



October 2, 2026

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Re: SHRM Response to: Health Coverage That Works for Everyone – Request for Information

Dear Ranking Member Wyden:

On behalf of myself and SHRM, we appreciate the opportunity to respond to the Senate Committee on Finance's July 30, 2026, request for information (RFI), *Health Coverage That Works for Everyone*. [SHRM](#) is the fourth-largest membership-based organization in the world, representing nearly 340,000 HR and business leaders through a network of 550 affiliates spanning every U.S. state and congressional district, with members in 174 countries worldwide. More than 95% of the Fortune 500 are represented within SHRM's membership, providing SHRM with a unique perspective on the workforce challenges and opportunities facing organizations of every size, industry, and sector.

SHRM's response to the Committee's RFI is organized into two principal areas. First, SHRM proposes the MODERN Care Act, which would amend the Internal Revenue Code (IRC) to modernize dependent care assistance programs by permitting voluntary employer prefunding of dependent care flexible spending arrangements and clarifying certain qualifying work-related dependent care expenses. The proposal responds to Section 1.III's request for employer and plan-sponsor input on reforms to employer coverage (p. 26), with related recommendations addressing Section 2's focus on making benefits easier for families to understand and use.¹

Second, SHRM responds to four additional issues with significant implications for employer-sponsored health coverage: Third-Party Administrator (TPA) transparency and employer access to data under Section 3.IV (pp. 80–86); self-insured employer plans and Employee Retirement Income Security Act (ERISA) preemption under Section 2.III (pp. 62–65); and prior authorization, claims administration, and related requirements under Sections 2.II and 2.III (pp. 48–65); and standardized enrollment tools and employer administrative simplification under Section 2's discussion of whether a more standardized enrollment platform could reduce burden and costs for employers and workers.

I. MODERN Care Act: SHRM's Targeted Reforms to Modernize Dependent Care Benefits

¹ An unpublished discussion draft of SHRM's proposed *MODERN Care Act: Modernizing Options for Dependent Expense Reimbursement Needs Act* is provided as attachment A.

For millions of Americans, the ability to remain in the workforce is closely tied to access to reliable and affordable dependent care. It is estimated that seven in 10 family caregivers are employed, and SHRM estimates that caregiving-related productivity losses cost his translates to an average of \$17.5 billion lost every month in wages due to insufficient support.² These responsibilities are also increasingly complex: nearly one in four working caregivers (23%) manage multiple caregiving roles, such as caring for both children and older adults, and at least 80% of employees with caregiving responsibilities report that the care they provide is long-term.³

A. Caregiving's Workforce Impact and the Need for Modernization

These responsibilities have meaningful workforce consequences. SHRM research finds that 42% of working caregivers say caregiving has hindered their career advancement, while more than half of working caregivers who have experienced an employment gap cite caregiving as the reason.⁴ Among unemployed caregivers who have attempted to enter or re-enter the workforce, 74% report that a caregiving-related employment gap negatively affected that transition.⁵

SHRM research shows that DCFSA's rank among the most helpful family-care benefits identified by child caregivers, adult caregivers, and elder caregivers.⁶ At the same time, SHRM's 2026 Employee Benefits Survey found that 50% of employers offered a DCFSA, down from 59% in 2022.⁷

While Congress took an important step by increasing the annual exclusion under Section 129 to \$7,500 beginning in 2026, it did not address two structural limitations that can constrain the usefulness of DCFSA's. First, employees generally may access funds only as payroll contributions accumulate, even when significant care expenses arise earlier in the plan year. Second, existing qualifying-expense rules do not fully reflect the range of caregiving arrangements used by today's workforce, particularly certain nonmedical care for adults who are incapable of self-care and costs required to secure qualifying care.

