

deductibles, or capping the employers' expenditures for coverage.

Several current and developing market, legal, and demographic factors may contribute to a further decline in employer-sponsored retiree health benefits. These factors include—

- A resumption of health insurance premiums rising at a rate faster than general inflation;
- Proposed changes in Medicare coverage, such as adding a new prescription drug benefit, that could affect the costs and design of employers supplemental health benefits for Medicare-eligible retirees;
- A recent circuit court ruling allowing claims of violations of federal age discrimination law when employers make distinctions in health benefits they offer retirees on the basis of Medicare eligibility; and
- The movement of the baby boom generation into retirement age, leading some employers to have a growing number of retirees relative to active workers.

Retirees whose former employers reduce or eliminate health benefits often face limited or unaffordable alternatives to obtaining coverage. Retirees may purchase coverage on their own—either individual insurance policies for those under age 65 or Medicare supplemental plans for those age 65 or older. However, despite federal laws that guarantee access to some individual insurance policies to certain individuals who lose group coverage, retirees' ages and often poorer health status combine to make individually purchased health insurance expensive. For example, the majority of states do not restrict the price of premiums that carriers may charge individuals who purchase individual insurance policies. Thus, carriers in these states may charge 60-year-old males a monthly premium close to 4 times higher than what they charge 30-year-old males, and there may be an even bigger difference if the older individual is not healthy. Similarly, the number of Medicare supplemental plans that federal law guarantees to retirees over 65 whose employers eliminate coverage is limited, and they do not include coverage for benefits such as prescription drugs. Thus, retirees seeking alternative coverage could receive less comprehensive coverage and pay more for it than they had previously.

The findings of the GAO report were supported and expanded upon by the Employee Benefit Research Institute (EBRI) Issue Brief Number 236, "Retiree Health Benefits: Trends and Outlook," authored by Paul Fronstin in August

2001. The Issue Brief reported that employers had taken various actions in response to SFAS 106, including placing caps on the employers' expenditures, changing age and service requirements, and moving to "defined contribution" health benefits. Some employers dropped all retiree health benefits for future retirees and other employers dropped benefits for current retirees' coverage, though this action occurred less often than did other changes. Regarding future trends, EBRI found the following:

While the changes employers have made to retiree health benefits do not appear to be having much impact on current retirees, they are likely to be felt most by future retirees who have not yet or may never become eligible for retiree health benefits because the courts have ruled that an employer has a right to terminate or amend retiree health benefits only if it has proved that such a right has been reserved or stated in specific language and on a widely known basis.

The EBRI Issue Brief also remarked that many early retirees, ages 55–64, who were not covered by employment-based retiree health insurance, had difficulty finding affordable insurance. This observation helped to explain the report's finding that—

By law, employers are under no obligation to provide retiree health benefits, except to current retirees who can prove that they were previously promised a specific benefit. Between 1994 and 1999, retirees ages 55–64 experienced an increase in the likelihood of being uninsured, but, as mentioned above, the percentage of retirees covered by health benefits through a former employer or union was unchanged (although as is shown below, current retirees have seen increases in their share of health insurance premiums). In addition, the likelihood of an early retiree having health insurance through his or her own spouse increased. An erosion of public health insurance and health insurance purchased directly from an insurer accounts for the increase in the uninsured.

The courts continue to find that an employer has a right to terminate or amend retiree health benefits if such a right has been reserved or stated in specific language and on a widely known basis. In *Hughes v. 3M Retiree Medical Plan* (2002 CA8), 2002 WL 276767, the Eighth Circuit held that an employee booklet describing a retiree health plan did not create a "lifetime" benefit because the summary plan description was silent as to vesting. The Court also noted that the benefit booklet contained the statement that "[t]he company hopes and expects to continue these plans indefinitely, but reserves the right to amend or discontinue them, subject to collective bargaining as required."

A recent study by a joint project of the Kaiser Family Foundation, the Commonwealth Fund, and the Health Research & Education Trust found not only that the number of employers who sponsor retiree health plans is continuing to decline, but that those plan sponsors who are continuing their retiree health plans are considering shifting more of the cost to the retirees. Mark A. Hoffmann, writing for "Business Insurance" on April 17, 2002, reported the following:

The percentage of employers offering retiree health care coverage is continuing to drop, according to a survey released earlier this week.

Only 34% of U.S. companies with 200 or more employees offered health care coverage to Medicare-eligible retirees in 2001, down from 37% in 2000 and 41% in 1999, according to the study, titled "Erosion of Private Health Care Insurance Coverage for Retirees."

The study... also found that Medicare-age retirees, on average, pay 26% of the total cost of their health care premiums, compared with 13% paid by active workers in the same firms.

"By 2001, numerous warning signs indicate that, although few employers are dropping coverage altogether, many say they plan to make changes that shift a greater share of costs to retirees, by raising premium contributions and imposing greater cost-sharing requirements for benefits such as prescription drugs," the report states.

As did the EBRI Issue Brief, the study found that while retiree health coverage will probably continue to be provided for current retirees, the prospect of retiree health coverage for future retirees is less certain. The survey made the following observation:

Yet, just 4% of companies offering retiree coverage say they are likely to eliminate that coverage entirely in the next two years. Seven percent of firms say it's likely they will eliminate retiree benefits for new employees or for existing workers who have not yet retired.

However, while no jumbo firms indicate they would eliminate retiree health coverage entirely, 11% say they are likely to eliminate them for new employees or existing workers who have not yet retired.

The staff reviewed copies of post-retirement benefit documents and plan descriptions of several defense contractors. At the request of the CAS Board staff, the Defense Contract Audit Agency (DCAA) provided these copies from their contract files after obtaining permission from the contractors to release these proprietary materials for review by the Board and its staff in their deliberation on this case. While the details and the benefits provided by these plans were quite varied among the plan documents, the provisions of these plans were consistent with the general description of post-retirement benefit