



GOVERNMENT RELATIONS

Legislative/Regulatory Update

SIIA.ORG

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WASHINGTON, D.C. HAPPENINGS

“Debate” Turns Into Political “Messaging” and “Campaigning”

In our September Newsletter, we were right when we you told you that the “debate” over extending the Affordable Care Act’s (ACA’s) “enhanced premium subsidies” would reach a fever-pitch once the September 30th government funding deadline hit. But, what we did not quite fathom is that the “debate” over extending the “enhanced premium subsidies” would be the root-cause for the longest Government Shutdown in history. Now that we are on the other side of the historic Government Shutdown, what’s next? ANSWER: Political “messaging” and “campaigning.”

The Democrats’ POV

Despite Democrats bludgeoning Republicans over Republicans’ refusal to extend the “enhanced premium subsidies,” the smart money in Washington, DC always knew that Democratic Leadership never really wanted a negotiated deal on extending the “enhanced premium subsidies.” Instead, Democratic Leadership wanted to keep the issue “live” throughout the rest of 2025, which would then enable Democrats to “campaign” on health care over the Holidays, and all the way through to the November 2026 mid-terms.

The Republicans’ POV

The smart money in Washington, DC also knew that Republicans would never agree to an extension of the “enhanced premium subsidies” without any reforms to the underlying premium subsidy structure. That put Republicans in a box and effectively forced Republican Leadership to schedule votes on Republican “messaging” bills rather than negotiating out a compromise proposal that would divide the Republican Conference. This, however, would at least allow Republicans to continue to argue that the ACA has failed to allow people to keep their doctors and reduce costs, despite promises made back in 2010 when the ACA was enacted.

Votes on “Messaging” Bills

And so it went, Senate Republicans voted on a bill that would NOT extend the “enhanced premium subsidies,” but instead, would allow up to \$1,000 to \$1,500 (depending on income and age) to be directed to an HSA which could be used to pay premiums and out-of-pocket spending, so long as a consumer enrolled in a “bronze” level ACA individual market plan. Meanwhile, House Republicans voted on a health care bill that also did NOT extend the “enhanced premium subsidies,” but instead, included a number of Republican health care priorities like Association Health Plans (AHPs), Individual Coverage HRAs (ICHRAs), and funding the Cost-Sharing Reduction Subsidies. This House bill also included the Self-Insurance Protection Act (SIPA) and PBM Disclosure Requirements (more on SIPA and PBMs below). Not to be out-done, Senate Democrats also had their “messaging” vote on a “clean” 3-year extension of the “enhanced premium subsidies,” and drama among moderate and conservative House Republicans has led to a “messaging” vote in the House on a “clean” 3-year extension in January.

So What’s Coming in January?

We are glad you asked. Well first, as stated, a House vote on a “clean” 3-year extension of the “enhanced premium subsidies” is coming. Even if four moderate House Republicans join all Democrats in passing this “clean” 3-year extension out of the House, it will go nowhere in the Senate. However, the smart money in Washington, DC is betting that this upcoming January vote will compel Senate Republicans and Senate Democrats to cut a deal on extending the “enhanced premium subsidies” in some form, although at this point, no one can really handicap the success rate of getting this compromise deal over-the-finish-line. Which brings us to the end of January, which is the next government funding deadline.

What Will Happen at the End of January?

The smart money in DC is betting against another Shutdown, and instead are betting that Republicans and Democrats agree to a grand compromise that not only funds the Government throughout the rest of 2026, but that extends the “enhanced premium subsidies” in some form and includes a number of health care policy changes like the PBM Disclosure Requirements and possibly the Transparency and Data-Sharing provisions SIIA has been waiting for Congress to enact over the past 3 years. Stay tuned, as 2026 is certainly going to start off with a bang...

HEALTHCARE FOCUS

The House Bill & The Self-Insurance Protection Act (SIPA)

Back in 2014, SIIA developed an early iteration of SIPA, which would prevent the Federal government from developing regulations that would re-characterize stop-loss insurance as health insurance based on specified attachment points. In 2023, language was added to the original version of SIPA that would preempt any State law regulating stop-loss insurance if that State regulation prevented a self-insured employer from obtaining stop-loss coverage. SIIA supports the language we developed back in 2014, prohibiting the Federal government from re-characterizing stop-loss insurance as health insurance. However, SIIA recognizes that States have the authority to regulate insurance products sold within their State, and SIIA believes that any unreasonable and arbitrary regulation of stop-loss insurance should be killed through lobbying and advocacy at the State level, not opening up ERISA’s preemption provision to preempt State stop-loss laws. We will monitor whether SIPA is included in any compromise health care package, but we do know that SIPA won’t be getting into the law through this House Republican “messaging” bill.

