

'MOST ACTIVE' FEDERAL POLICY ENVIRONMENT MOTIVATES SIIA MEMBER ENGAGEMENT

As the self-insurance industry matures in its service to the American public – for example, a majority of employees and their dependents covered by employer health plans are now in self-insured plans – it attracts greater government attention each year.

Increasingly, federal legislation, regulation and taxation issues can have great impact, for better or worse. The breadth of public policy affecting self-insurance is at its historic high point. “This is clearly the most active government relations environment I’ve seen for SIIA,” said Larry Thompson, chair of the Government Relations Committee who earlier served terms as president and chairman.

“Volunteer involvement by members is also at a higher volume than ever before,” Thompson said.



INSIDE THE BELTWAY

WRITTEN BY DAVE KIRBY



Larry Thompson

It's no mystery why the ability to influence public policy has become a primary reason for SIIA membership. Engagement in government advocacy is the members' direct path to protecting their businesses, clients and the millions who depend on their coverage.

"A good example of SIIA member engagement is the annual DC Fly-In that brings members to the capital to advocate for our top issues before Congress," said Ryan Work, Vice President of Government Relations. "At this event last spring SIIA members spread across Capitol Hill to meet with over 50 congressional offices, educating Members of Congress and their staff on the issues that are important for our industry."

Following are summaries of SIIA advocacy on current federal government issues:

SUPPORTING SIPA

In recent years the greatest ongoing government relations effort by SIIA staff and members has been pursuit of the Self-Insurance Protection Act (SIPA), which SIIA was instrumental in introducing in Congress during the previous administration. SIPA would prevent the federal government from being able to define stop-loss insurance as health insurance with all the resulting taxation and regulatory challenges.

"This issue has been like the sword of Damocles hanging over our heads for decades," said Larry Thompson at the time that SIPA was passed by the U.S. House of Representatives in the 2017 session by an overwhelming landslide vote of 400-16.

A number of states, of course, have in the past tried to define stop-loss insurance as health insurance in order to bring that element of self-insurance under state control and weaken the federal ERISA preemption of interference with self-insurance. SIIA has always countered that stop-loss insurance is not health insurance because it does not provide coverage to individuals or pay any health claims; rather it is casualty insurance that indemnifies self-insuring employers from extraordinarily high losses.

"If SIPA becomes law stop-loss insurance will be clarified and codified as not health insurance. It will end that argument once and for all," Thompson said.

SIIA is working with Senate offices to advocate and push for the introduction of a companion SIPA bill, following its passage by the House last year. "We are doing all we can through advocacy meetings and member engagement to bring this up for a vote in the Senate" Ryan Work said.

SELF-INSURED AHP OPTIONS

SIIA continues to work with members to seek potential solutions with the U.S. Department of Labor (DOL) to achieve a workable approach to allow self-insured association health plans (AHP). The DOL's recently released final rules do not include the hoped-for "class exemption" that would have given ERISA preemption. As the rule stands, AHPs will operate as multi-employer welfare arrangements (MEWA) under state laws, thus operating under a patchwork of regulations across various jurisdictions.

"The DOL rules are definitely an improvement over what has existed to date but still where we need them to be," said Government Relations Committee chair Thompson at the time the rule was released.

SIIA will continue to advocate for an appropriate self-insured AHP option, according to Ryan Work. “We will have ongoing discussions that follow up on the president’s stated goal of AHPs being able to operate across state lines,” he said.

HEALTH SAVINGS ACCOUNTS

New rules that create additional flexibility for the administration of health savings accounts (HSA) were contained in legislation passed by the House of Representatives and that still must be passed by the Senate on their way to the president’s desk.

HSAs may be offered to employees who are members of a high-deductible health plan (HDHP) and provide employees with the ability to seek care that is appropriate to each individual.



Catherine Bresler

“HSAs have become more and more important in recent years,” said Ashley Gillihan, attorney with SIIA member Alson & Bird LLC of Atlanta, an international law firm with a specialty in ERISA law that has brought “top firm” kudos from U.S. News magazine the last three years. “HSA enrollment has increased as employers become comfortable with high-deductible plans, which in some cases are replacing traditional self-insured plans,” he said.

The new rules approved by the House would make HSAs more attractive for employees, which may make them more attractive for employers. For example, Gillihan points out that employers could operate an on-site health clinic whose free services would not disqualify an employee from belonging to an HSA, as is currently the case. The House bill would also protect an employee’s eligibility for an HSA if their spouse enrolls in a general purpose Health FSA. And expenses incurred after the HSA is established but before the account is funded could still be reimbursed from the HSA. These are just a few of the improvements.

SIIA’s current challenge is to encourage the Senate to pass a companion bill before the House bill expires at the end of the current session. “We originally didn’t sense a lot of support for this by the Senate but our contacts in Washington have seen some encouraging signs recently,” said Gillihan. “Now we see this as a real possibility.”

EEOC WELLNESS RULES

Wellness programs – typically educational experiences that help employees reduce the possibility of serious disease – have gained in popularity among self-insuring employers to help restrain health care treatment costs. The programs are governed by the federal Equal Employment Opportunity Commission (EEOC).

A wrench was tossed into the works in the form of a federal lawsuit (AARP v. EEOC) that resulted in eliminating proposed rules on incentives employers may offer for employees to participate in the programs.

Without new rules being established, “Programs will be operating in an air of uncertainty,” said Catherine Bresler, Vice President of Government Relations for The Trustmark Companies.

The problem is that a full rewrite of the wellness incentive rules would likely require a full EEOC membership but the slate of nominated commissioners has not been confirmed by the Senate.

In the meantime, the greater scope of wellness programs remain available to employers, according to Bresler. “Incentive programs must observe the key word ‘voluntary’ in creating and communicating them,” she said.

SIIA joined a letter to Senate leadership urging a confirmation vote on EEOC Commissioner nominees to help the agency undertake a rewrite of wellness incentive program rules.

SIIA's Policy Webinar Series presented a program, "The Changing EEOC Wellness Incentive Rules" last month with panelists including SIIA members Catherine Bresler of Trustmark; Ernie Clevenger of CareHere; Shane Doucet of Doucet Consulting Solutions and Michael Eastman of NT Lakis LLP.

LIFTING ACA TAX BURDENS

SIIA staff continues to work with Congress on relief measures on several long-term taxes implemented by the Affordable Care Act (ACA). While debate has been ongoing in Congress over further delaying or eliminating the Health Insurance Tax (HIT) and Cadillac Tax, there were indications that further action in the House and Senate may occur this fall.

Also being considered is three-year retroactive relief of the ACA's employer mandate. SIIA, along with health coalition partners, continues to advocate for such actions and remains hopeful of Congressional action.

As always, questions or volunteering for advocacy duty are welcomed by SIIA's Ryan Work at rwork@siia.org. ■



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