Medicare Reform, One Step at a Time

Every mediator learns that if neither side is very happy with a particular agreement, it probably means it’s a pretty decent deal. Such is the case with the Medicare bills that passed the House and Senate this year and which are now the subject of a conference trying to work out the differences between the two bills. (For more specifics on the Medicare conference, see “Medicare Conference Snags, Doesn’t Foul, Still in Business” on pg. 2.) The left has criticized the bills as going too far while the right has argued that they don’t go nearly far enough down the road toward meaningful Medicare reform. To some degree, both are correct. But in this political town, it’s as much reform as can be had at this time.

Enacted in 1965 as one of the “Great Society” programs, Medicare mainly is a federal health insurance program for seniors. It is today a $245 billion program with medical and hospital insurance coverage. In 1965, there were 4 active workers for every retiree on Medicare. Today, that number is 3 to 1, and with the retirement of the baby boomers will shrink to 2 to 1 over the next 20 years. Along the way, Medicare has brought with it all the inefficiency you’d expect from a government program. To make matters worse, the problems with Medicare’s funding have been compounded by the political inability to say no to the coverage of new treatments or benefits, in recognition of the growing political clout of seniors. It is funded through income taxes and through a special payroll tax, split evenly between employers and employees. This tax, now at 2.9%, has been raised twenty-three times since Medicare’s inception, to cover its ever-escalating costs.

While the House and Senate bills differ, there are two main thrusts of both bills: they both add private plan choices to Medicare beneficiaries and they both add a prescription drug benefit for seniors. Both reforms are long overdue. Letting the fresh air of private plans blow through a stale, bulky government system can only help. And, adding a prescription drug benefit is long overdue for the many seniors on a fixed income who are struggling to pay the increasing costs of increasingly effective pharmaceuticals, extending life and enhancing the quality of life for millions.

For too long, politicians have stood idly by as the Medicare juggernaut hurtled toward certain insolvency — too afraid to touch this politically-charged issue. The President has made Medicare reform a top priority and we stand closer to that goal now than we ever have. To answer the critics on both the left and right, the deal is far from perfect, but it takes some important steps aimed at fixing the problem for future generations.

“The perfect”, said Voltaire, “is the enemy of the good”. We ought not let some unachievable view of a perfect Medicare system obstruct our best chance at real reform today.

- Pat Cleary (pcleary@nam.org)
Issues Update

Back in August, when we wrote the last edition of Workplace Watch, we discussed the status of the various HR issues winding their way through Congress. From Medicare to overtime, from job training to pensions, our issues were on the move. And then, as is the case every summer, Congress left town for the month of August. So now, one month, a lot of humidity, too much rain and one major northeast blackout later, what does the fall hold in store? What will Congress’ priorities be and what can we expect, especially now that the unofficial start to Election 2004 has begun? Below we review the top HR issues and (our best guess about) what may occur….

DOL Overtime Rules — Senate Vote Soon

After a close vote in the House (213 to 210) on an appropriations amendment that would have blocked the Department of Labor (DOL) from moving forward on its proposal to revise the 541/white collar regulations, attention now turns to the Senate. According to the Senate schedule, a vote could occur at any time this month (and as early as this week) on Labor-HHS appropriations. As of press time, Senator Harkin (D-IA) has offered an amendment that will prevent DOL from revising the white collar regulations, despite the fact that the regulations are over fifty years old and give little guidance to employers or employees regarding who is entitled to overtime and who is not. Needless to say, in the wake of the confusion over the outdated definitions, the regulations have become a favorite target for trial attorneys; in fact, there is now more class action overtime litigation than discrimination cases in Federal court.

The unions have seized upon the issue and have claimed that that the Administration is trying to take overtime away from entitled workers — despite the fact that the proposed regulations more than doubles the minimum base salary (from a little over $8,000 to $22,100) and makes clear that blue collar, line employees ARE entitled to overtime, no matter how highly compensated (no need to worry about the overtime of those six figure longshoreman). That hasn’t stopped the AFL-CIO from scaring its workers (the Wall Street Journal in an editorial pointed out that such propaganda is useful for recruitment…) and pressing its case with Senators over the August recess. Your Senators need to hear from you. Please let them know that you support the DOL rulemaking and ask them to vote against any amendments that would prevent DOL from moving forward with its rulemaking. A sample letter to Senators and talking points are available at www.nam.org/supportrulemaking. In particular, the following Senators need to hear from employers in their states: Alaska—Stevens, Murkowski; Colorado—Campbell; Maine—Snowe; Nebraska—Nelson; Ohio—DeWine, Voinovich; Pennsylvania—Specter; Rhode Island—Chaffee; Vermont—Jeffords. Please write, fax, e-mail and/or call today! For additional information, please contact Sandy Boyd at sboyd@nam.org or (202) 637-3133.

