

# NRLN 2007 Legislative Agenda – 110th Congress

## HEALTH CARE LEGISLATION:

**NATIONAL HEALTH CARE REFORM** – Support new legislation that offers **(1)** healthcare coverage for all including catastrophic coverage; **(2)** effective cost management disciplines; **(3)** better information technology systems and quality and safety discipline; **(4)** equitable financing; **(5)** simplified administration. Reform must not include a single-payer program or one that focuses on health care for just the uninsured, underinsured and Medicaid enrollees. New legislation must also protect the health care benefits of retirees already covered by corporate plans and must not allow corporations to abandon their plans, dumping an inferior National Plan in retiree laps, forcing them to buy back previously earned coverage.

Maintenance of Cost Payment: The NRLN supports a path to universal coverage that protects both retiree health care and the competitive strength of American corporations: **(1)** We propose corporations pay a retiree health care Maintenance-of-Cost Payment (MCP) equal to the cost of an individual's health care benefits at the time of retirement or at a subsequent time when reduction or cancellation of coverage or subsidies occur, whichever is higher. **(2)** For retirees eligible for Medicare or if a standard National Health Care Plan is established, retirees would be entitled to a reduced corporate MCP sufficient to purchase supplemental insurance in an amount that would maintain parity with their coverage in effect at the time of retirement or at the time their company coverage is cancelled or reduced, whichever is higher. Retirees would use MCP's to purchase supplemental insurance from employers or third party providers. **(3)** Employers would be entitled to an annual tax credit equal to the amount expended for retiree MCP's.

Two "Medicare for All Act" bills introduced in the 109th Congress as **S.2229** (Sen. Kennedy) and **H.R. 4683** (Rep. Dingle) if introduced in the 110th Congress must be improved to include (1) better coverage for those now on Medicare, including catastrophic coverage, (2) catastrophic coverage in new plans, (3) sufficient doctor/service payments and (4) a Maintenance of Cost Payment provision that ensures retention of existing coverage for million of retirees covered by superior corporate plans. Support bills **S.1418** (Sen. Enzi) and **H.R. 4157** (Rep. Johnson) scheduled for reintroduction in the 110th Congress that call for improved national health care system planning, quality and information technology mechanisms.

**PRESCRIPTION DRUGS - Revision of Medicare Part D: (1) Price Negotiations** - Support **H.R. 4** (Rep. Dingell) "Medicare Prescription Drug Price Negotiations Act of 2007" which has passed the House and is waiting for **S.250**, the Sen. Wyden / Sen. Snowe version to be taken up in the Senate. Support the general principles in **S.137** (Sen. Cardin) the "Preserving Medicare for All Act", and **S.345** (Sen. Durbin) the Medicare Prescription Drug Savings Act. **(2) Importation** - Support importation of prescription drugs through **S.242** (Sen. Dorgan / Sen. Snowe) "Pharmaceutical Market Access and Drug Safety Act of 2007, which has been reintroduced in the Senate, and in the House as **H.R. 380** (Rep. Emerson / Rep. Emanuel). **(3) Retention of Current Employer Plans** – Support new legislation that would increase the Part D subsidy to be paid to employers who offer better coverage than provided in Part D, and who agree to maintain their current plans. **(4) Prevent In-Year Coverage Interruptions** - Support **H.R. 4685** "Medicare Prescription Drug Emergency Guarantee Act of 2006" (Rep. Dingel) introduced in the last Congress - prevents in-year interruption of Med-D coverage and formulary changes.

**PRESCRIPTION DRUGS - Acceleration of Generic Drug Approval and Advancement to Market: (1)** Support new legislation that would fund FDA staffing and the systems needed to clear the generic drug approval backlog and require elimination of manufacturer "user fees". **(2)** Support companion bills **S.2300** (Sen. Stabenow) and **H.R. 6022** (Rep. Waxman) introduced in the last Congress. The bills required resolution of FDA petitions within 6 months and that petitioners disclose information unfavorable to these petitions that challenge approval of generic drugs. **(3)** Support new legislation that bans litigation or other practices that require/encourage brand manufacturers to pay generic manufacturers to pull generic brands from the market.

**HEALTH CARE TAX RELIEF - Deductibility of Health Care Costs:** Support new legislation that would enable health care premiums (including Medicare premiums) to be tax deductible, similar to the way health insurance premiums for workers and self-employed individuals are deductible. Such deductions

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would be exempt from the 7.5% (AGI) limitation on deductible medical expenses. **Withdrawals To Pay Retiree Health Premiums:** Support new legislation that would enable tax free and penalty free withdrawals from 401k, IRA, SEP and other qualified retirement accounts for the exclusive purpose of paying retiree health care premiums.

## **PENSION LEGISLATION:**

### **Protection of Defined Pension Plan Assets from Use in Corporate Restructuring:**

Support new legislation, likely an amendment to ERISA that would stop corporate use of pension assets to pay lump-sum severance or layoff payments and/or other enhancements to selected defined pension plan participants in instances where a plan is funded at or below the 120% level. Plans bargained by unions and subject to terms of a collective agreement would be exempt from this legislation.

Under the new 2006 Pension Protection Act, Internal Revenue Code Sec 420 asset transfers to 401(h) accounts within a defined benefit plan are not permitted unless the plan's current asset valuation level is at or above 120% of the plan's current liabilities. However, companies regularly draw down plan assets toward the 100% funding level to pay for force reduction costs in the form of early retirement incentive programs (including severance pay/layoff bonuses) without effective legal constraints. Such bonuses are typically granted to 10% or fewer of the total plan participants, take the form of incentives designed to get retirees to retire early, are usually offered in exchange for a waiver of rights by older workers that limits the company's age discrimination liability, and dilute defined benefit pension plan assets. Use of pension plan assets in this fashion thus benefits shareholders, not plans participants, and should not be paid from the pension trust

Examination of the underlying nature of the theses costs reveals they are corporate restructuring costs to be born by shareholders not by defined benefit pension plans. Vested assets of plan participants should not be raided. Non-union plan participants have no bargaining power to limit corporate power and are entitled to this proposed ERISA protection. The proposed legislation would mandate at least the same protection (the 120% of current liability surplus requirement) of assets from use by corporations to pay force reduction costs as the 109th Congress enacted to protect assets from being used under Sec 420 when establishing and transferring pension funds to 401(h) accounts.

This highly questionable practice has led to underfunding or near underfunding of defined benefit pension plans and thus directly increases the risk of underfunding and PBGC takeover where plan liabilities have outgrown assets and/or equity markets have tumbled.

The IRS and courts have allowed companies to hide behind current pension law to use defined benefit pension plan assets to pay such bonuses and, to date, Congress has allowed this practice to continue. The NRLN believes that such bonuses should properly be treated as a corporate expense, payable out of the corporation's own assets, not as a pension benefit paid out of defined benefit plan assets. Long-time ERISA and tax lawyers and Congressional staff have resisted legal changes in this area, arguing that plan sponsors have always been allowed to treat such expenses as pension benefit payments. This sacred-cow type thinking is not in keeping with the intent of ERISA, the 2006 Pension Protection Act or the vested rights of defined benefit pension plan participants.

We urge creation, sponsorship and passage of a bill that limits the ability of a company to tap pension assets to pay for what properly should be considered restructuring expense and which establishes the same 120% of current liability cushion of protection already established by Congress for transfers to 401(h) accounts for payment of corporate health care expenses.

