09/26/94 13:19 ☎ WOFFORD FILE ⊠002

HARRIS WOFFORD
PENNSYLVANIA

ENVIRONMENT AND PUBLIC WOR
LABOR AND HUMAN RESOURCE
FOREIGN RELATIONS
SMALL BUSINESS

# United States Senate

WASHINGTON, DC 20510-3803

September 26, 1994

The Honorable George Mitchell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Robert Dole
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Senators Mitchell and Dole,

Even though there is broad agreement on many elements of health reform, it now appears that Congress may recess without passing any health reform legislation. To adjourn without enacting those measures upon which we agree would be a scandal. It is hard for me -- and more importantly hard for the American people -- to understand why we would leave so many significant agreements on the table.

We have seen how baseball owners and players, by emphasizing their disagreements, ruined a wonderful season for everyone. Let's choose the opposite course. Let's emphasize our common ground, and act on it. That would be a victory for everyone, most significantly for the American people who would find health insurance more accessible and more secure.

As you, Senator Dole, have suggested on numerous occasions, there are clear areas of agreement on health reform that can still pass with overwhelming support in the Senate and the House of Representatives. Specifically, I propose a bill that includes the following provisions, which you and many Republicans and Democrats have supported. (I have noted how each item has already been included in existing proposals.)

1. **Insurance market reforms.** Strengthen private health insurance by eliminating pre-existing condition exclusions and enacting other widely agreed upon changes in insurance industry practices. (Mitchell, Dole, Labor Committee, Finance Committee, Mainstream Group)

2. **Federal Employees Health Benefits Program (FEHBP).** Open to individuals and small businesses the program that we and millions of Americans use to get health insurance. (Mitchell, Dole, Labor Committee, Finance Committee, Mainstream Group)

3. **Expanded coverage for children.** Provide subsidies for low and moderate income children. Virtually all health reform proposals include subsidies for individuals and families with low and moderate income. This approach would focus subsidies on expanding coverage for children. (Mitchell, Dole, Labor Committee, Finance Committee, Mainstream Group)

4. **Long-term home and community-based care.** Make a start on long-term care by creating a capped state grant program to provide assistance to the elderly and disabled for the cost of home and community-based care. (Mitchell, Labor Committee, Finance Committee, Mainstream Group)

5. **Deductibility for the self-employed.** Permit farmers, sole proprietors, and other self-employed persons to deduct 100 percent of their health care costs. Virtually all health reform proposals include an expansion of the deductibility for the self-employed. (Mitchell, Dole, Labor Committee, Finance Committee, Mainstream Group)

6. **Administrative simplification.** Reduce the cost and frustration caused by the mass of paperwork that plagues the current health care system by moving to a uniform electronic system for medical records and claims, building on private sector, not government initiatives. (Mitchell, Dole, Labor Committee, Finance Committee, Mainstream Group)

7. **Anti-fraud and abuse.** Enhanced investigation and enforcement of fraud and abuse laws. (Mitchell, Dole, Labor Committee, Finance Committee, Mainstream Group)

This "Seven-Point Common Ground Plan" is made up entirely of provisions that we have all supported. I believe the American people would understand and support such a bill if we could agree to move it through Congress. To be sure, such a bill would not include many reforms that I support, as well as provisions that others favor. But I suggest that we leave those disagreements for another day. Now is the time for us to come together to work for what we agree is the common good.

With warm regards,

Harris Wofford

From the office of...

for Chris Jennings
from HRC

# Harris Wofford

United States Senator from Pennsylvania

Washington, D.C. 20510 (202) 224-7754

FOR IMMEDIATE RELEASE
CONTACT: David Stone

## WOFFORD PROPOSES NEW BILL TO PROTECT RETIREE HEALTH BENEFITS

WASHINGTON (July 20) -- U.S. Senator Harris Wofford today introduced legislation to deal with the spreading problem of corporate cutbacks in retiree health benefits.

"Across this country workers who've dedicated decades of their lives to their companies are being left out in the cold by cutbacks in retiree health benefits. Benefits they fought for, worked for, and were promised by their employers," Senator Wofford said. "These are people who showed up to work every day, paid their taxes, paid their dues, and often took lower wages in order to receive retiree health benefits."

One recent study found that because of skyrocketing costs, two-thirds of companies plan to reduce or cut off retiree health benefits. Until the implementation of a comprehensive health care reform plan, such cutbacks threaten to leave millions of older citizens without coverage. They also impose new costs on taxpayers as more retirees are forced to rely on Medicaid and Medicare. For companies and families alike, the problem illustrates the need for a health care plan that controls costs and guarantees coverage for all Americans throughout their lives.

In the meantime, the Retiree Health Benefits Protection Act will help retirees -- such as those from the UNISYS Corporation -- seeking to maintain their promised health benefits in court by shifting the burden onto employers to prove that their contracts clearly permit such cutbacks. And unlike the current situation, it would require those employers to continue paying benefits while a case is pending.

"This is a matter of simple justice and basic fairness," Senator Wofford said. "It doesn't impose any new burdens on employers. It says: live up to your promises and fulfill the contracts you agreed to. Nothing more. Nothing less."

Senator Wofford's full statement is attached.

# # #

**U.S. Senator Harris Wofford**
**"Keeping the Promise of Retiree Health Benefits"**
**Floor Statement Introducing the Retiree Health Benefit Protection Act**
**July 20, 1993**

In 1991, the people of Pennsylvania sent a wake-up call to Washington that our nation's health care system is in crisis. Costs are skyrocketing out of control. Two million Americans lose their insurance coverage each month, and 100,000 of them never get it back. And millions more -- almost all of us -- live in fear that the health benefits we do have won't be there when we need them most.

This country still has the best quality health care in the world. But everything that's wrong with our health care system is threatening everything that's right about our health care system.

There's no better example of the insecurity now facing most Americans -- especially the middle-class -- than the growing number of companies that are cutting back or cutting off retiree health benefits.

The United States is just about the only industrialized nation where we leave health care to the luck of the draw. And more and more Americans are losing the gamble.

But health insurance isn't a game that any of us can afford to lose. Because the result, for an expectant mother, an unemployed worker or older citizen in need of care is to reach the door of the doctor's office or hospital, unable to answer the threshold question: HOW ARE YOU PLANNING TO PAY?

We're all feeling insecure, because we're all at risk. If we lose a job, change a job, have a serious illness. My wife was afraid that if I lost my election her preexisting condition would soon lock us out of insurance and we'd never be able to afford to pay the medical bills for her care.

But now, you don't even have to lose a job to lose your coverage. All you have to do is retire from one. The fact is that across this country workers who've dedicated 20, 30 years or more of their lives to their companies are being left out in the cold by cutbacks in retiree health benefits. Benefits they fought for, worked for, and were promised by their employers.

These are people who showed up to work every day, paid their taxes, paid their dues, and often took lower wages in order to receive retiree health benefits. And now, when the rug is pulled out from under them, they have no place to turn.

The kind of price tags that insurance companies put on plans when you're old and sick are right through the roof. Because they'd rather insure those who are young and healthy.

