# *BENEFITS INSIDER*

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The ***Benefits Insider*** is a bimonthly member exclusive publication prepared for WEB members by the American Benefits Council ("the Council"), a premiere benefits advocacy organization based in Washington, DC. This newsletter provides the latest news and analysis on the most important benefits-related policy matters in Congress, executive branch agencies and the federal judiciary.

*Please note: any views or opinions expressed in these stories represent the advocacy positions of the American Benefits Council and its membership. They do not necessarily reflect the views of WEB or its membership. To inquire about membership with the American Benefits Council, contact Deanna Johnson at (202) 289-6700 or djohnson@abcstaff.org.*

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## RECENT LEGISLATIVE ACTIVITY

### Council Voices Support for Bill to Promote Competition in Health Care Market

As a part of ongoing efforts to advocate for measures that would lower health care costs and promote higher-quality care, the American Benefits Council offered its strong endorsement of bipartisan legislation to crack down on anti-competitive practices in health care, thereby lowering costs and improving quality for patients.

The Healthy Competition for Better Care Act (S. 1451), introduced in the U.S. Senate by Senators Tammy Baldwin (D-WI) and Mike Braun (R-IN), previously passed the Senate Health, Education, Labor and Pensions (HELP) Committee in 2018 as Section 302 of the Lower Health Care Costs Act. Representative Michelle Steel (R-CA) has also introduced the measure in the House of Representatives and is seeking bipartisan cosponsors.

Specifically, the measure would:

- Allow discounts or incentives for enrollees who choose high-quality and low-cost providers.
- Allow insurers and employers to contract with the hospitals and providers of their choice, without requirements to enter into additional contracts with other affiliated providers or hospital.
- Allow health insurance issuers to negotiate their own rates with other providers who are not party to the contract of the provider involved.
- Allow hospitals and issuers to freely negotiate prices, without requirements to pay higher amounts for items or services than those to which other issuers have agreed.

The bill includes exceptions for certain group model issuers, including health maintenance organizations, and value-based network arrangements, such as an exclusive provider network or accountable care organization.

As the Council noted in a May 8 news release, "The only way to lower health care costs effectively is by addressing the root causes of rising prices – including anti-competitive contracting that stifle choice and competition. The bill introduced today will help lower costs by promoting competition in the health care market and employer innovations that prioritize high-value care. We applaud the senators for their leadership and urge Congress to pass this legislation."

The Council has consistently called upon Congress to tackle the root causes of rising health care costs and offered solutions for fixing these problems at their core. Earlier this year, the Council issued its priority legislative health care objectives for the 118th Congress, which prominently included enhancing competition in health care markets. In 2019, the Council prepared a comprehensive set of recommendations for lowering health care costs and supported passage of

the LHHCA. The Council will continue to advocate for passage of this legislation or its inclusion in other measures under consideration by Congress.

Prospects for committee consideration of the bill, or inclusion in broader legislation, are uncertain at this time.

### Council Supports Bill Allowing 403(b)s to Invest in CITs

On a May 10, the American Benefits Council **submitted a letter** to lawmakers in the U.S. House of Representatives in support of a bill that would allow 403(b)s to invest in collective investment trusts (CITs).

The Retirement Fairness for Charities and Educational Institutions Act (H.R. 3603) would amend federal securities laws to allow employees of charities and public educational institutions in 403(b) plans to invest in CITs. The four primary sponsors of the bill are Reps. Frank Lucas (R-OK), Andy Barr, (R-KY), Bill Foster, (D-IL) and Josh Gottheimer, (D-NJ).

Additionally, the bill leaves intact the SEC's ability to oversee and regulate the investment products offered under 403(b) plans, including enforcement powers over misleading disclosures or promotion of imprudent products.

Plan sponsors would also retain the responsibility to screen any investments made available to their participants — a further protection for participants.

"Eliminating this anomalous penalty on 403(b) plan participants would be a great step forward," the Council wrote in the letter to the bill's sponsors. "The advantages are clear — less expensive investments."

## RECENT REGULATORY ACTIVITY

### COVID-19 Public Health Emergency Ends

The COVID-19 public health emergency (PHE) ended May 11, at which time numerous health plan requirements and forms of relief also expired.

Separately, the COVID-19 National Emergency (NE) ended on April 10. This was a focus for plan sponsors because the U.S. Department of Labor and Treasury Department had previously extended certain important health plan timeframes (e.g., deadlines for COBRA elections, COBRA premium payments, special enrollment periods and claims) during the pandemic. These timeframes had been extended until the earlier of one year from the date the participant

was first eligible for relief or 60 days after the announced end of the NE, referred to as the "outbreak period."

While the Biden administration had initially announced that the NE would end on May 11, the president subsequently signed into law joint resolution (H.J. Res. 7) to end NE on April 10. Nevertheless, the administration informally clarified to the Council, referencing previously issued FAQs — that this change will not affect the end of the "outbreak period" for purposes of related health plan timeframes, with the end of the outbreak period remaining July 10, 2023.

**Council, Others Recommend OMB Update Race, Ethnicity Data Collection Standards**

The American Benefits Council was one of 19 physician, insurer and health advocacy groups to send **a letter to the White House Office of Management and Budget (OMB) on April 27** supporting a proposed update to the agency's data collection standards.

Earlier this year, OMB issued a notice and request for comments on initial proposals for revising the agency's 1997 Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15).

SPD 15 was first developed in 1977 to provide consistent data on race and ethnicity (when aggregated to the minimum reporting categories) throughout the federal government, including the decennial census, household surveys, and federal administrative forms (including benefit application forms). Since then, SPD 15 has only been revised once, in 1997.

Observing that, "over the nearly 25 years since SPD 15 was revised there have been large societal, political, economic, and demographic shifts in the United States throughout this period," OMB formed a Federal Interagency Technical Working Group on Race and Ethnicity Standards comprised of federal career staff representing programs that collect or use race and ethnicity data. After a series of listening sessions, the working group issued a series of proposals outlined in the request for comments.

The April 27 group letter to OMB, co-signed by the Council, supports a number of these recommendations:

- SPD 15 should provide clear and consistent requirements for the collection of race, ethnicity and language (REL) data and sexual orientation and gender identity (SOGI) data that include a minimum standard for disaggregated race and ethnicity data collection and are consistent with industry interoperability standards.

- OMB should incorporate the current data standards promulgated by the DHHS Assistant Secretary for Planning and Evaluation/Office of Minority Health into SPD 15 and require that these be the minimum standard categories for collecting disaggregated REL data.

- OMB should intentionally and proactively elicit and accept additional input from diverse stakeholders regarding SOGI data collection and utilization into the SPD 15 update.

- OMB should enforce non-voluntary, uniform and universal adoption of the updated SPD 15 standards upon release in 2024 for all government agencies and all private sector health care stakeholders, including payers and providers.

The Council's engagement on this issue follows the publication of a **report**, developed by the Council in partnership with the Urban Institute and the Deloitte Health Equity Institute (supported by Elevance Health) describing how health equity can be advanced through improved collection and sharing of race and ethnicity data.