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Senate Passes CPSC Reauthorization Bill

On the eve of the August recess, the Senate gave unanimous consent to legislation to reauthorize and reform the Consumer Product Safety Commission.

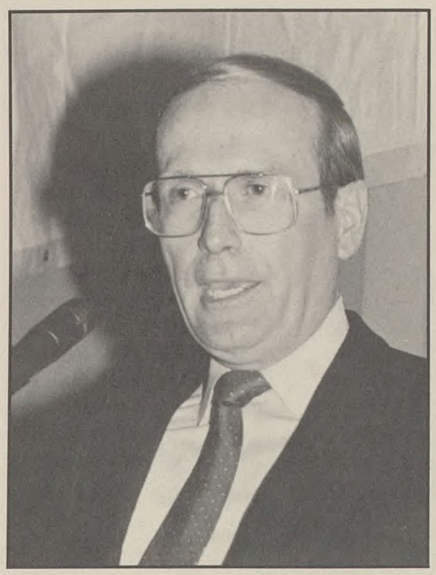
"This is a major breakthrough," said CFA Product Safety Director Mary Ellen Fise, noting that similar legislation last year never made it to a floor vote in either house.

Freshman Senator Richard Bryan (D-NV) made CPSC reauthorization his first priority when he took over chairmanship of the Consumer Subcommittee this year.

"Last year the bills got tied up in controversies over specific products. Sen. Bryan deserves a great deal of credit for bringing this vital bill so quickly and cleanly through the legislative process," Fise said.

A companion measure in the House currently awaits full committee markup, having been passed at the subcommittee level last spring.

The Senate bill, S. 605, contains a number of important provisions to improve operations of the CPSC. The bill contains provisions to improve the commission's rulemaking procedures, increase reporting burdens for manufacturers of unsafe products, strengthen penalties for violations, and civil penalties under the Federal Hazardous Substances Act, and clarify when the agency may defer to voluntary standards.



Sen. Richard Bryan (D-NV) made CPSC reauthorization a priority.

Civil Penalties Tied to Inflation

In addition, an amendment offered by Sen. Frank R. Lautenberg (D-NJ) to tie civil penalties under the Consumer Product Safety Act and the Federal Hazardous Substances Act to the rate of inflation was also accepted unanimously.

Currently, an individual who knowingly violates provisions of the CPSA is subject to civil penalty not to exceed $2,000 for each violation, with a maximum civil penalty for any related series of violations not to exceed $500,000. These penalties were set in 1972, when the CPSA was first enacted.

S. 605 would raise those penalties to $5,000 and $1.25 million respectively. The Lautenberg amendment "is designed to prevent a similar dilution of penalty values in the future," he said. It would provide for civil penalties under the two acts to be adjusted every five years based on increases in the Consumer Price Index.

"This is a vital component of effective law enforcement," Fise said. "By raising penalties to their original value contemplated at enactment, this bill will restore the deterrent effect of those penalties, which has been seriously eroded over the past two decades."

Appropriations Increase

In mid-September, the Senate appropriations committee recommended a $2.2 million increase in the CPSC budget over the Office of Management and Budget request of $33.479 million for 1990. The House appropriations committee had recommended an additional $2 million over the OMB request in August.

"The OMB request was woefully inadequate," Fise said. "While we would have liked to see a more substantial budget increase, this represents a significant step toward unlocking the fiscal handcuffs that have prevented this agency from fulfilling its mandate."

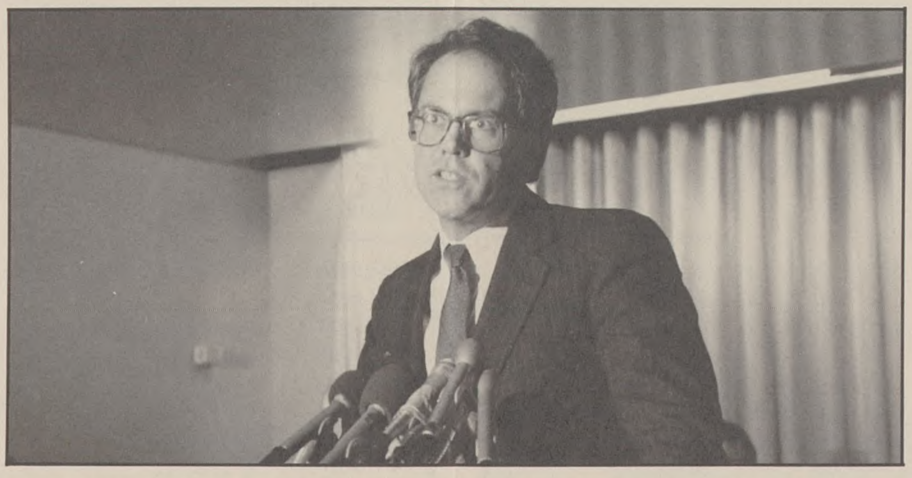
Fise pledged to continue the fight for adequate funding for the agency in future budgets.

