

# NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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September 3, 2009

The Honorable Harry M. Reid  
Majority Leader  
United States Senate  
S-221, The Capitol  
Washington, D.C. 20510

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Chris Dodd  
Committee on Health, Education, Labor &  
Pensions  
428 Dirksen Senate Office Building  
Washington, D.C. 20510

Greetings:

On behalf of the millions of American workers and families who depend on joint labor-management, collectively bargained, multiemployer health and welfare trust funds for their medical and other health benefits, I thank you for your leadership on national health care system reform and urge you to continue pressing for Senate passage of reform legislation that will truly fix what is broken in our Nation's health care system.

Health care is a matter of great personal importance to each and every America man, woman and child. A national system that provides all Americans with affordable, high quality health care, and that fairly contains and distributes the costs of that care, is a matter of supreme importance to our Nation. Uncontrollable health care cost inflation is undermining employee health plans, wages, jobs, Federal and State budgets, and the Nation's economy as a whole.

Yet, for many decades, the obvious need for national, systemic reform has gone unaddressed in Washington, and the health care system's cost, access and quality problems have been allowed to fester to the crisis point, endangering us all. We congratulate you, along with President Obama and the leadership of the House of Representatives, for your courageous efforts to finally break the stalemate.

We appreciate that finding the right solution is difficult; the health care system is vast and complex with lots of moving parts and stakeholders with competing interests. And, we know that the Leadership and Committees have been working in good faith with the best of intentions to fix only that which is broken and preserve that which is working without unnecessary new burdens. There are many aspects of the proposed legislation that will be beneficial to our Nation.

But, there are some aspects that seriously concern us because they would have unintended adverse consequences for labor-management, multiemployer health and welfare trust funds and the millions of workers and families they cover. We have every confidence that, as the legislation progresses, you will address these concerns and make needed adjustments.

It is crucial to understand that joint labor-management, multiemployer health and welfare trust funds are simply pools of workers' money held in trust under federal law to provide the workers and their dependents with medical, hospital and other health benefits coverage as well as other vital employee benefits. These trust funds are funded entirely by collectively bargained "employer" contributions for which covered workers explicitly tradeoff wages, dollar-for-dollar, through the collective bargaining process. That is, in a real sense, the workers pay the full cost of their and their dependents' coverage. There is not an employer's share and a workers' share; it is all workers' money.

All costs of a trust fund's operations—including benefits and administrative expenses—are paid from the pool of workers' money. If the trust fund's costs increase, despite the trustees' best efforts at cost-containment, the burden falls directly on the workers in the form of lower wages and/or reduced benefits. In short, cost containment is a big deal for the labor-management health and welfare trust fund community and, most importantly, the covered workers and their families.

To the extent that reform legislation increases the benefit costs or administrative expenses of a health and welfare trust fund, the effects will be felt directly by the covered workers and their families.

For example, a tax imposed on group health plans with benefit packages exceeding a set value would be, if applied to multiemployer health and welfare trust funds, a tax on the workers covered by those trust funds. If a health and welfare trust fund is self-funded (as a great many are), it would have to pay the tax directly from the fund's assets--the pool of workers' money. If the health and welfare trust fund maintains an insured plan, any tax on the insurer would certainly be passed-through to the trust fund in the form of higher premiums; premiums that would have to be paid from the trust fund's assets--the pool of workers' money.

A very important aspect of our cost concerns relate to cost-shifting and unfair business competition. At least 25% of the health care costs paid by the health and welfare trust funds are for persons not covered by the funds. Through various means, the providers of uncompensated care for uninsured workers shift the costs of this often-expensive care to payors like the health and welfare trust funds. In addition, government programs like Medicare and Medicaid, which

frequently pay providers less than the cost of providing needed care, shift costs to private sector health plans, including these health and welfare trust funds.

A particularly egregious cost-shifting problem afflicts health and welfare trust funds in the building and construction industry. Comprehensive health and welfare coverage for employees and their families is nearly universal in the unionized sector of the industry, but is rare in the non-union sector. The uninsured employees (and their dependents) of non-union contractors receive uncompensated care at hospital emergency rooms and from other providers who shift the costs to other payors including the union workers' health and welfare trust funds. As a result of this cost-shifting, the irresponsible non-union contractors gain two unfair competitive advantages: (1) they avoid the cost of providing health insurance for their employees, and (2) they impose higher costs on their union competition. This unfair competition means a loss of union jobs which means less income to the health and welfare funds which depend on the collectively bargained contributions that are only generated by union jobs.

This destructive unfair competition can only be ended by enactment of a robust employer "play or pay" mandate that is applicable to all employers and that includes meaningful "play" and "pay" requirements. The exemptions for "small business" in various bills are well-intended, but they are based on a false premise that providing or paying for employee health insurance is unduly burdensome. In fact, thousands of small businesses contribute to labor-management health and welfare trust funds for their employees and dependents under collective bargaining agreements around the Nation. These many responsible union "small business" employers have to compete against non-union "small businesses" employers for the same work.

To the extent that reform legislation exempts "small businesses" from "play or pay" mandates, it will perpetuate the unfair competitive advantage and cost-shifting of irresponsible non-union employers. They will escape any financial responsibility for the health care of their employees. In contrast, the labor-management, multiemployer health and welfare trust fund community, including their participating "small businesses", will incur higher costs as a result of the legislation. This anti-competitive situation will put pressure on union "small business" employers to withdraw from health and welfare trust funds. And, that would be counter-productive for a fundamental purpose of reform legislation: the preservation and strengthening of employment-based health plans.

As you explore how to broaden coverage, it is essential that any government subsidies for "small business" be extended to the responsible small business employers that participate in labor-management multiemployer health and welfare trust funds, and not merely made available to employers that participate in a Gateway or Exchange. Our understanding is that the HELP Committee bill and the House bills are intended to do so, recognizing that subsidizing only those employers that join a Gateway or Exchange would undercut private sector employee health plans. This equal protection must be continued into the final legislation.

You need to know our concerns in order to address them, of course. In that constructive spirit, I am enclosing a list of concerns about some aspects of the legislation as they would affect labor-management, multiemployer health and welfare fund trust funds.

I ask for the opportunity to continue to work with you and your staffs to perfect national health reform legislation and secure enactment as soon as possible.

Thank you for your attention to this letter and your leadership. If you have any questions concerning this matter, please feel free to contact NCCMP Executive Director Randy DeFrehn at (202) 756-4644.

Respectfully,

*Mark H. Ayers*

MARK H. AYERS  
Chairman

Enclosure

cc President Barack Obama