ERIC Shaping benefit policies before they shape you.

September 16, 2019



Federal Public Policies Impacting Large Employer Plan Sponsors



James Gelfand

Senior Vice President of Health Policy jgelfand@eric.org (202) 627-1922 www.eric.org

House and Senate Update

HEALTH CARE LEGISLATIVE UPDATE – ERIC continues to push for repeal to the "Cadillac" tax

- *"100 distinguished health and economic policy experts"* asking the Senate not to follow the House in repealing the Cadillac
- We have great momentum after the House vote up to 61 senators on the Senate companion bill
- There's still work to be done the new target is 66, veto proof majority
- Against all odds, we have more momentum now than ever before, and the President wants to sign this bill
- December is when the conversation will appear

HEALTH CARE LEGISLATIVE UPDATE – High cost Rx gene therapy reinsurance

Insurers pitch new ways to pay for million-dollar gene therapies

- New programs for employers to afford gene therapies that currently cost more than \$2 million
- Gene therapies replace faulty gene with a promise to cure hard-to-treat inherited diseases. But their price tags threaten employers
- Zolgensma, \$2.1 million; Luxturna, \$850,000; a drug for a rare blood disorder at €1.6 million (\$1.8 million) in Europe
- Health insurers managed costs by setting conditions that limit who can get the drugs

HEALTH CARE LEGISLATIVE UPDATE – Senate committee passes controversial drug bill

Senate Finance Committee passes bill to rein in drug costs. The final vote was 19-to-9.

Finance Committee markup was contentious:

- An amendment to strike the "inflation caps" failed by a vote of 14-to-14. Proponents say pharma companies are not allowed to increase costs faster than the economy grows, that would constitute price controls
- Another amendment, to prevent the President from implementing his International Pricing Index (IPI) model, also failed 14-to-14. The President may be planning a big expansion of this effort, possibly including ERISA
- An amendment to implement direct negotiations by the government for Medicare drug prices failed 12-to-16

HEALTH CARE LEGISLATIVE UPDATE – Senate committee passes controversial drug bill continued

- Talk of a "rebate rule" that would ban the use of prescription drug rebates in Medicare Part D is resurfacing. Chairman Grassley looks to cut a deal with Senate Democrats to lower drugs, pressure leader McConnell
- If Speaker of the House Nancy Pelosi (D-CA) makes a deal with President Trump on negotiations, depending on the provisions this could be difficult for employers to ignore
- We will wait to see how it comes together with other legislation in the Judiciary Committee, and the HELP Committee's package
- Possible end of year catch-all package

HEALTH CARE LEGISLATIVE UPDATE – What's in the *Lower Health Care Costs Act?*

- Senate HELP Committee released a <u>discussion draft</u> that is <u>the culmination of its health care costs project (ERIC's</u> <u>Roadmap letter was a part of it)</u>
- Includes 5 titles:
 - I. Ending Surprise Medical Billing
 - II. Reducing the Prices of Prescription Drugs
 - III. Improving Transparency in Health Care
 - IV. Improving Public Health
 - V. Improving the Exchange of Health Information



US SENATE COMMITTEE ON HEALTH EDUCATION LABOR & PENSIONS

HEALTH CARE LEGISLATIVE UPDATE – What's in the *Lower Health Care Costs Act?*

• Title I: Ending Surprise Medical Billing

- Option 1: ERIC's proposal in-network matching
- Option 2: Version of the Cassidy bill—binding arbitration
- Option 3: Version of E&C's proposal benchmark based on median in-network contracted rates
- Also includes a weak ambulance/air ambulance section
- Title II: Reducing the Prices of Prescription Drugs
 - Includes the "low-hanging fruit" proposals, some of which we have already endorsed (Purple book transparency, crack down on abuse of citizen petitions, etc.)



HEALTH CARE LEGISLATIVE UPDATE – What's in the *Lower Health Care Costs Act?*

- Title III: Improving Transparency in Health Care
 - Most impactful title for ERIC member companies significantly changes the way parts of the health system do business – could help your plans (complete rundown <u>here</u>)
 - Bans gag clauses, anti-tiering, and anti-steering clauses, used by health systems for leverage over TPAs
 - Vast changes to PBM business model
 - Creates a national All-Payers Claims Database
 - Requires providers to give patients a full list of services received upon discharge
 - Major disclosure requirements for brokers and consultants



HEALTH CARE LEGISLATIVE UPDATE – What's happening in surprise billing

- 60 groups signing onto our <u>Surprise Billing Multi</u> <u>Stakeholder Sign- on Letter</u>
- \$13 million in "dark money" spent on ads attacking Congress on benchmark billing linking them to extremities such as hospital closure and mass death
- California implemented a benchmark approach, with positive results yet the medical community continues to offer conflicting anecdotes
- ERIC beat arbitration push by ALEC (American Legislative Exchange Council)



HEALTH CARE LEGISLATIVE UPDATE – What's happening in surprise billing continued

The current war on airwaves:

- Providers and insurers are pouring millions into lobbying over surprise billing payment methods
- Hospitals and air ambulance providers look to add an arbitration backstop
- Insurers hoping to protect a benchmark payment rate

Patient Doctor Unity back arbitration thresholds Coalition Against Surprise Medical Billing supports fair, market- based prices



HEALTH CARE LEGISLATIVE UPDATE – What's happening in surprise billing battle continued

- House Education and Labor markup imminent, will consider modified Energy and Commerce bill
- House Ways and Means Committee looks at "network matching" approach, taking on the air ambulances
- ERIC continues to lobby in support of the Senate's *Lower Health Care Costs Act*