B. SHRM's Recommendations for Modernizing Dependent Care Benefits

SHRM therefore proposes the Modernizing Options for Dependent Expense Reimbursement Needs (MODERN) Care Act, a targeted modernization of Section 129 of the IRC. The proposal would make two principal changes while preserving the existing statutory exclusion, employer choice, and longstanding program safeguards.⁸

² Sources: Caregiving in the US, AARP and National Alliance for Caregiving, 2025; Care and Careers: Navigating Caregiving And Work Responsibilities, SHRM, 2024. The total estimate of lost wages was calculated by making the following assumptions: 1) average hourly pay of \$35.46 in October 2024, 2) an average daily total of 8.09 working hours, 3) a civilian, 18+ working population size of 166.19 billion, and 4) 30.6% of the civilian, 18+ working population providing care on a given day. The lost wages assume that the unexpected missed day of work is unpaid.

³ Source: Care and Careers: Navigating Caregiving And Work Responsibilities, SHRM, 2024.

⁴ Source: Care and Careers: Navigating Caregiving And Work Responsibilities, SHRM, 2024.

⁵ Source: Care and Careers: Navigating Caregiving And Work Responsibilities, SHRM, 2024.

⁶ Source: SHRM, The Caregiving Imperative: Organizational Solutions for Supporting Caregivers and Elevating Business Performance (2025).

⁷ Source: SHRM Employee Benefit Survey, SHRM, 2026.

⁸ The MODERN Care Act would not increase the statutory Section 129 exclusion. Voluntary prefunding would change when an employee may access an elected benefit, not the annual amount that may be excluded from income. SHRM

i. Recommendation 1: Permit Voluntary Employer Prefunding

Congress should amend Section 129 to permit, but not require, employers to make all or a portion of an employee's annual DCFSA election available before the corresponding salary-reduction contributions have accumulated. Under this approach, employees would continue funding their elections through payroll contributions over the plan year. Employers choosing to offer prefunding should retain flexibility to establish reasonable and uniformly administered safeguards, including rules addressing active participation, midyear enrollment, and other circumstances identified through Treasury guidance.

This reform would address a basic timing problem in the current structure. Dependent-care expenses do not necessarily occur evenly throughout the year. Families may face substantial upfront costs to secure child care, in-home assistance, or other qualifying care before sufficient payroll deductions have accumulated in their DCFSA. Allowing employers to voluntarily prefund an employee's existing election would make the benefit available closer to when the expense occurs without increasing the amount an employee may exclude from income. The MODERN Care Act would create an additional plan-design option for employers, not an obligation to assume open-ended financial exposure.

ii. Recommendation 2: Modernize Qualifying Work-Related Care

Congress should also modernize qualifying dependent-care rules to better reflect how employees secure care today, particularly for adults who are incapable of self-care. Section 129 generally relies on the employment-related expense framework under Section 21. SHRM recommends a targeted statutory update permitting the qualifying care component of specified nonmedical custodial arrangements when that care enables an employee to remain gainfully employed. Qualifying arrangements could include the care component of assisted-living or nursing-facility services, memory-care supervision, and long-term in-home personal attendant care.

This modernization is particularly important as caregiving responsibilities evolve. SHRM research finds that at least 80% of employees with caregiving responsibilities provide long-term care, while elder care is the most commonly anticipated future caregiving responsibility among workers who expect to become primary caregivers within the next five years.⁹ The tax code should better accommodate these workforce realities while maintaining clear boundaries around what constitutes qualifying dependent care. Congress should also clarify the treatment of placement, application, enrollment, agency, deposit, and similar fees that are required to secure otherwise qualifying care. Where such a cost is a necessary condition of obtaining qualifying dependent care, the statutory framework should provide employees and plan administrators with clear and consistent rules regarding its treatment.

recognizes that modernization of qualifying expenses could affect utilization within the existing exclusion. The Joint Committee on Taxation should therefore evaluate the revenue effects of the final legislative language. A legislative discussion draft of the MODERN Care Act is included as Attachment A and a Section-by-Section Summary is Attachment B.

⁹ Source: Care and Careers: Navigating Caregiving And Work Responsibilities, SHRM, 2024.