The House Bill & The PBM Disclosure Requirements

Despite the fact that this House “messaging” bill won’t become law, the House bill’s PBM Disclosure Requirements may get plucked out and added to a potential compromise health care package. Why? Because we have seen these PBM Disclosure Requirements before, namely, in a bi-partisan spending bill that was put together at the end of 2024, which never made its way into the law.

What Do the PBM Disclosure Requirements Do?

According to this proposal, PBMs must furnish to the group health plan every 6 months (or if requested by the group health plan, every quarter) a report that includes, among other things, whether the drug is brand-name or generic and the wholesale acquisition cost and average wholesale price of the drugs, and also, the net and gross amounts paid for covered drugs, the amount of rebates paid to the PBM, and participant out-of-pocket costs for covered drugs. The report must also include information on the number of participants who filed a claim for each drug, the total number of prescription claims for each drug, and the total number of dosage units for each drug, and also, the difference between the amounts paid to the drug manufacturer and the pharmacy for a covered prescription drug, the dispensing channel, information related to PBM-owned pharmacies and mail-order, and a description of the formulary tiers and prior authorization or step therapy applied to specified drugs. SIIA expects that we will see these PBM Disclosure Requirements enacted into law. It’s just a matter of when...

PBMs As ERISA Fiduciaries

Sticking with PBM-related issues, some groups within the employer-sponsored health plan community are advocating for legislation that would add PBMs to the list of ERISA fiduciaries under the ERISA statute. Here, Congress would amend ERISA specifying that if a person or an entity performs services like negotiating drug prices with drug manufacturers, developing drug formularies, developing prescription drug provider networks, and/or processing prescription drug benefit claims, this entity would be a fiduciary under ERISA, and thus, subject to the same ERISA fiduciary duties that plan sponsors and plan administrators are subject to. This would mean that PBMs must, among other things, act in the best interest of plan participants and undertake efforts to keep health plan costs low, and PBMs would have to make sure they do not have a conflict of interest and PBMs could not unreasonably profit off of the health plan.

Artificial Intelligence (AI) and Federal Preemption of State AI Laws

Last week, President Trump issued an Executive Order (EO) aimed at limiting State-level AI regulations. The EO argues that divergent State laws could hinder U.S. innovation and competitiveness, while critics of the EO argue that the measure is being pushed to make it increasingly difficult to regulate AI altogether. The EO directs the U.S. Attorney General to establish an “AI Litigation Task Force” that would target and challenge in Federal Court State AI laws that this Task Force determines conflicts with Federal AI policy and/or is a “barrier to innovation.” As we often remind our members, EOs do not have the force of law, but rather EOs (1) “message” the White House’s policy priorities and (2) direct the Federal Departments to “do something.” As AI continues to increase its footprint in the health care industry, SIIA will keep an eye out for any legal action taken by the DOJ and/or any efforts in Congress to enact an AI State law Federal Preemption provision.

SIIA’S GOVERNMENT RELATIONS TEAM IN ACTION

SIIA on the Hill

Our GR Team and SIIA members have taken advantage of the recent focus on health care policy in Congress. Over the past month, our GR Team and various SIIA members have participated in a number of meetings to talk directly to Congressional staff about price transparency, data-sharing, and PBM-related issues. In particular, we have been meeting with staff working for Senators that sit on the Senate HELP Committee, and we have been emphasizing our support for passage of the Price Transparency, Data-Sharing, and PBM Reforms that we have been relentlessly trying to get into the law over the past 3 years. Our meetings are also geared towards educating staff about the pain-points self-insured plan sponsors and their service providers are experiencing when it comes to understanding pricing information, accessing health claims data, and working with uncooperative PBMs. If you would like to discuss our ongoing Hill efforts or would like to get involved, please reach out to Anthony Murrello at amurrello@siia.org

WE WISH EVERYONE A HAPPY HOLIDAYS, MERRY CHRISTMAS, AND A HAPPY AND SAFE NEW YEAR!!!

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