E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

24-Mar-1996 07:36pm

TO: Robert J. Pellicci
TO: Nancy-Ann E. Min
TO: Jennifer L. Klein

FROM: Christopher C. Jennings
Domestic Policy Council

SUBJECT: Labor Fraud and Abuse Letter

I am ok on the Labor Dept. fraud and abuse letter. However, I completely defer to our fraud experts -- Nancy Ann and Jen on this one. Two questions do come to mind, though:

First, what happened to the bill that emerged out of the Opportunities Committee (the Fawell bill)? Since that is the Committee of jurisdiction over ERISA, isn't that the more relevant Committee mark-up this letter should be referencing -- and not the Commerce and Ways and Means marks? Didn't the Labor Dept. talk with those folks during the last several months?

And Second, why is this letter going to Newt? I am just curious b/c it might make more sense to go to the Rules Committee Chair (who is marrying all of these provisions) or to Congressman Hastert (who is the Republican Leadership's Lead Health Coordinator.)

cj

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 3877

FILE NO: 2030

3/22/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 8

TO: Legislative Liaison Officer - See Distribution below:

FROM: Janet FORSGREN Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Robert PELLICCI 395-4871 Legislative Assistant's line (for simple responses): 395-7362
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=PELLICCI, G=ROBERT, I=J
pellicci_r@a1.eop.gov

SUBJECT: LABOR Proposed Report RE: HR3103, Health Coverage Availability and Affordability Act of 1996

DEADLINE: C.O.B. Monday, March 25,1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Note the draft letter also discusses HR 3070. Also attached is a similar letter that DOL sent to Congressman Shays on October 10, 1995.

DISTRIBUTION LIST:

AGENCIES:
52-HHS - Sondra S. Wallace - 2026907760
61-JUSTICE - Andrew Fois - 2025142141
76-National Economic Council - Sonyia Matthews - 2024562174
118-TREASURY - Richard S. Carro - 2026221146

EOP:
Nancy-Ann Min
Chris Jennings
Jennifer Klein
OMB LA
Elena Kagan
Bob Damus
Allison Eydt
Barry Clendenin
Mark Miller
Larry Matlack
Mark Menchik
David Haun
Mark Mazur
Sue Murrin
Jeffery Rush
Jim Murr
Janet Forsgren

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: **3877**

FILE NO: **2030**

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.
You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Robert PELLICCI 395-4871
Office of Management and Budget
Fax Number: 395-6148
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

SUBJECT: LABOR Proposed Report RE: HR3103, Health Coverage Availability and Affordability Act of 1996

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of ____ pages, attached to this response sheet

The Honorable Newt Gingrich
Speaker of the House
of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

This letter is to express our views on the fraud and abuse provisions that were included in H.R. 3103 and H.R. 3070, the "Health Coverage Availability and Affordability Act of 1996," as approved by the House Ways and Means Committee and the House Commerce Committee, respectively, and that may be included in a final health reform package. We believe these provisions take necessary steps to provide tougher measures against fraudulent practices that drive up the cost of health care and recognize that billions of dollars have been lost to health care fraud and abuse in the last few years.

We are concerned that these fraud and abuse provisions fail to sufficiently build upon the strengths of today's anti-fraud enforcement efforts against private plans and note that these provisions as currently drafted would apply to all health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA). There are approximately 4.5 million such ERISA plans, providing coverage for about 120 million workers and their families with private employment-based health coverage. The Department has civil and criminal oversight responsibility for all private sector employee health benefit plans under ERISA.

To the extent fraud and abuse provisions are considered on the House floor and for reasons discussed more fully below, we ask that the Secretary of Labor's important role in fraud and abuse enforcement be reflected in these fraud and abuse provisions by clarifying that: (1) the Secretary of Labor is also responsible for the fraud and abuse control program to the extent ERISA plans would be covered; (2) the Secretary of Labor has authority to investigate the new Title 18 crimes as they apply to ERISA plans; and (3) criminal forfeitures and civil recoveries would be used to make participants and beneficiaries whole for losses before such funds were paid into the health care fraud and abuse control account.

Fraud and Abuse Control Program

We note that 42 U.S.C. 1128, as amended by these bills, provides that the Office of the Inspector General of the Department of Health and Human Services and the Attorney General

shall establish a "fraud and abuse control program" to, inter alia, "coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans." A "health plan," in turn, is defined as "a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes a policy of health insurance, a contract of a service benefit organization, and a membership agreement with a health maintenance organization or other prepaid health plan." We note that this definition would be read to include all health plans covered by ERISA.

Given the significant impact these provisions as written would have on our ERISA responsibilities and the scale of the ERISA plan universe, we believe that this legislation should reflect the Secretary of Labor's important role in health care enforcement. Therefore, we suggest revising the bill to clarify that the Secretary of Labor is also responsible, to the extent ERISA plans would be covered for health fraud enforcement.[1]

New Crimes

We note that 18 U.S.C. 24(a)(4), as amended by these provisions, would define "Federal health care offense" to include "a violation of, or criminal conspiracy to violate," specified sections of chapter 18 "if the violation or conspiracy relates to a health care benefit program." A "health care benefit program," in turn, is defined under 18 U.S.C. 63, as amended by these provisions, to mean "any public or private plan or contract under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract." Although the term "private plan" is not defined, these bills likely would be read to include all health plans covered by ERISA, and their sanctions

---

[1] The Pension and Welfare Benefits Administration (PWBA) conducts civil and criminal investigations of persons and entities that exercise discretion over ERISA plans and plan assets, such as multiple employer welfare arrangements (MEWAs). As you are aware, the Department administers and oversees many other worker-related health care programs, including the administration of the Federal Employees Compensation Act (FECA) program (medical benefits and disability compensation to injured Federal employees); the Black Lung Benefits program (medical benefits and disability compensation to former coal miners disabled from pneumoconiosis or "black lung"); and the Longshore and Harbor Workers Compensation Act program (benefits to certain injured and disabled maritime employees). The Inspector General investigates allegations of fraud in all of these three programs and conducts certain criminal investigations of MEWAs and employee benefit plans as well.

would apply to offenses committed against private sector employment-based health benefit plans.