In Philadelphia this past April, I joined a rally with hundreds of retired UNISYS workers who are losing their health benefits. Like many other groups of retirees around the country, they've filed a lawsuit to compel their former employer to make good on its promises.

In the last few months, more and more companies have either reduced retiree health benefits or dropped coverage altogether -- because costs are out of control. One recent study found that two-thirds of companies plan to reduce retiree health benefits. Others are cutting off those benefits entirely.

That doesn't just hurt the retirees involved. It affects all of us. When companies cut off retiree benefits, what they're really doing is shifting those health care costs right onto the taxpayers. Because many of those older citizens will have to turn to Medicare and Medicaid.

It's just one more reason we need action on comprehensive health care reform that guarantees all Americans health coverage regardless of where they live or work; regardless of whether they're sick or retired.

That's the next main order of business after we pass a five-year deficit reduction plan that puts our economy back on the right track.

But there's a tough, hard battle ahead to create a system that provides real health security. There are special interests who will fight health care reform every step of the way. And our retired workers can't wait. And we can't let companies write them off.

So I propose to do more. Today I'm introducing the Retiree Health Benefits Protection Act. It will help retired workers maintain their promised health benefits in court...and give companies second thoughts before trying to back out of their legal obligations.

The legislation will put the burden on employers to prove that their contracts clearly permit cutbacks in retiree health benefits. And unlike the situation today in which retirees get left high and dry while the lawyers argue, it would require those employers to continue paying benefits while the case is in court.

This is a matter of simple justice and basic fairness. It doesn't impose any new burdens on employers. It says: live up to your promises and fulfill the contracts you agreed to. Nothing more. Nothing less.

We'll work with corporate America to control health care costs. We know it's a problem that's eating into profits and productivity. But in the meantime, we challenge them to show responsibility by keeping their promises to retirees.

In fact, this is a moment when I urge every player in our health care system to respond to the facts of a system that's out of control. Don't wait. Go forward now. Let your actions, as much as your words, be part of the health care reform debate.

Show, as Merck and Miles pharmaceuticals have, that price increases can be restrained. Insurance companies...don't increase premiums. Hospitals and doctors...don't increase your rates. Business executives, don't cut retiree benefits. Make sure that promises made to workers and their families are promises kept.

Because nothing will ensure greater support for the Retiree Health Benefits Protection Act than companies that fail to take responsibility and keep their promises to workers and families.

To our older citizens who worked hard so they could enjoy some peace and security during their retirement, this legislation says: You have a right to what you earned.

And until we've enacted a plan that turns the right to affordable health care into a reality and controls skyrocketing costs, we won't let you and your promised benefits fall through the cracks. Because your health security can't wait. This bill helps ensure that for retirees, health security won't wait. It begins today.

# # #

II

103D CONGRESS
1ST SESSION

# S. 1268

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits.

---

IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JUNE 30), 1993

Mr. WOFFORD introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

# A BILL

To amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Retiree Health Benefits Protection Act".

# Clinton Presidential Records
# Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

**U.S. SENATOR HARRIS WOFFORD**
**BACKGROUND ON RETIREE HEALTH BENEFITS PROTECTION ACT**

### What is the retiree health care crisis?

More and more retirees are finding that their promised health care benefits are being drastically cut or eliminated. Workers often gave up pay raises or other benefits in order to receive health benefits in retirement. The crisis is getting worse. A recent study by the A. Foster Higgins consulting firm states that two-thirds of the companies surveyed plan to reduce retiree health benefits or shift more costs to retirees. The General Accounting Office, the investigatory arm of Congress, reported on July 9, 1993 that employers currently have a $442 billion liability for retiree health benefits, an increase from $227 billion in 1989. The federal Employee Retirement Income Security Act (ERISA) allows the unilateral termination or reduction of retiree health benefits.

### How are retirees affected by elimination or reduction in benefits?

Too many retirees and their spouses and dependents are left vulnerable by these actions. Retirees under the age of 65 who do not qualify for Medicare are especially at risk. At least three million retirees and their spouses under the age of 65 receive retiree health benefits. Many times they simply cannot make the financial adjustments to pay for medical coverage when benefits are eliminated or reduced. In addition, many retirees simply cannot obtain any coverage at any price because of preexisting medical conditions.

### Who else pays when retiree benefit plans are terminated?

We all do. If retirees cannot find health insurance they have to pay for their health costs at emergency rooms and other high-cost health care providers. Some may be forced to apply for Medicaid. Others will rely more heavily on Medicare. In addition, workers who retiree on disability and have their health benefits terminated now will receive benefits under the Social Security Disability program. In any event, taxpayers will have to bare these costs.

**When benefits are eliminated or reduced, what hurdles do retirees face?**

Retirees have three strikes against them before they step up to the plate. First, the benefits they relied on are gone. Second, they are faced with large, unforseen costs even if they can obtain coverage. Third, if they resort to court action to get their benefits back, they carry the legal burden of proof as plaintiffs. During all of this financial, legal and emotional trauma retirees are going without their promised health benefits, and often without any health care coverage. The situation is unfair.

**What does the Retiree Health Benefits Protection Act do?**

The Retiree Health Benefits amends ERISA and states that courts shall order employers to maintain retiree health benefits during litigation. Second, in cases where the language of health plans is ambiguous or silent regarding the termination or reduction of health benefits the employer must prove that the plan allows for the termination or reduction of retiree health benefits. Disabled employees who retire are also covered by this legislation. In addition, an employee representative of retirees can file a suit. The legislation restores fairness to a system that is now stacked against retirees who find themselves without benefits and faced with both expensive health care costs and legal challenges. It tells employers to think twice about cutting benefits.

**How does the retiree health care crisis and the Retiree Health Benefits Protection Act fit into the larger picture of national health care reform?**

Retiree health benefits must be part of national health care reform. Presently, employers are unilaterally terminating or reducing benefits because of skyrocketing costs. They need health care reform to help bring these costs under control. This legislation gives retirees a fair, fighting chance to keep their benefits until national health care reform is enacted and implemented. In a sense, it is a stop-gap measure, but one of critical importance to older citizens faced with losing health coverage before a comprehensive health care reform plan is in place.

THE WALL STREET JOURNAL.



★★★ EASTERN EDITION WEDNESDAY, FEBRUARY 24, 1993 WHITE OAK, MARYLAND

## *Chilly Sunset*

# Firms' Attempts to Cut Health Benefits Break Calm of Retirement

## Chiquita Meatpacking Unit Cites Surging Costs, Sues Angry, Fearful Retirees

## Bad News at the Bingo Club

By ROBERT L. ROSE
*Staff Reporter of* THE WALL STREET JOURNAL

SIOUX FALLS, S.D. – The monthly bingo club meeting of John Morrell & Co. retirees hasn't been the same since the meatpacker sued its former workers.

Members still recite the Pledge of Allegiance and hear a reading of names of those who've died since the last meeting. But then the meeting at a brick building called the Labor Temple invariably turns to what many see as an employer's broken promise. Morrell is trying to change 3,300 retirees' health benefits.