C. Employer Choice and the Need to Preserve Existing Safeguards

Both reforms should be implemented within the existing employer-sponsored framework. Employers vary significantly in workforce composition, financial capacity, payroll systems, and benefits strategy. Accordingly, the MODERN Care Act would expand employers' options rather than establish a new benefit mandate.

Importantly, the legislation should preserve the current \$7,500 statutory exclusion, existing nondiscrimination and substantiation requirements, documentation requirements, and coordination with the Child and Dependent Care Tax Credit. Treasury and the Internal Revenue Service should also receive appropriate authority and a reasonable implementation period to address issues such as midyear participation, reconciliation of employer advances, allocation of bundled adult-care expenses, and coordination with cafeteria plans.

II. Employer-Sponsored Health Coverage Priorities

Employer-sponsored health coverage remains a cornerstone of workplace benefits as SHRM's research found that 88% of employers consider health-related benefits very or extremely important to their workforce.¹⁰ Workers similarly place significant value on their benefits, with 75% reporting that benefits were very or extremely important to their decision to remain with their employer over the past year.¹¹

At the same time, employers face mounting pressure to sustain these benefits. Eighty-one percent (81%) of HR professionals identify rising health care costs as a leading benefits-related challenge, while 55% cite budget constraints. More than two-thirds (42%) report at least moderate pressure related to benefit costs, including 25% experiencing significant pressure.¹² Against this backdrop, reforms that reduce unnecessary costs and administrative complexity can help employers preserve resources for the benefits employees value. SHRM therefore offers recommendations in four areas addressed by the Committee's RFI.

A. Strengthen Transparency and Employer Purchasing Power

Employers need meaningful information about the health benefits they purchase and the entities they retain to administer them. This is especially important for self-funded plans that rely on third-party administrators (TPAs) and administrative services only arrangements for provider networks, claims administration, and other essential functions.

Without access to claims, cost, and compensation information, employers cannot effectively evaluate vendor performance, identify avoidable costs, or compare alternatives — particularly as they confront rising health care costs.

¹⁰ Source: SHRM Employee Benefit Survey, SHRM, 2026.

¹¹ Source: Government Affairs Midyear Check-in, SHRM, 2026.

¹² Source: Government Affairs Midyear Check-in, SHRM, 2026.

SHRM therefore supports reforms that give employers the information and audit rights necessary to act as informed purchasers of health care. Congress should ensure access to claims and cost data, transparency into TPA fees and potential conflicts of interest, and appropriate rights to audit plan performance and compare vendors. Policymakers should also examine contractual restrictions that unnecessarily constrain audits or employers' ability to steer employees toward lower-cost or higher-value care. These reforms should strengthen employer purchasing power and competition without shifting new reporting or administrative obligations to employers when insurers, TPAs, or other service providers already possess the relevant information.

B. Preserve ERISA's National Framework for Self-Insured Employer Plans

ERISA's nationally consistent framework is fundamental to employers' ability to provide benefits across state lines. Even organizations based in a single state may have employees working in multiple jurisdictions, making uniform federal standards increasingly important to consistent plan administration. Federal preemption allows self-funded health plans to operate under a common framework rather than navigating potentially differing state requirements.

This framework applies to a significant and growing share of employers. SHRM's 2026 Employee Benefits Survey found that 29% of organizations offer a self-insured health plan, up from 27% in 2025.¹³ At a time when 81% of HR professionals identify rising health care costs as a leading benefits-related challenge, additional fragmentation could introduce administrative complexity and costs into a system employers are already under pressure to sustain. The RFI asks whether states should receive new waiver authority to regulate portions of the self-insured market and separately seeks feedback on strengthening federal oversight and enforcement. These approaches have materially different implications. Expanding state-by-state regulation could increase complexity and administrative costs while undermining the consistency ERISA provides.

SHRM supports clear, predictable federal standards for self-insured plans rather than fragmented state regulation. Any additional oversight should also align accountability with decision-making authority, ensuring that insurers and TPAs remain responsible for functions they control without imposing inappropriate liability on employers that rely on specialized administrators.