Coalition Formed to Promote Auto Safety

In late September, a broad-based coalition of insurers and consumer groups, including the Consumer Federation of America, announced the formation of Advocates for Highway and Auto Safety, a new organization to reduce deaths, injuries, and economic costs associated with motor vehicle crashes.

At a press conference, CFA Public Relations Director Jack Gillis read a statement from CFA Executive Director Stephen Brobeck that began: "The launching of this new organization represents a landmark in the advocacy of highway and automotive safety. For the first time, insurers and consumer groups are joining together in a partnership with substantial funding and a full-time staff. Under the capable leadership of Judith Stone, this organization will help ensure that there is a strong voice for traffic safety before Congress, state legislatures, and other public policy making bodies."

Brobeck worked with Robert Vagley, President of the American Insurance Association, for nearly a year to get this new organization off the ground. At midpoint, they joined with Jerry Maatman, President of The Kemper Group, who had developed a separate but related initiative. At different times, there was strong opposition from some consumer leaders and from some insurers, which reflected intense debates on auto insurance reform measures.



CFA Public Affairs Director Jack Gillis spoke at a news conference to announce the creation of the auto safety coalition in late September.

Federal issue priorities will include passage by the full Congress of S. 673, the National Highway Traffic Safety Administration reauthorization bill, which has passed the U.S. Senate. Targets identified for further potential life and cost savings include extension of all federal motor vehicle safety standards to multipurpose vehicles and light trucks (including automatic crash protection), upgrading side impact protection, requiring anti-lock braking systems for trucks (and autos), adoption of pedestrian safety and occupant head protection standards, reinstating the 5 mph bumper standards, and preserving price competition for replacement crash parts.

At the state level, Advocates will support action-oriented programs to contain automobile insurance loss costs, including frequent losses due to minor and moderate injuries and damage. These will relate to issues such as safety belt use, drunk and drugged driving, child safety seat use, speed enforcement, motorcycle helmet use, commercial vehicle driver licensing, high accident locations, and auto theft.

The new group is headed by Judith Stone, who has worked for more than a decade on motor vehicle safety. In the late 1970s, she worked for the National Highway Traffic Safety Administration and for the U.S. Department of Transportation. More recently, she has headed the Washington office of the National Association of Governors' Safety Representatives and had directed federal efforts of the National Safety Council.

Insurers have pledged $1.5 million of funding for the operation of the coalition during its first year. It is expected that this funding will increase in succeeding years.

The Board of Directors is made up of equal numbers of insurers and consumer and safety advocates. As well as Brobeck, the latter include Joan Claybrook, President of Public Citizen; Clarence Ditlow, Executive Director of the Center for Auto Safety; Dr. Janine Jagger of the Virginia Head Injury Foundation, and Hubert Williams, President of the Police Foundation.

