



# GOVERNMENT RELATIONS

Legislative/Regulatory Update

SIIA.ORG

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## WASHINGTON, D.C. HAPPENINGS

### House Passes the “One Big Beautiful Reconciliation Bill”

We told you it wasn't going to be easy, but it ultimately got done. On May 27<sup>th</sup>, House Republicans successfully passed the “One Big Beautiful Bill” by a 215 - 214 vote count. Now, on to the Senate...

### Showtime for The Senate

Senate Republicans have been patiently waiting for House Republicans to pass the “One Big Beautiful Bill” and send the Bill to the Senate for their consideration. Most Senate Republicans kept their powder dry and refrained from commenting on how the House was crafting the underlying provisions of the Bill, although some Republican Senators couldn't help themselves in either praising or criticizing the House version. But now that the “One Big Beautiful Bill” is out of the House and in the hands of the Senate, Senate Republicans are saying that everyone should expect some changes.

### Chchch...chaaaannggeess

Changes to the House-passed version of the “One Big Beautiful Bill” will not only come in the form of policy differences between House and Senate Republicans, changes will also come to bear if and when the Senate Parliamentarian determines that certain provisions of the House-passed Bill fail to satisfy the Reconciliation Rules. For example, the House-passed version of the Bill includes a provision prohibiting States from regulating AI for 10 years. It is highly likely that this provision will get bounced from the underlying Bill by the Parliamentarian for failure to satisfy the Reconciliation Rules. In addition, the House-passed Bill includes a number of HSA-friendly provisions that SIIA and the employer-sponsored health plan community support, including allowing an HDHP-planholder to access Direct Primary Care services and certain items or services furnished at an On-Site Clinic without losing their eligibility to contribute to their HSA. Although these provisions impact taxes, the Parliamentarian may find that these provisions are private insurance-driven law changes that only have an “indirect” impact on taxes, and thus, must be removed from the underlying Bill. We will keep an eye on these provisions to see if they stay in or get bounced.

### Differences on Policy

When it comes to policy, there are indeed some differences between House and Senate Republicans, but interestingly, many of these differences are over the same difficult issues House members were wrestling with, namely: Spending reductions and how deep; Medicaid cuts; Repealing the Inflation Reduction Act's energy tax credits; and Tax reforms. For example, some conservative Senators want even bigger spending reductions than those included in the House-passed version (so we may see additional spending cuts), while Republican Senators that hail from States with low-income populations are concerned that the proposed work requirements, modifications to the eligibility requirements, and changes to how Medicaid services are funded will result in too many of their constituents losing health coverage (so maybe we see changes here too). On energy taxes, some Republican Senators (while not necessarily channeling Elon Musk on the issue) don't want all of these energy taxes to be repealed, and then you have the SALT tax deduction, which most Republican Senators don't want to increase from a \$10,000 to \$40,000 limit like the House-passed Bill did. How will things shake out? Stay tuned...

### Timing

As noted previously, President Trump said he wants Congress to pass the “One Big Beautiful Bill” by July 4<sup>th</sup>. Which means, the Senate MUST pass its version of the Bill – THEN – the House must pass that SAME version by July 4<sup>th</sup>?!? We're taking the over...

## SIIA'S COALITION WORK

SIIA continues to oppose any limitation placed on the tax preference for employer-sponsored health coverage (i.e., the “exclusion”). This past Tuesday, our Anthony Murrello attended a fundraiser for Senate Finance Republicans, where Anthony was able to articulate SIIA's concerns on the matter. We are also joining our Coalition partners at P4ESC in conveying our support for the HSA-related provisions included in the House-passed “One Big Beautiful Reconciliation Bill.”

## HEALTHCARE FOCUS

### Court Ruling on TPA-Fiduciary Status

The 6<sup>th</sup> Circuit Court of Appeals recently ruled that Blue Cross/Blue Shield of Michigan (BC/BS of MI) – serving as a TPA to a self-insured health plan – was an ERISA fiduciary. In this particular case, the court found that BC/BS of MI intentionally overpaid out-of-network providers. Then, BC/BS of MI clawed back these overpayments as part of their routine audits of payments to the providers. Then, under a Shared Savings Program, BC/BS of MI retained 30% of the overpayments that were discovered. The court ruled that as a TPA, BC/BS of MI had “discretionary authority” over how to spend the plan's assets because BC/BS of MI could decide whether and how much to pay out-of-network providers. The court also ruled that BC/BS of MI could determine the amount of compensation paid to it by the plan by over-paying providers with knowledge that the TPA would retain 30% of the identified overpayments.