C. Improve Claims Administration Without Creating Unnecessary Employer Burdens

Employees should be able to use employer-sponsored health benefits without unnecessary administrative barriers. The RFI considers reforms involving prior authorization, claims denials and appeals, and standardized communications. Policymakers should target unnecessary delays, opaque processes, and improper denials while preserving reasonable utilization-management tools that promote appropriate care and help control health care costs.

Reducing administrative burden can also allow employers to direct more resources toward benefits employees value. SHRM research found that, if administrative costs were reduced, HR professionals

¹³ Source: SHRM Employee Benefit Survey, SHRM, 2026.

most frequently identified supplemental health and wellness offerings (43%) and well-being programs (39%) as areas where their organizations would be most likely to expand benefits.¹⁴

SHRM supports practical reforms that promote timely decisions, understandable communications, efficient electronic processes, and accessible appeals. New requirements should integrate with existing benefits-administration processes and clearly delineate the responsibilities of employers, insurers, and TPAs. Employers should not be required to duplicate claims, authorization, or appeals functions already performed by specialized administrators.

D. Simplify Enrollment Without Creating Duplicative Systems

Administrative simplification is particularly important as employers contend with rising benefit costs and limited resources. Federal efforts to simplify enrollment should reduce existing burdens rather than create additional systems or requirements for employers to administer. Employers use different plan designs, vendors, technologies, and communication strategies to meet the needs of their workforces. Any federal approach should preserve that flexibility while accounting for privacy, cybersecurity, ERISA, payroll, and systems-integration considerations.

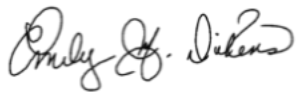
SHRM supports continued exploration of voluntary, interoperable approaches that simplify enrollment and improve data exchange across benefits, payroll, and enrollment systems. Rather than prescribe a single federal platform or process, policymakers should engage employers, HR professionals, vendors, and other stakeholders in developing standards that complement existing systems and reduce administrative burden.

Conclusion

SHRM appreciates the Committee for initiating this important conversation about the future of employer-provided benefits and welcomes the opportunity to continue working with Congress as these ideas develop. SHRM remains committed to preserving and strengthening the employer-provided benefits system so that employers can continue offering meaningful, innovative, and sustainable benefits that meet the evolving needs of workers and their families.

We look forward to continuing this dialogue and serving as a resource to the Committee.

Sincerely,



Emily M. Dickens, J.D.
Chief Administrative Officer
SHRM

¹⁴ Source: Government Affairs Midyear Check-in, SHRM, 2026.

Attachment A: MODERN Care Act Legislative Discussion Draft¹

MODERN Care Act

Modernizing Options for Dependent Expense Reimbursement Needs Act

DISCUSSION DRAFT

A BILL

To amend the Internal Revenue Code of 1986 to modernize dependent care assistance programs by permitting voluntary employer prefunding of dependent care flexible spending arrangements, clarifying the treatment of certain work-related dependent care expenses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Modernizing Options for Dependent Expense Reimbursement Needs Act” or the “MODERN Care Act.”

SEC. 2. VOLUNTARY PREFUNDING OF DEPENDENT CARE ASSISTANCE.

(a) **In General.**—Section 129 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) **Optional Employer Prefunding.**—

“(1) **IN GENERAL.**—A dependent care assistance program described in subsection (d) may provide that an employer may make available to an employee, in advance of the employee’s salary reduction contributions for the plan year, all or a portion of the amount of dependent care assistance elected by the employee for that plan year.

“(2) **VOLUNTARY EMPLOYER ELECTION.**—Nothing in this subsection shall be construed to require an employer to provide amounts in advance under paragraph (1). An employer that elects to provide such amounts may establish reasonable and uniformly administered terms governing the advance, subject to this section and regulations or other guidance prescribed by the Secretary.

“(3) **REPAYMENT THROUGH SALARY REDUCTION.**—An amount made available in advance under paragraph (1) may be recovered through salary reduction contributions otherwise elected by the employee for the plan year.

