data Bank, Sen. John McCain (R-Ariz) March 15 introduced legislation to repeal the statute establishing the bank and to require the Department of Health and Human Services to conduct a study to find some other way to meet its objectives (S 1933).

S 1933 would repeal Section 13581 of the Omnibus Budget Reconciliation Act of 1993. The section established the bank as a way to ensure that the two federal health programs did not pay the health care bills of those with private insurance. The statute required employers to collect insurance information of employees and provide it to the Health Care Financing Administration.

In remarks prepared for delivery on the Senate floor, McCain called the law "remarkably intrusive" to employers and overly broad, since only about 2 percent of businesses employ workers with Medicaid or Medicare coverage.

The legislation "would repeal a law that is extremely expensive, burdensome, punitive, and in my view, entirely unnecessary," McCain said.

Amendment Considered

Earlier on March 15, McCain had considered adding an amendment with the same aim as S 1933 to S 4, the Competitiveness Act. Sources said the amendment was not offered over concern that funds to replace those lost with repeal of the act would have to be found by Congress. The bank would save Medicare about $653 million, funds which were scored last year by Congress.

Congress has not appropriated the approximately $15 million to fund the databank, although the Clinton administration has asked for such funds in its fiscal 1995 budget request.

McCain said he decided to introduce a bill to allow the Senate Labor and Human Resources Committee or the Senate Finance Committee an opportunity to consider it, but added he deserved the right to again raise the bill as an amendment if it "is not being addressed adequately and in a very timely manner."

Under the statute, employers were to start collecting health insurance information on their workers Jan. 1 and begin reporting it to HCFA by Feb. 28, 1995. Employers have been highly critical of the measure and its data collection requirements, however, which they claim would be expensive to gather and maintain.

Draft Criticized

The bank would be administered by HCFA, which has said it will issue "guidance" to employers by the end of the month on meeting the bank's requirements. A partial draft of the guidance notice produced by the agency at the end of February was widely criticized by employers as vague and confusing (2 HCPR 482, 3/14/94).

McCain said the data bank would penalize employers who are offering insurance, since only they would be required to provide information to HCFA.

In addition, HCFA already is gathering such information through several programs, including one mandated by OBRA '89 that requires the agency to cross-check health insurance information with Internal Revenue Service records, he added. HCFA also directly asks Medicare beneficiaries if they have third-party coverage, McCain said.

While Congress passed the statute in effort to save Medicare and Medicaid money, it most likely will cost employers more to meet the data bank requirements, McCain stated.

'A Paperwork Nightmare'

Employers over the last several weeks have intensified efforts to repeal the statute. In a March 15 letter to McCain, for example, the National Federation of Independent Business said the data bank law would "be a new paperwork nightmare" for the nation's small businesses.

"What is a problem of communication between a patient, the health care provider, Medicare, and insurance companies is 'solved' by placing a tremendous burden on small business," NFIB Vice President John J. Motley said in the letter. "Business is not part of the problem, but under the Medicare data bank they must bear the expense of the solution."

Sources told BNA that if the repeal had been added to S 4 as an amendment, NFIB was prepared to tell lawmakers it considered a vote on the measure to be a "key vote," meaning that the group would use the vote when considering future support of lawmakers.

Similar letters were sent to McCain by the Coalition on Employer Health Coverage Reporting and the Medicare/Medicaid Databank, a group of 70 employers seeking repeal of the statute; the National Employee Benefits Institute; the ERISA Industry Committee; the Washington Business Group on Health; and the Associated General Contractors of America.

The bill was referred to the Senate Finance Committee.□

Public Health

JUSTICE DEPARTMENT TO INVESTIGATE ALLEGATIONS OF NICOTINE MANIPULATION

The Food and Drug Administration has asked the Justice Department to investigate allegations that cigarette manufacturers manipulate nicotine levels in their products in order to maintain smokers' addiction to them, a House appropriations subcommittee was told March 16.

