



90<sup>TH</sup> PUBLIC POLICY FORUM  
DECEMBER 6, 7, AND 9, 2021

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EBRI produces and communicates independent, objective, nonpartisan data, research, and other information about employee benefits. The organization serves the public, employers, service providers, workers and their families, and policymakers.

# MEMBER WORDS THAT DESCRIBE EBRI



# EBRI'S 90<sup>TH</sup> POLICY FORUM

- Monday, December 6 — **Keynote: Department of Labor Update With Kathleen Kennedy Townsend**
- A Path to a More Equitable Solution: Solving the Retirement Coverage Gap**
- Tuesday, December 7 — **Spending in Retirement: The Full Picture**
- Thursday, December 9 — **Health Care Reform Redux: How Might Legislative and Regulatory Action Drive Change?**

# THANK YOU, POLICY FORUM DEVELOPMENT TASK FORCE!

**Vice Chair, PPAC:** Liz Varley, Ameriprise Financial

## **Task Force:**

**Nevin Adams**, American Retirement Association

**Reagan Anderson**, Capital Group

**Rhonda Berg**, Mercer

**Nicky Brown**, HealthEquity, Inc.

**Chris Byrd**, WEX Health

**Rob Capone**, Legal & General Investment Management America

**Kathryn Carleson**, HealthEquity, Inc.

**Drew Carrington**, Franklin Templeton

**Kelsey Chin**, Millennium Trust Company

**Josh Cohen**, PGIM

**David Cruz**, New York Life

**Liz Davidson**, Financial Finesse, Inc.

**Mark Dennis**, Financial Finesse, Inc.

**Jody Dietel**, HealthEquity, Inc.

**Bob Doyle**, Prudential Retirement

**Jennifer Flodin**, Mercer

**Josh Freely**, TIAA

**Kris Haltmeyer**, Blue Cross Blue Shield Association

**Katie Hockenmaier**, Mercer

**Bob Holcomb**, Empower Retirement

**Sarah Holden**, Investment Company Institute

**Kirsten Hunter**, Fidelity Investments

**Tom Johnson**, Retirement Clearinghouse

**Melissa Kahn**, State Street Corporation

**Marla Kreindler**, Morgan, Lewis & Bockius LLP

**Mike Lanza**, Ameriprise Financial

**Lisa Margeson**, Bank of America

**Martin McGuinness**, Unum

**Ed Murphy**, Empower Retirement

**Meenu Natarajan**, Mercer

**Chantel Sheaks**, U.S. Chamber of Commerce

**Mike Skinner**, T. Rowe Price

**Kevin Smart**, Custodia

**Michael Sowa**, Benetic

**Jana Steele**, Callan Associates, Inc.

**Christopher T. Stephen**, National Rural Electric Cooperative Association

**Aron Szapiro**, Morningstar

**Renee Wilder Guerin**, Retirement Clearinghouse LLC

# HEALTH CARE REFORM REDUX: HOW MIGHT LEGISLATIVE AND REGULATORY ACTION DRIVE CHANGE?



**Annette Guarisco Fildes**, President and CEO, The ERISA Industry Committee



**Kris Haltmeyer**, Vice President, Legislative and Regulatory Policy, Blue Cross Blue Shield



**Kathy Bakich**, Senior Vice President, Health Compliance Practice Leader, Segal



**Moderated by: Paul Fronstin**, Director of the Health Research and Education Program, EBRI

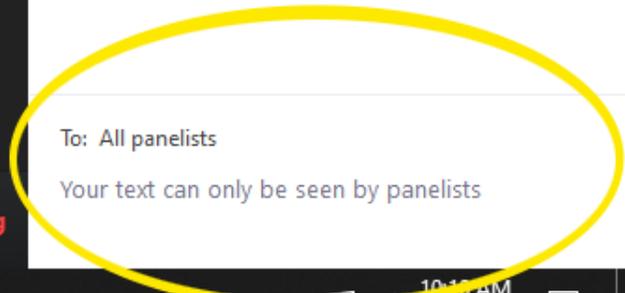
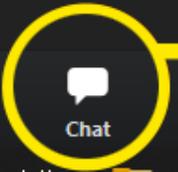
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# John Doe