Medicare Conference Snags, Doesn’t Foul, Still in Business

Legislative conferences are rarely easy. Not only are they the forum where hard-held differences on complex legislative proposals are resolved, but they also have to contain some of the biggest egos on Capitol Hill. It’s an explosive mix, no matter how carefully business is conducted.

The current Medicare conference is a case in point. Congress’ annual August recess was viewed as the perfect time to clear out some of the conference underbrush (e.g. technical or less controversial) issues to allow conferees to tackle the big (e.g. big picture or big money) issues. Unfortunately the snag in question was between the Chairman and Vice-Chairman of the conference, respectively Representative
Bill Thomas (R-CA), chairman of the House Ways and Means Committee, and Senator Chuck Grassley (R-IA), chairman of the Senate Finance Committee. The dispute — concerning when the issue of relief of rural health care providers would be considered — resulted in Senator Grassley pulling his staff from bipartisan/bicameral negotiations. Fortunately the talks continued in spite of the (hopefully) temporary impasse between the chairmen.

As much as a third of the bill has been resolved, leaving (among others) such issues for resolution in September and October as: the ultimate structure of the drug benefit, how retirees with employer-provided health insurance will be treated and whether Medicare will be the provider of last resort. Ultimately relations between Grassley and Thomas will be smoothed over, perhaps with continued prodding from President Bush. It will take every ounce of respect, good will and comity to produce a conference report. In our view the odds still favor a positive outcome and a signing ceremony for President Bush … but we must still climb Mt. Everest to get there. Are there any alpine climbing experts out there? For more information on the Medicare conference or any other health issues, please contact Neil Trautwein at (202) 637-3127 or ntrautwein@nam.org.

**Increased Scrutiny of Employment-based Visas**

In June, the House Small Business Committee held a hearing on white collar job loss and, in July, the Senate Judiciary Subcommittee on Immigration held a hearing specifically on the use of L visas. In addition to the hearings, a number of bills have been introduced in both the House and the Senate that would limit (or eliminate) the use of L and H visas. One of the primary issues at both hearings, and in the proposed bills, appears to be the use of the L1-B visa, particularly in situations where the worker is being contracted out to another site. Concerns about whether such activity displaces American workers and makes it difficult for American companies without overseas operations to compete for such work have led to much of the legislative activity.

This flurry of legislative activity, coupled with the H1-B cap reverting on September 30 to 65,000 as well as the training and education fees and attestations for H1-B dependent employers sunsetting, suggests that both the L and H program will be under increased scrutiny this fall and the possibility of legislative action is high. Both of these programs have been beneficial to manufacturers and we will have to work hard to ensure that any legislative changes do not undermine companies’ ability to be competitive and transfer and hire the talent they need. If this is an issue of interest to your company and you would like to receive future updates on it, please let us know. The NAM also houses and chairs the American Business for Legal Immigration (ABLI) coalition which is working to defend these programs. If you would like to receive NAM updates on these issues and/or be added to the ABLI coalition distribution list, please e-mail Sandy Boyd at sboyd@nam.org.

**Mental Health Parity Amendment to Labor-HHS?**

Some appropriations bills have a checkered past, perhaps none so much as the Labor-HHS funding bill. This bill is perennially the target for hot button political issues (e.g. abortion as well as benefit mandates, labor or OSHA legislation) and quite often never even reaches the floor. Among the labor issues discussed elsewhere in this issue, there is a strong possibility the NAM-opposed Domenici-Kennedy mental health parity bill (S. 486) may be offered as an amendment to the Labor-HHS appropriations bill.

