



# Washington Update

*Presented by Michael Andel,  
Vice President Congressional Affairs, NABIP*

# Congressional Overview

# 118<sup>th</sup> Congress

Party	118 <sup>th</sup> Congress
Democratic	48
Republican	49
Independent	4
<b>Total</b>	<b>100</b>

Party	118 <sup>th</sup> Congress
Democratic	213
Republican	218
Independent	0
Vacancies	2
<b>Total</b>	<b>435</b>



**Chuck Schumer (D-NY)**  
Majority Leader



**Mitch McConnell (R-KY)**  
Minority Leader

\*The four Independents caucus with Democrats. Senators Kyrsten Sinema and Joe Manchin changed their party affiliation from Democrat to Independent.



**Mike Johnson (R-LA)**  
Speaker of the House

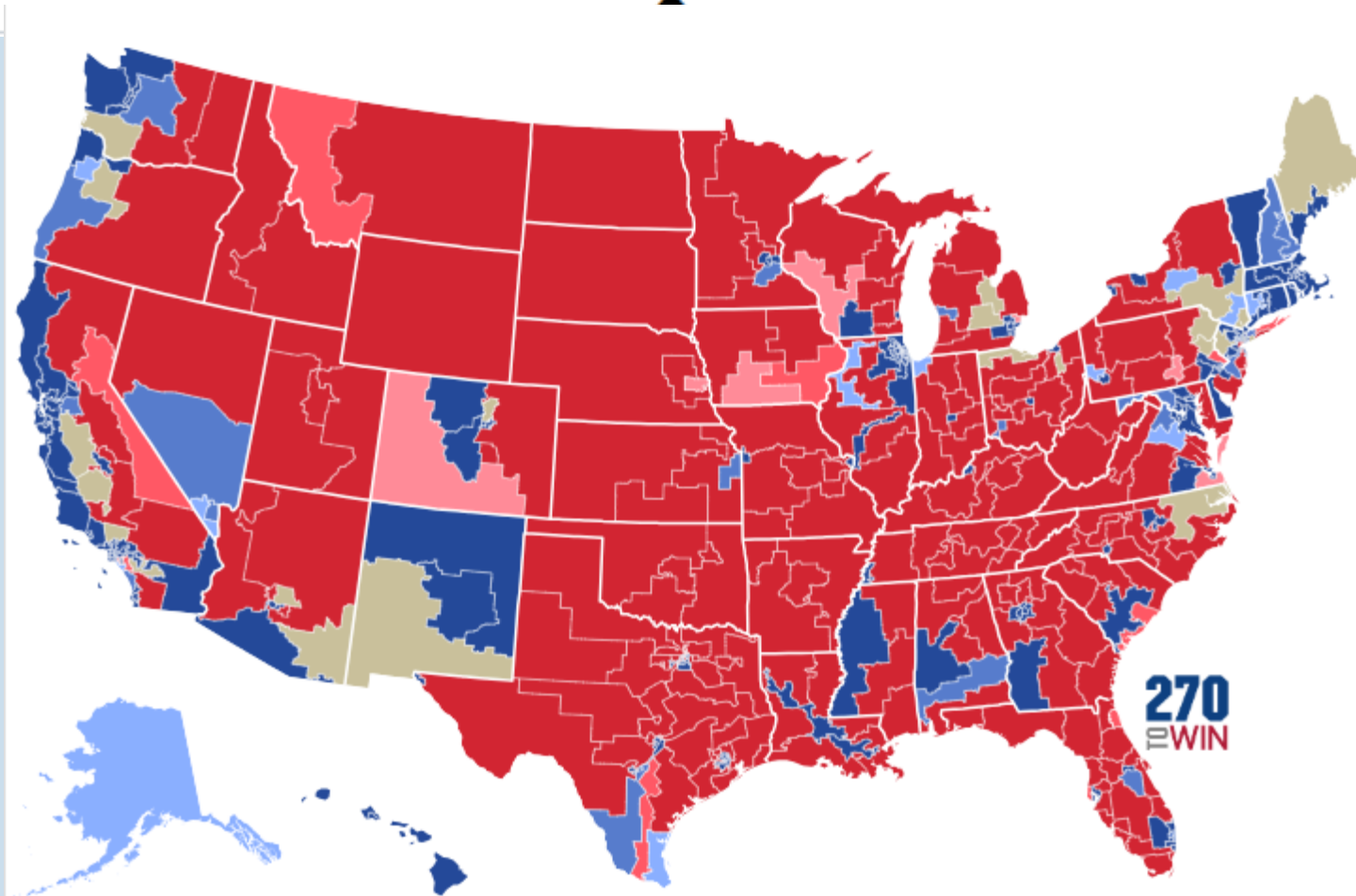
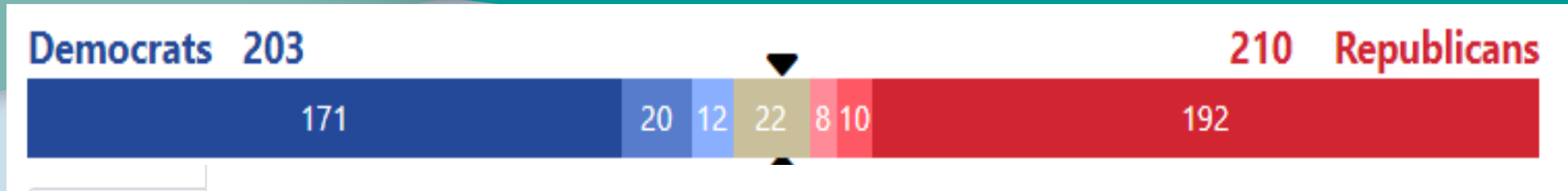