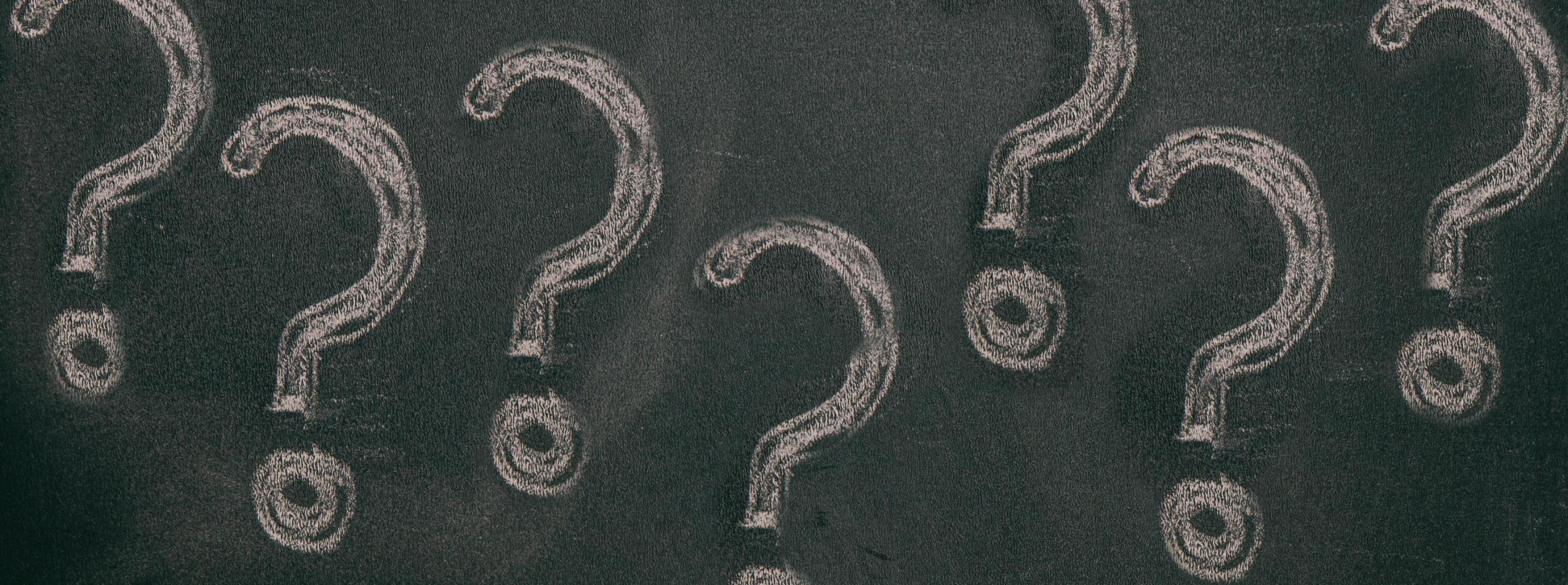
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# POLLING QUESTION

PLEASE SHARE YOUR THOUGHTS



# Health Care Reform Redux: How Might Legislative and Regulatory Action Drive Change?

Annette Guarisco Fildes  
President and CEO, The ERISA Industry Committee  
EBRI Policy Forum  
December 9, 2021

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# ERIC – The Voice of Large Plan Sponsors

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- ERIC advocates for policies that enable nationwide employers to deliver sustainable benefit programs, tailored to their workforces
- We are the only national association that advocates exclusively for large employers as plan sponsors on health, retirement, compensation, and paid leave public policies at the federal, state, and local levels
- ERIC takes state and local governments to court to protect federal ERISA preemption

## ***You are likely to engage with an ERIC member company when you:***

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- Visit a bank or hotel
- Use cosmetics
- Fly on an airplane
- Enjoy a beverage



# The ERISA Industry Committee – Large Employer Priorities

(Congressional or Agency action, temporary measure, budget reconciliation)

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✓ HDHP coverage for telehealth/preventive care

✓ Telehealth only plan

Interstate provider licensing

Worksite health clinic care

HSAs for veterans, retirees, etc.

Anti-competitive practices in hospital contracts

✓ Banning provider gag clauses

✓ Broker transparency

✓ Surprise medical billing

✓ Transparency and accountability

ERISA preemption, State mandates and assessments

Tax treatment of ESI

Value driven care

Patient safety – National Patient Safety Board

✓ COBRA

✓ Medicare Expansion and Public Option

ESRD Third Party Payer

*Mental Health*

✓ *Substance use disorders and opioid mitigation*

*Mental health parity*

*Prescription drug costs*

*PBM oversight*

# The ERISA Industry Committee – Large Employer Priorities

- ✓ HIPAA compliance, privacy
- ✓ Claims data and All Payers Claims Database

## Affordable Care Act

- Reporting
- Employer mandate
- Wellness issues
- OOP limits
- Nondiscrimination
- ✓ • 1332 waivers
- ✓ • ADA and GINA
- ✓ • PCORI
- ✓ • Coverage mandates