"What we agreed to was for life," says Francis McDonald, who 26 years ago helped negotiate the post-employment health benefits with the meatpacking company, long a mainstay of this plains city's economy. "Now," says the 80-year-old, "they come around and want to do something else—and we're still living."

Across the country, a rapidly growing number of retired workers are finding themselves forced to foot more of their medical bills. Their former employers, faced with exploding health costs, are reducing or eliminating retiree benefits considered sacrosanct a few years ago.

### Many Ways to Cut

Nearly half of employers surveyed last summer by consultants William M. Mercer Inc. had asked retirees to pay more of their medical-insurance premiums. A similar large percentage had increased medical deductibles or co-payments. Nine percent had eliminated benefits for future retirees.

Unisys Corp., for instance, intends to stop paying for any medical benefits for both current and future retirees. Some other companies, such as Navistar International Corp., are shifting more of the health costs to retirees, just as they have done already with many of their active employees. Still others, such as Du Pont Co., say they will pay only a portion of future cost increases for employees and retirees. Du Pont argues that rising medical costs threaten its competitiveness.

Health-care costs for active and retired workers equaled 31% of manufacturers' profits in 1991, according to a survey by the National Association of Manufacturers. As new rules force employers to account for the future cost of retiree benefits, shifting expenses to retirees is the most effective way to pare the huge charges.

### New Uncertainty

The benefit cutbacks mean a new era of uncertainty for retirees who thought one of life's biggest worries was behind them. "Spiraling health costs are the No. 1 threat to the financial security of older people," says James Firman, president of the United Senior's Health Cooperative in Washington.

Many retirees, benefits experts say, have it better than those who preceded or those who will follow them. Most companies didn't start providing retiree health benefits until after World War II, and some are dropping post-employment coverage for future retirees. Medicare, enacted in 1965, pays much of physician and hospital costs for the elderly, though not for prescription drugs or long-term care. But that is only partial consolation to the estimated eight million retirees who count on company-paid benefits to fill the gap.

So retirees are fighting back, and as they do so, many of the disputes end up in court. While some retirees can point to contract or benefit-plan documents promising unchanged benefits – and in other instances, companies have clearly reserved the right to make changes – many other cases fall between those extremes. Then, judges must sort through mounds of documents and oral testimony to decide what, if anything, was promised to the retirees.

### Suing Retirees

Today some employers actually are going to court to sue their retirees, hoping to control the ensuing legal struggle. That's what Morrell did, through the Chicago law firm of McDermott, Will & Emery, which has gained a reputation as expert in paring retiree health benefits.

Resisting is the United Food and Commercial Workers union, which represents the 2,800 hourly Morrell workers in this city of 105,000. For a decade, the union fought a losing battle against Morrell and other meatpackers determined to cut their labor costs. The base pay of a Morrell worker has fallen to $8.60 an hour from $11.27 a decade ago. Active hourly workers in Sioux Falls, where Morrell began butchering hogs by the Big Sioux River in 1909, pay deductibles, co-payments and part of premiums for their health care.

Morrell declines to be interviewed. So do officials of its parent company, Chiquita Brands International Inc. of Cincinnati, which is controlled by Cincinnati investor Carl Lindner and his American Financial Corp.

Morrell announced its planned benefits change in a letter to hourly retirees 14 months ago. The company said they would have to pay more of the cost of prescription drugs. The yearly deductible would in-

*Please Turn to Page A6, Column 1*

THE WALL STREET JOURNAL.



★★★ EASTERN EDITION WEDNESDAY, FEBRUARY 24, 1993 WHITE OAK, MARYLAND

# Chilly Sunset: More Companies Cut Health Benefits Of Retirees, Sometimes Even Taking Them to Court

*Continued From First Page*

crease to $300 from $200 per person. A retiree's maximum annual out-of-pocket expenses for covered expenses would rise to $1,000 from $900. Retirees who were under age 65, and thus not covered by Medicare, would also pay premiums of $18 a month for single coverage and $36 a month for families.

Morrell blamed surging costs. It said its cost of health care per hourly retiree, $1,276 in 1985, had more than doubled by 1990. Overall, Morrell's medical costs jumped to $20 million from $14 million in those five years, with drugs accounting for nearly a third of the rise.

The changes still left the retirees with what the company called "solid, comprehensive health-care protection." Indeed, the revisions shifted some costs to the retirees, but left intact basic coverage for items such as surgery, hospitalization, sick visits to doctors, hospice and vision care. Combined with Medicare, the former Morrell workers would still have benefits superior to those of most American retirees.

Some Morrell retirees say they could have lived with the proposed changes except for a jarring sentence at the end of the company's mailing to them: "John Morrell & Co. reserves the right to change or terminate any plan or benefit at any time." Mr. McDonald, who was president of the union local from 1945 to 1978, reads that to mean that "next year, they'll be back for more."

When Morrell and Chiquita announced the planned changes in late 1991, Chiquita was completing its eighth straight year of higher profits: $128.5 million on sales of $4.63 billion. Since then, however, Chiquita has incurred a $90.6 million loss in the first nine months of 1992, partly because of higher banana costs. Separate results for Morrell alone weren't available.

### Choosing South Dakota

As the retirees were receiving their letters, Morrell was suing them and the union in federal court. The idea was to beat the retirees to court and to limit the proceedings to a single jurisdiction. Otherwise, the company argued in its suit, it could face a "multiplicity of lawsuits" from the retirees, who are scattered around the country. Morrell asked the judge to declare that it can "modify or terminate" the health benefits of its retired hourly employees at any time.

Morrell's lawyers, McDermott Will, knew that the eighth federal judicial circuit, of which South Dakota is a part, has been more favorable to employers in such cases than has its judicial counterpart in Ohio, where Chiquita is based. Suing in South Dakota also increased the chances of getting a "pro-business" judge, says Michael Melbinger, a McDermott Will lawyer working on the Morrell case.

The lawyers believed that a South Dakota judge either would give them permission for the retiree-benefit changes or grant a secondary request, to order the union to bargain over such changes. The lawyers also figured that if the court ordered negotiations and the union didn't budge, Morrell could declare an impasse and implement the changes on its own.

More than 200 retirees crowded the bingo meeting after the benefit changes were announced and the lawsuit filed. Morrell had insisted in its letter that the retiree benefits still were better than those provided by many of its competitors. "The changes we are making will help us to manage this competitive disadvantage" while continuing to offer strong protection, it said in the mailing.

That didn't make the retirees any happier. Benard Aning, a former president of the union local, asked if any retiree had heard the company say that medical benefits were subject to change, as Morrell says it told employees in exit interviews upon retirement. "Not one raised their hand," says the former union local president.

### Judge Hears Case

U.S. District Judge Richard Battey, citing the potential of "irreparable harm" to the retirees, ordered the company not to act until the case is decided. He heard the case last fall in Rapid City, S.D.