The NAM doesn’t oppose mental health benefits — indeed, many NAM member provide for good quality mental health coverage and employee assistance programs. We object to the mandated addition of benefits at a time health costs are skyrocketing. We also object to delegating the design of our benefit plans to the whims of the psychiatric profession which determines the content of the Diagnostic and Statistical Manual (currently the fourth edition, but the fifth edition is in development) which will in turn determine the scope of benefits we would be required to offer.
The NAM has testified against such legislation before; follow the link below to review our arguments against the mental health parity legislation. Urge lawmakers to oppose S. 486 or similar mental health parity mandates. Now is not the time to discuss benefit mandate expansions, no matter how worthy the cause.


**Pension Update**

Replacement of the flawed 30-year Treasury interest rate with a more accurate benchmark for pension funding purposes remains a top priority for the NAM. The business community and the AFL-CIO have coalesced around a proposal that would permanently replace the 30-year interest rate with a long-term corporate bond interest rate. The proposal was included in Portman–Cardin III (H.R. 1776) as introduced by House Ways and Means Committee members Rob Portman (R-OH) and Ben Cardin (D-MD) earlier this year. Despite strong bipartisan support for this approach in the House, the Administration in July unveiled an alternative plan that would both replace the 30-year Treasury rate for pension plan funding purposes and address several other pension funding issues. The four-part plan would replace the pension liability discount rate with a long-term corporate bond rate for two years and then move to a controversial yield curve approach that would tie the discount rate to an employers’ specific pension obligations. The Administration’s plan also would require companies to disclose additional information about their pension plan and limit benefit improvements and lump sum payments in certain circumstances. In a very quick and somewhat controversial markup on July 18th, the Ways and Means Committee approved by voice vote a substitute version of H.R. 1776. Under the substitute, the long-term corporate bond rate would replace the 30-year Treasury rate for three years from 2004 through 2006.

In the Senate, HELP Committee Chair Judd Gregg (R-NH) on July 31, 2003 introduced a bill that would provide a temporary fix for five years based on the corporate bond rate. The Gregg bill also calls for an independent commission to look at a wide range of funding issues and report back to Congress by 2007. While the Senate Finance Committee has yet to take up a pension discount rate proposal, staff say Committee Chairman Chuck Grassley (R-IA) is interested in addressing this issue in September. NAM contact: Dorothy Coleman at dcoleman@nam.org or (202) 637-3077.

**Even More Pension Reform**

In addition to a “fix” for the defunct 30-year Treasury interest rate, H.R 1776, as approved July 18 by the Ways and Means Committee, includes a number of other important reforms to current pension laws that will help employers provide pension benefits and encourage more employees to participate in the private retirement system. Specific provisions in the bill would accelerate scheduled increases in retirement and IRA savings limits, including “catch-up” contributions; gradually increase the minimum distribution age from 70½ to 75 years old. Other provisions would speed-up vesting of employer contributions, enhance portability of plan assets, provide an income exclusion for up to 10% of annuity payments received under a defined contribution plan and expand rules on employer contributions to Savings Incentive Match Plans for Employees (SIMPLE). The bill also clarifies that stock acquired through the exercise of a statutory stock option is not subject to payroll tax. NAM contact: Dorothy Coleman at dcoleman@nam.org or (202) 637-3077.

**OSHA Reform Bills get Retooled**

Representative Charlie Norwood (R-GA) has split his NAM-supported OSHA reform bill (H.R. 1583) into separate pieces of legislation. Four bills have already been re-introduced and two more are expected to be re-introduced soon. The bill was split into different pieces of legislation to make it easier for the less contentious sections of the bills to move forward in the legislative process.
The bills that Rep. Norwood plans to move first are: H.R. 2728, which would provide the OSHA Review Commission with reasonable flexibility in the application of the 15-day deadline for employers to contest citations and proposed penalties; H.R. 2729 which would expand the size of the OSHA Review Commission from three to five members; H.R. 2730 which would clarify where deference is given to the Review Commission on matters of law; and H.R. 2731, which would make recovery of attorney’s fees less difficult for small employers who prevail in cases brought by OSHA (see next article for more detail on this bill).

All of these bills have a good chance to be marked-up by the full House Education and Workforce Committee sometime this fall; possibly even later this month. We are also looking for upcoming Senate action on OSHA reform from Senator Mike Enzi (R-WY) who chairs the subcommittee that handles these issues in the Senate. Hopefully he will include some of these reforms in any legislation that he introduces.

For more information about these bills, please contact Chris Tampio at ctampio@nam.org or (202) 627-3126.

