



The NEA Monthly Lobbyist Report for Members

NEA October Federal Advocacy Report

Last Updated: November 01, 2024

Work on the Hill

On Capitol Hill, October proved to be a relatively uneventful month as Congress continues its long recess until November 12, 2024. With legislative business paused, some committees have remained active, but the overall pace of action has slowed.

Despite the lull in congressional activity, Capitol Hill staffers are diligently preparing for the upcoming 119th Congress. Given the ongoing preparations for the next Congress, it is crucial to maintain our engagement with Capitol Hill to ensure our priorities remain at the forefront of its agenda. With the 2024 elections rapidly approaching, the 119th Congress's agenda will significantly shift depending on the election's outcome. Lobbyit is well-positioned to navigate the uncertain political landscape and continue engagement with lawmakers from both parties to ensure our priorities are reflected in the next legislative agenda.

Lobbyit will continue to monitor legislative developments closely and work with lawmakers to keep NEA at the forefront of the healthcare discussion through the end of this Congress and into the next.

Lobbyit shared a summary of the Subcommittee on Health, Employment, Labor, and Pensions hearing titled: "ERISA's 50th Anniversary: The Value of Employer-Sponsored Health Benefits." The hearing included witness testimony on the pros and cons of ERISA; ultimately with the goal of potentially editing out some of the negatives like administrative cost.

Lobbyit also shared a report from the Department of Treasury on Affordable Care Act Marketplace Coverage for the Self-Employed and Small Business Owners. It details some of the spending on ACA Marketplace plans and provides data on numbers of people insured in different states.

In October, Lobbyit met with the Senate HELP Health Subcommittee to get a better insight into moving legislation for the lame duck period into the 119th Congress. For the lame duck period, telehealth, PBM reform, and program reauthorization bills are the most likely to move forward, while committee staff would like to see more progress on the Physician Fee Schedule, prior auth reform, and mental health services. For the 119th Congress, committee staff are already planning a larger healthcare package including site neutral payments, additional telehealth measures, Medicare Advantage and Medicaid reform, 340B updates, mental health access, and more.

Regulatory Update

Enhancing Coverage of Preventive Services Under the Affordable Care Act

Summary: This document sets forth proposed rules that would amend the regulations regarding coverage of certain preventive services under the Public Health Service Act. Specifically, this document proposes rules that would provide that medical management techniques used by non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage with respect to such preventive services would not be considered reasonable unless the plan or issuer provides an easily accessible, transparent, and sufficiently expedient exceptions process that would allow an individual to receive coverage without cost sharing for the preventive service that is medically necessary with respect to the individual, as determined by the individual's attending provider, even if such service is not generally covered under the plan or coverage. These proposed rules also contain separate requirements that would apply to coverage of contraceptive items that are preventive services under the Public Health Service Act. Specifically, these proposed rules would require plans and issuers to cover certain recommended over-the-counter contraceptive items without requiring a prescription and without imposing cost-sharing requirements.

In addition, the proposed rules would require plans and issuers to cover certain recommended contraceptive items that are drugs and drug-led combination products without imposing cost-sharing requirements, unless a therapeutic equivalent of the drug or drug-led combination product is covered without cost sharing. Finally, this document proposes to require a disclosure pertaining to coverage and cost-sharing requirements for over-the-counter contraceptive items in plans' and issuers' Transparency in Coverage internet-based self-service tools or, if requested by the individual, on paper. These proposed rules would not modify Federal conscience protections related to contraceptive coverage for employers, plans and issuers.

Agency: IRS, Treasury; Employee Benefits Security Administration, DOL; CMS, HHS

Action: Proposed rule

Dates: To be assured consideration, comments must be received at one of the addresses provided below by December 27, 2024.

Continuing Resolution Signed: Deadline Dec 20

The U.S. Senate passed a 12-week spending bill with a 78-18 vote, avoiding a potential government shutdown before the Sept. 30 deadline. The bill was then signed into law by President Biden. It temporarily extends current government spending levels until Dec. 20, allowing lawmakers to return home and campaign before the November elections. After the elections, they will have around five weeks to negotiate a full-year fiscal 2025 spending deal.

The bipartisan bill, described as a "straightforward compromise" by Senate Appropriations Chair Patty Murray, received broad support despite some opposition from GOP conservatives who wanted lower spending levels and voter ID measures. Senate Majority Leader Chuck Schumer praised the bill for keeping the government open and avoiding a shutdown.