Congress Studies Acid Rain Solutions

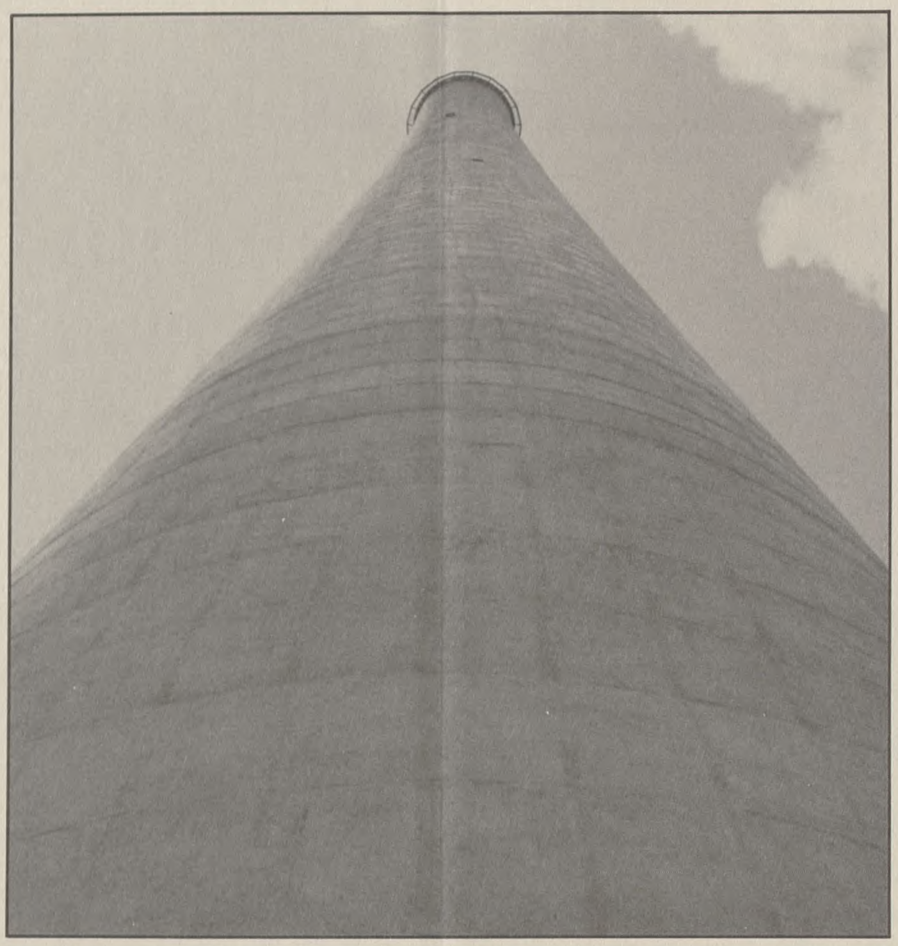
In the wake of President Bush's clean air proposals, Congress has begun to consider clean air legislation, including specific strategies to solve the problems of acid rain.

At a September hearing before the House Subcommittee on Energy and Power, CFA Research Director Mark Cooper praised the new administration for breaking the executive branch logjam on acid rain legislation and providing targets that are "a broadly reasonable framework for a solution."

Cooper warned, however, that there remain "difficult problems that must be solved and some delicate balances between competing objectives that must be struck. There is much work to be done by the Congress to craft the details of acid rain legislation that will be efficient, effective and fair."

Acid rain occurs when sulfur dioxide (emitted primarily by coal-fueled electric utilities) and nitrogen oxide (emitted primarily from transportation sources and utilities) are chemically transformed and transported in the atmosphere and deposited on the earth.

Acid rain is more closely associated with damage to aquatic systems, but it also is implicated in forest damage as well as damage to buildings, monuments, and other structures.



In a bill that is neutral on the choice of technology, plants such as the one above using advanced scrubber technology would constitute one clean-up option.

General Principles for a Solution

Speaking from the point of view of electricity residential ratepayers, who will bear much of the cost of any solution, Cooper outlined "the general principles that we think should govern the final bill and some of the areas that we believe this is the time to set federal and state agencies to work solving the measurement problem, not throwing up great obstacles to conservation as an alternative."

The solution to the acid rain problem also should "impose responsibility in a fair manner," he said. "Fairness dictates that those responsible should contribute to the solution in proportion to their contribution to the problem."

The acid rain issue should not be allowed to undermine developing countries and diversity in the electric utility industry, nor should it create new institutional problems, he said. As currently formulated, however, "the administration's bill creates a new commodity, emission credits, which can become a major barrier to competition and diversity in the industry."

"We urge Congress to make it clear that it will not tolerate anti-competitive or anti-consumer abuse of emissions trading and to set up an explicit mechanism for preventing such abuse."

Finally, since acid rain reduction will cost electricity ratepayers dearly, they "deserve vigorous efforts to minimize that burden," including not only least cost approaches, but also administrative and accounting conventions. In particular, investments made to reduce acid rain should not be taxed, he said. Also, conservation investments should be subject to the same regulatory scrutiny and receive the same regulatory rewards (i.e., rates of return) as other technologies.