**Hearing on OSHA Attorneys Fees Bill**

As we mentioned above, Representative Norwood re-introduced a bill that would allow small businesses to recover its attorneys fees when prevailing in fighting an OSHA citation (H.R. 2731). This current bill would allow for employers with not more than 100 employees and a net worth of no more than $1,500,000 at the time of the action to recover their attorney’s fees. While we support the concept, NAM believes that both of these thresholds should be raised.

The NAM is set to have one of its small manufacturers, Jim Knott, of Riverdale Mills Corporation, testify on this bill at this upcoming hearing (September-TBA). Mr. Knott will mention the NAM’s concerns about the low thresholds, as well as describe the personal experiences he has had with the frivolous citations from OSHA in Massachusetts.

After the hearing on this bill, we anticipate that the bill will be marked-up in the full Education and Workforce Committee and then hopefully move to the House floor for passage. There has not yet been any action on this legislation in the Senate.

The NAM is co-chairing a coalition of business groups to help move this bill, along with the other OSHA bills, forward in the legislative process. For more information or if you are interested in joining this coalition, please contact Chris Tampio at ctampio@nam.org or (202) 627-3126.

**Workforce Investment Act**

The House moved quickly to pass the reauthorization of the Workforce Investment Act of 1998 at the beginning of this summer — now it is the Senate’s turn to get a crack at the legislation. So far, the Senate Health, Education, Labor, and Pensions (HELP) Committee has held a few hearings to examine a few of the problem areas, such as the consolidation of the separate funding streams, how to make the system work better in general and how to make it more inclusive of business. We at the NAM are supportive of many of the efforts to make the system more business friendly and are definitely pushing for the inclusion of funding for incumbent worker training. The current legislation authorizing workforce investment services and activities through statewide and local One-Stop Career Center systems is set to expire Sept. 30. The likely scenario will be that Congress passes a short term funding fix that keeps the money flowing to the program until the Senate can pass their bill. We can then expect a tough conference between the House and the Senate before a final bill. For more information, please contact Chris Tampio at ctampio@nam.org or (202) 627-3126.
Regulation Run Amok:

Rendell Pursues the Transgender Vote

Through out his political career, Pennsylvania Governor Ed Rendell (D) has earned a reputation for being an earnest and hard-working guy, a problem-solver able to work with all sides. Indeed, many of our members have supported him and have enjoyed a good working relationship with him. And so it left us scratching our heads here when we read of his bold move to end transgender bias in the state. Rendell hasn't been Governor all that long, having been elected only just last year. We wondered, had he accomplished everything else he set out to accomplish and was now moving to his “B” and “C” lists? In the greater hierarchy of things, how big an issue is this in Pennsylvania, anyway? In July, he signed an Executive Order — which applies only to state employees — directing that state agencies not discriminate against any employee or applicant because of his or her “gender expression.” The Governor labeled it an important step for the recognition of dignity and freedom. Oh, well.

At last count, there were some 85,000 state employees in Pennsylvania. Not sure how big the transgender population is (maybe one never knows), but we are sure that the Governor has wrapped up the transgender vote for the next election. No doubt some enterprising transgender soul will try to export this into the private sector (probably companies doing business with the state of Pennsylvania) and some poor employer will end up in court, defending themselves against a charge of transgender discrimination.

We took on the pedophiles last month and this month we will no doubt offend the transgenderites, but it’s just one more opportunity for one more lawsuit against a manufacturer who’s trying its damndest to compete.

Other Developments

Ballot Initiative to repeal Washington State’s Ergonomics rule

In Washington State, a business-led initiative to repeal the states ergonomics regulation, qualified for the November ballot. The push was led by the Building Industry Association of Washington State which collected the needed signatures to get on the ballot. The initiative (if passed) would promptly get rid of the regulation issued by the state Department of Labor and Industries in 2000. The governor has delayed the regulations enforcement until July 2004 — allowing businesses time to come into compliance with the rule's requirements. Although efforts to repeal the rule in the legislature have not been completely successful, the rule is also facing a challenge in the Washington Supreme Court.

We hope that the people of Washington see the light and vote in November to repeal this regulation. The NAM state affiliate, the Association of Washington Business, has worked a great deal on this issue including the legislative, legal and ballot fights. For more information on what is going on in ergonomics in the state of Washington, contact Amber Balch at amberb@awb.org or (360) 943-1600.

