



Draft date: 3/12/26

*2026 Spring National Meeting
San Diego, California*

**EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) AND ALTERNATIVE HEALTH
COVERAGE (B) WORKING GROUP**

Tuesday, March 24, 2026

11:15 a.m. – 12:00 p.m.

Manchester Grand Hyatt—Grand Hall A—Level 1

ROLL CALL

Andria Seip, Chair	Iowa	Martin Swanson/	Nebraska
Sara Farris, Vice Chair	Arkansas	Michael Anderson	
Yada Horace/ Anthony L. Williams	Alabama	Jeremy Christensen/ Alexia Emmermann	Nevada
Kyla Hoskins	Colorado	Ted Hamby	North Carolina
Howard Liebers	District of Columbia	Chrystal Bartuska	North Dakota
Alexis Bakofsky/ James Dunn	Florida	Laura Miller	Ohio
Weston Trexler	Idaho	Andy Schallhorn	Oklahoma
Julie Holmes/ Craig Van Aalst	Kansas	Jill Kruger	South Dakota
Shaun Orme	Kentucky	Tanji J. Northrup	Utah
Frank Opelka	Louisiana	Mary Ashby	Virginia
Mary Kwei	Maryland	Gregory Lee	
Jeana Thomas/ Melissa Panetti	Missouri	Sofia Pasarow	Washington
		Michael Malone	West Virginia
		Sarah Smith	Wisconsin

NAIC Committee Support: Jennifer R. Cook

AGENDA

1. Consider Adoption of its Feb. 26 Minutes—*Andria Seip (IA)*
2. Discuss Comments Received on the *Guidance Document: ERISA Preemption and State Pharmacy Benefit Manager (PBM) Laws—Andria Seip (IA)*
3. Discuss its Next Steps—*Andria Seip (IA)*
4. Discuss Any Other Matters Brought Before the Working Group—*Andria Seip (IA)*
5. Adjournment

Virtual Meeting

**EMPLOYEE RETIREMENT INCOME SECURITY (ERISA) AND ALTERNATIVE HEALTH COVERAGE (A)
WORKING GROUP**

Thursday, February 26, 2026

Summary Report

The Employee Retirement Income Security Act (ERISA) and Alternative Health Coverage (B) Working Group met Feb. 26, 2026. During this meeting, the Working Group:

1. Discussed the Working Group's name change and charges.
2. Heard preliminary feedback on the draft *Guidance Document: ERISA Preemption and State Pharmacy Benefit Manager (PBM) Laws*.
3. Discussed next steps that would likely involve reviewing written comments submitted by the March 3 deadline during the Working Group's meeting at the NAIC Spring National Meeting.

Draft: 3/16/26

Employee Retirement Income Security Act (ERISA) and Alternative Health Coverage (B) Working Group
Virtual Meeting
February 26, 2026

The Employee Retirement Income Security Act (ERISA) and Alternative Health Coverage (B) Working Group of the Health Insurance and Managed Care (B) Committee met Feb 26, 2026. The following Working Group members participated: Andria Seip, Chair (IA); Kelli Littlejohn Newman (AL); Sara Farris (AR); Alexis Bakofsky (FL); Weston Trexler (ID); Craig Van Aalst and Julie Holmes (KS); Shaun Orme (KY); Frank Opelka (LA); Mary Kwei (MD); Jeana Thomas and Melissa Panettierre (MO); Chrystal Bartuska (ND); Michael Anderson (NE); Jeremy Christensen (NV); Laura Miller (OH); Andy Schallhorn (OK); Jill Kruger (SD); Tanji J. Northrup (UT); Gregory Lee (VA); and Sarah Smith (WI).

1. Discussed its Name Change and Charges

Seip introduced herself as the new chair of the Working Group. Seip was vice chair of the Working Group last year, and with the retirement of the previous chair, Robert Wake (ME), she agreed to chair the Working Group. She asked anyone interested in being vice chair to contact Jennifer Cook (NAIC).

Seip explained that the Working Group has been renamed the Employee Retirement Income Security Act (ERISA) and Alternative Health Coverage (B) Working Group. The new name reflects the inclusion of a new charge: to “monitor, analyze, and report, as necessary, developments related to excepted benefits coverage, short-term, limited-duration (STLD) coverage, health sharing ministry coverage, and coverage that is offered and marketed as a substitute for, or an alternative to, comprehensive major medical coverage.” The Working Group’s remaining charges remain unchanged, and it plans to maintain its focus on ERISA-related issues and to continue last year’s projects. In addition to completing the *Guidance Document: ERISA Preemption and State PBM Laws*, the Working Group anticipates drafting a paper discussing level-funded plans.

