

House Passes Health Care Transparency Law

The U.S. House of Representatives voted 320-71 to pass the Lower Costs, More Transparency Act (“the Act”) on December 11, 2023. The legislation aims to lower health care costs by increasing transparency in the market. The Act includes changes that would impact employers sponsoring group health plans.

For group health plans, the bill:

- Codifies the current transparency in coverage regulations (related to posting machine-readable files (“MRF”) and making certain cost information available) into statute with some changes (e.g., specific timing to post the MRF – 10th day of such month). This provision, if enacted, would apply to the first plan year on or after January 1, 2026.
- Requires Pharmacy Benefit Managers (“PBMs”) to provide semi-annual reporting to a group health plan that includes detailed data on prescription drug spending, including the acquisition cost of drugs, total out-of-pocket spending, formulary placement rationale, and aggregate rebate information. PBMs who fail to comply may face penalties of \$10,000/day. If enacted as is, it would apply to the first plan year on or after a date that is 2 years after the date of enactment.
- Enhances transparency requirements to ensure health plan fiduciaries are not contractually restricted from receiving cost or quality of care information about their plan. Penalties for noncompliance may be assessed against TPAs and PBMs of \$10,000/day. If enacted as is, it would apply effective for the first plan year on or after the date of enactment.
- Amends ERISA 408(b)(2) compensation disclosure requirements to directly include PBMs and TPAs as service providers that must disclose their compensation. If enacted as is, it would apply to contracts entered into on or after January 1, 2025.
- Prohibits gag clauses in pharmacy contracts that would restrict a pharmacy from disclosing to a covered participant or beneficiary cost information related to a drug. The effective date of this provision is unclear.

While the House was successful in passing this bipartisan legislation, it is unlikely the Senate will consider or pass this bill as a standalone piece of legislation. However, the House and Senate will need to pass government funding bills in early 2024 and it is possible that components of this legislation could make it into one of those spending bills that are ultimately enacted into law. We will continue to monitor developments.