¹ The MODERN Care Act legislative text attached as Appendix A is an unpublished discussion draft intended for congressional tax staff and Legislative Counsel review.

“(4) **LIMITATION.**—The aggregate amount made available to an employee under paragraph (1) for a plan year shall not exceed the amount elected by the employee for that plan year and shall remain subject to the limitation under subsection (a)(2).

“(5) **TREATMENT OF ADVANCE.**—An amount made available pursuant to this subsection shall not, solely by reason of being made available before the employee has made corresponding salary reduction contributions—

“(A) fail to constitute dependent care assistance under this section;

“(B) be treated as income to the employee at the time the amount is made available; or

“(C) cause a dependent care assistance program to be treated as providing coverage subject to a uniform coverage requirement otherwise applicable to a health flexible spending arrangement under section 125.

“(6) **TERMINATION OF EMPLOYMENT AND OTHER EVENTS.**—The Secretary shall prescribe rules under which an employer providing an advance under this subsection may establish reasonable procedures for reconciliation of amounts advanced and amounts recovered through salary reduction contributions, including in the event of termination of employment or another cessation of participation, consistent with applicable Federal law.

“(7) **EMPLOYER PLAN DESIGN.**—Subject to subsection (d), an employer may establish reasonable terms governing the availability and amount of an advance, including limiting advances to active participants, prorating available amounts based on the portion of the plan year during which the employee participates, and establishing other reasonable safeguards to administer and reconcile advances.

“(8) **NO INCREASE IN EXCLUSION.**—Nothing in this subsection shall be construed to increase the amount excludable from gross income under subsection (a)(2).”.

(b) **Preservation of Existing Requirements.**—Nothing in this section shall be construed to modify nondiscrimination, substantiation, reporting, or other requirements otherwise applicable under section 129.

SEC. 3. MODERNIZATION OF EMPLOYMENT-RELATED DEPENDENT CARE EXPENSES.

(a) **Certain Care Outside the Household.**—Section 21(b)(2)(B) is amended by adding an exception for a qualifying individual described in section 21(b)(1)(B) or (C), without regard to the eight-hours-per-day household requirement, if the individual is physically or mentally incapable of self-care, the expense is for qualified nonmedical custodial dependent care, and the expense is incurred to enable the taxpayer to be gainfully employed.

(b) **Qualified Nonmedical Custodial Dependent Care.**—Section 21(b)(2) is amended to define qualified nonmedical custodial dependent care as care or supervision furnished to an adult qualifying individual that is necessary for the individual’s well-being or protection and enables the taxpayer to be gainfully employed. Such care may include the care component of assisted living

or nursing-facility services, memory-care supervision, long-term in-home personal attendant care, assistance with activities of daily living, and substantially similar nonmedical custodial services.

(c) **Allocation.**—For bundled facility or provider charges, only the portion properly allocable to qualifying nonmedical custodial dependent care shall be treated as an employment-related expense. Amounts attributable to housing, food, medical care, or other nonqualifying goods or services remain excluded unless otherwise eligible under existing law.

(d) **No Double Benefit.**—No amount may be treated as an employment-related expense under this section to the extent a deduction or credit is allowed for that amount under another provision of the Internal Revenue Code.

SEC. 4. REQUIRED FEES TO SECURE DEPENDENT CARE.

Section 21(b)(2) is amended to provide that a required placement fee, application fee, enrollment fee, agency fee, deposit, or similar charge may be treated as an expense for care if payment is required to obtain or secure otherwise qualifying care and the expense enables the taxpayer to be gainfully employed. Except as otherwise provided by the Secretary, a forfeited amount for which no dependent care services are ultimately provided shall not qualify.

SEC. 5. COORDINATION WITH DEPENDENT CARE ASSISTANCE PROGRAMS.

Section 129(e)(1) is amended to conform to the amendments to section 21. Nothing in this Act permits an expense excluded from gross income under section 129 to also be taken into account for the credit under section 21.