- ✓ Vaccines
- ✓ Price Gouging
- ✓ Testing





# EBRI Virtual Winter 2021 Policy Forum

## Health Care Reform Redux: How Might Legislative and Regulatory Action Drive Change?

December 9, 2021 / Kathryn Bakich [kbakich@segalco.com](mailto:kbakich@segalco.com)

# Agenda

**Mental Health and MHPAEA**

**No Surprises Act and Transparency**

**Prescription Drug Proposals**

**Medicare Proposals**

# Mental Health and Substance Use Disorder (SUD) by the Numbers

**7.8%**  
**19.3M People**  
aged 18 or older had a substance use disorder

**3.7%**  
**9.2M People**  
18+ had BOTH an SUD and a mental illness

**19.1%**  
**47.6M People**  
aged 18 or older had a mental illness

**Among those with an SUD:**  
3 in 8, 38.3% or 7.4M, struggled with illicit drugs  
3 in 4, 74.5% or 14.4M, struggled with alcohol use  
1 in 8, 12.9M or 2.5M, struggled with illicit drugs and alcohol

**Among those with a mental illness, 1 in 4, 23.9% or 11.4M, had a serious mental illness**

In 2018, 57.8M Americans had a mental and/or substance abuse disorder.

# Mental Health Parity and Addiction Equity Act Rules

- Signed into law on December 27, 2020
- Requires group health plans to perform and document comparative analyses of the design and application of nonquantitative treatment limitations (NQTLs)
- Plans must be prepared to make these comparative analyses available to the Departments of Labor and/or Health and Human Services upon request beginning 45 days after the date of enactment (February 10, 2021)



# Build Back Better Act – MHPAEA

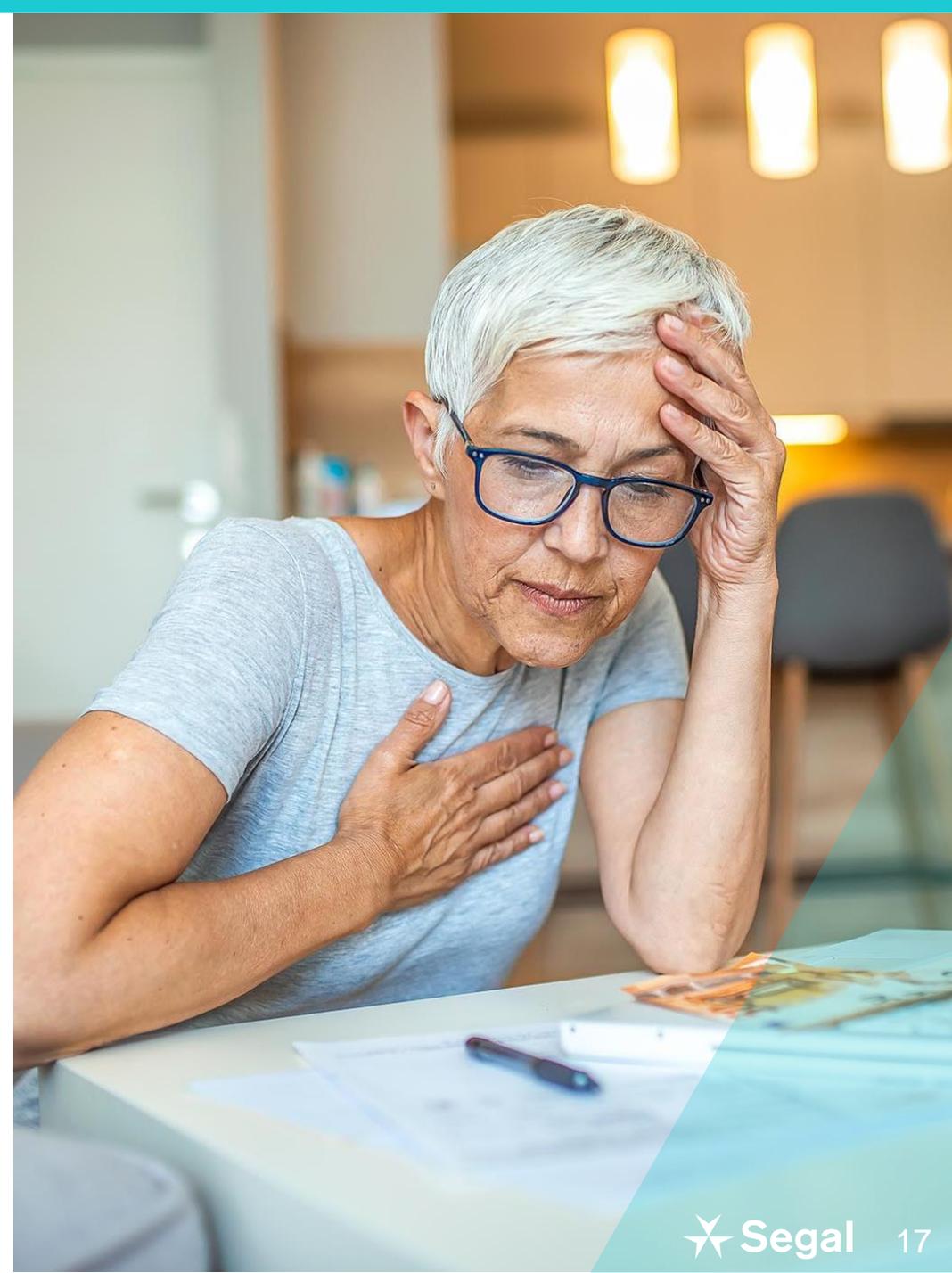
- The Act would impose civil monetary penalties on both group health plans and health insurers for violation of the Mental Health Parity and Addiction Equity Act
- \$100 per person per day for violations
- Can be imposed directly on insurers, as well as on plan sponsors and administrators
- Effective beginning 1 year after date of enactment