At the October trial, current and former Morrell officials testified that retiree benefits were a management prerogative subject to change. "There was never any consideration or promise or conversation that they would remain that way for the rest of their life," said Robert Gray, a labor consultant for Morrell. He also said that while previous labor contracts stated that the company and the union must agree to changes in retiree benefits, the current contract has no such language.

Union officials countered in court that workers had been promised the benefits not only in exit interviews but in negotiations throughout the years. The officials said they even accepted less pay as a trade-off for better retiree benefits. "It would have been foolish—stupid—for us to have paid for a benefit knowing . . . that the company could take it back at their pleasure sometime in the future," maintained William Burns, an official from the union's Washington office.

A retiree's widow, Marjorie Boyd, 72 years old, was eager to tell her story to Judge Battey. Living on Social Security and a monthly Morrell pension of $225, she didn't know how she could afford the new co-payments for drugs to treat her diabetes, arthritis and heart condition. In a van with other retirees, she had traveled 348 miles to testify, stopping along the way to take insulin. But in the courtroom, she found that cases involving retiree medical benefits depend more on the interpretation of contracts and benefit-plan documents than on stories of personal hardship.

Judge Battey acknowledged that a lack of health benefits and rising costs present a "severe problem for folks who are in that position." But when Morrell's trial attorney, Bill Boies, objected to an exhibit of Mrs. Boyd's drug purchases as irrelevant, the judge agreed.

"I can't say any more?" Mrs. Boyd asked, according to the trial transcript.

"There's no question for you to answer, Mrs. Boyd," the judge replied.

"Well, this isn't irrelevant," she persisted, telling the judge she was there not just for herself but her late husband, William. "And I hate to see him turn over in his grave. . . ."

"I don't know how this case is going to wash out," Judge Battey said. "But it's not going to wash out based on sympathy, because it's going to be decided under the rule of law which I have also taken an oath to follow. So with that in mind, Mrs. Boyd, you are excused."

At a recent meeting of the bingo club, retirees and widows of retirees sit around folding tables in the basement of the Labor Temple. They recite the trade unionists' pledge to buy union-made goods, and note a letter from a local food pantry thanking them for the donation of food and $7. And they play game after game of bingo, continuing until everyone has won at least one package of Morrell lunch meat.

They also hear Mr. Aning's monthly report on the litigation. The news on this cold winter day is that a decision has been delayed again, probably till late spring. That's fine with Gerrit Zwak, the bingo club's president. He says a prescription for his wife's heart drug costs $105, and the company wants retirees to pay 20% to 30% of that, instead of the current $2 flat fee. "We'd better be thankful every day and every month that we can keep it the way it is," Mr. Zwak says.

### A Different View

In their offices in a new skyscraper overlooking downtown Chicago, Morrell's lawyers take a different view. When a company pares retiree benefits, "it's following its obligations under the documents," says Mr. Melbinger. He says providing the benefits "was a nice thing for the company to do, but I don't believe it's why you were there." The alternative, adds Mr. Boies, "may be a bankrupt company and no coverage." Mr. Melbinger says that if Chiquita gets a favorable decision from the judge, it might seek larger cuts.

There's little doubt other companies will continue to seek ways to cut retiree benefits as well. George Wagoner of the William M. Mercer consulting firm predicts a "second wave" of cutbacks later this year as companies seek to match the cost-cutting of competitors. Then another round is likely by 1995, when smaller employers have to follow the new accounting rules on retiree costs that major companies had to adopt this year.

To smooth the way, consultants and lawyers tell employers to clearly state in writing that retirement benefits are subject to change or elimination. Mr. Melbinger of McDermott Will says the law firm is advising companies to speed up their decisions. The firm fears that publicity over cutbacks might prompt Congress to try to require vesting of retiree medical benefits, much as current law seeks to enforce some pension promises.

TUESDAY, MAY 4, 1993

**RETIREES PAY MORE:** Out-of-pocket contributions by retirees who help pay for employer-sponsored health insurance rose an average of 21% last year, says consulting firm Wyatt Co. A retired worker and spouse under age 65 paid an average of $1,932 of their total $4,596 cost. Retirees over 65, who qualify for Medicare, paid an average of $864 of their $2,424 bill.

# Accounting Rule Erodes Profits—and Retiree Benefit Promises

By Philip I. Rosenbaum
Associated Press

NEW YORK—Financial Accounting Standard 106. The name might mean nothing to you, but if you're a retiree or will be someday, this new accounting rule can pack a powerful punch.

Aimed at making investors more aware of company obligations to provide health benefits for future retir-ees, the rule has prompted many big corporations to :rim or even kill retiree plans once considered un-:ouchable.

To comply with the rule, companies must subtract 'rom their profits the estimated future costs of provid-ng health benefits to retirees. Previously, companies ›nly had to account for the costs as they were incurred.

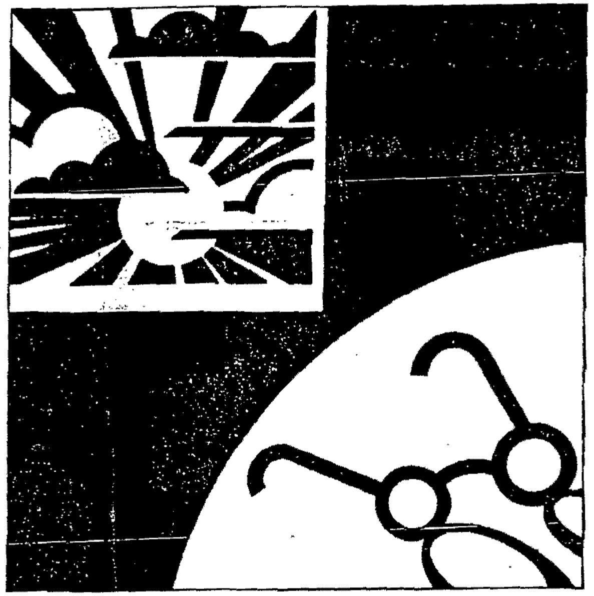
In effect, the rule will cut into companies' reported :arnings, hurting their overall financial picture.

"We're seeing a lot of companies looking for ways to .nload the liability of the rule," said Mike Clowes, ditor of Pensions and Investments, a twice-monthly ublication.

Many firms are trying to lessen the impact by :educing their insurance coverage for workers. Some re asking workers to pay higher premiums and deduct-›les or are offering less coverage for new workers. 'thers are eliminating benefits for retirees altogether.

In early November, computer maker Unisys Corp. ıid it will phase out health insurance for retirees by 996, saving $100 million a year.

McDonnell Douglas Corp., a leading defense con-actor, said recently it would phase out health :nefits for salaried retirees after four years. That ove was expected to halve the costs created by the :w rule.



International Business Machines Corp., which took a one-time bookkeeping charge of $2.3 billion against earnings in the first quarter of 1991 to account for the rule's impact, is making retirees pay a greater share of the costs of their benefits.

Navistar International Corp., a large truckmaker, recently negotiated a deal with the United Auto Workers that would slash medical benefits for 40,000 retirees in exchange for giving the retirees a large stake in the company.

Retired workers from some companies, including McDonnell Douglas and Unisys, have sued former employers on grounds that the change violates contract promises.