Administration Bill Has Strong, Weak Points

In terms of these principles, the administration's bill has strong points and weak points, Cooper said. "It allows the cost of acid rain reduction (but not necessarily the benefits) to take precedence over responsibility and fairness. Although tonnage allowances open the door to conservation, the administrative mechanisms established will create an obstacle for it. Although the bill seeks efficiency through market processes, it ignores the serious anti-competitive impacts of the regulatory scheme it imposes. It is virtually silent on ratepayer impacts."

Cooper called for a reconfiguring of objectives that would mitigate the burden on electric utility ratepayers in a fair manner.

These objections to the President's plan should not be interpreted as an attempt to obstruct the passage of legislation, he said. "The time for foot dragging and nay-saying has passed. We want and intend to work for legislation to pass this Congress."

Product Safety Update

CFA Seeks Mandatory Warnings on Waterbeds

Because of the risk of suffocation to infants, CFA, the Attorney General of New York, and the American Academy of Pediatrics have filed a petition with the Consumer Product Safety Commission requesting a mandatory warning on all waterbeds.

"Few parents realize that these seemingly safe waterbeds are, in fact, death traps for their babies," said CFA Product Safety Director Mary Ellen Fise.

In the past seven years, at least 32 infants and two children ages 9 and 12 with cerebral palsy died of asphyxiation when left unattended on adult-size waterbeds.

There are two types of suffocation hazard associated with the beds: 1) the infant or child, asleep in the face-down position, has his nose and mouth trapped in the depression caused by the weight of his head and body; or 2) the infant rolls or is rolled by the motion of the waterbed to the edge of the mattress, where her head or entire body becomes wedged between the waterbed mattress and the bed frame, preventing breathing.

The petition requests that the government develop a mandatory warning standard that would include the following:

- a permanent, conspicuous warning printed on all waterbed mattresses;
- a conspicuous warning included as part of the waterbed instructions;
- a conspicuous warning on the sales receipt for each waterbed; and
- a prominent, easy-to-read sign explaining the hazard in all stores selling waterbeds.

The warnings should contain the following paragraph: *Never* put an infant to sleep or leave unattended on this waterbed. *Never* put a handicapped child who lacks the ability to turn over to sleep or leave unattended on this waterbed. Infants or handicapped children can suffocate in the face-down position or get caught between the mattress and frame and suffocate.

Methylene Chloride

The U.S. Court of Appeals for the District of Columbia Circuit has denied a CFA request for court review of a CPSC order denying CFA's petition for initiation of rulemaking proceedings to ban the use of the solvent methylene chloride in household products.

CFA petitioned the CPSC in 1985 to institute rulemaking proceedings to declare methylene chloride both a hazardous substance, requiring warning labels, and a banned hazardous substance. Exposure to methylene chloride, a solvent used in paint strippers and other products, is suspected of increasing the risk of certain forms of cancer.

In 1986, the CPSC granted the first part of the petition, but in 1988 the commission denied CFA's second request, that methylene chloride be banned.

In making its ruling, the court gave great weight to the commission's authority to make such decisions. "While some of the commission's judgments may be subject to question, Congress has entrusted the responsibility to make them to the commission and not this court," the opinion reads.

Swimming Pool Barriers

CFA has submitted comments to three organizations—the Southern Building Code Congress International, the International Association of Plumbing and Mechanical Officials, and the Council of American Building Officials—calling for more stringent swimming pool barrier requirements than those proposed by the CPSC.

While praising the commission for raising the issue with building code groups, Fise called the CPSC proposal inadequate. True four-sided fencing with self-closing, self-latching access gates is needed to prevent children's access during times of no adult supervision," she said.

Residential pool drownings are the second leading cause of accidental death in the home to children under five years of age. According to CPSC estimates, 330 children under five drowned in residential pools in 1986.

"As a nation, we have accepted for far too long an egregiously unacceptable number of child drownings in residential pools," Fise said. "By amending code requirements, the number of drowning deaths can be first stayed and then decreased as compliance with new code provisions is achieved."

