EBRI’S MISSION

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.
EBRI’S 90TH 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!

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 Halmeyer, 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 McGuiness, 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, Benefic
- 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
Click this button

Type question(s) here

To: All panelists
Your text can only be seen by panelists
POLLING QUESTION

PLEASE SHARE YOUR THOUGHTS
ERIC – The Voice of Large Plan Sponsors

• 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:

• Drive a car or fill it with gas
• Watch T.V.
• Dine out or at home
• Benefit from our national defense
• Use a cellphone
• Receive or send a package
• Use a computer
• Go shopping
• Visit a bank or hotel
• Use cosmetics
• Fly on an airplane
• Enjoy a beverage
• Receive a package
• Go shopping
• Use cosmetics
• Enjoy a beverage
The ERISA Industry Committee – Large Employer Priorities

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

- 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
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
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.

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

Source: BCBSA analysis of company financial data
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.
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.

**Enhanced Tax Credits in the Individual Market**

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

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

Please visit ebri.org for more information.
Support EBRI by joining today: Contact Betsy Jaffe, jaffe@ebri.org