The Alliance
Self-Funding Smart

Health Policy Insights

July 27, 2022

When health policy issues arise – and affect self-funded employers – we will share insights into each issue to better educate employers. These emails will be sent occasionally throughout the year, but primarily during peak "legislative season."

At the State Level

The Alliance has been spending time with lawmakers over the summer discussing the "white bagging" legislation that was introduced at the request of Wisconsin hospitals last session. Several employers concerned about health costs have joined us in these meetings.

The legislation in question would make it nearly impossible for employers to buy clinician-administered medications through pharmacies that are not hospital owned. The base prices of clinician-administered drugs start out very high, but the hospital markups on these medications typically fall between 200-1000%. This adds significant costs for both employers and employees.

Our meetings feature stories from employers that illustrate how much money their company and their employees are saving through "white-bagging." This is when an employer works through a consultant, TPA, or PBM to arrange for the purchase of medications from drug manufacturers and their distributors who then safely deliver them to the site of care.

The proposed bill is aimed at insurers, but it gets at self-funded employers by also targeting PBMs and their agents that are subject to Wisconsin insurance unfair marketing and trade practices laws. We have seen an increase in state bills targeting self-funded plans in recent years, with no guarantee that these bills will be preempted by ERISA, thanks to the **Rutledge decision**.

With Wisconsin's primary election slated for August 9 and the general election on November 8,

you may have an opportunity to talk with your elected officials. We encourage you to ask them where they stand on the white-bagging issue. If you need any support from us, our Government Affairs consultant, **Melissa Duffy**, will be happy to help and/or involve you in meeting with lawmakers.

And on the subject of elections, if you are looking for information about who is on your local ballot, you can visit **myvote.wi.gov**.

At the Federal Level

At last, there is some progress in the Senate to advance drug pricing reforms that are similar, but not identical, to those passed by the House at the end of 2021. We've referenced this in previous publications. Senate Majority Leader Chuck Schumer has sent language reflecting the agreement to the Senate parliamentarian for her review – the first step toward taking a Senate "budget reconciliation" vote on a bill in July or August. Budget reconciliation bills are not subject to the filibuster in the Senate.

A key component of the drug pricing agreement directs Medicare to negotiate prices for certain medications, which would not help employers. However, a second provision, one that would penalize drug manufacturers from raising prices above an inflationary cap, could potentially help slow drug increases for employers and the commercial market if it is included in the final package.

The Congressional Budget Office estimates that the agreement on drug pricing alone would result in a total of $287 billion in drug savings for the federal government. However, some of those savings will reportedly be used under the agreement to increase tax credits that make the purchase of individual health insurance more affordable for people who buy health insurance on their own, without access to employer- or government-sponsored coverage.

All of the details of the agreement in the Senate are not yet known, and these proposals still have a long way to go before they become law, including agreement by the House. That said, President Biden has indicated support and is urging Congressional leaders to act quickly.

The Alliance will continue to monitor these important issues and report any news or changes to employers via this newsletter.