Cathy Ventrell-Monsees, a manager of worker equity at the American Association of Retired Persons, said companies are unfairly using the rule as a reason to cut benefits to retired workers.

"Theoretically, it should have no relationship to the benefits the companies provide because they've had the benefits obligation all along," she said. "We look at it as if they're using FAS 106 as an excuse or a scapegoat."

Dale Yamamoto of Hewitt Associates, a benefits consulting firm in Lincolnshire, Ill., said the rule is accelerating a new era of austerity among companies trying to get more control over health insurance, one of their most rapidly escalating costs.

"The companies making cuts eventually would have done so anyway. The rule is just speeding it up in some cases," Yamamoto said.

A recent survey by the consulting firm Foster Higgins Inc. found 65 percent of employers offering retiree health care benefits either have changed their programs within the past two years, or intend to make changes by the end of 1993.

The most common reforms were raising premiums, increasing cost-sharing provisions, or moving to managed-care programs, a more affordable alternative in which workers choose doctors from a list provided by their employer.

Hewitt found in a survey that the bottom-line cost created by the rule ranges from $1 million for small businesses to more than $8 billion for the larger and older companies with the most retirees. General Motors Corp., the biggest U.S. company, has retiree obligations exceeding $20 billion.

The Financial Accounting Standards Board, the government-sanctioned body that creates rules for corporate accounting, wrote Rule 106 to rectify the history of underestimating retiree obligations. Shareholders in many companies simply don't know these obligations exist.

For IBM and hundreds of other big companies that can afford it, the most logical choice has been to account for the costs in one lump sum, which is reflected in a bookkeeping transaction known as a charge against earnings.

Upjohn Co., for example, said this week it will take a $224 million charge in the fourth quarter to cover costs associated with the new rule. Amoco Corp. said it will take an estimated $850 million fourth-quarter charge.

Earlier in December, Ford Motor Co. said it would take charges of nearly $7.7 billion against 1992 earnings, mostly to account for the new rule.

In November, Reynolds Metals Co. said its 1992 results will be reduced by $827 million, largely because of the accounting rule.

An alternative under the new rule is to spread out accounting for the retiree benefit costs over 20 years, but it's not clear how many will do that. Hewitt said a survey of 72 companies indicated that most expect to account for the full obligation in one step.

"They want to get it all out of the way in year one and not taint the future years thereafter," said Vince Amorosa, an accountant with KPMG Peat Marwick in Washington.

Many companies have been scrambling to comply before Friday, when most corporate fiscal calendars begin. However, the majority of companies will not adopt the rule until 1993, postponing the impact on their financial statements as long as possible, the Hewitt survey found.

The New York Times

July 10, 1993

# Health Limbo for Early Retirees

By MILT FREUDENHEIM

The White House is consulting with business and labor groups on measures that would assure medical coverage for millions of workers who retire before they are eligible for Federal Medicare insurance.

Although no decisions have been made on how to pay for care for either active or retired workers under the proposed national health-care plan, Clinton Administration officials are discussing ways of raising money for the program, according to people who attended meetings in the last 10 days with Ira Magaziner, the White House health-care adviser.

Some large industries, including auto makers, as well as the A.F.L.-C.I.O., prefer an income-based payroll tax, these people said, while other industries were more receptive to paying a flat premium per employee, and some employers wanted the costs paid from general tax revenues.

**Other Possibilities**

Ceilings on the tax or premium payments, reduced charges for small businesses and special treatment for low-income employees are also being considered.

Under the Administration plan, people who retire before age 65 could join regional alliances of health-care consumers; these groups presumably could buy health coverage at favorable prices.

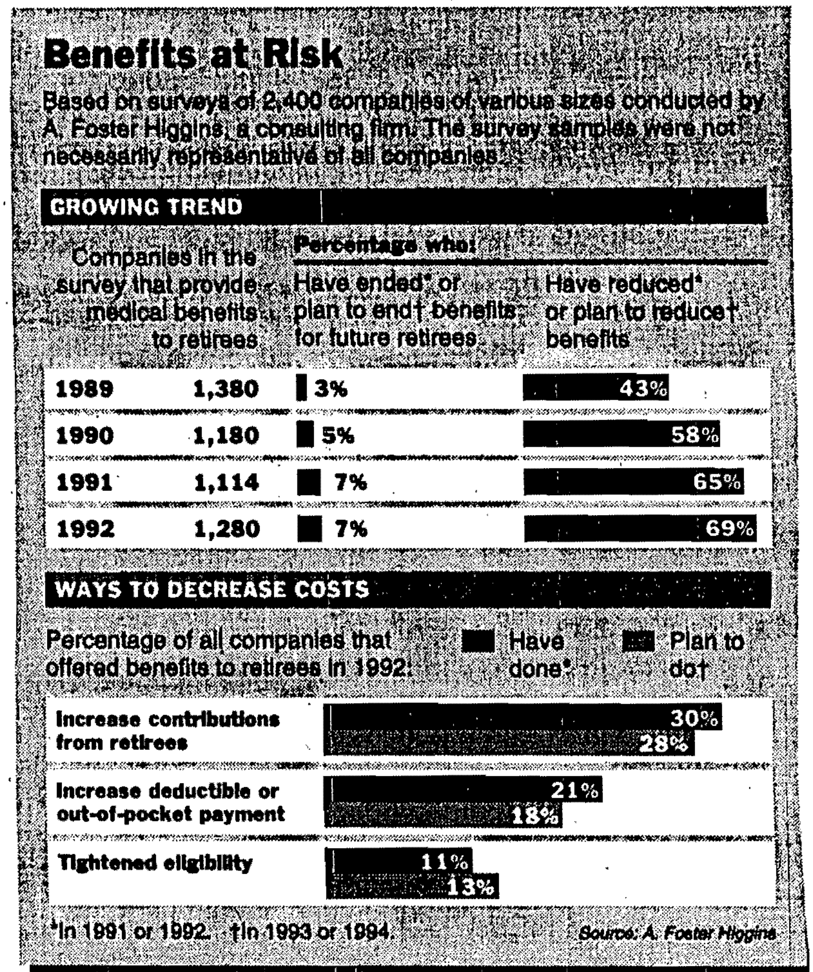
With the cost of medical care climbing, many companies are requiring retirees to pay a growing share of their own health costs, which have been rising faster than general inflation for years. Some companies have announced that they will eliminate retiree coverage.

Administration officials and members of Congress said in interviews that protecting retirees would be essential in securing support for the Administration's program of sweeping changes in health care.

"It is critical to include retirees, including those who are eligible for Medicare, in reform of the system," said Dr. Mary Jane England, president of the Washington Business Group on Health, an association of 200 large employers.

Claire Hushbeck, an analyst with the American Association of Retired Persons, said that protecting retirees' benefits was an issue that worried mainstream Americans. "Mom and dad and the next-door neighbors, people who basically did everything right all along the way, are at risk of losing their health benefits," she said.