S&L Bill Contains New Consumer Programs

In addition to important provisions on safety and soundness, the savings and loan reform bill which passed Congress and was signed into law in August authorizes the establishment of a number of new programs and policies that should be beneficial to consumers and individuals in need of low-cost housing.

A coalition of consumer and low income housing groups, including CFA, was active in September, meeting with the new administration authorities in an effort to influence how these new programs are set up.

"How these initial decisions are made could mean the difference between programs that are truly useful to those in need and programs that are simply window dressing," said CFA Legislative Representative Peggy Miller.

A summary of the programs currently being established follows.

The Resolution Trust Corporation

A newly established Resolution Trust Corporation is responsible for acquiring and selling the assets of closed savings and loans. As a part of this responsibility, the law stipulates that the RTC must identify less valuable residential assets, roughly those under $67,500 in value, and make them available for bid by non-profit organizations willing to set aside a portion of the residences for low income housing.

Non-profits have the right of first refusal, but they only have 90 days in which to decide to make a bid and then 45 days in which to put together a bona fide offer.

"The potential of this program resides with its administration," Miller said. Two critical factors are: the manner by which a bid is considered acceptably priced; and the efficiency of the dispersal of accurate lists of eligible properties. An efficient information clearinghouse system is essential if non-profits are to have a reasonable amount of time to consider their offer and put together a reasonable bid.

"Still, this program could provide access by low income housing groups to property at a reasonable price, and all organizations need to be aware of the potential," Miller said.

The Federal Housing Finance Board

The legislation also separates the powers of the Federal Home Loan Bank Board into supervisory and credit functions. Supervision of the thrifts was moved to the national level, to be carried out by the Office of Thrift Supervision. Attempts by CFA and others to force the reconfirmation of Danny Wall failed, and he will continue to oversee this function, which includes implementation of the new capital standards.

The twelve Federal Home Loan Banks, which run the cash advance system offering low-cost funds to the thrifts on a loan basis, will now be managed by the newly created Federal Housing Finance Board. This board will have five directors, including the Secretary of Housing and Urban Development and one consumer representative.

The board will be responsible for establishing an entirely new set of community investment standards, taking into account Community Reinvestment Act standards, that thrifts will have to meet in order to get any cash advance funds.

"These standards are going to be very important, so members of the board and the top staff of this new agency will play critical roles," Miller said. "We're working hard to ensure that good people are named to the board and that top staff people are sensitive to housing, community investment, and low income needs."

The FHFB will also be responsible for setting up a new "affordable housing program" that will provide funds to "buy down" the interest rates on low income housing loan packages. Under this program, a thrift wanting to lend money to a local applicant endeavoring to put together a low income housing development will be able to apply for the funds necessary to lower the interest rates on the loan to a level that makes the loan affordable.

"The program will have $50 million to spend in the first year of operation, and low income housing developers and non-profits need to be made aware of the funds' availability," Miller said.

Currently, the twelve Federal Home Loan Banks are developing plans for implementing this program. These agencies are also required by the new law to set up advisory councils of seven to fifteen consumer and housing representatives to advise them on how to manage their responsibilities. Furthermore, the law stipulates that there be two consumer representatives on each Federal Home Loan Bank Board. Consumer representatives interested in serving on these boards should submit their names to CFA and/or to the FHLB president in their region.

CRA Disclosure

Another provision of the new law requires all the appropriate regulatory agencies—including the Federal Reserve Board, the Office of Comptroller of the Currency, and the Office of Thrift Supervision—to put in place Community Reinvestment Act disclosure requirements. "This means that all banks and thrifts will have to disclose to the public their CRA rating and the examiners' written evaluation, so the public will finally be able to determine the lending patterns of their banks and thrifts," Miller said.

The legislation also requires these same agencies to collect and disseminate data on the home mortgage applications and lending patterns of banks, thrifts, and mortgage companies by race, sex, and religion, so that individuals, organizations, and policymakers will have better information on which to base policy decisions about lending patterns.

Bank Fee Survey

Finally, the law requires the Federal Reserve Board to carry out a bank fee survey each year for seven years. "We are currently working to try to flush out the ramifications of this survey," Miller said, "but it should analyze the increasing fees as well as the relationship of these fees and any change in offered services to the inclusion of premium fee increases in the savings and loan bill."