Health Policy Issues we are following*

State Issues

Bill or Issue	The Alliance Position	Summary and Implications for Employers	Status
SB 394/AB 396 APRNs	No position currently	Would modernize and expand the scope of work for Advanced Practice Registered Nurses (APRNs). Physician groups are opposed to this legislation that could increase the availability of medical practitioners, particularly in rural areas. It has the potential to broaden the availability of providers to staff onsite clinics.	The governor has vetoed this legislation even though a physician-friendly amendment was added in an attempt to quell opposition to the bill. The bill is expected to be reintroduced next session.
AB 184/ SB 215 Drug Coupons	Opposed	Pharma sponsored legislation that would require self-funded municipal plans and PBMs to count the value of drug coupons offered by drug manufacturers toward deductibles and maximum out-of-pocket expenses, ensuring that anyone using drug coupons will satisfy cost-sharing requirements faster. Since this would apply to PBMs, it is uncertain as to whether the bill would be preempted by ERISA for non-municipal self-funded plans.	A public hearing was held in the Assembly Health Committee, but no further action was taken.
AB 571/SB 559 Prompt Pay Discounts	We have concerns	Would enable health care providers to offer a discount for bills that are paid promptly, except that the bill is drafted so broadly that it could be used by providers to undermine plan designs. "Prompt" is not defined, and there are no limits on the discounts, nor is there any reporting to plans once a discount is provided. We have concerns that providers could use this legislation to incentivize people to seek care.	A public hearing was held in both houses, but no further action was taken.
AB 718/SB 753 White Bagging	Opposed	Would prohibit employers from "white-bagging" or sourcing clinician-administered drugs from less expensive pharmacies other than hospital-owned pharmacies. Essentially forces PBMs or administrators to purchase these medications from hospital pharmacies where markups average 200-400% or more. Since this would apply to PBMs and entities involved in health benefits, it is likely to impact self-funded plans. Removes any incentive for hospitals to keep prices on clinician-administered medications reasonable.	A public hearing was held in both houses, but no further action was taken. The bill will be reintroduced next session, according to the author.
SB 889/AB 956 Direct Primary Care	No position currently	Would clarify Wisconsin law to give physicians that want to practice independently and charge a monthly subscription fee for services the assurance of knowing that doing so will not be regulated as insurance. This could lead to an increased number of independent physicians practicing in the state.	Passed the Senate, failed to pass the Assembly.

Federal Issues

Bill or Issue	The Alliance Position	Summary and Implications for Employers	Status
Reconciliation Agreement on Drug Pricing	No position until the actual	One provision that could have a positive impact on employers is a provision that would penalize drug makers for increasing the price of medications above	Not yet passed the Senate. If they vote to approve, it would

	language is introduced	the inflation rate. This, as proposed, would extend to medications purchased by employers.	need to be agreed to by the House.
S. 3139 Healthy Competition for Better Care Act	The Alliance has concerns	Legislation introduced by Senator Baldwin targets anticompetitive behavior in health care. As written, however, the bill contains numerous gaps that could lead to even bigger problems with anti-competition in Wisconsin. The Alliance has shared these concerns with Senator Baldwin.	It was introduced and referred to the Senate HELP Committee.
The INSULIN Act	No position currently	Requires Medicare and private plans to cap out-of-pocket costs for covered insulin at $35 for a 30-day supply. Encourages drug manufacturers to limit insulin prices by "certifying" that the price is note greater than the weighted average of the Medicare Part D negotiated prices for such insulin, net of all manufacturer rebates, received by plans in 2021. This act prohibits rebates, prior authorization, and step therapy for certified insulin.	Legislation that passed the House is likely to be supplanted by a bipartisan agreement in the Senate. Neither house has passed this version as of the date of writing.
H.R. 6851 The No Surprises for COVID Tests Act	The Alliance has concerns	Extends coverage mandate for no-cost COVID-19 testing until December 31, 2023 and applies the No Surprises Act arbitration process to tests received out of network. This is meant to address price gouging for tests by out-of-network providers, although increasing disputes that require arbitration may not be the desired outcome for employers.	It was introduced and referred to House Energy and Commerce.
No Surprises Act Lawsuits	N/A	There are now eight lawsuits filed in total that challenge the No Surprises Act rules issued by HHS/Labor. Many of the lawsuits are challenging the rule's direction that requires arbiters to consider the "Qualified Payment Amount" (QPA or median in-network amount) as the dominant factor when settling payment disputes. Since the No Surprises Act took effect on 1/1/22, the lawsuits create uncertainty for health plans. As of today, arbiters are not required to rely on the QPA as the dominant factor, which is likely to lead to more disputes and higher settlement amounts in the interim.	One case has been decided; a lower court ruling found the original rule's emphasis on the QPA is unlawful. HHS/Labor has reissued rules directing arbiters (otherwise known as IDREs) to weigh all factors in disputes.

** The information provided in this newsletter is for general informational purposes only and does not, and is not intended to, constitute legal advice.*

How Are We Doing?

Answer one question to let us know!

How likely is it that you would recommend The Alliance to a friend or colleague?

Highly Unlikely — Highly Likely

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