**Steve Scalise (R-LA)**  
Majority Leader



**Hakeem Jeffries (D-NY)**  
Minority Leader

# 2024 Election Outlook, House



Map Updated: Mar. 5, 2024 at 22:38 UTC (5:38 PM EST)



# Legislative Strategy

- Before we get into specifics... how does advocacy work?
  - **Direct lobbying:** What NABIP's GR Team do on a regular basis (*and what you do at Cap Con!*)
  - **Coalition lobbying:** NABIP is a member of several coalitions with stakeholders like ourselves across all issue areas (*i.e. Partnership for Employer-Sponsored Coverage.*)
  - **Grassroots lobbying:** Operation Shout! The voices of you and your clients.



# Employer Reporting

- **S. 3204 (The Employer Reporting Improvement Act) and S. 3227 (The Paperwork Burden Reduction Act) PASSED HOUSE!**
  - Provides much-needed relief for employers seeking to comply with the reporting requirements under Section 6055 and 6056 for enforcement of the ACA.
  - Reduce the number of individuals and amount of information that would need to be reported, eliminate the requirement to collect dependent social security numbers, provide ALEs more time to respond to first IRS letter, limit time horizon for IRS lookback for prior compliance period.
- **If these vital pieces of legislation are passed by the Senate, the landmark bills will be sent to the president's desk**

# Site-Neutral Payment Reform

- **H.R. 5378 (The Lower Costs, More Transparency Act):** Reps. Frank Pallone (D-NJ) and Cathy McMorris Rodgers (R-WA). **PASSED HOUSE!**
  - Currently, providers that own multiple facilities can charge different amounts for the same care depending on where care was received. *(For example, the price of the same X-ray or MRI could vary whether it is at a physician's office or hospital setting.)*
  - This issue impacts all markets, but enacting site-neutral payment reform in just the Medicare market alone would help lower costs (because Medicare prices serve as a benchmark for private markets).
  - **The bill passed the House and must be passed by the Senate to become law.**

# Non-Site Neutral Provisions of LCMT Act

- **H.R. 5378 (The Lower Costs, More Transparency Act) (LCMT Act)**
  - Regarding **hospital price transparency**, H.R. 5378 would grant the federal government the authority required to mandate that hospitals publish an annual list of shoppable services they provide, including specified pricing information.
  - The LCMT Act would also **require PBMs to semi-annually provide employers with detailed data** on prescription drugs pending, including the acquisition cost of drugs, total out-of-pocket spending, formulary placement rationale and aggregate rebate information.

# Transparency

- **S. 3548 (The Health Care PRICE Transparency Act 2.0)**
  - Sets a **higher transparency standard for TPAs** and responsibility for providing health insurance purchasers with the information to make **informed decisions** about their healthcare.
  - Currently, employers and unions nationwide are **blocked** from accessing, auditing, or leveraging their own health claims data. If S. 3548 passes into law, **health insurance professionals like you** will be able to assist employers in **accessing this data**.
  - Some concerns: “Held harmless” provision and effective date.