An S&L Honor Roll

The following members of Congress made substantial contributions to the passage of a strong and comprehensive savings and loan reform bill. We are grateful for their hard work in a good cause.

Rep. Thomas S. Foley (D-WA) Safeguarding bill on the House floor

Rep. Barney Frank (D-MA) RTC, low income asset program

Sen. Jake Garn (R-UT) Capital standards

Rep. Henry B. Gonzalez (D-TX) All aspects of the bill

Rep. Joseph P. Kennedy II (D-MA) CRA, HMDA

Rep. Gerald D. Kleczka (D-WI) All aspects of the bill

Rep. Jim Leach (R-IA) Capital standards

Rep. Sander M. Levin (D-MI) Affordable housing

Sen. Howard M. Metzenbaum (D-OH) Capital standards, CRA, December deals

Sen. George J. Mitchell (D-ME) Improving consumer safeguards on the Senate floor

Rep. Joe Moakley (D-MA) All aspects of the bill

Rep. Charles B. Rangel (D-NY) Affordable housing

Sen. Donald W. Riegle, Jr. (D-MI) Consumer reps, capital standards

Rep. Dan Rostenkowski (D-IL) Affordable housing

Rep. Tobias Roth (R-WI) Bank audits

Rep. Charles E. Schumer (D-NY) All aspects of the bill

Rep. Bruce F. Vento (D-MN) All aspects of the bill

Rep. Chalmers P. Wylie (R-OH) Capital standards

Indoor Air Bill Introduced in House

This summer, the House Subcommittee on Natural Resources, Agricultural Research, and Environment held the session's first hearing on H.R. 1530, the "Indoor Air Quality Act of 1989," which was introduced in the spring by Reps. Joseph Kennedy II (D-MA), Claudine Schneider (R-RI), and James H. Scheuer (D-NY). CFA Legislative Counsel Barbara J. Katz testified in support of the bill, calling it "a measured, comprehensive approach to addressing indoor air quality and making it a national priority."

H.R. 1530 is a companion measure to legislation introduced earlier this year in the Senate by a bipartisan coalition of senators that includes Majority Leader George Mitchell. Neither bill has yet been scheduled for markup.

The bills would authorize expenditures of $48.5 million a year to: further research; establish a program to demonstrate various technologies that may contribute to the reduction of indoor air contamination; make grants to state programs; establish a national information clearinghouse; and develop a program to demonstrate methods of assessing and mitigating indoor contamination in public and private facilities.

In addition, the bill would name the Environmental Protection Agency as the lead agency on the issue and improve coordination among all relevant agencies.

"The bill before us today is needed not only from a health standpoint, but from an economic standpoint as well," Katz said. She cited a report by the EPA that estimates costs of indoor air pollution in the tens of billions of dollars annually associated with direct medical care, employee sick days, loss of earnings, lost productivity on the job, and adverse effects on equipment and materials.

"If the legislation we are considering today, with a cost of $48.5 million a year, were to reduce the illnesses and deaths attributable to indoor air pollution by as little as one percent, it would pay for itself many times over," she said.

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Momentum Builds for Health Care Reform

While debate over funding of the Medicare Catastrophic Coverage Act dominated the national headlines in September, a bipartisan panel created by the controversial bill was quietly at work considering ways to ensure universal access to comprehensive health care—proposals that could entail a dramatic restructuring of the national health care system.

If advocates of a national comprehensive health care system get their way, the commission's work won't be quiet for long. "For advocates of affordable, universally available health benefits, the commission provides an important forum for serious national debate, and the national campaign is heating up in response," said CFA Legislative Director Gene Kimmelman.

The Pepper Commission, named for the late Rep. Claude Pepper (D-FL), was created to examine shortcomings in health care delivery or financing that prevent access to comprehensive health care, including long-term care, and to come up with consensus solutions to these problems.

Public Dissatisfied with Current System

Two 1989 polls show the degree to which the public is fed up with the current system. According to an April NBC News poll, 67 percent of Americans favor a comprehensive national health care plan; 92 percent are concerned about the rising cost of health care; and 75 percent believe good health care is something to which all Americans should be entitled. A February Harris poll found that 89 percent of Americans believe the health care system needs fundamental restructuring.