# No Surprises Act

Enacted December 27, 2020 as part of the Consolidated Appropriations Act, 2021, Public Law 116-260

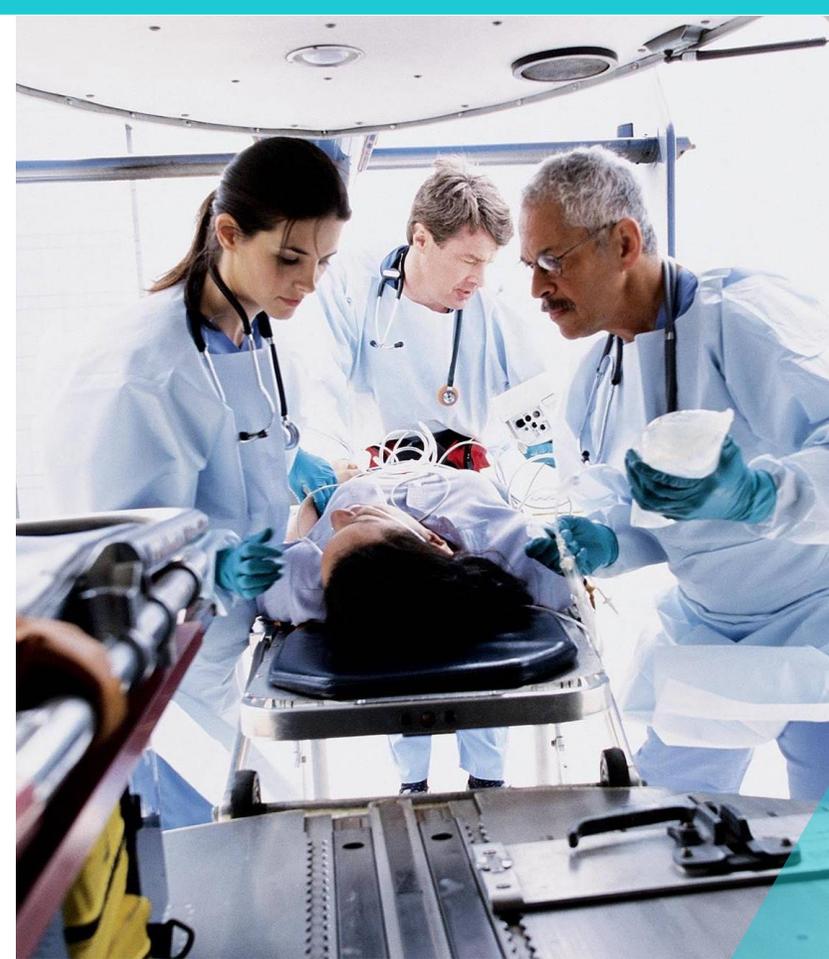
Applies to most group health plans and insurers, including grandfathered plans

