

ALSTON & BIRD



Health Care Legislative Update and Outlook

NCCMP Lawyers and Administrators Meeting

National Press Club

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Carolyn E. Smith - Alston & Bird





Agenda

- **Setting the Stage**
- **NCCMP Approach**
- **Specific Issues**
- **Potential Vehicles for Further Legislation**



NCCMP Guiding Principles

- Preserve employment-based health plans, particularly multiemployer plans
- Don't shift costs to private plans
- Preserve ERISA preemption, including with respect to state initiatives that would tax multiemployer plans
- No taxes on employees' health benefits or health plans
- Provide a level playing field for contributing employers (conversely, 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



Specific Issue Areas



MHPAEA

- DOL civil penalty (House-passed BBA)
 - Allows DOL to impose a civil penalty for MHPAEA violations
 - \$100 per day per each impacted participant or beneficiary
 - Effective beginning 1 year after date of enactment (DOE)
- President's Budget
 - “The President’s fiscal year 2023 (FY23) budget will propose that all health plans cover robust behavioral health services with an adequate network of providers, including three behavioral health visits each year without cost-sharing.”
 - Expand access to tele- and virtual mental health care options
- Substantial Hill Activity
 - Example: Senate Finance Committee bi-partisan examination of mental health issues, with a goal of bi-partisan legislation this summer
- Outlook: There is considerable bi-partisan interest in mental and substance abuse issues and parity



Rx Pricing

BBB Act (Housed-passed)

- HHS Drug Price Negotiation
 - Starting in 2025, HHS to negotiate prices for certain single source drugs that lack price competition
 - HHS to identify 100 drugs for possible price negotiation
 - HHS to negotiate prices for up to 10 drugs in 2025, 15 in 2026 and 2027, and 20 thereafter
 - ***Negotiated prices would apply only to Medicare, not to private sector plans***
- Inflation Rebates
 - Requires drug manufacturers to pay a rebate to the federal government if prices increase faster than inflation
 - The amount of the rebate takes into account not only drugs provided through Medicare, but also ***group health plans*** and commercial market generally
- Part D Redesign
 - Sets annual out-of-pocket limit for Rx at \$2,000 beginning in 2024, as well as other changes



Rx Pricing (cont.)

- Senate Finance Committee Chair Ron Wyden (D-OR) core principles:
 1. Medicare must have the authority to negotiate with pharmaceutical companies, especially when competition and market practices are not keeping prices in check.
 2. American consumers must pay less at the pharmacy counter.
 3. Prices of drugs that increase faster than inflation will not be subsidized by patients and taxpayers.
 4. *Drug pricing reforms that keep prices and patient costs in check should extend beyond Medicare to all Americans, **including those covered by employer and commercial health plans.***
 5. Drug pricing reforms should reward scientific innovation, not patent games.

- NCCMP position: Any cost reduction measures should apply to group health plans, and not shift costs from governmental plans to private plans

- Outlook: Bi-partisan agreement unlikely; maybe limited proposals if BBB/reconciliation bill moves



Cost-Sharing Limits for Insulin

- BBA (House-passed)
 - Group health plans must cover at least one of each dosage form of each different type of insulin
 - Cannot apply any deductible
 - Other cost sharing (for a 30-day supply) is limited to the lesser of: \$35 or 25% of the negotiated price under the plan
 - Effective for plan years beginning on/after Jan. 1, 2024
- Similar stand-alone bills have been introduced in Senate and House
 - Affordable Insulin Now Act



Affordability Provisions (BBB House Passed)

- Changes how affordability is determined for employer pay-or-play penalties
 - Reduces threshold to 8.5% for 2022 through 2025
 - Threshold for 2021 is 9.83%; threshold for 2022 will be 9.61% under current law; indexing of the 8.5% threshold will begin in 2027
 - This change is related to provisions expanding access to the premium tax credit
- Outlook: Bi-partisan legislation unlikely; watch for regulations changing affordability standard for premium tax credits and any impact on the penalty provisions



Paid Leave – BBB (House Passed)

- Federally-funded and administered paid leave program funded by general revenues; not an employer mandate
 - 4 weeks per 12-month period for various reasons, including sickness and caregiving
 - “Legacy” states with existing programs eligible for a federal grant for the cost of the leave
 - No preemption of state leave laws (but no federal grant money for new laws)
 - Employers that maintain their own leave programs eligible for a credit
 - Credit applies for leave provided through insurance, ***through a multiemployer plan*** or by the employer on a self-funded basis
- Outlook:
- Action on a paid leave proposal of this type unlikely; there is some bi-partisan interest but not in this type of plan
 - In the absence of a federal program, more states likely to adopt their own laws



House Republican Healthy Future Tax Force

- Goal is to draft an agenda for the future
- Five subcommittees
 - Security (supply chain and pandemic preparedness)
 - Affordability
 - Treatment
 - Doctor/patient relationship subcommittee
 - Modernization



Possible Legislative Vehicles



Questions?

Thank You!