Philip R. Lee, HHS assistant secretary for health, who joined FDA Commissioner David A. Kessler in testifying before the House Appropriations Committee's Subcommittee on Agriculture, Rural Development, FDA and Related Agencies, told the subcommit-

Written Statement for the Hearing Record
The President's Budget for Fiscal Year 1995
Committee on Finance, U.S. Senate
February 23, 1994

Submitted by Members of
The Coalition on Employer Health Coverage Reporting
and the Medicare/Medicaid Data Bank

Members of the Coalition on Employer Health Coverage Reporting and the Medicare/Medicaid Data Bank submit to the Committee on Finance, U.S. Senate, the following written testimony regarding the implementation and operation of the data bank as proposed by the President's fiscal year 1995 federal budget. Specifically, Coalition members urge the Committee to ensure that the implementation and operation of HCFA's Medicare and Medicaid Data Bank be excluded from the fiscal year 1995 budget until the current employer reporting requirement is replaced with a more efficient and cost-effective source of health coverage information.

The Coalition is a broad-based, *ad hoc* group of associations, organizations and individual companies reflecting a cross-section of the employer community. The Coalition was formed to work with Congress and the Administration to identify an alternative means to address the secondary payer enforcement and compliance needs of the Health Care Financing Administration (HCFA) that does not impose a disproportionate financial and administrative burden on employers.

BACKGROUND

Beginning with calendar year 1994, an employer that "has, or contributes to, a group health plan, with respect to which at least 1 employee of such employer is an electing individual," must annually report to a new HCFA Medicare and Medicaid Data Bank information relating to the health insurance coverage status of covered employees, their dependents, and other covered electing individuals. An "electing individual" is "an individual associated or formerly associated with the employer in a business relationship who elects coverage under the employer's group health plan."

The reporting requirement was created by §13581 of the Omnibus Budget Reconciliation Act of 1993 (P.L.103-66). This provision adds a new §1144 at the end of Part A of title XI of the Social Security Act (see 42 U.S.C. 1301 *et. seq.*). The information supplied to the data bank is intended to be used to help prevent mistaken payments to physicians and hospitals by Medicare and Medicaid.

The budget the President recently submitted to Congress requested a supplemental amount of $15 million for fiscal year 1994 to implement the data bank, as

well as budget authority for the ongoing administration of the data bank in fiscal year 1995 and subsequent years.

ANALYSIS

The Coalition's analysis suggests that, so long as the Medicare and Medicaid Data Bank is based on the current employer reporting requirement, it will neither successfully address HCFA's concerns regarding mistaken primary payments nor justify the financial and administrative burdens imposed on employers.

1. Employer compliance:

In many cases it will be impossible for employers to fully comply with current law. Employers cannot easily obtain from employees any missing information that must be reported. For example, employees' responses are frequently unreliable and are time-consuming and expensive to verify. Further, employers' ability to request documentation to verify certain information to be reported, such as dependents' social security numbers, is limited by privacy laws.

Obtaining information about dependents, in particular, will be difficult, time consuming, expensive, and in many cases impossible -- especially for employers with high work force turnover. The statute is sufficiently broad that employers appear to be required to report such information about retirees and their spouses, employees' separated/divorced spouses and noncustodial dependent children who are still covered under the employer's health plan, franchisees, participants in Taft-Hartley plans, and many other persons who may fit the definition of "electing individuals" under the statute -- all of whom are either geographically dispersed and difficult to locate, or otherwise pose significant administrative problems for employers trying to obtain accurate information.

As a result, employers are at risk to be assessed significant penalties for failure to report information that they do not routinely possess and which they may not be able to obtain from any other source.

2. Administrative and financial burden on employers:

The administrative and financial burden imposed on employers by full compliance with the law is enormous. A significant portion of the information to be reported to the data bank is not currently maintained by employers for any business purpose. Nor is all of the required information routinely maintained by insurers. In many cases, it will have to be compiled manually, at tremendous cost. In the aggregate, employers will have to expend hundreds of millions of dollars *annually* to comply.