Indeed, the General Accounting Office, in a report issued yesterday to a House subcommittee on small-busi-



The New York Times

Continued on Page 51



# Early Retirees Are Often Left in Limbo on Health Care

Continued From First Business Page

ness regulation, stated that "retiree health benefits are not secure." It noted that an employer's right to reduce retiree benefits had been upheld in a number of court cases.

The subcommittee chairman, Representative Ron Wyden, Democrat of Oregon, said retiree coverage should be part of a "basic benefits package" that all employers must provide.

**Variation in Reactions**

Sharon Canner, a health policy expert at the National Association of Manufacturers, said employers' views on the issue varied widely.

"It depends on the industry, high wage or low wage, the markets they are competing in, health costs, geography," she said. "High-tech industries with fewer retirees are more likely to lean toward a flat premium. Autos is likely to favor a payroll tax."

## Who should pay in the years before Medicare begins?

Depending on the financing setup of the Administration plan, costs might be reduced for employers like the auto makers that have many older workers and retirees.

Unions generally favor a payroll tax based on a percentage of income. "It would be one of the fairest ways to get the money," said John J. Sweeney, president of the Service Employees International Union.

**Rapidly Rising Figure**

Employers currently have a $412 billion liability for retiree medical benefits, the General Accounting Office said, up from $227 billion in 1989. Rising medical costs and the aging population have swelled the total, said Donald C. Snyder, an assistant director of the G.A.O.

At least four million Americans between the ages of 55 and 64 consider themselves retired, and three million retirees under 65 and their spouses are now receiving retiree health benefits. The report said future retirees would have less employer-provided coverage.

Medical expenses are often a problem for people over age 55, who are not eligible for Medicare. Many are rejected by private insurers because of health problems and many cannot afford insurance premiums anyway. "This is a vulnerable age group," said Senator Donald W. Riegle Jr., Democrat of Michigan.

Mr. Magaziner discussed the retiree health issue on Thursday with executives of some of the nation's largest companies at the National Association of Manufacturers office [illegible] Washington. He met with labor u[illegible] officials last Friday. Both groups [illegible]comed the Administration's inte[illegible] in the retiree issue.

"It is to their credit that they [illegible] trying to solve the issue," said Ka[illegible] Ignagni, the head of the A.F.L.-C.[illegible] employee benefits department.

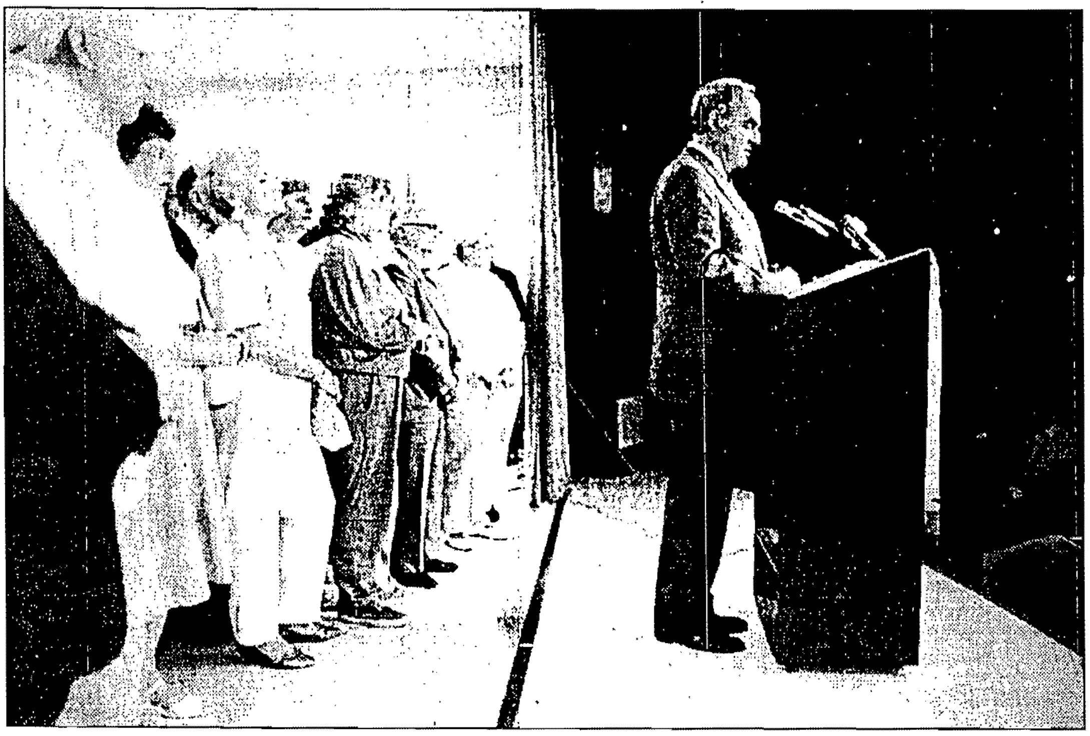
Walter B. Maher, a health po[illegible] spokesman in Washington for [illegible] Chrysler Corporation, said that m[illegible]ufacturers that offer health bene[illegible] "are bearing a disproportion[illegible] share of American health costs" [illegible] that hurts their ability to comp[illegible] with companies in foreign count[illegible] where more health expenses are [illegible]ered by governments.

Ms. Canner of the National Ass[illegible]ation of Manufacturers pointed [illegible] that while mature industries like [illegible]tos "were getting the biggest hit" [illegible] retiree costs, "eventually all companies are going to be mature."

The Philadelphia Inquirer

Tuesday, July 20, 1993

## THE WORKPLACE



The Philadelphia Inquirer / BONNIE WELLER

**Sen. Harris Wofford** announces his retiree medical-benefits bill. He invited Unisys retirees, including some who joined him on stage at the Philadelphia Senior Center.

# Pa. senator seeks to slow retiree health-plan cuts

*Wofford's bill would make it harder for firms to end benefits.*

By Andrea Knox
INQUIRER STAFF WRITER

Companies would find it tougher to cut retiree medical benefits under legislation to be introduced today by Sen. Harris Wofford (D., Pa.).

Under the bill, an employer could not reduce or terminate benefits while such a change was under challenge in the courts.

In addition, courts would be instructed not to allow reduction or termination of retiree health benefits unless the benefit plan clearly stated the employer's right to make such changes.

The bill would "help retired workers maintain their promised health benefits in court . . . , and give companies second thoughts before trying to back out of their legal obligations," Wofford said yesterday at the Philadelphia Senior Center, where he described the proposed legislation.

The Wofford bill would not prevent employers from reducing or terminating retiree health benefits. However, it would tip the legal balance more toward retirees, according to Philadelphia lawyer Jerome Marcus. Marcus represents some former Unisys Corp. workers who are suing to keep the company from ending its contributions to retiree medical insurance.

Under the Wofford proposal, courts are less likely to consider "a single sentence on Page 127" of a benefit plan to be adequate notice that the plan might be changed, Marcus said.

Warnings now held by the courts to be sufficient might be ruled inadequate, Marcus said. The measure would apply to cases already in court, as well as any brought in the future.