We believe those provisions amending the criminal law concerning health care fraud represent positive steps toward eliminating abusive practices that drive up the cost of health care. Under ERISA, the Secretary of Labor has responsibility for enforcing the provisions of Title I of ERISA and conducting investigations of civil and criminal violations relating to Title I and "other related violations of Title 18 of the United States Code," which include health care fraud. Therefore, we suggest adding language to clarify that the Secretary of Labor had the authority to investigate the new Title 18 crimes as they apply to ERISA welfare benefit plans.

Protection of Participants and Beneficiaries

Finally, the Department's primary focus with respect to ERISA-covered health plans is to protect the benefits of participants and beneficiaries. In cases where private health plan participants and beneficiaries are the victims of fraud and abuse, criminal forfeitures and civil recoveries should be used to make such participants and beneficiaries whole for losses before funds are paid into the health care fraud and abuse control account established under 42 U.S.C. 1395i, as amended by these bills.

Conclusion

The Department would be pleased to work with your staff to develop language that would protect plan enrollees who are the victims of health care fraud. As the agency responsible for regulating employment-based health plans, we will continue to review these bills for other issues affecting Department programs. We look forward to providing further input on these bills and to working with you on these issues.

The Office of Management and Budget advises that _____

Sincerely yours,

Robert Reich

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

OCT 10 1995

The Honorable Christopher Shays
Chairman
Subcommittee on Human Resources
and Intergovernmental Relations
Committee on Government Reform and Oversight
House of Representatives
Washington, D.C. 20515

Dear Chairman Shays:

While we have not completed our examination of its impact on the Department of Labor's programs, we wish to express our views on H.R. 2326, the "Health Care Fraud and Abuse Prevention Act of 1995." We believe this legislation takes necessary steps to provide tougher defenses against fraudulent practices that drive up the cost of health care. We recognize that billions of dollars have been lost to health care fraud and abuse in the last few years.

We note that 18 U.S.C. 24(a)(4), as amended by section 201(a) of this bill, would define "Federal health care offense" to include "a violation of, or criminal conspiracy to violate section 501 or 511 of the Employee Retirement Income Security Act of 1974 (29 U.S.C 1131 or 29 U.S.C. 1141), if the violation or conspiracy relates to a health care benefit program." A "health care benefit program," in turn, is defined under 18 U.S.C. 1347, as added by section 202(a) of this bill, to mean "any public or private plan or contract under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract." Although the term "private plan" is not defined in this bill, we are concerned that the bill could be broadly read to include all health plans covered by the Employee Retirement Income Security Act (ERISA). If the bill is interpreted in this manner, its sanctions would apply to offenses committed against private sector employment-based health benefit plans.

There are approximately 4.5 million such ERISA health plans, providing coverage for about 120 million workers and their families with private employment-based health coverage. Given the significant impact H.R. 2326 as written would have on our ERISA responsibilities and the scale of the ERISA plan universe, we believe that this legislation should reflect the Secretary of Labor's important role in health care enforcement. We suggest revising the bill to make the Secretary of Labor also responsible, to the extent ERISA plans will now be covered for

health fraud enforcement.[1] For the same reasons, we also suggest that the Secretary be included in section 101(a), which relates to the investigation of health care fraud violations of federal law.

The Department's primary focus with respect to ERISA-covered health plans is to protect the benefits of participants and beneficiaries. In cases where private health plans participants and beneficiaries are the victims of fraud and abuse, criminal forfeitures and civil recoveries should be used to make participants and beneficiaries whole for losses before funds are paid into the Anti-Fraud Account.

Finally, we believe the provisions of H.R. 2326 amending the criminal law concerning health care fraud represent positive steps toward eliminating abusive practices that drive up the cost of health care. Under ERISA, the Secretary of Labor has responsibility for enforcing the provisions of Title I of ERISA and conducting investigations of civil and criminal violations relating to Title I and "other related violations of Title 18 of the United States Code" which include health care fraud. Therefore, we suggest adding language to clarify that the Secretary of Labor will have the authority to investigate the new Title 18 crimes as they apply to ERISA welfare benefit plans.

The Department would be pleased to work with your staff to develop language that would protect plan enrollees who are the victims of health care fraud. As the agency responsible for regulating employment-based health plans, we will continue to review H.R. 2326 for other issues affecting Department programs. We look forward to providing further input on this bill and to working with you on these issues.

---

[1] The Department has civil and criminal oversight responsibility for all private sector employee health benefit plans under ERISA. The Pension and Welfare Benefits Administration (PWBA) conducts civil and criminal investigations of persons and entities that exercise discretion over ERISA plans and plan assets, such as multiple employer welfare arrangements (MEWAs). As you are aware, the Department administers and oversees many other worker-related health care programs, including the administration of the Federal Employees Compensation Act (FECA) program (medical benefits and disability compensation to injured Federal employees); the Black Lung Benefits program (medical benefits and disability compensation to former coal miners disabled from pneumoconiosis or "black lung"); and the Longshore and Harbor Workers Compensation Act program (benefits to certain injured and disabled maritime employees). The Inspector General investigates allegations of fraud in these programs and conducts certain criminal investigations of MEWAs and employee benefit plans as well.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert B. Reich