# Full-Page Shout-Out in Washington Post!

# THANK YOU



**For joining the fight for health care price transparency!**

National Association of Benefits & Insurance Professionals - NABIP is leading on health care price transparency, demanding systemwide upfront actual pricing access. They know when American consumers — patients, employers and unions — can see actual prices, we all benefit from competition!

**NABIP supports the Health Care PRICE Transparency Act 2.0 (S.3548).**

Thank you for championing what Americans want — to lower their costs of care and coverage through price transparency.

Congratulations on the start of the NABIP Capitol Conference 2024!



PAID FOR BY PATIENT RIGHTS ADV



# Telehealth

- **H.R. 1843 (Telehealth Expansion Act of 2023):** Reps. Michelle Steel (R-CA), Adrian Smith (R-NE)
- **S. 1001 (Telehealth Expansion Act of 2023):** Sens. Catherine Cortez-Masto (D-NV), Steve Daines (R-MT)
  - In 2021, the CARES Act allowed Health Savings Account (HSA) qualified high-deductible health plans (HDHP) to cover telehealth services before reaching the deductible.
  - This flexibility was extended until **December 31, 2024**. Large employers need to know if it will continue as they put together benefits for 2025.
  - The Telehealth Expansion Act would extend this flexibility for **an additional 2 years**, with the long-term goal of making it permanent.

# Part D Open Enrollment Period

- Many Medicare beneficiaries enroll in their plan during the Annual Enrollment Period and are locked into their Part D coverage. But once the plan year begins, **they are no longer able to switch** to another plan.
- Part D formularies change throughout the year, yet seniors can only switch plans during AEP.
- NABIP supports the **creation of a new Part D OEP** for beneficiaries like the Medicare Advantage enrollment period.



# Observation Status

- Studies have found that **beneficiaries on observation status tend to cycle through the hospital repeatedly** because they did not receive the skilled nursing facility (SNF) care they need, resulting in higher costs.
- Conversely, those who did receive SNF care had very few readmissions.
- This is contrary to the purpose of the utilization review to lower inappropriate readmissions.



# Observation Status

- **H.R. 5138 (Improving Access to Medicare Coverage Act):**
  - Reps. Joe Courtney (D-CT), Glenn Thompson (R-PA) and Suzan DelBene (D-WA)
  - H.R. 5138 would allow **observation stays** to be counted toward the three-day mandatory inpatient stay for Medicare coverage of a skilled nursing facility (**SNF**).
  - **S. 4137**, companion bill, April 17, 2024, Sen. Brown, Collins, Whitehouse
  - Currently, Medicare beneficiaries who are not officially admitted to a hospital may be classified under “**observation status,**” which is treated as an **outpatient** procedure for billing purposes.

# COBRA as Creditable Coverage



- Allow COBRA coverage to count as creditable coverage for Medicare beneficiaries just as employer-sponsored coverage does.
- This will allow beneficiaries to have access to Part B on a timely basis without penalties for late entry into the program.
- H.R. 8217, 7 original bipartisan sponsors from 3 committees of jurisdiction.

# Regulatory Update

# Regulatory Strategy

- Regulatory advocacy is just as important as legislative advocacy!
- When federal agencies release a proposed rule relevant to our members, NABIP submits **high-level comment letters** to CMS, HHS, DOL, IRS, and/or Treasury Department – depending on the issue.
  - You can access our comment letters under the “Advocacy” section of our website
- Like Congressional testimony, NABIP staff works with the pertinent legislative working groups to craft comments.



# Employer-sponsored Health Insurance



## Republican-proposed Changes to ESI Fed Tax Treatment

- House Republican Study Committee FY 2025 budget includes a **federal income tax on ESI**
- Republican-tied think tank proposed capping ESI tax exclusion at **125% of the national average**

## ERISA 50<sup>th</sup> Anniversary & Threats

- Some states looking to circumvent ERISA's **preemption clause**
- J&J lawsuit reemphasizes employer **fiduciary responsibility** in managing employee benefit plans and negotiating fair contracts with benefit providers

## Simplified Employer Reporting Bills

- Relief for employers' compliance with **ACA reporting requirements**
- H.R.3801 Employer Reporting Improvement Act **passed the House**; two identical bills are sitting with the Senate Finance Committee (S. 3204 & S. 3227)

## Price Transparency Senate Bill

- Provide employers & unions access to their **health claims data**; make available **negotiated rates & cash prices** between plans & providers
- S. 3548 **Health Care PRICE Transparency Act 2.0** sitting with HELP committee

# 2014 Presidential Campaign Implications

## 14<sup>th</sup> Anniversary of ACA – March 23

- Final rules on healthcare released by the Biden Administration as part of the milestone celebration
- President Biden campaigning on success of ACA. Appeared with former President Obama as part of a media tour.
- Former President Trump (**for the first time**) backed away from his steadfast message of Repeal and Replace and suggested improvements to current law.

