

ALSTON & BIRD



Health Care Legislative Update and Outlook

NCCMP Annual Conference

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Agenda

Pre-Season

- Planning ahead
- Assessing risks and opportunities, setting priorities

Regular Season Recap

- Activity to date

Post-Season

- Current state of play and what's next



Pre-Season: Planning Ahead

- Preserve employment-based health plans, particularly multiemployer plans
- Don't shift costs to private plans
- Preserve ERISA preemption
- No taxes on employees' health benefits or health plans
- Provide a level playing field for contributing employers (i.e., do not provide a competitive advantage to employers that do not offer health coverage)
- Adopt meaningful steps to reduce health care costs
- Avoid imposing unnecessary costs and burdens
- Respect the collective bargaining process through which multiemployer plans operate
- The details matter: consider the structure of multiemployer plans as technical details are developed



Regular Season: Activity to date -- COBRA premium subsidies

- **March – April 2020 -- Swift action on multiple bi-partisan relief bills (est. cost \$2.4 trillion)**
 - Supplemental Appropriations Act
 - Families First Coronavirus Relief Act (FFCRA)
 - CARES Act
 - Paycheck Protection Act
- **May 15, 2020 - House passes the HEROES Act (est. cost \$3.4 trillion)**
 - 100% COBRA subsidy if coverage lost due to a termination of employment (other than voluntary) or significant reduction in hours
 - Up to 11 months (March 1, 2020-Jan. 31, 2021)
- **July 27: Senate GOP releases the HEALS Act (est. cost \$1.1 trillion)**
- **Sept. 10: Senate votes on and fails to advance GOP “skinny bill” (\$650 billion est. cost)**
- **Oct. 1: House passes “HEROES II” (\$2.2 trillion est. cost)**
 - **COBRA subsidies not included**
- **Dec. 27, 2020: Consolidated Appropriations Act, 2021 signed into law; no COBRA subsidies**



COBRA Subsidies – 2021 is a whole new ballgame

American Rescue Plan Act

- House Action
 - Introduced Feb. 24, 2021, Passed the House Feb 27, 2021
 - 85% COBRA subsidy
- Senate Action
 - Passed in Senate 3/06/21
 - 100% COBRA subsidy
- House passes Senate version March 10, 2021
- Signed into law: March 11, 2021
 - 100% COBRA subsidy, April 1, 2021 through Sept. 30, 2021
- NCCMP involvement:
 - Partnered with other stakeholders on efforts to secure the subsidies
 - Key voice on issues specific to multiemployer plans



The No Surprises Act

- Enacted on Dec. 27, 2021; generally effective for plan years beginning on/after Jan. 1, 2022
- Three main provisions:
 - Protects plan participants from surprise medical bills for emergency services, certain services by OON providers at an in-network facility, and air ambulance services
 - Imposes new requirements on plans, including notice requirements and the rules for determining participant cost sharing
 - Provides a mechanism for resolving the remainder of the bill between the provider and the plan
- NCCMP involvement
 - Pre-enactment: engagement with Congress dating back to 2019, including with the House Ways and Means and Energy and Commerce Committees and Senate HELP Committee, and partnering with other stakeholders
 - Post-enactment: pre-rulemaking engagement with the regulators; formal comments
 - Key points: help control medical cost inflation and limit administrative costs/burdens



Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance Issues

- New requirement for a comparative analysis of Nonquantitative Treatment Limitations (NQTLs)
 - Added by the No Surprises Act
 - Effective Feb. 10, 2021 (45 days after the date of enactment)
- Pending legislation will increase DOL enforcement tools
 - Reconciliation provisions from House Education and Labor Committee will authorize DOL to impose civil penalties of up to \$100 per day per violation for MHPAEA violations
 - Currently, if violations are found, claims are re-run and adjusted to correct amount
- NCCMP activity regarding comparative analysis and MHPAEA audits
 - Formal comments
 - Meeting with Department of Labor on compliance/audit issues
 - Key points:
 - Need for more guidance
 - Possible changes to the audit process, including reasonable documentation requests and timeframes for responses



Current State of Play and What's Next



Budget Reconciliation: Rx Proposals

■ Drug Price Negotiation

- HHS will identify 250 brand-name drugs that lack price competition
- HHS will negotiate prices for at least 25 drugs in 2025, and at least 50 drugs thereafter
- The negotiated “Maximum Fair Price” will be based on average international market price
- The negotiated rate applies to Medicare ***and also to group health plans (unless the plan opts out)***. Similarly applies to individual market plans, subject to opt-out. Cost-sharing will be based on the negotiated price (for plans that do not opt-out).

■ Inflation Rebates

- Requires drug manufacturers to pay a rebate to the federal government if prices increase faster than inflation, starting in 2023
- The amount of the rebate takes into account not only Medicare, but also **group health plans** and commercial market generally

■ Part D Redesign

- Including other changes, sets annual out-of-pocket limit for Rx at \$2,000 beginning in 2024



Rx Proposals – State of Play

- House:
 - Identical Rx provisions were considered by Ways and Means and Energy & Commerce
 - WM passed the provisions; E&C did not
 - Failure of E&C to pass sets up a negotiation for what might be included in a final package
- Senate Finance also is considering Rx proposals
- Negotiations with House and Senate leadership and WH will ultimately decide
- Reconciliation process restrictions (the “Byrd rule”) in the Senate may be an issue, particularly with respect to applying negotiated prices to private plans.



A couple of other issues...



Thank you!
Questions?