Generally, effective for plan years beginning on or after January 1, 2022



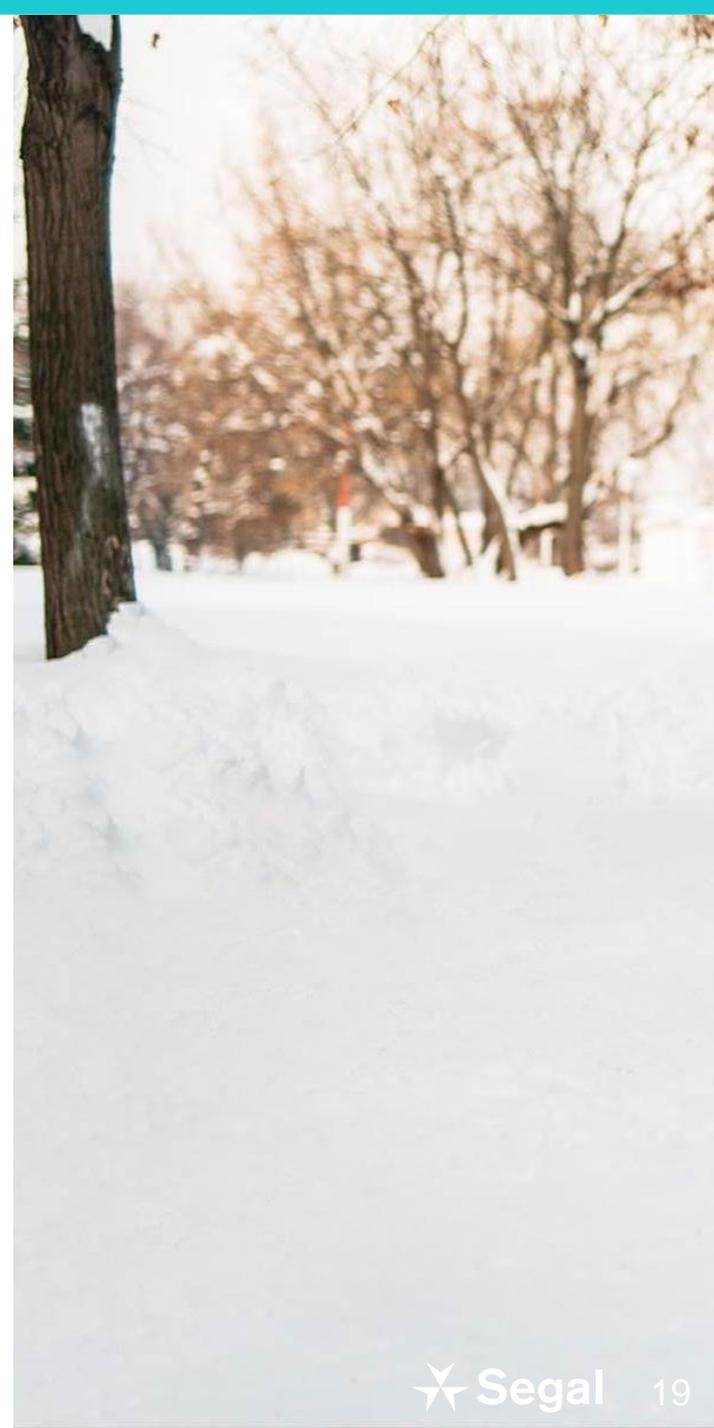
# What Does This Mean for Your Costs for Out-of-Network Care?

- Employees will be protected from Surprise Bills
  - Cost-sharing is based on the median in-network rate
- Plans must make an initial payment to providers and facilities, but that amount is not established in the rule
  - Will the plan's existing out-of-network payment rules still be effective?
  - Will the new rules lower plan costs?
  - How will Independent Dispute Resolution change the provider network environment?



# Transparency is Coming

- Hospital transparency 1/1/2021
- Gag clause prohibition and attestation in 2022
- Machine readable file production (in-network and out-of-network rates) 7/2022
- Prescription drug (and more) reporting 12/27/2022
- Air ambulance claims reporting for 2022/3 due 3/31/2023 and 4
- Online price comparison tool required for 2023
- BBB proposal for PBM reporting to plans on costs, rebates, fees, and other compensation for 2023



# Build Back Better Act— Prescription Drug Proposals

- HHS would negotiate prices for up to 10 drugs in 2025, 15 in 2026 and 2027, and 20 in 2028 and beyond (plus insulin)
- Drug manufacturers would pay rebates to Medicare if a Part B or D drug price increases faster than inflation
- Medicare Part D benefit significantly modified to eliminate participant coinsurance during the catastrophic payment period and change payment responsibility (increased costs for EGWPs)



# Build Back Better Act – Insulin Coverage for 1/1/2023 Plan Years

- Group health plans would have to cover at least one of each dosage form of each different type of insulin without a deductible
  - Examples of dosage form: vial, pump, or inhaler
  - Examples of different types of insulin: rapid-acting, short-acting, intermediate acting, long-acting, ultra long-acting and premixed
- Cost sharing (for a 30-day supply) is limited to lesser of: \$35 or 25% of the negotiated price under the plan
- Higher cost sharing may be imposed if the insulin is received from an out-of-network provider
- Applies to grandfathered plans