The only persons who have all the information HCFA needs are Medicare and Medicaid enrollees themselves. HCFA claims it is too difficult for the government to obtain this information directly from enrollees; instead, HCFA wants to burden employers and their insurers. HCFA is relying on a false premise, however. The information will be far more difficult and expensive for employers to obtain than it is for HCFA to obtain, in part because employers are required to obtain it from tens of millions of additional persons who are neither Medicare nor Medicaid enrollees.

3. Utility of the data collected:

The rationale for the reporting requirement is to allow HCFA to match the health coverage information received against other government records in an effort to identify employer plans that should be paying "primary" and thus prevent mistaken reimbursements for health care services by Medicare and Medicaid. However, employer reporting is an extremely inefficient means to obtain the information HCFA is seeking.

Employers will have to report coverage information for more than 140 million individuals. But only a minute amount of the information employers will report will be relevant to the data bank's purpose because, according to a preliminary General Accounting Office report, only about 2 percent of employees and their dependents are Medicare or Medicaid beneficiaries subject to secondary payer rules. In many industries with a young work force, such as food service and hospitality, the percentage may be even less.

Even where the data reported by employers is relevant, it will still not be sufficient in many cases to enable HCFA to identify or prevent mistaken payments. Moreover, by the time the information is reported to HCFA, processed by the data bank, and incorporated into claims payment systems it will often be a year old or more, further limiting its usefulness.

4. Availability of other sources of data:

HCFA should already receive, when claims are filed, much of the information that is part of the employer reporting requirement. For example, under Medicare the UB-92 and other claims forms require secondary payer information to be reported. In fact, HCFA has not been successful at enforcing this claims-based reporting requirement or fully incorporating the information it does receive into its systems. HCFA has also been unable to take full advantage of additional information it receives from other sources, such as beneficiaries themselves and the Medicare Secondary Payer data match. It makes far more sense to ensure HCFA makes better use of the information that it currently receives than to overwhelm it with data generated by the new employer reporting requirement.

5. Effective date and guidance:

Not only has the federal government imposed an unclear and unworkable reporting requirement on employers, it also has compounded the problem with an unrealistic effective date. Due to several vague provisions in the statutory language, as well as the complete lack of any timely guidance from HCFA, many employers either are unaware that they have an obligation to report this data or cannot determine with any certainty what their obligation is.

It is already too late to provide the guidance employers need to prepare to collect and report data on employees' health coverage status for calendar year 1994. Employers would need to learn about and understand their obligation, train staff, rewrite payroll computer programs, modify health plan open season election forms, and otherwise prepare to report such information before they can successfully comply with the law. Despite employers' good-faith efforts, there is likely to be widespread noncompliance for calendar year 1994 and for an indeterminable period following the eventual publication of guidance.

CONCLUSION

The employer reporting requirement effectively forces employers to perform HCFA's program administration, enforcement and compliance responsibilities in a very inefficient manner. Further, even if the reporting requirement itself were feasible -- which it emphatically is not -- employers who spend (in the aggregate) hundreds of millions of dollars *annually* attempting to comply with the law in good faith will find their effort and expense squandered since the data received by HCFA will be incomplete, incompatible, or unusable due to the impossibly short effective date and the complete lack of any timely guidance.

Coalition members urge the Committee to ensure that the implementation and operation of HCFA's Medicare and Medicaid Data Bank be excluded from the fiscal year 1995 budget until the current employer reporting requirement is replaced with a more efficient and cost-effective source of health coverage information. We hope to work with you and others in Congress and the Administration to find an alternative means to address HCFA's secondary payer enforcement and compliance needs that does not impose such disproportionate financial and administrative burdens on employers. In particular, we urge that the multiple sources of data and data collection vehicles already available to HCFA be adequately funded and implemented rather than imposing this massive new reporting burden on employers.