

Statement for the Record

**Gerald Shea, Assistant to the President
American Federation of Labor and Congress of Industrial Organizations**

**U. S. Senate Health, Education, Labor and Pensions Committee
Roundtable on
“Health Care Reform Legislative Options”**

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Thank you for the invitation to participate in this roundtable discussion and offer our perspective, on behalf of working women and men, on the Committee's draft legislative options for health care reform. The AFL-CIO represents 11 million members, including 2.5 million members in Working America, our new community affiliate, and 56 national and international unions that have bargained for health benefits for more than fifty years. Our members have a significant stake in health care reform as consumers and, for some, as sponsors of coverage and health care workers.

Even as we continue to negotiate benefits for our members, American labor has long advocated for health care for everyone, not just those in unions or with stable jobs. For over 100 years, America's unions have called for universal coverage to health care built on a social insurance model, an approach that has been proven effective and efficient across the globe and one we have employed successfully for decades to provide income security and health security for the elderly.

The AFL-CIO was the leading lobby force behind the enactment of Medicare in 1965, and we have backed many legislative efforts since then to expand coverage. We continue to believe that a social insurance model is the simplest and most cost effective way to provide benefits for all.

It is in our national interest to assure health coverage for everyone, from active workers to retirees, to those who lose their jobs and those unable to work due to disability. Clearly, it would make sense to cover everyone through the same program and system of coverage. We regret that the social insurance approach to health care has been marginalized to a great extent in the health care debate in Washington, even as it remains very popular around the country.

But our health care situation is too problematic and too important for those of us lucky enough to have good coverage to debate what would be the best approach to health

reform. And health reform has been stymied for far too long by those who advocate one approach and reject all the others.

Health care costs are hobbling American business and bankrupting American families. Even those with good coverage worry about what will happen next year if cost increases remain unchecked as they have for decades.

It's time – indeed, it's past time -- for the comprehensive health care reform that most in Congress and our President have called for.

So, in 2009, our members are ready to stand with President Obama and Congress for a plan that builds on what works in our system while creating new options for obtaining coverage and lowering health care costs for families, business and government at all levels.

On behalf of America's working families, I want to thank the Committee, especially Chairman Kennedy, Senator Dodd, and ranking member Enzi, for the leadership, commitment and determination you've shown in assuring quality, affordable health care for all.

America's working families need comprehensive reform to constrain the cost increases that are killing good jobs, to ensure people who currently have coverage can afford it in the future, to bring everyone into coverage, and to modernize the delivery of health care in America. The draft "Affordable Health Choices Act" is a very strong start on that path.

Employer-based coverage is the backbone of our health care financing and coverage system. The majority of non-elderly Americans obtain coverage through employer-sponsored health plans. And despite its flaws – including higher cost sharing and the hassles and outright denials they've come to expect from insurance companies – most Americans are happy with their employer-based health benefits, in large part

because they know it is still far superior to being on their own in the individual insurance market. Building on this core piece of our health care system will both minimize disruption and garner greater public support. Our comments on the options will focus on this element, particularly since it is an area on which the Committee has said they are seeking input.

We strongly support the Committee's proposal to stabilize the employment-based system with "Shared Responsibility" and a requirement that employers either offer coverage to their workers or pay into a fund to subsidize coverage for uninsured workers. There are significant benefits of this approach, sometimes called "pay or play." First, it will create a more level playing field between firms that offer health benefits and those that don't. It will also eliminate the cost shift that occurs when employers offering good family coverage see their costs rise when they provide coverage for spouses employed in firms that either offer too costly coverage or no coverage at all. To the extent policymakers may choose to construct pay or play in a way that allows families to be enrolled in the same employer plan, we believe one approach to consider would be to require a dependent's employer to make a contribution to the employer covering the whole family.

Furthermore, given other policy elements under consideration and the federal fiscal challenges affecting health reform, pay or play will be a necessary component if health reform is to succeed. If reform includes a new requirement that all individuals obtain coverage, expanding employer based health benefits will be key to making coverage affordable for workers that do not qualify for income-based public subsidies. It will also generate revenue to help fund subsidies for low-income individuals and extend coverage to many of the uninsured since most are in families with at least one full time worker. Finally, without a requirement that employers participate in the new system, health reform that includes publicly subsidized coverage for low-wage workers will prompt many employers of low-wage workers to eliminate their coverage to take advantage of public subsidies. The resulting increase in federal costs may well doom reform efforts.

