



The NEA Monthly Lobbyist Report for Members



National Employers Association August 2023 Federal Policy Report

Last Updated: August 23, 2023

Work On The Hill

House: Not in session; returning Sept. 12.

Senate: Not in session; returning Sept. 5

On July 27, House Ways and Means Subcommittee on Oversight held a hearing on the Employee Retention Tax Credit. Witnesses included: Pat Cleary, president and CEO of the National Association of Professional Employer Organizations; Linda M. Czipo, president and CEO of the New Jersey Center for Nonprofits; Larry Gray, partner at Alfermann, Gray & Co CPAs LLC; and Roger Harris, president of Padgett Advisors.

On June 21, the House of Representatives passed the CHOICE Arrangement Act (H.R. 3799), introduced by Rep. Kevin Hern (OK-01), in a series of health care votes. The CHOICE Act codifies a 2019 Trump Administration rule that allows employers to provide tax-advantaged funds to reimburse employees for buying their own health insurance on the individual market.

Upcoming Congressional Fiscal Policy Deadlines

1. Student Loan Repayment Pause: End of August 2023

In August 2022, the White House announced executive action that provided debt forgiveness for certain borrowers while extending the repayment pause for all borrowers until the end of 2022. The moratorium was again extended to 60 days after either the resolution of student loan litigation or June 30, 2023. The Supreme Court ruling blocking the Biden administration's student loan plan was issued on June 30.

2. Funding the Government / Appropriations: September 30, 2023

Congress enacted a FY 2023 omnibus in late December that funds the government through the end of the fiscal year. Discretionary spending for FY 2024 and FY 2025 will be subject to statutory caps enacted in the Fiscal Responsibility Act.

3. Agriculture and Nutrition Programs: September 30, 2023

The most recent farm bill is scheduled to expire, including crop insurance, nutrition programs such as SNAP, rural development, and agricultural research and conservation programs.

4. FAA Reauthorization: September 30, 2023

The current authorization law for Federal Aviation Administration operational, safety, and infrastructure programs expires. Multi-year reauthorization bills have advanced in the House and Senate.

House Passes Health Bills GOP says Would Expand Options

The House passed a package of bills in June that Republicans contend would expand health care options for workers, but Democrats argue it would undermine the 2010 health care law and lead to less comprehensive coverage.

The package (HR 3799), which includes the texts of three additional measures (HR 3798, HR 2868 and HR 2813), passed 220-209 on a party-line vote. It would mainly focus on health care policies Republicans have touted for years, like association health plans and health reimbursement arrangements, which they say would help small businesses offer coverage to their workers. The bills would "help small businesses support their workforce and let them focus on what they do best: serving their customers and employees," said Rep. Jason Smith, R-Mo., chairman of the House Ways and Means Committee.

One measure, sponsored by Rep. Kevin Hern, would codify a Trump-era rule allowing employers to offer health reimbursement arrangements, which provide employees employer-funded accounts to purchase insurance on the individual market exchanges; Rep. Claudia Tenney's bill would notify small employers about the HRAs and available tax credits. Another bill, sponsored by Rep. Tim Walberg, R-Mich., would allow small businesses and self-employed people to band together to buy health insurance and form association health plans.

Under a self-funded plan, employers typically assume all of the financial risk of providing health care coverage to its workers, but in some states can also buy stop-loss to guard against some of that risk. However, some states like New York have barred companies with less than 50 employees from buying stop-loss insurance, which Republicans say is crucial to making self-funded plans work.

House Moves High-Deductible Health Plan Legislation To Floor

A bill led by House Republicans to make higher deductible health insurance plans less risky and more attractive to consumers passed in the House Ways and Means Committee in June and will make its way to the House floor for a potential vote in September.

The CHOICE Arrangement Act (H.R. 3799), introduced by Rep. Kevin Hern (OK-01) codifies a 2019 Trump Administration rule that allows employers to provide tax-advantaged funds to reimburse employees for buying their own health insurance on the individual market.

The CHOICE Arrangement Act:

- Combats labor shortage by allowing small businesses to provide more flexible health benefit options for employees.
- Allows employers to better budget for expenses while forgoing the complex process of choosing and managing a health insurance plan.
- Gives small businesses the freedom to focus on serving their customers and employees.

Democrats were split on the bill. Representative Earl Blumenauer (D-OR), in support of the bill, said the health plans would help increase preventive care, while Representative Lloyd Doggett (D-TX) is concerned the plans pose financial and medical risks for low-income patients who might not be able to pay their deductibles and would have to skip critical care as a result.

Battle Over Medicaid Enrollments Wages On

A pandemic-era policy meant to prevent vulnerable people from suddenly losing health insurance expired in April, causing states nationwide to purge their Medicaid programs of millions of low-income enrollees. Between May and August of this year, nearly 4 million Americans have been cut from Medicaid, most of whom lost their insurance over paperwork issues. By next year, the number will rise to 15 million Americans.