The bill, to be offered as an amendment to the Employee Retirement Income Security Act (ERISA), was prompted by a wave of cuts in retiree medical plans in the last year.

Those were spurred, in turn, by a new require-

See **BENEFITS** on C7

The Philadelphia Inquirer

Tuesday, July 20, 1993

# Bill would curb cuts in retiree benefits

BENEFITS from C1

ment of the Financial Accounting Standards Board that companies estimate the future cost of all promised retiree medical benefits and carry that amount as a liability on their books. Most companies had never calculated that liability, and many were shocked to find it reaching hundreds of millions or even billions of dollars.

Although the calculation did not alter the companies' current medical costs, dozens of companies, including Unisys and Campbell Soup Co., reacted by deciding to reduce or terminate retiree health coverage.

For many retirees, the cost of replacing company-paid insurance would be thousands of dollars a year. Unisys, which said last fall that it would eliminate its contributions to retiree health care by 1996, said current premium costs were about $3,000 a year for each person not entitled to Medicare, and about $1,100 a year for the Medicare-eligible.

However, Unisys estimated that retirees could expect to pay as much as $4,000 a year per person by 1996 as costs rose.

In suits against Unisys, Campbell, Bethlehem Steel, General Motors and other companies, retirees have charged that they were promised orally or in writing that company-paid medical benefits would last for their lifetimes. In some cases, retirees said they took early retirement, which meant giving up the chance to fatten pension benefits by working longer, in part because they were promised lifetime medical benefits in return.

Courts have required employers to continue benefits in some cases and not in others, depending in part on how clearly a plan was worded, Marcus said.

Wofford described the proposed bill as a stopgap until Congress and the administration can craft a comprehensive health-care reform plan.

However, he predicted that creating such a plan would be "a tough, hard battle," and said retired workers had to be protected in the meantime.

At Wofford's invitation, several dozen Unisys retirees attended the announcement. Some sat in the audience, but about a dozen were arrayed behind him on the stage of the auditorium where he appeared.

One retiree who spoke at Wofford's behest, John Mkhailian of Hatboro, said medical-insurance payments would be greater than pension checks for some retirees. He estimated that medical insurance for him and his wife could reach $800 to $900 a month, adding that he was worried about what might happen if she outlived him.

"She is much younger than I am," he said. "If I die before she reaches 65," when Medicare coverage begins, "she would have very little left" to live on after paying for health insurance.

The Tribune

7-20-93

# Bill aims to protect retirees' benefits

By Laurie Casaday

TRIBUNE STAFF WRITER

> *Wofford said Monday he has broad support for his bill and expects it to pass.*

U.S. Sen. Harris Wofford, D-Pa., said he will annouce today a health care bill that protects benefits to retired workers.

Wofford made trips to Philadelphia and the Dunmore Senior Center Monday to announce his plan and answer questions.

The bill, he said, will ensure workers get what they've been promised — health care after they retire.

"You don't have to lose your job to lose your coverage," Wofford told the crowd in Dunmore. "All you have to do is retire from one.

"This bill will help retired workers maintain benefits ... and give companies second thoughts on backing out" of the benefits they promised workers.

Wofford said one recent study showed that 60 percent of companies "plan to reduce retiree health benefits. Others are cutting off those benefits entirely."

Wofford, who filled the seat left vacant by the death of Sen. John Heinz and retained his seat by defeating former Pennsylvania governor Richard Thornburgh in a special election in 1991, has been credited for pushing the issue of health care to the front pages.

Wofford said Monday he has broad support for his bill and expects it to pass.

He said when health care benefits are taken away from retirees, the cost is shifted to taxpayers because the elderly turn to Medicare and Medicaid.

Wofford said the answer is a comprehensive health care system that cares for every American. But, he admitted, creating that system won't be easy.

"There are special interests who will fight health care reform every step of the way," he said. "And our retired workers can't wait. And we can't let companies write them off."

Wofford said before a comprehensive health care package is passed he expects companies to try to get out of paying health care benefits for retirees.

The bill he plans to introduce today, he said, is a warning to those companies that they should not think of dumping retirees' benefits.

The senator said his bill, called the Retiree Health Benefits Protection Act, will help retired workers maintain their benefits in court "and give companies second thoughts before trying to back out of their legal obligations."

He said the bill will put the burden on the company to prove that their contracts "clearly permit cutbacks in retiree health benefits.

"And unlike the situation today in which retirees get left high and dry while lawyers argue, it would require those employers to continue paying benefits while the

U.S. Sen. Harris Wofford, D-Pa., visits the Dunmore Senior Center to explain his health care bill aimed at protecting benefits of retired workers. Wofford said he would introduce the legislation today in Washington. (Staff Photo by John

# Wofford plan would help retirees keep benefits

## Though only until system's reformed

by **Marc Meltzer**

*Daily News Staff Writer*

U.S. Sen. Harris Wofford said yesterday he is proposing a "stop-gap" measure in Congress to help retirees who lose their medical benefits as a result of corporate cost-cutting.

The freshman Pennsylvania Democrat, who brought together 25 Unisys Corp. retirees to share a stage at the Philadelphia Senior Center, said the legislation is necessary as "employers are unilaterally terminating or reducing benefits because of skyrocketing costs."

The proposal amends the federal Employee Retirement Income Security Act, which now allows the unilateral termination or reduction of retiree health benefits.

Wofford's proposed Retiree Health Benefits Protection Act would require courts to order employers to maintain benefits for retirees while lawsuits are pending; and requires companies to prove that their health plans allow for the termination or reduction of the benefits.

He said the legislation is designed to protect retirees from losing health coverage before a comprehensive health-care-reform plan takes effect.

He said health-care reform is essential to bringing those costs permanently under control.

Last November, Blue Bell-based Unisys announced a three-year plan to phase out premium payments for its retirees. The company said the move was essential to its survival.

"The new medical benefits payments that Unisys wants to assess the retirees would be a great hardship to many," said John Mkhalian, a retiree who spoke after Wofford. "To some of the retirees, this would not only use up their whole monthly check, it would mean that they would have to take money from their pockets to pay for the medical benefits that Unisys wants to take away from them."

Unisys retirees, who have filed 14 lawsuits against the company to halt the phase-out, said the company had promised in wage contracts and stated in agreements covering early retirement packages that the medical costs would be covered.

Retiree Robert Kennedy, a former union official at the company, said a court injunction has at least temporarily halted the company's plan to phase out the premium for the medical benefits.

Unisys declined to comment on the proposed legislation, citing the pending lawsuits.

Similar health-benefit cuts have been announced by other companies to escape financial squeezes caused by rising health-care costs, intense competitive pressures or new accounting requirements.

In a statement, Wofford cited a study by the consulting firm A. Foster Higgins that found two-thirds of U.S. companies plan to reduce retiree health benefits or shift more costs to retirees. ■

*Daily News wire services contributed to this report.*

PHILADELPHIA DAILY NEWS
THE PEOPLE PAPER
TUESDAY, JULY 20, 1993

The Washington Post

FRIDAY, JUNE 18, 1993

ABCDEFGJK

Harris Wofford

# Health Care Can't Wait

When should President Clinton present his health care reform proposals to Congress and the American people? The answer should be simple: Health care reform should be the next main order of business as soon as we complete action on the budget reconciliation bill.