A Great Labor Day for Manufacturing

As regular Workplace Watch readers know, earlier this year we launched the Campaign for Manufacturing (www.nam.org/renewal), aimed at creating a climate in this country that will allow
manufacturing to survive and to prosper. The first phase of this campaign was aimed at awareness, i.e., in
driving home the importance of manufacturing and the challenges we face. We have been gratified at the
response of manufacturers large and small, who have stepped up the plate and have weighed in with other
businesses, with their local media, and with local and federal elected officials. All that work is clearly
paying off. There was a spate of editorials around the country on manufacturing this Labor Day, and the
NAM’s Annual Labor Day report (www.nam.org/labordayreport) received great coverage yet again this
year. Renowned columnist David Broder wrote an article on manufacturing over the weekend
(http://www.washingtonpost.com/wp-dyn/articles/A2464-2003Aug29.html) and the Washington Post
even wrote a favorable editorial on Labor Day on manufacturing (www.washingtonpost.com/wp-
dyn/articles/A8769-2003Aug31.html). But the coup de grace was the President’s speech in Ohio before a
union audience, extolling the virtues of manufacturing and talking about the many challenges we face
(www.nam.org/Bushlabordayspeech). Among other things, he announced that he would move to appoint
a “manufacturing czar” inside the Department of Commerce, to be a permanent champion for
manufacturing.

Commerce Secretary Don Evans will speak on September 15 at noon in Detroit to talk about the
upcoming Commerce Department report on manufacturing (see www.econclub.org, for more information
or call (866) 4-econclub), and we will be holding a “Manufacturing Matters” summit in Columbus, Ohio
on September 17.

In short, thanks to the activism of manufacturers, we are making headway, but our work is far from over.
We must keep pressing the cause of manufacturing in our towns and localities. We seek a level playing
field in international trade, a relaxation of the cost burden on business, both regulatory and legal, and a tax
system that encourages innovation and investment. We don’t want handouts, just opportunity. We’ll take
it from there.

New! Improved! AFL-CIO

You may have missed it this Labor Day with all the coverage of manufacturing, but the AFL-CIO rolled
out it’s new, new, really new (no, this time we really mean it) plan for expanding its membership. They
created “Working America”, a neighborhood-based membership organization aimed at allowing workers
who do not belong to unions to join and make their voices heard. Astute labor watchers will tell you this
idea is as old as the hills and has been rattling around the AFL-CIO for at least the last two decades in one
form or another. Their problem is that they’ve lost their focus: that they put their money into politics, not
organizing. They spent $141 million in the last two election cycles on politics, nothing remotely close to
that on organizing. When AFL-CIO President John Sweeney was elected in 1994, he promised first, to
“take back the House for the Democrats” and second, to organize a million new workers. Needless to say,
he has put his money into the first, but has failed at both. The union with the most organizers — the
Carpenters — disaffiliated from the AFL-CIO over this precise issue. At some point, the members will
get wise to the misuse of their money and will force the organization to change direction. ‘Til then,
however, the political money will continue to be spent and the numbers will continue to decline.

The Ohio Manufacturing Matters Forum

As we mentioned above, on September 17, 2003 from 10:00 a.m. to 3:00 p.m. at The Hyatt on Capitol
Square, Columbus, OH, the NAM — along with the Ohio Manufacturers’ Association (OMA) BIPAC,
Employers Resource Association, Inc., Employers Resource Council and The Employers’ Association —
will be sponsoring the Ohio Manufacturing Matters Forum. This one-day program will coordinate our
manufacturing campaign messages and strategies, share company communications best practices and
provide practical tools for getting employees to the polls in support of pro-manufacturing candidates.
For more information on this event, please contact Bill Gill, the NAM’s Senior Regional Manager for Ohio. Bill can be reached at (847) 549-5867 or at bgill@nam.org. To register, please visit www.ohiomfg.com/meetingregistration/namoma. We hope that you will be able to join the NAM and your fellow Ohio manufacturers for what promises to be a most informative and action-oriented forum. Your company can make a difference in the public policy arena and at the polls.

To subscribe to this FREE monthly newsletter, which is delivered by fax or e-mail only, please contact Danielle Sarmir at (202) 637-3125 or dsarmir@nam.org with your name, company/association name and fax or e-mail address.

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