Event Summary

"Workplace Wellness Programs, Healthy Behaviors and Health Reform"

December 7, 2009

The Alliance for Health Reform, with support from AARP, held a briefing in the Dirksen Senate Office Building Room G-50, Washington, DC. This briefing examined workplace wellness programs and explored legal and ethical issues associated with incentives for participation and achieving outcomes benchmarks. A key focus centered on provisions in pending health reform bills.

Ed Howard, executive vice president at the Alliance, extended a welcome from Senators Rockefeller and Collins to those in attendance. He also thanked the panelists for their participation and AARP for sponsoring the event. Workplace wellness programs, he reminded the audience, serve the dual goal of achieving a healthy workforce and lowering costs. A Kaiser poll shows that 58% of employers currently offer some version of these programs, which Safeway's CEO, Steve Byrd, suggested would save $500 billion if expanded nationwide. Questions still exist about whether these programs are discriminatory and if they shift costs from the healthy to the sick. Mr. Howard reminded the audience that the Alliance's goal is to portray the full story.

The first panelist, **Kathy Buto,** vice president for healthy policy, government affairs, at Johnson & Johnson, presented the company's experience in creating a "Culture of Health" in the workplace. Their total health approach includes online risk assessments, disease counseling, financial incentives, and health education. She noted that instituting incentives increased participation from 60% to 90%. The company also prohibited smoking on premises worldwide, a step towards decreasing smoking. As a result of these efforts, per capita health care costs are consistently 1% - 2% below benchmarks for the past ten years. Additionally, population health risks trend better among their employees as compared with the U.S. population. The overall results of these investments have produced savings of $250 million over 10 years. Further, Johnson & Johnson's interest in prevention and wellness now extends to its business holdings, and the Office of Personnel Management is pilot testing some Johnson & Johnson strategies.

Nancy LeaMond, executive vice president of social impact for AARP, postulated that workplace wellness programs have the potential to promote healthier lives and lower premiums and total system costs. She said that these programs promote healthy behaviors, such as physical activity and smoking cessation, and include medication management programs. Grants or tax credits for employers who offer these programs, she argued, merit strong support. LeaMond further stated that AARP supports workplace wellness provisions in the House bill, including grants to small employers. Importantly, the programs must meet specific, reasonable criteria: actively engage employees through worksite assessments, onsite delivery, evaluation, and improvement efforts; must make the programs culturally competent; and provide opportunities for periodic screenings and referrals for appropriate follow-up. Other important House provisions include making sure participation is voluntary and not tying financial incentives to premiums or cost sharing. In contrast, AARP has concerns about the Senate plan which does not include all the wellness program criteria in the House bill and increases the amount employees can be charged for not meeting specific

outcomes. They are concerned that this could lead to unaffordable costs for people who cannot participate, change behaviors or achieve health targets for factors not under their control. Such factors might include genetics, physical and mental disabilities, lack of community resources, or other life priorities. Health reform, she concluded, should ensure that everyone can have affordable coverage regardless of health status. She warned that great care must be taken to avoid pre-existing conditions discrimination.

Nancy Taylor, co-chair of the Health and FDA Business section of the Greenberg Traurig law firm in Washington, DC, and counsel on behalf of Business Roundtable, explored the current legal structure surrounding workplace wellness programs. Current regulations under HIPAA permits employee sponsored wellness programs to offer rewards up to 20% of the premium. The Senate bill would codify HIPAA regulations into law and increase permissible rewards to 30% in the form of discounted premiums, reduced cost sharing, or extra benefits. Ms. Taylor emphasized that wellness programs do not violate nondiscrimination requirements. In addition, many programs exist that do not rely on specific "health factors" and reward participation rather than outcomes. Programs range from reimbursement for cost of fitness center membership to rewarding participation in diagnostic testing to reimbursing employees for cost of smoking cessation programs, regardless of outcome. If a program depends on the outcome of a "health factor", several requirements must be met to uphold nondiscrimination protections, including offering the reward to all similarly situated individuals and offering reasonable alternatives if someone cannot meet a standard due to medical reasons.

The final panelist, **Karen Pollitz**, research professor at Georgetown University Health Policy Institute, expressed concern that wellness programs authorized under the Senate bill could provide a loophole for medical underwriting. Pollitz reviewed the history of regulations regarding nondiscrimination in health insurance. Regulations put in place in 1997 by the Clinton Administration permitted programs that established discounts based on healthy behavior, not on health status factors. For example, participants could receive a discount for participating in nutrition counseling, but not for passing a cholesterol test. In 2006, the Bush Administration regulations allowed rewards based on health status factors, as long as the programs met certain standards. The 20% cap on rewards, or absence of penalty, was designed to give employers flexibility without creating too heavy a financial penalty on those who did not satisfy a health status standard, explained Pollitz. Larger rewards, such as the 30% or 50% in the Senate bill, she argued, effectively deny coverage and would be similar to current medical underwriting. To prevent discrimination, Ms. Pollitz suggested, programs should not attach rewards to premiums or cost sharing, should apply incentives for healthy behaviors, not health status, and should develop standards for evidence-based programs, while supporting healthy lifestyles.

A lively question and answer session followed.