Yet some are suggesting that health care reform is too complicated or controversial to take up right away. It can't be done this year, so wait until next year, slow down and take more time, runs one argument, made most often by those who want an excuse to do nothing. Another, more seductive, case for delay was made recently on this page by Robert Kuttner [op-ed, May 21], who argues that instead of seeking out bipartisan ground on health reform, President Clinton should set out an ambitious plan and refuse to make "fatal compromises." Then, he suggests, when Republicans block this popular idea, the president should take the issue to the country in the 1994 midterm elections, as I did in 1991 in my Senate race in Pennsylvania.

Kuttner calls this strategy the "Wofford gambit" to achieve the most far-reaching health care reform. But the "Wofford" in the strategy doesn't believe that health care reform can wait. Not for some supposedly more inviting moment, and certainly not for a political gambit. Too many critical factors demand action sooner rather than later.

First, our economy and budget can't afford a delay. The current debate over entitlement caps and deeper Medicare and Medicaid cutbacks is a case in point. Eighty-five percent of the increase in federal entitlement costs is in health programs such as Medicare and Medicaid. More than half the projected increase in the federal deficit over the next five years will come from increased health care costs unless we do something. Arbitrary caps and cutbacks treat the symptom instead of curing the illness. In fact, such caps or cutbacks would merely shift the "symptom" of rising costs onto the private sector or onto the states, many of which are necessarily moving forward with their own reforms. Their success—and ours in cutting the deficit or limiting tax increases and financing coverage of the uninsured—depends on the structure and cost controls of comprehensive reform.

Second, we have built momentum for change in the past two years that we shouldn't allow to dissipate. During my Senate campaign two years ago, the debate was *whether* to reform the health care system. Now the only serious debate is over *how* to do it.

*Because of the cost of medical care, companies aren't hiring new workers.*

It's true that interest groups historically opposed to health care reform are now spending millions advertising and lobbying for their own versions of such reform. But rather than merely condemning this spectacle, let's recognize the progress it symbolizes and the degree of consensus that has developed on many key points. Insurance companies, hospitals, doctors and drug manufacturers have joined consumers calling for universal coverage, an end to "preexisting condition" exclusions and a limit on ever-increasing costs.

Of course, this is a case of enlightened self-interest coming to the fore. Many groups see the train pulling out of the station, and their choice is to hop on board or lie on the tracks and get run over. We must capitalize on this momentum by moving the debate to resolution rather than waiting any longer.

Third, delay ignores the hardships that the health care crisis is imposing on American families and companies. Of course, it's nice to read how, as Kuttner puts it, my 1991 election "instantly placed health reform center stage and transformed the presidential dynamics for 1992." But health care is a defining issue of our time not because of an election but because Americans are seeing their costs increase and their benefits shrink. Because of health care costs, companies aren't hiring new workers. Retirees are seeing their promised benefits become broken promises. And 100,000 more Americans are losing health care coverage each month. For all these reasons and many more, delay is unacceptable.

Fourth, Kuttner argues against compromise as part of his plan for positioning the issue for the 1994 elections. But he is wrong to suggest that all compromises are "fatal." On the contrary, failure to compromise will lead to further delay. Indeed, some compromises may actually improve the substance of reform.

With citizen frustration over political gridlock at an all-time high, no one will gain from turning health care into a partisan football. There are Republicans in Congress who care deeply about health reform and whose views are not very far from where the president seems headed. We need to reach out, as Hillary Clinton has been doing, to build the broadest possible coalition for action.

I agree with Kuttner that those who oppose comprehensive reform will find themselves on the wrong side of history. But voters won't reward either party for continuing the partisan bickering that has prevented action on so many of the problems people face in their daily lives. And if, despite our best efforts, we are blocked from achieving real reform before next year, there will be time enough to turn the 1994 campaign into another referendum.

*The writer is a Democratic senator from Pennsylvania.*

Pittsburgh Post-Gazette

JULY 25, 1993



THE REGION

# Wofford campaigns for health benefits

By Mark Belko
Post-Gazette Staff Writer

Martha Dillon always trusted employers to do the right thing, so much so that her husband dubbed her a "company man."

No more.

As Dillon addressed U.S. Sen. Harris Wofford during a discussion in Turtle Creek yesterday, she sounded more Cesar Chavez than Andrew Carnegie.

"I always thought companies were decent people, but now I'm getting to have a different opinion," she said. "It's just plain greed."

What got Dillon going was the move by some companies to eliminate health benefits for retirees, leaving those on pensions the choice of having no insurance or paying high premiums themselves.

Wofford introduced legislation in Washington Tuesday that would make it tougher for corporations to cut back on or eliminate retirees' health care benefits.

The legislation would require employers to maintain health care benefits during litigation brought by employees to stop cutbacks. In cases where the language of a health plan is ambiguous, it would put the burden on employers to show that provisions of the plan allow benefits to be cut.

Wofford, D-Pa., went to Turtle Creek, once a busy steel and manufacturing center, to drum up support for his measure and to learn more about the problems retirees are facing.

He was not disappointed.

One by one, retirees and their spouses — there were 12 people in the round table — discussed the problems they were having trying to maintain the benefits they were promised.

Most of them did not experience the elimination of benefits. Most said they had had to absorb premium increases or other changes imposed by their former employers and now worried that the next step would be full elimination.

Dillon's husband, Regis, for example, retired from Westinghouse Air Brake and had been paying $4.50 per month per person for company-supplied health insurance.

In October 1992, he and other retirees were informed by American Standard Inc., WABCO's successor company, that the cost would increase to $29.50 a month per person this year. Some are suing to stop the increase.

Among the others attending yesterday's session were Melvin and Ilene Spector of White Oak, who were the subjects of a Senate speech Wofford gave last week on the need for his benefits legislation.

After taking an early retirement from Allegheny International in 1987, Spector, 62, learned in June that his medical and life insurance benefits — part of the sweetened retirement package — were being eliminated this month.

Spector, who estimated that it would cost him $8,000 a year to pay for medical benefits for himself and his wife, is now among about 2,000 AI retirees who have filed a suit against their former employer.

Wofford said that unless companies were prevented from reducing or eliminating benefits, the practice would spread "like wildfire" as costs climbed and as companies sought to end benefits in anticipation of national health insurance. In some cases, he added, companies are pitting retirees against present workers in a competition for benefits.

Wofford called his legislation a "stopgap measure" designed to protect retirees until a comprehensive national health care program could be enacted. He called the fight for national health care, expected to begin in earnest in Congress after Labor Day, "probably the biggest political battle since the civil rights laws of the '60s."

Wofford's legislation and other proposed revisions in the Employee Retirement Income Security Act of 1974 already have critics.

One industry representative said that since the retirees' plans were voluntary, employers would be less likely to set them up if the government made them difficult to operate and fund.