2. Received Preliminary Feedback on the Draft Guidance Document: ERISA Preemption and State PBM Laws

Seip shared background on the development of the draft *Guidance Document: ERISA Preemption and State PBM Laws (Attachment ?)*. Last year, there was a priority to examine ERISA preemption and state pharmacy benefit manager (PBM) laws. That priority was delegated to the ERISA (B) Working Group by the Regulatory Framework (B) Task Force. A drafting group started meeting bi-weekly following the 2025 Summer National Meeting. The draft being discussed was released on Feb. 2 for a public comment period ending March 3. Today’s meeting was intentionally scheduled before the March 3 comment deadline, allowing participants to hear each other’s input prior to submitting written feedback.

The purpose of the guidance document, as the title suggests, is to provide guidance about ERISA preemption and state PBM laws. The guidance document could be helpful to state regulators or legislators as they consider PBM oversight legislation. The guidance document provides an overview of developments in other states and the types of legal challenges that have arisen. This document is only current as of its publication date, as this area is rapidly changing and legal challenges are ongoing. Seip said the Working Group plans to consider updating this document as the legal landscape shifts.

Chris Petersen (Arbor Strategies) spoke on behalf of the Pharmaceutical Care Management Association (PCMA). He said PCMA would submit detailed comments and plans, suggesting that the guidance document reference the existing language in the NAIC publication *Health and Welfare Plans Under the Employee Retirement Income*

Security Act: Guidelines for State and Federal Regulation (ERISA Handbook), so that they can be read as a whole. The PCMA will also be seeking a fuller listing of federal jurisprudence and hopes to share examples of other court cases to include.

Leanne Gassaway (AHIP) said she thought that this guidance document was intended to be a chapter in the ERISA Handbook. Seip explained that the ERISA Handbook focuses on settled law, while the guidance document addresses an issue that is very much in flux. She welcomed feedback on how to reference the ERISA Handbook in the guidance document and on how to ensure consistency.

Carl Schmid (HIV+Hepatitis Policy Institute) spoke on behalf of NAIC Consumer Representatives who plan to offer written comments, suggesting that, in addition to describing PBMs and their functions, they want to add the ways PBMs negatively impact the drug pricing ecosystem, which is one of the reasons states want to regulate them. He said the consumer representatives plan to suggest language addressing rebating, which results in PBMs favoring higher-cost drugs over lower-cost ones, the lack of transparency in PBM financial transactions, and the lack of competition among PBMs. He said the consumer representatives think the guidance document should note that PBMs are fighting state legislative efforts to regulate them, arguing for federal preemption. Schmid said they will also be offering some language edits, but generally think the draft lays out what the U.S. Supreme Court has said very well, along with the appellate decisions and the conclusion that there will continue to be litigation filed.

Robert T. Smith (Katten Muchin Rosenman LLP), speaking on behalf of the National Community Pharmacist Association (NCPA), said the NCPA will be submitting written comments. The NCPA will suggest including two appellate court decisions decided before the U.S. Supreme Court's *Rutledge v. PCMA* decision in 2020: *PCMA v. Rowe* and *PCMA v. District of Columbia*. Those cases created a circuit split over whether states have the authority to impose fiduciary duties on PBMs. The First Circuit in *Rowe* held that states have the authority to impose fiduciary duties on PBMs, and the DC Circuit reached the opposite conclusion. There is some meritorious discussion in *Rowe* regarding whether PBM regulation implicates ERISA in the first instance. The Supreme Court did not have to address the issue in *Rutledge* because it was obvious that cost regulation does not implicate ERISA, leaving the issue open.

Additionally, Smith said he thinks it makes sense to include the amicus brief of the United States in *Mulready* at the 10th Circuit level. The United States took the position in *Mulready* that certain state laws, as applied to PBMs, may be saved as laws that regulate insurance within the meaning of ERISA's saving clause, with respect to both fully insured and self-funded ERISA plans. Under this reasoning, PCMA's preemption claims would be saved from ERISA preemption. The 10th Circuit did not address the saving clause issue because it deemed it waived, but those arguments are percolating up in the courts and have been raised in the Iowa case heading to the Eighth Circuit. He said that informing regulators about these pending arguments is important.

Kris Hathaway (AHIP) said AHIP would be submitting written comments and agreed that adding more context by including other cases would be beneficial.

3. Discussed its Next Steps

Seip reiterated that written comments should be submitted by the March 3 deadline. She suggested that comments should be as specific and detailed as possible. Seip also welcomed comments on the relationship between the ERISA Handbook and the guidance document. Seip explained that the volume and scope of the comments would dictate the Working Group's next steps and whether the drafting group could revise the draft prior to the Fall National Meeting. Either way, she anticipates a productive discussion at the Working Group's meeting at the Fall National Meeting.

Having no further business, the ERISA and Alternative Health Coverage (B) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Committees/B CMTE/ERISA/ 2026 Spring National Meeting