HEALTH CARE LEGISLATIVE UPDATE – Surprise billing battle, air ambulances

In a <u>letter</u> to Senate HELP Committee leaders, 32 state insurance commissioners lobbied to end surprise air ambulance bills in its health care costs legislation

The Association of Air Medical Services (AAMS) pushback

- The AAMS says median in-network rate would "devastate the provision of this service in the United States."
- Global Medical Response, an air transportation provider, is spending \$800,000 on ads arguing the harm to rural communities

The insurance commissioners push back on the AAMS

- They argue this legislation benefits rural Americans, adding accessibility
- They are also encouraging a federal solution due to the lack of agency states have due to the *Airline Deregulation Act* of '78

The Wyoming Department of Health rolled out a <u>proposal</u> to submit a 1115 Medicaid waiver application, expanding Medicaid to each Wyoming resident – for the sole purpose of air ambulance transportation

Privately insured plans would be able to "opt-in", or risk of receiving the bill

We would like to hear from you on the following:

- Does your company have an opinion on this idea?
- Does your plan have contracts with air ambulance companies, particularly in Wyoming? If so, how does this affect your position on the proposal?
- Would your plan opt-in, if you have any Wyoming employees? If not, would you pay a bill from Medicaid for air ambulance costs associated with one of your beneficiaries?

Administration, Executive Action, and Regulatory Activity

HEALTH CARE EXECUTIVE UPDATE- Improving price and quality transparency

The President on Monday June 24 issued this order ordering transparent and choice for patients

Here is the rundown:

- HHS must require hospitals to post "standard charge information," including negotiated rates
- HHS, Treasury, and DOL must issue 90-day notice of proposed rulemaking, on out-of-pocket costs to patients prior to receiving care
- HHS, DOJ, and FTC must issue a report on ways the government and the private sector are "impeding healthcare price and quality transparency

All the various government health insurance programs must collaborate and develop a "Health Quality Roadmap" with access to deidentified health care claims data

HEALTH CARE EXECUTIVE UPDATE - Improving price and quality transparency continued

The President on Monday June 24 <u>issued this order</u> ordering transparent and choice for patients

- Treasury must expand the ability of patients to select high-deductible health plans that can be used alongside a health savings account, and that cover low-cost preventive care, before the deductible, for care for chronic conditions
- Treasury must propose regulations to treat direct primary care arrangements and healthcare sharing ministries as eligible expenses
- HHS must submit a report to the President on ways the Administration can address surprise medical billing.
- How else can we expand HSAs and HDHPs?

Preventive Care for Specified Conditions	For Individuals Diagnosed with
Angiotensin Converting Enzyme (ACE) inhibitors	Congestive heart failure, diabetes, and/or
	coronary artery disease
Anti-resorptive therapy	Osteoporosis and/or osteopenia
Beta-blockers	Congestive heart failure and/or coronary artery
	disease
Blood pressure monitor	Hypertension
Inhaled corticosteroids	Asthma
Insulin and other glucose lowering agents	Diabetes
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International Normalized Ratio (INR) testing	Liver disease and/or bleeding disorders
Low-density Lipoprotein (LDL) testing	Heart disease
Selective Serotonin Reuptake Inhibitors (SSRIs)	Depression
Statins	Heart disease and/or diabetes

HEALTH CARE EXECUTIVE UPDATE- Promoting health care choice and competition across the United States

<u>This executive order</u> notably expands access to association health plans, expands availability of health reimbursement arrangements and expands availability of short-term, limited-duration insurance

- Association Health Plans (AHPs)
 -Calls for the DOL to reimagine what a bona fide group is, for the purposes of allowing small groups to band together and form larger ones
- Health Reimbursement Arrangements (HRAs)

 Eliminates the barrier for employees to have a standalone HRA that they could use as a kind of defined contribution account to purchase health insurance and health care
- Short-Term, Limited Duration Insurance (STLDI)
 -Rescind the previous ACA rules, making STLDI easier to get, able to last longer, and renew more easily

All three main provisions have final rules

WHITE HOUSE REPORT, December 2018

The <u>report</u> reviews existing laws and regulations that get in the way of healthcare choice and competition

Section 1: The importance of choice and competition in healthcare markets is discussed. The authors note that the free market principles that operate in other sectors of the economy do not always work in the healthcare market

Section 2: Trends in healthcare market consolidation, and how the rising numbers of consolidations might make some markets less competitive.

Section 3: Focuses on government healthcare policies and their effect on competition, touching on HSA and HRA expansion and telehealth

Section 4: Enables consumer-driven healthcare, the authors argue that payers can improve incentives granted more transparency

HEALTH CARE REGULATORY UPDATE – Co-pay accumulator rules

- Member concerns regarding Accumulator Co-pay rules in the NBPP
- If co-pay accumulators exclude drugs without a generic equivalent, there are million dollars of potential costs for members (many biologics retain market exclusivity through 2023)
- ERIC asked DOL and IRS and received feedback for relief that is now delayed
- ERIC will continue to advocate for the usage of accumulators even in the absence of a generic counterpart



HEALTH CARE WELLNESS UPDATE - EEOC wellness rules and implications

- Recall that Janet Dhillon was finally confirmed by the Senate as a commissioner of EEOC—actually the new Chair
- EEOC recently announced that new wellness rules will be out by the end of the year
- Hopefully this means an end to the regulatory noman's land we have been in regarding wellness programs and premium "inducements"



Thanks for joining me!

ERIC Shaping benefit policies before they shape you.