

# ALSTON & BIRD



## Health Care Legislative Update and Outlook

NCCMP Annual Conference

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# Agenda

- Guiding principles for evaluating legislation and regulations
- Mental Health Parity and Addiction Equity Act Issues
  - Inflation Reduction Act and otherwise
- Inflation Reduction Act
- Looking ahead



## Guiding Principles

Since 1974, the NCCMP's mission has remained constant: *“to assure an environment in which multiemployer benefit plans can continue in their vital role of providing retirement security and health and welfare benefits to working Americans and their families through negotiated benefits with a minimum of regulatory or other interference.”*



## Specific Guiding Principles on Health Care Issues

- 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 a technical details are developed



# **MENTAL HEALTH PARITY and ADDICTION EQUITY ACT (Inflation Reduction Act and Otherwise)**



# Mental Health Parity and Addiction Equity Act (MHPAEA): Inflation Reduction Act

- **House-passed Build Back Better Act (BBB):** Authorized DOL to impose civil penalties of up to \$100 per day per violation for MHPAEA violations, in addition to other sanctions (typical sanction is re-determining claims)
- **NCCMP position**
  - Plans are committed to compliance with MHPAEA and providing high quality benefits.
  - Additional penalties is not the road to compliance. Additional guidance from DOL is needed.
  - Other stakeholders have similar position.
- **Inflation Reduction Act**
  - This provision was *not included* in the Inflation Reduction Act.



# HR 7780, “Mental Health Matters Act”

- Approved by the House Committee on Education and Labor (on party lines), on May 18, 2022.
- NCCMP actively engaged with the Committee on the bill.
- Provisions that give discretionary authority to interpret the plan are prohibited, ***other than in the case of multiemployer plans.***
- Other areas of concern remain:
  - Prohibition against arbitration clauses
  - Expansion of enforcement and sanctions with respect to mental health parity issues
  - Very broad and vague language



## MHPAEA: Looking Forward

- Key NCCMP priority
- NCCMP is continuing to work with the DOL, HHS, and the IRS, including as part of a coalition effort, to obtain additional guidance
- NCCMP is continuing to monitor and engage on legislative proposals





# INFLATION REDUCTION ACT



# Rx Drug Pricing Provisions

- **Two key provisions**
  - Require HHS to negotiate prices for certain high-cost drugs
  - Require drug manufacturers to pay an “inflation rebate” to the federal government if the price of the drug increases faster than inflation
- **NCCMP position**
  - Any provisions aimed at drug price reduction should include private sector sales to prevent cost shifting from governmental plans to private plans.
  - This position is shared by other stakeholders.
- **Inflation Reduction Act**
  - Various earlier versions of BBB/IRA had applied one or both provisions to private sector sales.
  - Final version: Both provisions are limited to Medicare.
  - Application to private sector dropped because of the “Byrd rule” restrictions that apply to reconciliation measures.
  - Concerns remain about potential long-term impact on the multiemployer plans.



# Cost-Sharing Requirements for Insulin

- House-passed BBB proposed new group health plan requirements for insulin:
  - Must cover at least one of each dosage form (e.g., vial, inhaler) of each different type of insulin (e.g., rapid-acting, long-acting)
  - No deductible can be applied
  - Cost-sharing per 30-day supply limited to lesser of \$35 or 25% of the negotiated price under the plan
- Inflation Reduction Act: applies cost-sharing limit to Medicare only. No changes for group health plans.
  - The provision for group health plans was deleted on the Senate floor.
  - The parliamentarian ruled the provision ruled out of order under the Byrd rule.
  - 60 votes is required to override the Byrd rule.
  - The motion to override was defeated by a vote of 57-43. The 7 Republicans voting for the amendment: Sens. Bill Cassidy (R-LA), Susan Collins (R-ME), Josh Hawley (R-MO), Cindy Hyde-Smith (R-MS), John Kennedy (R-LA), Lisa Murkowski (R-AK) and Dan Sullivan (R-AK).



## Paid Leave Provisions

- House-passed BBB would have created a new federally administered paid leave program funded by general revenues
  - 4 weeks per 12-month period for various reasons, including sickness and caregiving
  - Employers that maintain their own leave programs would be eligible for a credit eligible for a credit
  - Credit applies for leave provided through insurance, ***through a multiemployer plan*** or by the employer on a self-funded basis
  - **NCCMP provided technical assistance to House and Senate staff** drafting the provision, so that contributing employers to multiemployer plans could obtain the credit.
- Inflation Reduction Act: Does not include paid leave



# Legislative Outlook

- Funding for the federal government runs out on September 30
- Possible lame duck legislation
- Impact of 2022 elections and possible new composition of the House and Senate