The design issues involved in a pay or play approach are critical, as they can create both opportunities and limits. Employers opting to “play” must be required to offer benefits that are at least adequate enough to allow their employees to meet an individual requirement to purchase coverage. The “play” test should also require employers to make a defined minimum contribution to the premiums for that coverage.

For those firms not offering coverage, a “pay” requirement could take a number of forms, from a payroll tax to an amount per worker, and there are tradeoffs associated with each. Setting the contribution rate based on payroll would lessen the impact on low-wage workers and would be a better measure of a firm’s capacity to contribute to health benefits than the number of employees. Alternatively, a requirement tied to each individual employee will be more effective at reaching the entire workforce than a requirement tied to a percentage of total payroll, since it will protect against an employer meeting the percent of payroll test by offering relatively generous benefits to only a share of their workforce. However, such an approach, if applied only to full-time workers, would create incentives for employers in certain sectors to hire part-time workers or reduce workers’ hours to minimize the application of the contribution rate. We support the approach included in the summary of legislative options, in which the contribution rate is prorated for part-time workers in order to protect workers and to ensure adequate revenue for subsidized coverage.

Policymakers will also have to prescribe which firms are covered under an employer obligation to offer coverage. While many proposals exempt small businesses, since those firms face higher premiums in the current market, we believe this ignores important factors. First and foremost, the number of employees is a poor predictor of a firm’s ability to pay: a doctor’s office or small law firm may have more capacity than a larger restaurant or store. A carve out for small firms also creates a potentially costly hurdle for firms near the threshold to hire additional employees. In addition, the Committee’s legislative options include a proposal that would allow small businesses to meet the “play” requirement by allowing them to buy coverage that meets fair rating rules

through a newly constructed “Gateway,” including a public health insurance plan that would make coverage more affordable and a proposal to give low wage employers additional subsidies. If policymakers choose to treat small business differently in the application of pay or play, we would prefer an approach that sets the threshold based on payroll rather than number of employees. If set at an appropriate level, a payroll threshold could effectively eliminate small, low-wage firms from the employer requirement while protecting against the cliffs associated with a requirement based on number of employees.

Opponents to including an employer requirement in health reform will raise objections based on new costs for firms. However, the vast majority of firms will likely meet any new coverage requirement and the impact on businesses that would be affected would vary depending on whether they are currently offering health coverage or if they are offering coverage that is inadequate. Those firms that do not offer health benefits would be directly affected by a new “pay” requirement, and others will have to spend more on the benefits they now offer in order to meet the requirement. These objections are misplaced.

Opponents may argue that employers subject to new health care costs may be less likely to raise wages in the short term; however, the widely endorsed economic view is that these employers would still raise wages over the long term. Opponents may also argue that employers subject to new health care costs may eliminate jobs or hire more slowly. However, we can expect results similar to the experience with raising the minimum wage. Recent studies of minimum wage raises have found no measurable impact on employment.ⁱ Furthermore, economists often note that employers faced with higher costs under a minimum wage increase can offset some of the costs with savings associated with higher productivity, decreased turnover and absenteeism, and increased worker morale.ⁱⁱ We can expect similar results with a pay or play requirement.

There are other factors that will compensate for any increase in employer cost. First, the majority of firms that currently do not offer health benefits are in markets where

their competitors also do not provide benefits, so they would see increases similar to those of their competitors. Second, firms that will pay more for health care than they currently do will see at least some of those costs offset by a healthier workforce. Third, broadening the pool of employers that would contribute to health financing could improve competition among firms within sectors by creating a more level playing field based on health benefit costs. Fourth, to the extent there is currently a shift of uncompensated care costs to employer-sponsored plans, all firms now offering coverage will see their costs decrease as we expand coverage. Finally, our economy as a whole will benefit from more rational job mobility and a better match of workers' skills to jobs when health benefits are no longer influencing employment decisions.

Another element on which the Committee is seeking input is the inclusion of a public health insurance option, which we strongly support. A public health insurance plan will be key to holding down costs for consumers and government. It will make coverage more affordable with lower administrative costs and will inject needed competition into an imperfect market. And it can help drive delivery system reforms in conjunction with private payers, as Medicare has done with the quality improvement work underway already. Two of the options included in the Committee's summary in our view are not necessarily mutually exclusive. We support a level playing field for a public health insurance option to compete alongside private plans but believe the payment schedule should be set at a fair and reasonable level that ensures access to providers. The key will be to not hamstring the public health insurance plan so that it can't produce the savings or competition that are essential to the success of the plan and health reform.