Key issues, including disaster aid and veterans' healthcare funding, were left unresolved and will be addressed in December. The bill also allocates \$231 million for Secret Service protection and \$20 billion for FEMA disaster relief.

False Claims Act Ruling

A recent federal court ruling could impact how the False Claims Act (FCA) is used to combat fraud in Medicare and Medicaid, particularly the role of whistleblowers. U.S. District Judge Kathryn Mizelle ruled that the FCA's whistleblower provisions are unconstitutional, a decision that may lead to the reduction of whistleblower power in such cases if upheld. While this ruling only applies to the specific case, it could set a legal precedent.

Experts predict the case will likely reach the Supreme Court, where conservative justices may take interest in the issue. Whistleblower-driven cases generate billions for the U.S. each year, and legal analysts argue that weakening these provisions could reduce the number of fraud cases brought forward. Critics of the ruling, including whistleblower attorney Gordon Schnell, argue that the decision misunderstands the FCA, noting that the Justice Department retains ultimate control over these cases. Even if the Supreme Court finds the FCA unconstitutional, Schnell expects Congress or the DOJ to act swiftly to protect whistleblower powers.

FTC Sues Three Largest Drug Middleman for Allegedly Inflating Insulin Prices

The Federal Trade Commission (FTC) filed a lawsuit on Friday alleging "anticompetitive" behavior that has driven up insulin prices against the three biggest pharmacy benefit managers (PBMs): UnitedHealth's OptumRx, Cigna's Express Scripts, and CVS Caremark Rx. In the US, these businesses oversee almost 80% of prescription drugs. Despite the availability of less expensive options, the FTC claims that they established a discount program that benefits manufacturers who charge higher prices for insulin, increasing patient expenses. PBMs and partners are allegedly able to make money from people who depend on insulin thanks to this process.

The lawsuit is part of a broader scrutiny by the Biden administration aimed at uncovering the questionable practices of PBMs in the pharmaceutical distribution system. The FTC highlighted concerns that powerful PBMs have contributed to increasing insulin costs over the past decade. In response, the targeted companies strongly criticized the FTC's claims, arguing that the agency misunderstands the drug pricing environment and that they have made efforts to make insulin more affordable.

Although the FTC admits that PBMs have contributed to the increase in insulin pricing, it also identified medication producers such as Eli Lilly, Novo Nordisk, and Sanofi as important actors. The FDA said that as part of its ongoing inquiry into the increasing price of life-saving medications, it could pursue additional legal action against drug producers in the future.

Lame-Duck 'Must Pass' Bills

Appropriations / Continuing Resolution. If Congress passes a short-term CR to extend discretionary program funding into December, it must then decide how to act on the 12 regular appropriations bills to fund the government through Sept. 30, 2025, which is the end of the next fiscal year. The outcome of the November elections may impact whether Congress decides to pass full-year legislation or simply pass another CR that extends into 2025 (and the next Administration). In 2023, Congress passed these bills in two packages, with each combining six of the bills. The first package included Agriculture, Commerce-Justice-State, Energy-Water, Interior, Military Construction-VA, and Transportation-HUD. The second package included Defense, Financial Services, Homeland Security, Labor-HHS-Education, Legislative Branch, and State-Foreign Operations. Passage of the bills in this format required bipartisan majorities. Congress may be forced to try a similar approach in December.

Health Care Extenders. In March, the Continuing Appropriations Act (H.R. 4366) extended several expiring health care programs through Dec. 31, including funding for Community Health Centers, National Health Service Corps, Teaching Health Centers with Graduate Medical Education, and Special Diabetes programs. It also delayed scheduled cuts for "disproportionate share" hospitals. These provisions are likely to be extended again.

Bills by Issue

National Employers Association (8)

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 2813	Placed On The Union Calendar Calendar No 88 2023 06 20	In House	None	None	14.8% 95.0%

Title Introduction Date: 2023-04-25
Self-Insurance Protection Act

Description
Self-Insurance Protection Act This bill specifies that stop-loss coverage is not health insurance coverage for purposes of regulation under the Employee Retirement Income Security Act of 1974. Stop-loss policies are generally obtained by self-insured health plans or sponsors of self-insured group health plans to reimburse the plan or sponsor for losses incurred in providing health benefits to plan participants in excess of a level set forth in the stop-loss policy. The bill also preempts state laws that prevent employers from obtaining stop-loss coverage.