# Individual Market

## Record-breaking 2024 OEP

- **22 million** Americans signed up for coverage during the 2024 OEP
- Agents and brokers were responsible for **78% of enrollments** in states using the federal ACA platform

## Telehealth Expansion Bills

- Telehealth flexibility **expires end of 2024**
- H.R. 1843 & S. 1001 would **extend flexibilities by 2 years**
- **Bipartisan support** particularly among rural & remote areas; areas facing worker shortages

## STLDI & Fixed Indemnity Plans Final Rule

- Caps initial STLDI coverage periods to **3 months** and prohibits stacking policies
- **Consumer notice requirements** to clarify fixed indemnity coverage, emphasizing the difference vs. comprehensive health insurance

# Tri-Agency Rule on Short-Term Plans, Fixed Indemnity Plans, Level-Funded Plans

## *Final Rule Issued March 28*

- The IRS, DOL, and HHS released the final rule, which returns their availability back from one year to **90 days (or 3 months), with potential for an additional month of coverage – a maximum coverage period of 4 months.**
- **Effective date Sept. 1, 2024 (new plans only)**, those sold prior to Sept. 1 (including any subsequent renewals or extensions), may continue to have an initial contract term of 12 months (and maximum of 36 months with renewals).
- NABIP submitted **comments** on the proposed rule participated in a meeting with OMB officials in March ahead of the final ruling.

# Tri-Agency Rule on Short-Term Plans, Fixed Indemnity Plans, Level-Funded Plans

## *Final Rule Issued March 28*

- A carrier can only write a short-term plan for a family **once every 12 months**. The rule defines a carrier as companies under common ownership.
- Fixed indemnity plans will have new disclosure requirements to consumers to clarify that these plans are not ACA-compliant insurance plans.
- Other proposed changes to fixed indemnity plans were not approved at this time **(Election year politics!)**
  - President Biden is running on the success of ACA enrollment and didn't want to do anything that would decrease that number in 2024.

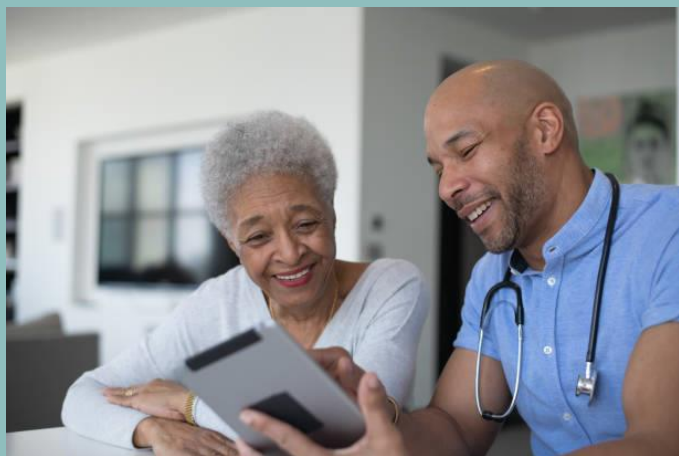
# Medicare Advantage Rule

- NABIP submitted a **comment letter** to CMS in response to the proposed Contract Year 2025 Policy and Technical Changes to the Medicare Advantage Plan Program.
- CMS **redefines agent and broker compensation by “eliminating administrative fees”** and capping the maximum compensation for enrollment at **\$642**.
- The proposed rule would have reduced administrative payments to **\$31** but the final rule raised the amount to **\$100** per year. This is not inflation adjusted.

# Medicare Advantage Rule



- *NABIP's Message:* Without licensed and certified agents assisting in enrollments, Medicare beneficiaries will have few choices in finding accurate enrollment assistance and will be led directly to the bad actors that the federal government seeks to protect them from.
  - The new compensation standards contained in the final rule the model of servicing agents working with and through FMOs and GAs is a complete reversal of agreed upon business practices. Contracts based on those standards have already been submitted to CMS and FMOs.
  - New rule becomes effective June 3<sup>rd</sup>, CMS hasn't yet clarified even simple questions on how compensation will work.



