



30 WINTER STREET  
BOSTON, MA 02108  
TEL 617.338.6035  
FAX 617.451.5838  
WWW.COMMUNITYCATALYST.ORG

October 1, 2009

VIA ELECTRONIC MAIL

Representative Nancy Pelosi, Speaker  
United States House of Representatives  
H-232, US Capitol  
Washington, DC 20515

Dear Speaker Pelosi:

We applaud your dedication and leadership in moving forward a plan that would greatly expand access to quality affordable health care. The bills that have emerged from the three House committees of jurisdiction contain too many significant advances to enumerate in one letter. However, we would like to especially thank you for your continued support for a public insurance option, vigorous oversight of the private insurance industry, strong affordability protections, and employer responsibility for contributing to health care costs.

As you and your colleagues work to merge the three committee bills, we would like to call your attention to seven priority areas where we believe the merged bill should be either preserved or strengthened, specifically: ensuring that people are not required to pay more for coverage than they can afford; helping to inform and support consumers; creating robust exchanges; improving access to safe, effective and affordable prescription drugs; ensuring that new health delivery models protect consumers' interests; improving health coverage for children; and improving equity in access and care.

### **Affordability**

We applaud all three Committees for offering subsidies to individuals up to 400 percent of the Federal Poverty Level (FPL) and for placing caps on out-of-pocket costs for all plans in the Exchange. We recommend that in the merging of the three bills, you:

- Adopt the subsidy schedule passed by both the Education and Labor Committee and the Ways and Means Committee. That subsidy schedule offers coverage that is significantly more affordable to moderate-income families than the Energy and Commerce Committee proposal.
- Adopt the standard in the Education and Labor bill that allows low-income individuals to qualify for subsidies if their employer-sponsored insurance is unaffordable. Under the Ways and Means Committee bill and the Energy and Commerce Committee bill, individuals who are offered employer-sponsored coverage do not qualify for subsidies unless their premium would cost more than 11 or 12 percent of their income, respectively. The Education and Labor Committee also better protects low-income workers by allowing them to qualify for subsidies if their premium *and* cost-sharing exceeds 11 percent of their income.

The Education and Labor Committee provision could be further improved by exempting from the mandate individuals whose employer-sponsored coverage costs more than what someone at the same income level *without* employer-sponsored coverage is expected to pay, but who still does not qualify for subsidies.

- Set out-of-pocket caps along a sliding scale that protects families from becoming underinsured. The three committee proposals limit annual out-of-pocket costs to \$5,000 for an individual or \$10,000 for a family, and they also specify that low- and moderate-income families in the Exchange should face lower out-of-pocket caps. The Committees do not specify, however, what those out-of-pocket limits will be, leaving low- and moderate-income families at risk of incurring costs they cannot afford. We recommend that out-of-pocket expenses be capped at five percent of income for families below 200 percent FPL and at 10 percent for families above 200 percent FPL.
- Exempt people from the individual mandate if they earn too much for subsidies but cannot find affordable coverage. Under the proposals from the three committees, individuals above 400 percent FPL would be required to buy coverage no matter how high the cost, unless they are eligible for a “hardship waiver.” We recommend that the House include an “affordability standard,” defined as a sliding-scale percentage of income, to exempt those who cannot find comprehensive affordable coverage.

### **Strengthening Consumer Engagement**

We support the provisions in H.R. 3200 that seek to provide consumers with the information, support, and trouble-shooting services they need to enroll in the right coverage and navigate the health system. We recommend that in the merging of the three bills, you include those provisions that:

- Create a national ombudsman’s office (Section 144) to assist consumers with health coverage problems.
- Include the requirement that Exchanges provide outreach and enrollment assistance (Section 205).
- Reduce problems that arise as health care reform is implemented by tapping experienced community-based groups to help support consumers.

### **Insurance Exchanges and the Public Plan**

We strongly support the committees’ inclusion of health insurance exchanges, an approach that will greatly improve individuals and businesses ability to compare plans and make informed choices based on cost and quality. In addition, we also support the proposal to have the National Exchange set a floor, but then allow states to strengthen the Exchange rules. This flexibility will allow states to choose appropriate benefit packages and health plans. As you work to merge the three bills, we urge you maintain these provisions and to include a strong public plan option within the exchanges.

## Prescription Drugs

We applaud all three Committees for passing prescription drug reforms that would not only promote the use of the safest, most effective drugs but also would significantly reduce the cost of drugs for seniors. We specifically recommend in the merging of the three bills, you maintain:

- The Physician Payments Sunshine provision, which would require pharmaceutical or medical device companies to report all payments over \$5 to health professionals and organizations. Other key elements to include are public reporting on a searchable website; inclusion of not only physicians but also other prescribers, such as nurse practitioners and physician assistants; and careful pre-emption of state disclosure laws that preserves the right of states to collect other information.
- The Pharmacy Benefits Manager (PBM) Transparency amendment by Representatives Baldwin and Weiner. This amendment, which was passed by the Energy and Commerce Committee, would help ensure lower prescription drug cost by providing health plans operating in the exchange with accurate information about both the rebates that their PBM receives from drug manufacturers, and the PBM's actual costs of dispensing the drugs covered by the health plan.
- The Ban on Pay-for-Delay Settlements amendment by Representative Rush, as passed by the Energy and Commerce Committee. This amendment would prevent pharmaceutical manufacturers from paying their generics competitors to delay bringing a generic drug to market. This provision would promote competition in the marketplace and help provide patients affordable access to needed medicines. The Federal Trade Commission estimates it will save \$35 billion over ten years.
- The "donut hole" and drug rebate provisions. The donut hole provision would fill the "donut hole" in the Medicare D prescription drug benefit by providing an additional \$500 in coverage in 2011, and increasing that amount over time to eliminate the "donut hole" in 15 years. The drug rebate provision would raise new revenue by requiring drug manufacturers to provide drug rebates for drugs used by dually eligible beneficiaries and full subsidy-eligible enrollees that are at least as large as Medicaid rebates for the same drugs.

## Improving Quality

We strongly support H.R. 3200's many payment and delivery system reforms aimed at reorienting the American health care system away from lower-quality, higher-cost interventions and towards a high quality, cost-effective care model that is better targeted to individuals' and families' needs. By rewarding care coordination and prioritizing primary care and prevention, these provisions, taken together, will help address the existing gaps in care and quality experienced by many Americans, particularly those with multiple chronic conditions or those who are dually eligible for Medicare and Medicaid. While the positive proposed reforms are too numerous to list in these comments, as you work to merge the three committee bills, we recommend, in particular, those provisions that would:

- Establish national priorities and performance measures for quality improvement, with a focus on chronic care and improving patient-centeredness of care.
- Set up an independent commission to coordinate comparative effectiveness research to make sure our health practitioners are up to date with the most effective clinical treatments.

- Reduce unnecessary hospital readmissions by changing payment incentives and encouraging services to assist transitions from hospital to home, including translators, discharge planning and ensuring patients receive a summary of care/discharge orders.
- Provide enhanced coordinated coverage options for dually eligible beneficiaries.

In addition, while we support further testing and rigorous evaluation of new models of care through pilots and demonstration projects – for example, of accountable care organizations and medical homes – we believe it is also critical to ensure patients participating in these pilot programs are well-protected from potential incentives to limit care or “cherry pick” patients least likely to require expensive care. We think these protections can be assured by making sure the models:

- Tie payment incentives to improved health outcomes
- Are subject to financial penalty for "gaming" the system and avoiding high-need patients
- Adequately pay providers who serve higher-need patients
- Incorporate evidence-based means of engaging patients and their caregivers
- Promote transparency by informing patients how their providers are paid, how quality is measured, and what incentives affect the type and amount of care they receive

### **Children’s Coverage**

As described in our previous comments, we believe that H.R. 3200’s proposed reforms will expand affordable health coverage, access, and quality for parents and other adults. Health care reform, however, must also address children’s unique developmental and health care needs and work to improve their overall health status. We recommend that the merged House bill incorporates the following children’s health provisions to help guarantee that health care reform does not leave children with fragmented coverage, fewer benefits, or higher cost-sharing:

- The amendment offered by Representative DeGette, and approved by the Energy and Commerce Committee, to ensure that children enrolled in CHIP in 2013 will not be moved into the Exchange unless the Secretary of Health and Human Services certifies that coverage in Exchange plans is comparable or better to the average CHIP plan.
- The amendment offered by Representative Scott, and approved by the Education and Labor Committee, to require that all children who receive coverage through the Exchange have access to Early Periodic Screening, Diagnosis and Treatment (EPSDT) benefits.
- Medicaid simplification measures proposed by Representative Rush to make it easier for the lowest-income children to access coverage. These measures include 12-month continuous eligibility, which has already been successfully adopted by 30 states for their Medicaid and/or CHIP programs, and a “no wrong door” enrollment process that would allow families to apply for insurance through any program and be directed to the coverage that is appropriate for them.

### **Health Equity**

We appreciate that the H.R. 3200 has included strong measures to reduce racial and ethnic health disparities and provide greater equity in access and care. We urge you to preserve as many of those provisions as possible in the final House bill. In particular, we believe it is extremely important that the final bill:

- Provide full access for legal immigrants to insurance subsidies, with no waiting period.
- Expand funding for community health centers.
- Include requirements and standards for collection of data on race, ethnicity, primary language and the extent of disparities.
- Require that plans sold through the Exchange provide culturally and linguistically appropriate services.

In addition, we recommend that the House bill take two additional steps:

- Eliminate the five-year waiting period for legally present immigrants to qualify for Medicaid. This waiting period leaves many families who pay taxes without access to needed preventive care, as well as to speedy and appropriate treatment for diseases such as cancer and diabetes. Providing Medicaid for legal immigrants who qualify based on their income and assets is also a cost-effective means of providing quality coverage.
- Require hospitals to identify and respond to the unmet health needs of the communities they serve as a condition for Disproportionate Share Hospital payments and tax-exempt status. Hospitals will continue to be an essential part of the safety net in many communities and can play a stronger role in others.

\* \* \*

Once again, we thank you for your leadership in moving the nation toward quality affordable health care for all. We hope you will receive these comments as constructive contributions to your deliberations and welcome any questions you may have about our suggestions.

Sincerely,



Robert Restuccia  
Executive Director