Primary Sponsors
Bob Good

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 2868	Placed On The Union Calendar Calendar No 87 2023 06 14	In House	None	None	16.5% 95.0%

Title Introduction Date: 2023-04-25
Association Health Plans Act

Description
Association Health Plans Act This bill provides statutory authority for the treatment of association health plans (AHPs) as single, large employer health plans for purposes of the Employee Retirement Income Security Act (ERISA). Under AHPs, groups of individuals or small employers join together to purchase health insurance coverage. AHPs were historically subject to the market requirements for individual and small group health plans. In 2018, the Department of Labor issued regulations that allowed an AHP to be considered a single, large employer under ERISA if certain conditions are met. The regulations have been subject to litigation, which is still ongoing. The bill provides that a group of employers is treated as a single, large employer for the purpose of establishing an AHP if the group, among other listed criteria (1) has been in existence for at least two years prior to establishing a group health insurance plan and was formed for a purpose other than offering health insurance, (2) meets any criteria set by Labor in a prior advisory opinion, or (3) meets any other criteria set by Labor through regulations. Additionally, the bill establishes rules for AHPs to set premium rates and prohibits AHPs from discriminating in coverage based on health status-related factors or denying coverage based on preexisting conditions.

Primary Sponsors
Tim Walberg

Title
CHOICE Arrangement Act

Description

This bill generally provides statutory authority for certain health reimbursement arrangements and other alternative health insurance options for employers. TITLE I--ASSOCIATION HEALTH PLANS ACT This title provides statutory authority for the treatment of association health plans (AHPs) as single, large employers for purposes of the Employee Retirement Income Security Act (ERISA). Under AHPs, groups of individuals or small employers join together to purchase health insurance coverage. AHPs were historically subject to the market requirements for individual and small group health plans. In 2018, the Department of Labor issued regulations that allowed an AHP to be considered a single, large employer under ERISA if certain conditions are met. The regulations have been subject to litigation, which is still ongoing. The title provides that an AHP qualifies as a single, large employer if it (1) among other listed criteria, has been in existence for at least two years before offering health insurance and was formed for a purpose other than offering health insurance; (2) meets any criteria set by Labor in a prior advisory opinion; or (3) meets any other criteria set by Labor through regulations. TITLE II--CHOICE ARRANGEMENT ACT This title 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 title provides statutory authority for these regulations and generally refers to ICHRAs as custom health option and individual care expense arrangements. TITLE III--SELF-INSURANCE PROT... (click bill link to see more).

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)

Introduction Date: 2023-06-05

Primary Sponsors

Kevin Hern

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 3800	Received In The Senate And Read Twice And Referred To The Committee On Finance 2024 09 18	In Senate	None	None	9.3% 95.0%

Title **Introduction Date:** 2023-06-05
Chronic Disease Flexible Coverage Act

Description
Chronic Disease Flexible Coverage Act This bill provides statutory authority for certain guidance from the Internal Revenue Service (IRS) that expands the types of preventive care that may be offered under high deductible health plans (HDHPs) without a deductible. In 2019, the IRS issued guidance that allows HDHPs to cover certain items and services for individuals with chronic conditions without a deductible, including medications and monitoring devices for those with diabetes or heart conditions. The bill provides statutory authority for this guidance.

Primary Sponsors
Brad Wenstrup

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 5687	Placed On The Union Calendar Calendar No 317 2024 02 13	In House	None	None	89.5% 95.0%

Title **Introduction Date:** 2023-09-26
HSA Modernization Act of 2023

Primary Sponsors
Beth Van Duyne

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 5688	Placed On The Union Calendar Calendar No 330 2024 02 26	In House	None	None	89.4% 95.0%

Title **Introduction Date:** 2023-09-26
Bipartisan HSA Improvement Act of 2023

Primary Sponsors
Lloyd Smucker

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 5737	Referred To The House Committee On Ways And Means 2023 09 26	In House	None	None	5.5% 95.0%

Title **Introduction Date:** 2023-09-26
Elevating HSA Limits Act of 2023

Primary Sponsors
Beth Van Duyne

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	S 3224	Read Twice And Referred To The Committee On Finance 2023 11 02	In Senate	None	None	7.1% 95.0%

Title

Chronic Disease Flexible Coverage Act

Introduction Date: 2023-11-02

Description

Chronic Disease Flexible Coverage Act This bill provides statutory authority for certain guidance from the Internal Revenue Service (IRS) that expands the types of preventive care that may be offered under high deductible health plans (HDHPs) without a deductible. In 2019, the IRS issued guidance that allows HDHPs to cover certain items and services for individuals with chronic conditions without a deductible, including medications and monitoring devices for those with diabetes or heart conditions. The bill provides statutory authority for this guidance.

Primary Sponsors

John Thune