# CMS' 2025 Medicare Advantage & Part D Final Rule

(Effective June 3<sup>rd</sup>)



Last updated 05/29/24

## Key Provisions

- **\*Increased compensation for MA enrollments** (a one-time increase of \$100)
- **Restrictions on TPMO** beneficiary data collection and **elimination of payer payments** for TPMO steerage to certain plans
- Expanded MA network requirements for **behavioral health**
- **Part D plan flexibility** to substitute biosimilars for reference drug products

## NABIP Actions

Met with CMS & OMB, had Congressional members send letters, and worked with legal partners to advocate for members:

- Moved from the **originally proposed compensation increase of \$31** to \$100
- **CMS acknowledged** critical role of agents & brokers
- Preserved ability of **FMOs to contract with carriers**
- **Contained rule impact on FMO payments to enrollments** vs. other activities

# Medicare Advantage Rule Released April 4

- The rule preserves the ability of Field Marketing Organizations (FMOs) to contract with carriers - **NABIP WIN!**
- The rule as written does not impact FMO payments outside of activities related to enrollment. - **NABIP WIN!**
- The new rule bans certain contract terms with Third Party Marketing Organizations (TPMO) - **NABIP WIN!**
- No changes at this time on overrides – **NABIP WIN!**

# Litigation Against CMS

- Lawsuits were filed against CMS seeking injunctive relief to vacate the rule, under the Administrative Procedures Act (APA) citing numerous instances CMS violating statutory authority for rule making.
- The complaints generally assert that the agency's definition of compensation is outside their authority under the APA, and is capricious and unsubstantiated by data.
- This rule cuts across all distribution channels and will result in a shrinkage of assistance to Medicare beneficiaries at a time when over 12,000 people are turning 65 every day for the next four years.

# Pre-Enrollment Checklist

- The new Medicare marketing rule also includes :
  - A requirement for agents to “ask a standardized list of questions that address a beneficiary’s healthcare needs, current providers and prescriptions” prior to enrolling a beneficiary into a plan.
  - A requirement that agents to provide a **pre-enrollment checklist to prospective enrollees**, which would include the effect on current coverage if the beneficiary changes plans. (For telephonic enrollments, agents would be required to thoroughly review the pre-enrollment checklist with prospective enrollees prior to completing enrollments.)

# Pre-Enrollment Checklist



- Where will this “standardized” list of questions come from: Carriers? CMS?
- What specifically must be included in the checklist?
- Still waiting on official guidance

# NABIP Medicare Resources

## ■ Medicare Web Portal

- Compliance
- Legislative news
- Newsletters
- NABIP Medicare brochures
- FMO Council
- Medicare Advisory Council
- Medicare Summits

NABIP is the only trade organization representing professional agents and brokers who work with Medicare beneficiaries and Medicare products.

A long history of working on Medicare issues on Capitol Hill has resulted in strong relationships with legislators.

In addition, growing influence with CMS makes NABIP your valued choice for advocacy and professional development!



# NABIP Medicare, Medicare Advantage, Compliance Requirements Certification

- NABIP's PY2024 Medicare, Medicare Advantage and Compliance Requirements Certification is available to purchase for just \$100.
- The cost includes free CE credits (up to 8 credits awarded), the convenience of a private online library accessible 24/7 with easy navigation and access to NABIP's Live Student Services Help Desk.
- NABIP's certification is written **by agents for agents.**



# ERISA

- The Employee Retirement Income Security Act of 1974 (**ERISA**) sets **minimum standards for plans** and sets standards for providing information, fiduciary responsibility, procedures for handling benefits, and remedies for beneficiaries.
- A critical aspect of ERISA is its **preemption clause**. This means ERISA supersedes any state laws relating to employee benefit plans. **NABIP supports ERISA** and **opposes** any attempts to circumvent or preempt it.
- 50<sup>th</sup> anniversary... Johnson & Johnson lawsuit... **lots of activity in 2024!**

# ERISA

- House **Education and Workforce** Committee has released a **Request for Information (RFI)**, seeking insights to enhance ERISA's foundational role in governing **employer-sponsored health benefits**.
- NABIP submitted formal comments, highlighting the need to address several new stakeholders that did not exist during the law's inception and recognizing how complicated and burdensome compliance regulations and reporting has become.