In addition, we applaud the Committee's comprehensive plan to foster innovation in health care delivery by building on the significant quality measurement and improvement underway within health care in recent years. Title II of the draft legislation, "Improving the Quality and Efficiency of Health Care," provides a blueprint for how we can greatly expand this work and take a giant step towards a truly 21st Century health system. It would put into place a system of broad consultation with consumers, purchasers, physicians, insurers and health care organizations in setting national priorities

for health care quality improvement and in implementing standardized measures of quality throughout health care. With quality measurement as a foundation, it empowers those who deliver care, pay for care and oversee care to work with those who receive care to innovate and modernize health service delivery.

The draft legislation also calls for the use of quality measurement and improvement processes in private health insurance. There is very strong support for this among insurers and purchasers. I would call the Committee's attention to the need for the legislation to link the quality approaches in the private sector to those you've proposed for the public sector. We believe this could and should be more explicit in the final legislation than in the draft released earlier this week. Title II provides a comprehensive framework for quality measurement and improvement that should – indeed must, in order to drive the kind of systemic change that is necessary for improvement to take place – be applied to private as well as public purchasing of coverage.

Beyond these elements, there are laudable provisions that lay the groundwork for comprehensive, affordable coverage for all. The market reforms for all buying coverage in the individual and group market will make coverage more fair, transparent, affordable and secure. We fully support the prohibition on rating based on health status, gender and class of business, as well as the prohibition on the imposition of pre-existing condition exclusions, guaranteed issue and renewal, and greater transparency and limits on plans' non-claims costs. While we would prefer a prohibition on rating based on age, we believe the proposal to limit age rating to 2 to 1 is a strong alternative. Any variation allowed above that limit threatens to make coverage unaffordable for older individuals.

We strongly support the proposal to establish a temporary, federally funded reinsurance program for employers that provide health benefits to retirees age 55 to 64. This provision represents a positive initiative to address the health care needs of this vulnerable population. We also support the Gateway proposal as a mechanism for simplifying enrollment in coverage and applying standards for plans regarding benefits, affordability, transparency and quality. We applaud the Committee's proposal to extend

Medicaid coverage to all under 150 percent of poverty, with sufficient resources to states to offset new costs, and to provide subsidies for coverage to those with incomes up to 500 percent of poverty. We also support the inclusion of a new Medical Advisory Council to make recommendations for evidence-based benefits that plans in the Gateway would be required to cover. And we support the inclusion of long-term care services and supports and in particular, the Community Living Assistance Services and Supports (CLASS) Act.

I want to offer one final note of caution. Some of your colleagues in the Finance Committee are considering changes to the current exclusion of health benefits from income and payroll taxes. We believe this would be a step in the wrong direction. A cap on the tax exclusion would disproportionately affect firms with higher cost plans because of factors other than the level of coverage, including a higher percentage of older workers, higher risk in the industry and firm size. There is also likely to be some employer response even to capping the exclusion, including increases to employee cost sharing to a level where they may become unaffordable for low-wage workers. Finally, capping the tax exclusion would undermine the place where most Americans now get their coverage before we have built a proven effective, sustainable alternative to employer-based plans.

Thank you for the opportunity to offer our comments and participate in this roundtable discussion. We commend the Committee for your commitment to enacting legislation that will guarantee quality, affordable health care for all. We agree that we can no longer wait for reform – our economy depends on the success of reform – and we stand ready to help move this legislation forward. We thank you for the leadership you are providing on this vital issue.

ⁱ A. Dube, T. W. Lester, M. Reich, “Minimum Wage Effects Across State Border: Estimates Using Contiguous Counties,” Institute for Research on Labor and Employment Working Paper Series No. iiwps-157-07, August 1, 2007.

ⁱⁱ J. Bernstein, J. Schmitt, “Making Work Pay: The Impact of the 1996-1997 Minimum Wage Increase,” Economic Policy Institute (1998); D. Card, A. Krueger, “Myth and Measurement: The New Economics of the Minimum Wage,” Princeton University Press, 1995.