# Build Back Better Act—Medicare

- Would phase in hearing benefits in 2024
  - Hearing 80/20 coverage as prosthetic device under Part B
  - Audiologists would be eligible for Medicare reimbursement
  - FDA also proposes to allow purchase of hearing aid OTC w/o prescription
- Proposals to also pay for vision and dental in 2022 and 2028, respectively but outlook unclear
  - Vision 80/20 benefit
  - Dental coverage for preventive (80/20) and major (90/10) treatment
- Proposal to expand Medicare to age 60 was not included in the bill
- Point-of-Service/elimination of rebate rule would be permanently stopped

Thank You

# Impact of Build Back Better Act and End of the PHE

**Kris Haltmeyer**  
Vice President, Policy Analysis

December 9, 2021

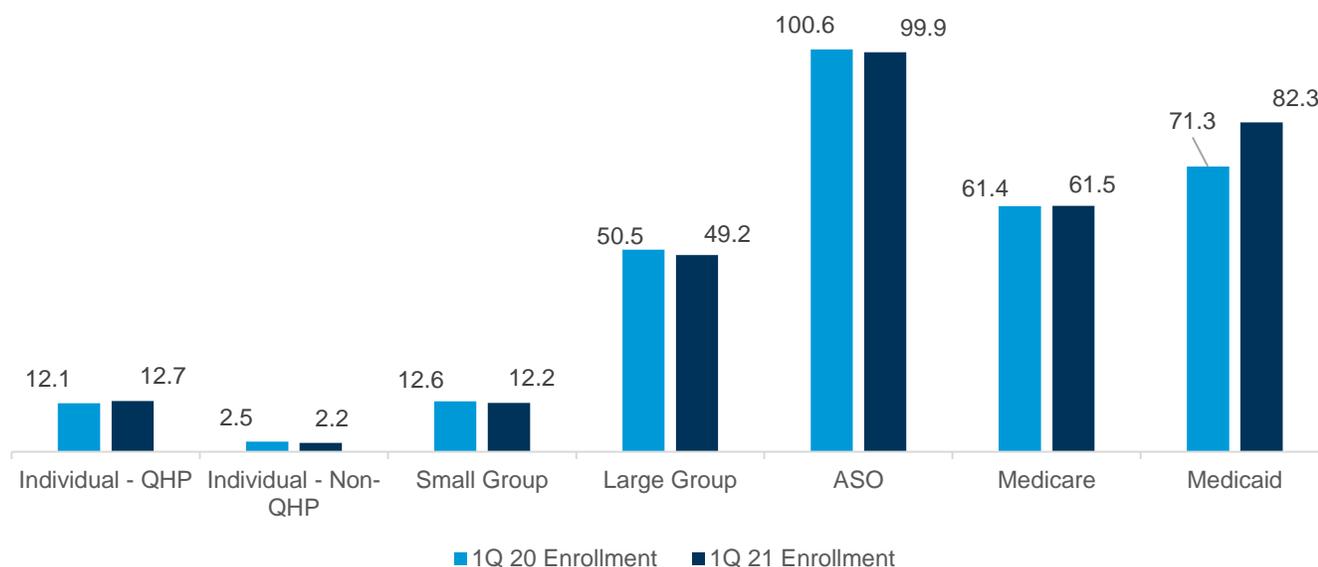


Blue Cross Blue Shield Association is an association of independent Blue Cross and Blue Shield companies.

## Coverage Shifts During the Pandemic

While some people lost coverage, most subsequently obtained other coverage, such that the overall U.S. uninsured rate did not increase during the Pandemic

1Q 20 vs 1Q 21 Baseline Comparison by Market Segment (Lives in Millions)



Source: BCBSA analysis of company financial data

### Key Factors:

- Growth in Medicaid, no eligibility redetermination during PHE
- Congressional action to support employee benefits
- Workers who lost jobs were in industries with lower ESI offer rates
- More people obtained ACA coverage, particularly after ARPA was expanded