# ERISA Lawsuit Shakes Industry

- A proposed **class action lawsuit** was filed against Johnson & Johnson, accusing the company of **failing to negotiate lower prices for prescription drugs** for its employee health plans.
- Specifically alleges that J&J agreed to **“unreasonable prices”** for prescription drugs and allowing the PBM to profit **at the expense of** the plan participants.
- The lawsuit seeks unspecified damages and statutory penalties under **ERISA** because – if the case’s allegations are accurate – **J&J did not uphold its responsibility to fiduciaries.**



# Association Health Plan Proposed Rule



- The DOL issued a *proposed* rule right before the holidays that would **rescind 2018 regulations** on Association Health Plans (**AHPs**).
- Prior to 2018, AHPs operated under a **strict** regulatory framework. The plans were required to:
  - Be formed by groups with a tangible and close common interest,
  - Be related to their industry or profession,
  - Comply with ACA essential health benefits.

# Association Health Plan Proposed Rule

- The landscape for AHPs shifted significantly in **2018** when the DOL, under President Trump, introduced new rules:
  - Allowed broader array of employers, including those with more tenuous commonalities.
  - Self-employed individuals could also participate, opening up AHPs to a wider demographic.
  - Flexibility to circumvent certain ACA-mandated benefits; not as tightly bound by community-rating rules.

# Association Health Plan Proposed Rule



- BUT – in **March 2019**, the U.S. District Court for the District of Columbia **vacated** the 2018 rule.
- While the court did not vacate the entire rule, it effectively ended the Trump administration’s AHP goals.
- Most AHPs today **still follow pre-2018 regulations** because of this decision.

# Cutting Edge Information!



**NABIP NEWS WIRE**  
Shaping the future of healthcare  
January 4, 2023

**SIS** **HAVE A HIGH DEDUCTIBLE HEALTH PLAN?** One of Our Custom GAP Plans Can Help

- Multiple Carriers Available
- HSA Compatible GAP Plans
- Customizable Plan Designs
- Composite Rates Available

**Top predictions for health insurers, employers in the new year**  
Health Payer Intelligence  
Three years after the first wave of the coronavirus pandemic hit the U.S., the American healthcare system is still feeling the effects. In 2023, the anticipated unwinding of the public health emergency will send shockwaves through the health insurance industry, impacting health insurers and employers alike.

**FEATURED ARTICLE**

**ACA 1094/1095-C filing season is now open**  
Promoted by ACA Compliance Solution Services  
ACA Compliance Solution Services is here and ready to assist you and your clients in filing their 2022 1094/1095-C filings with the IRS. As one of the leading ACA filing companies in America our experts are here to take the burden off your clients. We offer white glove services at very low costs.

Contact us now to take advantage of our NABIP discount and feel good knowing your clients are in great hands.

Call us at 977-959-3953 or [Click Here](#) to simplify your clients compliance filings.

**2023: The year Medicare Advantage begins to dominate traditional Medicare**

**NABIP WASHINGTON UPDATE**  
November 9, 2018

**Fast Facts**

- As a result of President Trump's executive orders, Democrats and members of the House of Representatives have announced that they will support the TRUMP CARE Act, beginning in 2021.
- Several states have passed legislation on health care-related issues, including measures to protect and expand Medicaid programs.
- Congress will likely take further action on the TRUMP CARE Act in the coming weeks. This will likely open a new chapter in the debate over the future of the program.
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**ACA Prime Reporting**  
Get up to date on ACA Prime Reporting.

**Market Election Results in 2018 Government and Opportunity to Advance NABIP's Priorities**  
The market election on Tuesday resulted in a historic defeat for Democrats in Congress, but NABIP's priorities remain a top priority for the new Congress.

**NABIP Seeks Repeat of Certain and Premium Taxes at Lame Duck**  
Congress will be meeting in Washington, D.C. next week for a final lame-duck session through mid-December. NABIP's priorities remain a top priority for the new Congress.

**Healthcare Happy Hour Can Divide Government Advance Congress on healthcare ahead of 2019**  
One of the most significant legislative priorities for NABIP is to ensure that the healthcare industry remains a top priority for the new Congress.

**State Spotlight: Utah, Idaho and Nebraska Vote in Favor of Medicare Expansion**  
Three states have passed legislation to expand Medicaid coverage for low-income individuals, which will provide coverage for an estimated 2.5 million low-income people.