SEC. 6. PRESERVATION OF PROGRAM SAFEGUARDS.

Nothing in this Act shall be construed to increase the section 129(a)(2) exclusion limit; alter section 129 nondiscrimination requirements; eliminate applicable substantiation or documentation requirements; require an employer to establish or maintain a dependent care assistance program or offer prefunding; or permit a duplicate tax benefit for the same expense.

SEC. 7. REGULATIONS AND GUIDANCE.

Not later than 12 months after enactment, the Secretary of the Treasury, or the Secretary's delegate, shall issue regulations or other guidance necessary to implement the Act, including guidance on prefunding and reconciliation, midyear participation changes, employer safeguards, substantiation and allocation of nonmedical custodial-care expenses, and coordination with sections 125 and 21.

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall apply to plan years beginning after December 31, 2026.

Attachment B: MODERN Care Act Section-by-Section Summary

MODERN Care Act

Modernizing Options for Dependent Expense Reimbursement Needs Act

SECTION BY SECTION

The MODERN Care Act modernizes employer-sponsored dependent care assistance through two targeted reforms: optional employer prefunding of an employee's elected dependent care FSA amount and updated treatment of work-related dependent care expenses. The proposal preserves employer choice, the existing statutory exclusion limit, nondiscrimination requirements, substantiation rules, and coordination with the Child and Dependent Care Tax Credit.

Section 1. Short Title

Establishes the Modernizing Options for Dependent Expense Reimbursement Needs Act, or MODERN Care Act.

Section 2. Voluntary Prefunding of Dependent Care Assistance

Allows an employer, at its option, to make all or part of an employee's annual DCFSA election available before corresponding salary-reduction contributions have accumulated. The employee continues making elected payroll contributions during the plan year. The section does not mandate prefunding or increase the annual tax exclusion. Employers may establish reasonable, uniformly administered safeguards, and Treasury would address reconciliation when participation ends during the plan year. The mechanism remains separate from the health FSA uniform coverage rule.

Section 3. Modernization of Employment-Related Dependent Care Expenses

Updates section 21, whose employment-related expense rules are incorporated into section 129. The provision permits qualifying nonmedical custodial care for an adult dependent or spouse incapable of self-care without applying the current eight-hours-per-day household condition. It may cover the care component of assisted living or nursing-facility services, memory-care supervision, and long-term in-home personal attendant care when the expense enables the taxpayer to work. Housing, food, medical care, and other nonqualifying components remain outside the provision unless otherwise eligible under existing law.

Section 4. Required Fees to Secure Dependent Care

Provides statutory clarity for required placement, application, enrollment, agency, deposit, and similar fees necessary to secure otherwise qualifying dependent care. The underlying care must be employment-related. Generally, a forfeited fee would not qualify if no care is ultimately provided.

Section 5. Coordination With Dependent Care Assistance Programs

Conforms section 129 to the amended section 21 rules and preserves the existing prohibition on receiving both a section 129 exclusion and a section 21 credit for the same expense.

Section 6. Preservation of Program Safeguards

Preserves the current section 129 exclusion limit, nondiscrimination requirements, substantiation and documentation rules, employer choice, and the prohibition on duplicate tax benefits.

Section 7. Regulations and Guidance

Directs Treasury and the IRS to issue implementing guidance within 12 months, including rules for prefunding, reconciliation, midyear participation, employer safeguards, expense allocation, and coordination with sections 125 and 21.

Section 8. Effective Date

Applies the amendments to plan years beginning after December 31, 2026, allowing employers, payroll providers, and third-party administrators time to update plan documents and systems.

Employer Considerations

- The framework is entirely voluntary for employers.
- The proposal does not increase the \$7,500 statutory exclusion under section 129(a)(2).
- Employers retain reasonable plan design flexibility, subject to Treasury guidance.
- The adult-care provision is limited to qualifying nonmedical custodial care that enables employment; it does not make housing, food, or medical expenses generally eligible.
- Existing nondiscrimination, substantiation, documentation, and anti-double-benefit rules remain in place.