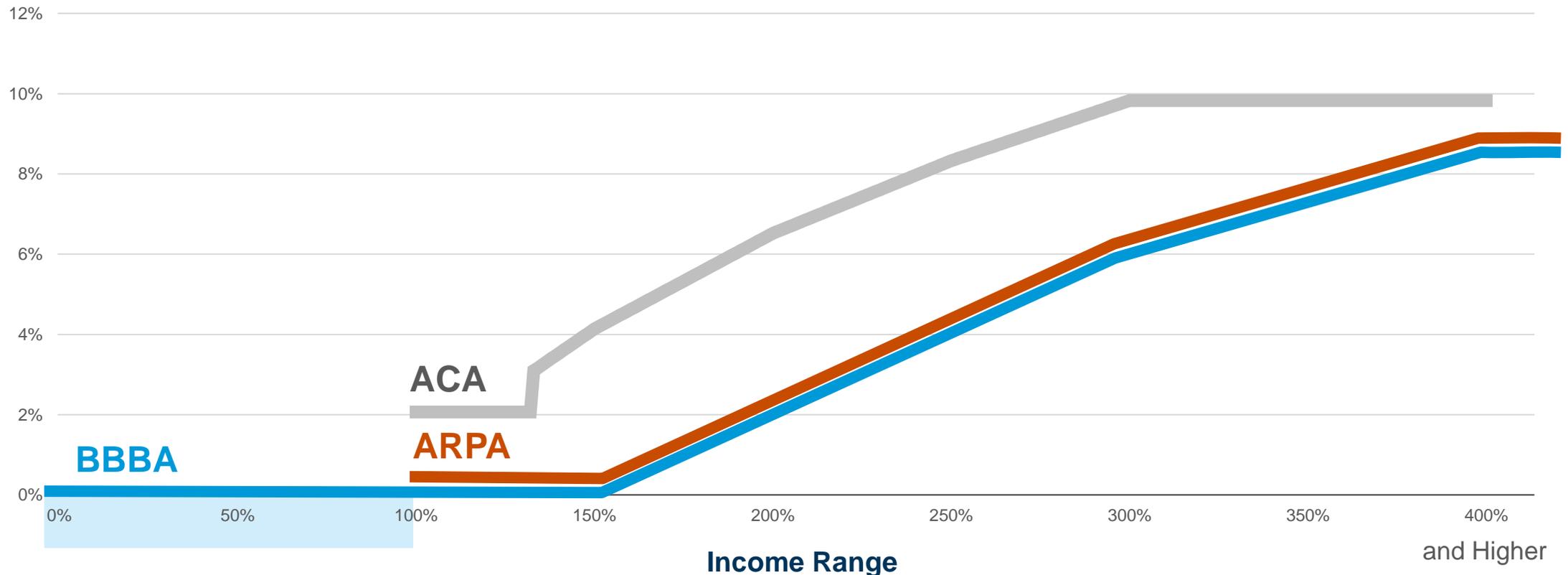
# Key Provisions of the Build Back Better Act

A number of provisions in BBBA could encourage shifts in coverage

- **ACA Tax Credit Extension.** Extends the American Rescue Plan Act's (ARPA) premium tax credit enhancements and cost-sharing reduction (CSR) assistance through 2025; Individuals receiving unemployment or with incomes below 150% FPL would continue to have access to zero-premium coverage.
- **Tax Credits for ACA Enrollees with Employer-sponsored Coverage.** Reduces the employer-sponsored insurance affordability threshold for accessing ACA premium tax credits (the employer firewall) from 9.8% to 8.5% of household income; the threshold is not indexed until 2027.
- **Tax Credits for Low-income People with Employer-sponsored Coverage.** Taxpayers with household incomes below 138% FPL with access to affordable employer-sponsored coverage or a qualified small employer health reimbursement arrangement (QSEHRA) may receive tax credits. Employer penalty waived if such individuals enroll.
- **Addressing the “Coverage Gap” in states that have not expanded Medicaid.** Those below the poverty level (who are not eligible for exchange subsidies today) will be allowed to purchase on the exchanges from 2022-2025.
- **Medicaid Changes.** Includes financial incentives for states to expand Medicaid, post-partum coverage, and provisions to slow the rate of redeterminations of Medicaid eligibility at the end of the PHE.

## Enhanced Tax Credits in the Individual Market

The American Recovery Plan Act (ARPA) improved the generosity of ACA tax credits – BBBA would extend these changes through 2025 and expand credits below 100% of poverty