**NABIP STATE UPDATE**  
June 23, 2021

**Welcome to NAHU's State Update!**  
Good afternoon! You're reading NAHU's State Update, a newsletter highlighting all the pertinent political and regulatory news at the state level. The State Update will be published the second and fourth Wednesday of every month. If there is legislation or regulation brewing in your state that you think the State Update should cover, please contact us at [states@nahu.org](mailto:states@nahu.org).

**Colorado and Nevada Pass Watered Down "Public Option" Laws**  
While proponents of each measure are calling these "public option" laws, it is important to note that these laws do not institute "pure" public options. Since these new laws use the private market to offer standardized plans, health insurance brokers will still play a major role in the marketplaces of Colorado and Nevada... [Read More](#)

**New York Single-Payer Bill Fails to Advance Once Again**  
The legislation made less progress than usual; while the bill historically passes at least one chamber, this year the bill did not even make it to the Assembly floor for a vote. The New York Health Act, if passed, would have instituted... [Read More](#)

**Connecticut Ends Legislative Session without a Public Option or Health Insurance Tax**  
While the public option was defeated, the potential for a health insurance tax still lingered for some time. The HIT included in the ACA was a sales tax on health insurance that increased the cost for coverage for consumers and employers across the country... [Read More](#)

**NABIP MEDICARE NEWS**

**In This Issue**

- 2020 Year-End Government Relations Report
- AEP Wrap-up
- Premiums and Other Costs for 2021
- Say Ahhh!
- Miss the Medicare Plan Finder?
- Click to learn more!

**2020 Year-End Government Relations Report**  
by John Greene  
NAHU worked closely with CMS early on to express our concerns for the 2021 AEP and the ability of our members to serve millions of beneficiaries... [Read more](#)

**AEP Wrap-up**  
by Justin Lubner  
While 2020 was smoother, it was not without some bumps... [Read more](#)

**Premiums and Other Costs for 2021**  
by Erin Fisher  
Each November, CMS announces increases in the premiums for Part A and Part B... [Read more](#)

**Say Ahhh!**  
by Ken Schmidt  
"Welcome to Medicare" preventive visits, annual wellness visits and annual physical examinations may sound like the same procedure... [Read more](#)

**The OEP**  
by Dawn McFarland  
The Medicare Advantage OEP occurs annually between January 1 and March 31. This is often confused with annual enrollment period... [Read more](#)

**Medicare Thiva**  
Did you know... [Read more](#)

**Newsletter Tools**

- Email the Editor
- Visit the NAHU Website
- Committee Members
- View Past Editors

# State Resources Page



# State-by-State Information

- Access informational **charts**, including details on:
  - Stop-loss requirements
  - Reinsurance programs
  - Malpractice damage caps
  - Mini-COBRA laws (*Coming Soon!*)



State Reinsurance Programs

State	Year Established	Impact on Premiums	Expiration Year	Markets Impacted	Additional Notes
Alaska	2017	Rates decreased in 2018, 2019, 2020, and 2021.	2027	Individual Market	The initial 1332 Innovation Waiver expired in 2022, however Alaska was granted a 5-year extension of the waiver in 2023.
Colorado	2020	Rates decreased in 2020 but increased slightly in 2021 and 2022.	2026	Individual Market	The program was extended through 2026 by SB 215 (2020) and a new 1332 waiver.
Delaware	2020	Rates decreased in 2020 and 2021 and increased slightly in 2022.	2024	Individual Market	
Georgia	2022	Rates decreased modestly in 2022.	2026	Individual Market	
Idaho	2023	Rates, so far, have decreased modestly.	2027	Individual Market	
Maine	2019	Rates decreased slightly in 2019 and 2020, significantly in 2021, and slightly in 2022.	2024	Individual Market	Maine plans on expanding their reinsurance program to the small group market in 2023.
Maryland	2019	Rates decreased in 2019, 2020, and 2021, but increased slightly in 2022.	2028	Individual Market	
Minnesota	2018	Rates decreased in 2018, 2019, and 2020, but increased in 2021.	2025	Individual Market	The program has been extended to run through 2022, with less robust coverage.

# Contribute!

Few other industries are as heavily regulated as health insurance. Your success, and that of your clients, is directly dependent upon the actions of Congress. It is absolutely critical that we help those Congressional candidates who support private sector health insurance.

**Support legislators who fight for agents and brokers and the employer-based system!**

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**Join Us!**

# Questions?