- In June, The White House began pressuring states to correct errors and minimize coverage losses. Since then, the Biden Administration has focused on finding ways to reconnect people with coverage, either through Medicaid again or through Obamacare.
- On June 9th, Senator Ron Wyden (D-OR) pledged that Congress would take a more forceful stance to prevent states from continuing to unenroll people in Medicaid. Senator Wyden even suggested that Congress investigate cutting off critical funding streams to states that refuse to slow their disenrollments. Also on June 9, Representative Frank Pallone, Jr. (D-NJ) pressuring CMS and the Department of Health and Human Services (HHS) to ensure states follow federal Medicaid and eligibility determinations regulations.
- In late July, 14 states confirmed that they would change how they had previously handled Medicaid unenrollment. Before this, South Carolina and Michigan were the only states that had changed how they managed Medicaid. In June, South Carolina did not unenroll anyone, while Michigan removed 12,000 and renewed over 103,000 Medicaid enrollees.
- On August 9th, the Centers for Medicare and Medicaid Services released letters the agency sent to state Medicaid officials warning that they may be breaking federal law and regulations while unenrolling people in Medicaid. The letters were sent to all 50 states and Washington, DC. They identified high rates of people losing Medicaid because of paperwork problems, long call center wait times, and slow application processing as three areas of concern. Thirty-six states were flagged as falling short on at least one of the criteria; five states, Alaska, Florida, Montana, New Mexico, and Rhode Island, fell short on all three.

Election Rulings Temper Supreme Court's Conservative Streak

The Supreme Court in its recent term delivered decisions leaning conservative in cases regarding race and religious rights, restricting the use of race in college admissions and supporting a business owner who refused to serve same-sex weddings based on religious beliefs. However, it declined to back a Republican-led theory that could have impacted congressional districts and federal elections.

Significant cases upheld by the court included a Voting Rights Act case, *Allen v. Milligan* which decided that Alabama may need to draw a second congressional district to enable Black voters to elect their chosen candidates before the 2024 election. The court also upheld the power of state courts to review laws governing federal elections, rejecting a theory that would've given more power to state legislatures.

GOP Conservatives' Demands Imperil House Spending Bills

Members of the House Freedom Caucus and other GOP conservatives are threatening the passage of multiple appropriations bills, including the Military Construction-VA bill (HR 4366) and the Agriculture bill (HR 4368). These conservatives demand a \$115 billion cut to the bills and resist rescinding previously allocated but unspent funds. Despite the Appropriations Committee releasing all 12 bills, conservatives won't support any measures until they can review all of them. The deadlock raises the possibility of a partial government shutdown, a prospect that some GOP conservatives do not fear.

House GOP Readies More Cuts to Fiscal 2024 Appropriations Bills

House Republican leaders are seeking to reduce spending in the fiscal 2024 appropriations bills to appease hard-line conservatives as the bills proceed to the House floor. During a meeting, members agreed to trim these bills as close to the fiscal 2022 level of \$1.471 trillion as possible. House Republican Conference Chair Elise Stefanik, Majority Whip Tom Emmer, and Freedom Caucus Chairman Scott Perry were among the attendees. Conservative members have voiced concerns over the Appropriations Committee's proposal to allow \$115 billion in spending above the 2022 top-line, offset by previously allocated but unspent funding.

House Republicans are set to move the Agriculture (HR 4368) and Military Construction-VA (HR 4366) bills to the floor next week. The group also discussed using a self-executing rule to implement further spending cuts. Among other policy items, conservatives suggested amendments to the Agriculture and Military Construction-VA bills, with proposed changes to food programs and restrictions on abortion funding.

Senate Appropriations Chair Patty Murray announced a contrast to House Republicans' cuts, with her panel adding \$13.7 billion in emergency spending to fiscal 2024 bills, citing priorities that couldn't be met under spending caps enforced by the debt limit law. The move, however, met with opposition from some Senate appropriators, including Senator Joe Manchin.

Next week, the Senate Appropriations panel plans to discuss Defense, Labor-HHS-Education, Interior-Environment, and Homeland Security bills.

Bills by Issue

National Employers Association (1)

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 3799	H Amdt 207 On Agreeing To The Hayes Amendment A 001 Failed By Recorded Vote 211 220 Roll No 278 2023 06 21	In Senate	Monitor	Medium	72.7% 42.5%
Title CHOICE Arrangement Act		Bill Summary: Last edited by Jacob Kohn at Jun 22, 2023, 1:42 PM The CHOICE Act makes several improvements, including: - Association Health Plans Act Would Allow Businesses to Pool Risk and Negotiate Lower Costs - Self-Insurance Protection Act Levels the Playing Field for Small Business - Custom Health Option and Individual Care Expense Arrangement Act Creates Certainty and Improves Individual Coverage HRAs (ICHRAs)				
Description Custom Health Option and Individual Care Expense Arrangement Act or the CHOICE Arrangement Act This bill provides statutory authority for regulations that allow employers to offer individual coverage health reimbursement arrangements (ICHRAs). Under ICHRAs, employers agree to reimburse employees for incurred medical expenses up to a limit for a specified period (e.g., a calendar year), and employees obtain their own individual coverage that meets certain requirements of the Patient Protection and Affordable Care Act (coverage of preventive services and no annual or lifetime limits). Payments or reimbursements under an ICHRA are tax-exempt and may only be made for medical care provided when the employee was covered by a plan that meets the requirements. Employees may also pair ICHRAs with Medicare coverage. In 2019, the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services issued regulations that allow employers to offer employees ICHRAs if certain conditions are met: (1) the employer offers ICHRAs to all employees in the same class (e.g., all full-time employees) without the choice of an employer-sponsored group health plan, and (2) the employer offers the ICHRA to all employees within the class on the same terms (i.e., the amount of available funds and the terms and conditions of the benefits). The regulations also specify certain notice and verification requirements with respect to ICHRAs. The bill provides statutory authority for these regulations and generally refers to ICHRAs as custom health option and individual care expense arrangements.		Introduction Date: 2023-06-05				
Primary Sponsors Kevin Hern						

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