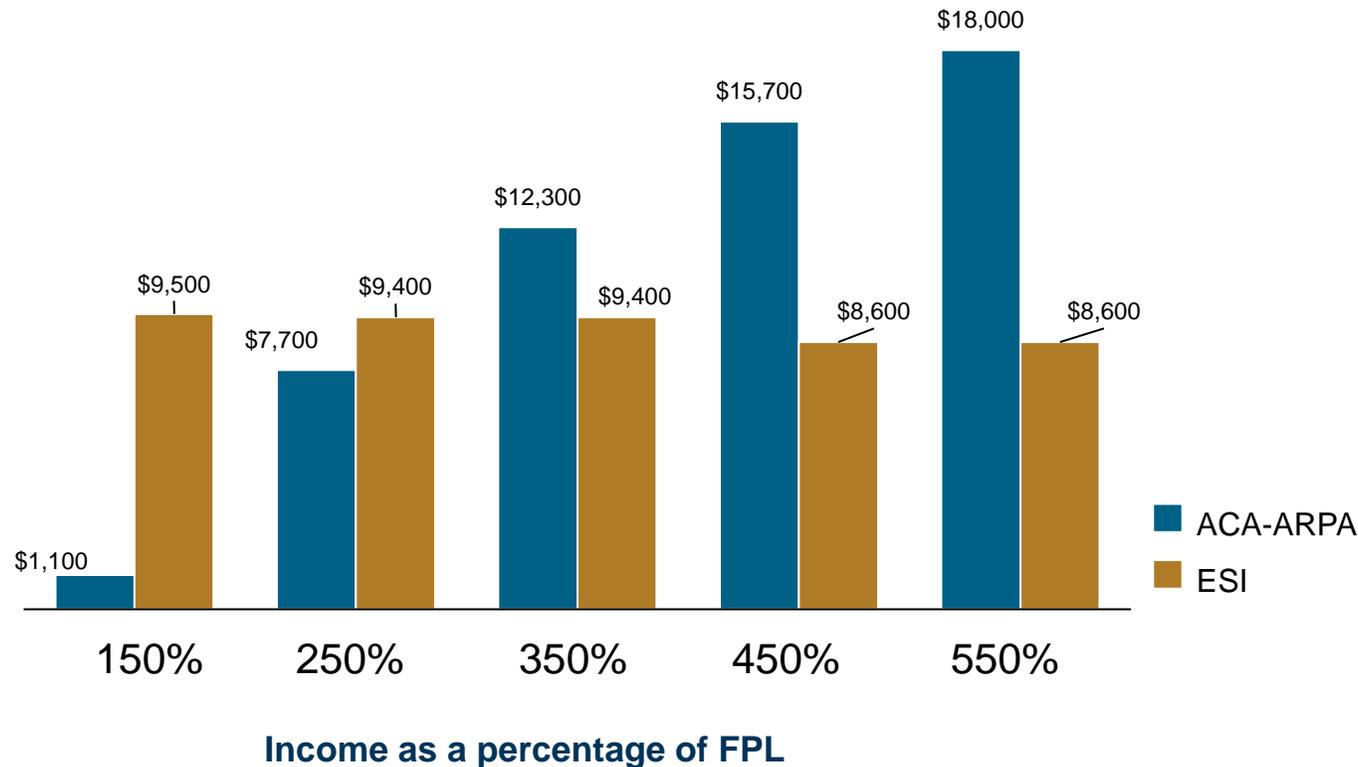


BBBA would also provide greater cost-sharing protection, including 99% AV plans below 138% of poverty

## Net cost of coverage – Enhanced ACA Tax Credits vs ESI

Up to incomes of about 300% of FPL for a family of four (income of about \$75,000), the net cost of coverage is lower with ARPA changes than for ESI

Estimated 2021 nationwide net cost of premiums and cost sharing by FPL for a Family of four, adults age 45, excluding employer contribution



- For ESI, employee's net cost includes the tax deductible share of premium and patient cost sharing. At higher incomes, the value of tax deductibility is greater, leading to lower costs.
- For ACA coverage, net costs reflect premiums after APTCs and patient cost sharing and CSRs

## Will Coverage Increase or Decrease as we Emerge from the Pandemic if BBBA is in place?

- Enhanced tax credits may lead to some reduction of employer coverage, but the impact post PHE may be limited
  - While the ACA marketplaces have stabilized, coverage remains less generous than ESI (which has an average actuarial value of 83.5% or higher than Gold plans)\*
  - Likely impact is on smaller firms with lower wage workers
- No indication that major employers will withdraw benefits in the near term
  - Tight labor market; health insurance remains important for recruiting and retaining workers
  - Temporary nature of BBBA changes
- Medicaid redeterminations could impact 10-15 million after the PHE ends
  - Need successful processes to transition people to other sources of coverage
  - The big question is how many people will transition back to employer coverage

\* Source: Fronstin, Paul, Stuart Hagen, Olivia Hoppe, and Jake Spiegel, "The More Things Change, the More They Stay the Same: An Analysis of the Generosity of Employment-Based Health Insurance, 2013–2019," EBRI Issue Brief, no. 545 (October 28, 2021).

# Q&A



# UPCOMING EBRI PROGRAMS

Webinar: Generational Differences in Wealth – January 19, 2022

Webinar: Workplace Wellness Survey Core Findings – February 2, 2022

Webinar: Workplace Wellness Survey Race & Ethnicity Findings – February 23, 2022

Webinar: Members Only Research Round Up – March 9, 2022

Webinar: Retirement Income Security of Public Employees – March 16, 2022

Webinar: Health Savings Account Data Update – March 30, 2022

Webinar: EBRI/ICI 401(k) Contribution Analysis – April 20, 2022

Washington, DC: May Policy Forum – May 13, 2021

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