### Not All TPAs are Fiduciaries, But Certain Actions Will Make TPAs a Fiduciary

It is important to point out that this case involved a unique set of facts and circumstances that led the 6<sup>th</sup> Circuit to rule that BC/BS of MI was a fiduciary. In many cases, however, a TPA for a self-insured plan (whether it's an insurance carrier-owned TPA or independent TPA) is NOT a fiduciary. Why? Because in many cases, TPAs do not have “discretionary authority” (i.e., decision-making authority) over (1) how the plan is operated or (2) how the plan's assets are spent. Yes, it is true that TPAs perform services that are paid for with plan assets. But, that is NOT the same thing as having decision-making authority over how the plan's assets are spent. BUT, if the TPA does indeed take certain actions where they make decisions on how the plan's assets are spent (like we saw in this 6<sup>th</sup> Circuit case), the TPA will cross-the-line into being considered a fiduciary. Whether a TPA is found to be a fiduciary is almost always determined by a court of law in response to a plan sponsor's lawsuit claiming wrong-doing on the part of the TPA. TPAs are advised to ensure that they are not performing tasks where they are deciding how the plan's assets are spent, unless the TPA is open to affirmatively accepting fiduciary status. Plan sponsors are advised to continue to monitor their TPAs to ensure that the TPAs are performing the tasks they were hired to perform and not spending plan assets without the plan sponsor's consent.

### Price Transparency Request for Information (RFI)

On May 22<sup>nd</sup>, the Federal Departments released an RFI asking for feedback on how the Departments should develop regulations governing the public disclosure of prescription drug prices on a Prescription Drug Machine-Readable File (MRF). The questions in the RFI are technical in nature, so we won't detail them here, but we highlight the release of the RFI to say a couple of things: First, regulations governing the Prescription Drug MRF were originally released along with the Hospital and TiC Rules in the first Trump Administration, but the Drug MRF was halted due to a lawsuit. But now, the forthcoming Transparency 2.0 efforts are resurrecting the Prescription Drug MRF, and it is highly likely that this unique Drug File is here to stay. Second, many of the questions in the RFI on how improve the MRFs can be applied to the Hospital and TiC MRFs, so this RFI – while focusing on the Drug File – is requesting information that can be used to improve ALL of the Transparency MRFs. Third, SIIA will be responding to the RFI. [Click here](#) to view the RFI.

## STATE POLICY UPDATE

### Connecticut

SB 11 called for requiring a stop-loss insurance policy to cover the ACA's EHBs and State's mandated benefits, and also, requiring a minimum of \$75,000 individual and \$250,000 aggregate attachment points. The bill was not taken up in committee, and we can now confirm that the legislation is dead. Legislators in the State are still working on a healthcare affordability bill, so we will continue to advocate for the bill to exclude stop-loss provisions.

### Louisiana

SB 16 endeavored to prohibit the issuance of a stop-loss insurance policy to an employer with 50 or fewer employees. We are happy to report that this provision, and other related restrictions based on employer size, have been removed from the bill, and conversations are ongoing to ensure that these types of restrictions do not resurface.

## SIIA'S GOVERNMENT RELATIONS TEAM IN ACTION

### Advocacy in Action Webinar Series

Last month, SIIA's GR Team held our May edition of our Advocacy in Action (AIA) Webinar Series. [Click here to watch](#) a recording of the Webinar.

The next AIA Webinar will be held on Tuesday June 17th . Please register for our AIA Webinar Series if you haven't already.



## STAY IN THE KNOW

Registration is now open for **SIIA's National Conference!** [Register here!](#)

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[SIIA Government Relations Team](#)

Chris Condeluci | [ccondeluci@siia.org](mailto:ccondeluci@siia.org) – Anthony M. Murrello | [amurrello@siia.org](mailto:amurrello@siia.org) – Catherine Bresler | [catherine@siia.org](mailto:catherine@siia.org)

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