"The Pepper Commission is both an outcome of public dissatisfaction with the health care system and also an opportunity to translate that dissatisfaction into a solution to the problem," said Cathy Hurwit, Director of Federal Health Policy for the National Health Care Campaign. NHCC is a broad-based coalition of 130 national organizations, including CFA, and 36 state groups.

Lack of Access, Long-Term Care Are "Most Pressing Problems"

The Pepper Commission has identified the two most pressing problems in the nation's health care system as:

- "the lack of health insurance for 31 to 37 million Americans and the perceived 'underinsurance' of a population that may be as large;" and
- "the general lack of insurance—public or private—against the costs of long-term care."

With respect to these issues, the commission seeks a consensus on: whether (and how) to improve or expand existing public programs targeted to the poor; whether (and how) to improve financial protection for the non-poor; what the appropriate roles of the public and private sectors ought to be in financing and providing insurance protection if action goes beyond the poor; and how any initiatives will be financed.

"Everyone from President Bush's advisers to the Heritage Foundation to the National Health Care Campaign agrees that the health care system is sick, that it's not working," Hurwit said. "The issue is not whether the country's health care system is going to be replaced. The issue is when it's going to be replaced and what the new system is going to look like."

Essentially, the commission will choose among: expanding the existing Medicare/Medicaid system and essentially maintaining the current structure; enhancing the availability of private insurance, for example through employer provided coverage; and creating a comprehensive national health care system, "as the other industrialized countries have already done," Hurwit said.

Grassroots Support Needed

NHCC is organizing nationwide grassroots support for a restructuring of the system. "How quickly Congress moves and whether Congress devises a solution that really solves the problems will rely to a large extent on public pressure," Hurwit said. "Our goal is to help provide a forum and opportunity for the public to get its views to Congress."

Other groups that have joined the fray include labor groups concerned about rising costs and employers' efforts to reduce health benefits. The AFL-CIO has launched a major national campaign to alert Congress, the media, and the general public "about the difficulty of maintaining health benefits and the need for a national health care program to bring costs under control."

Instead of pushing a specific legislative proposal for creating a comprehensive system, NHCC will measure any proposal the commission develops according to whether that proposal: 1) provides comprehensive benefits, including long-term care, to everyone; 2) ensures quality of care; and 3) contains costs.

As the commission began a series of decision meetings in late September that are expected to last until January, Hurwit said initial signs were good. In particular, NHCC is encouraged by the commission's willingness to go beyond the "most immediate problem of the millions of Americans who don't have any insurance at all" and address the problems faced by the millions of underinsured individuals as well.

CFA urges all its member organizations to become more involved in the NHCC campaign and join with other organizations to influence the Pepper Commission's deliberations.

The commission is expected to submit its recommendations to Congress in March.

Senate Passes Smoking Ban On All U.S. Airline Flights

The Senate voted overwhelmingly in mid-September to enact a permanent smoking ban on all U.S. airline flights. The measure was attached to the Department of Transportation appropriations bill. The House voted in August to make permanent the current two-hour-flight smoking ban in its version of the spending bill.

The Coalition for Consumer Health and Safety, of which CFA is a member, lobbied in favor of the total ban. Arnita Hannon, Assistant Director of Government Relations for the American Lung Association and co-chairman of the coalition's committee on cigarette consumption, said the overwhelming margins by which the Senate passed the total ban "were indicative of the growing public sentiment in favor of a total ban and the feeling of members of Congress that we have to go ahead and get this in place."

The Senate voted 77-21 to end a three-day filibuster by senators from tobacco states.

The House and Senate transportation spending bills will now proceed to conference committee, where Hannon said she is optimistic about the chances for a permanent total ban. "It looks very encouraging," she said. The Senate conferees will be led by ban sponsor Sen. Frank R. Lautenberg (D-NJ). The House conferees include a number of strong supporters of a total ban, including Rep. William Lehman (D-FL), who will head up the House conference contingent.

The current law forbidding smoking on all commercial airline flights of two hours or less is due to expire next year. It was enacted in response to studies that show that the exposure of nonsmokers to other persons' tobacco smoke poses health risks to the nonsmoker.

A recent study by the National Cancer Institute of environmental tobacco smoke exposure on commercial flights found that passengers and flight attendants assigned to the nonsmoking sections of airplanes inhaled quantities of nicotine comparable to those inhaled by passengers in smoking sections.

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