

# LATE BREAKING POLICY, REGULATORY, AND LEGISLATIVE UPDATES

September 24, 2024





# WELCOME & INTRODUCTIONS

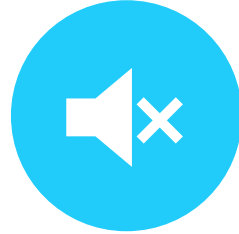
**Michele Norton** - Senior Vice President, Product Marketing, Avalon



# Before We Start



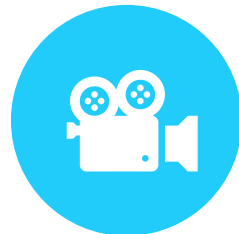
This meeting is being recorded.



We will be **MUTING** everyone except the presenter to make sure the audio is clean and clear.



Q&A will be done by using the **“Questions”** feature.



The recording and slides will be **available** on our website later during the week.

# Agenda

## Overview & Introductions

Michele Norton, MS, RN – SVP, Product Marketing, Avalon

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## 2024 Federal Policy and Regulatory Landscape

Julie Barnes, JD – CEO, Maverick Health Policy

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## 2024 State Legislative Landscape & Trends

Alex Sommer, JD – Vice President, State Government Affairs, Avalon

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## Q&A

Michele Norton, MS, RN – SVP, Product Marketing, Avalon



**Julie Barnes, JD** – CEO, Maverick Health Policy



**Alex Sommer, JD** – Vice President, State Government Affairs, Avalon Healthcare Solutions

# Discussion Overview

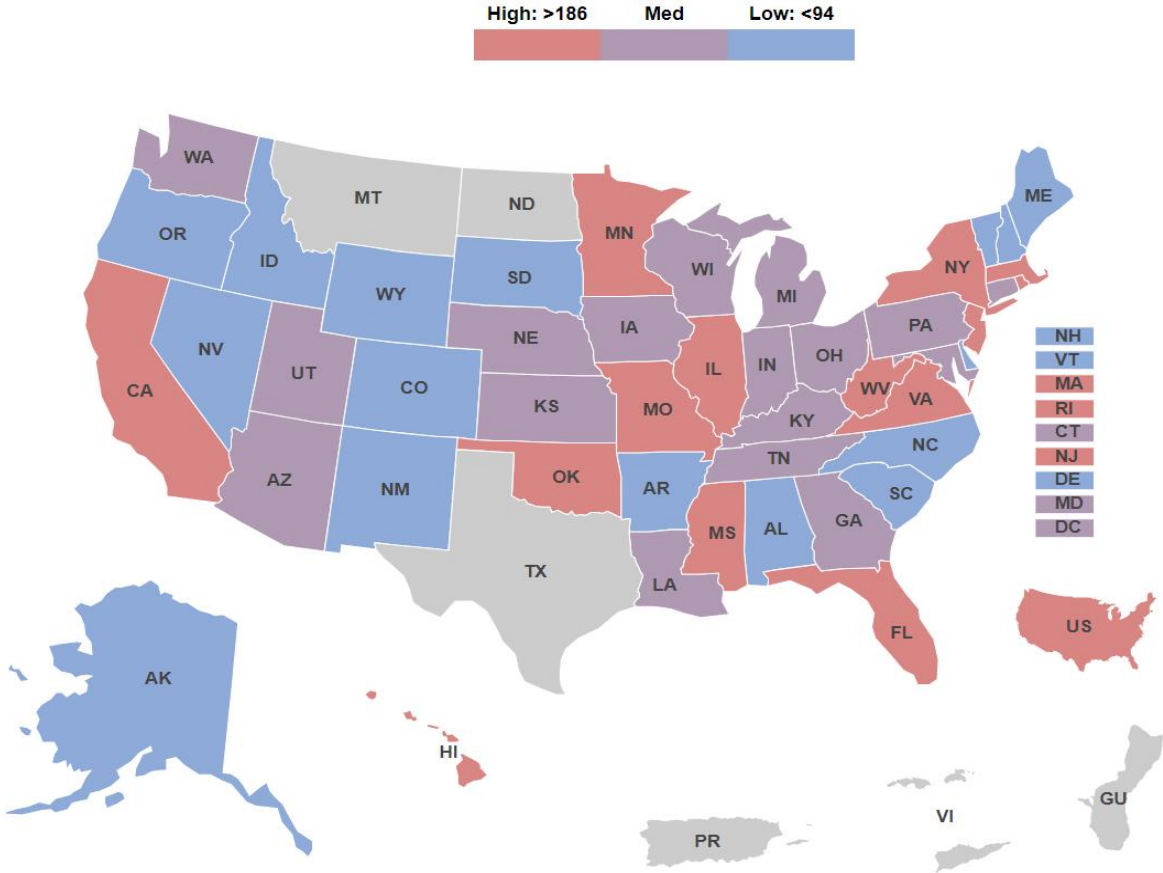
## 1 Big Ticket Items for 2024- Federal & State Perspectives

- MA Star Ratings
- Prior Authorization
- Payment Reform / VBC
- Artificial Intelligence
- Expanded Scope Coverage

## 2 Political Landscape Overview

# State Legislative Activity in Healthcare

## STATE HEALTHCARE REFORM ACCELERATES



State legislation accelerates to fill the void due to the lack of overall comprehensive federal reform.

# Poll Question: What policy/regulatory focus has the most significant impact on your organization currently?

- a. MA Star Ratings
- b. Prior Authorization
- c. Payment Reform / VBC
- d. Artificial Intelligence
- e. Expanded Scope Coverage

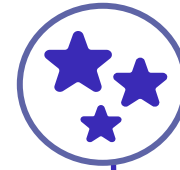


# Payers Win Big with Medicare Advantage (MA) Stars Recalculations



**June 13, 2024**

**CMS announces new methodology for calculating 2024 MA Star ratings** after losing multiple legal challenges brought by payers



**September 11, 2024**

**KFF publishes an analysis estimating 2024 MA quality bonus payments** (based on 2023 ratings) will total \$11.8 billion, a decrease of \$1 billion from 2023



**KFF**



**July 9, 2024**

**More than 60 plans receive higher star ratings under recalculations** – according to a *Healthcare Dive* analysis. Thirteen plans passed the "four-star threshold" to receive maximum bonus payments in 2025

# Policymakers Are Exploring Ideas for Sustainable Payment Reform



**May 17, 2024**

The Senate Finance Committee releases a white paper – discussing bolstering chronic care through Medicare Part B physician payment policy reform



**August 1, 2024**

The Congressional Budget Office releases formal answers to questions submitted in a May meeting – they agreed that expanding Medicare's site-neutral payments wouldn't impact prices paid by insurers



**July 25, 2024**

Former HHS Secretaries Alex Azar and Kathleen Sebelius participate in a think tank event advocating for site neutral payments in Medicare



**August 21, 2024**

CMMI publishes a blog post on a new data sharing strategy – published to *Health Affairs Forefront*, this new data sharing strategy aims to increase infrastructure of and participation in value-based care models

# Issue Focus – Prior Authorization

## *Physician Burnout*

- A June 2024 AMA survey on prior authorization found:
  - Physicians and staff spend 12 hours per week completing prior auth requests
  - Physicians complete 43 prior auth requests per week, on average
  - 95% of physicians report that prior auth somewhat or significantly increases physician burnout



# State Policy Solutions – Prior Authorization



Gold Carding



Transparency



Standardized Processes & Forms



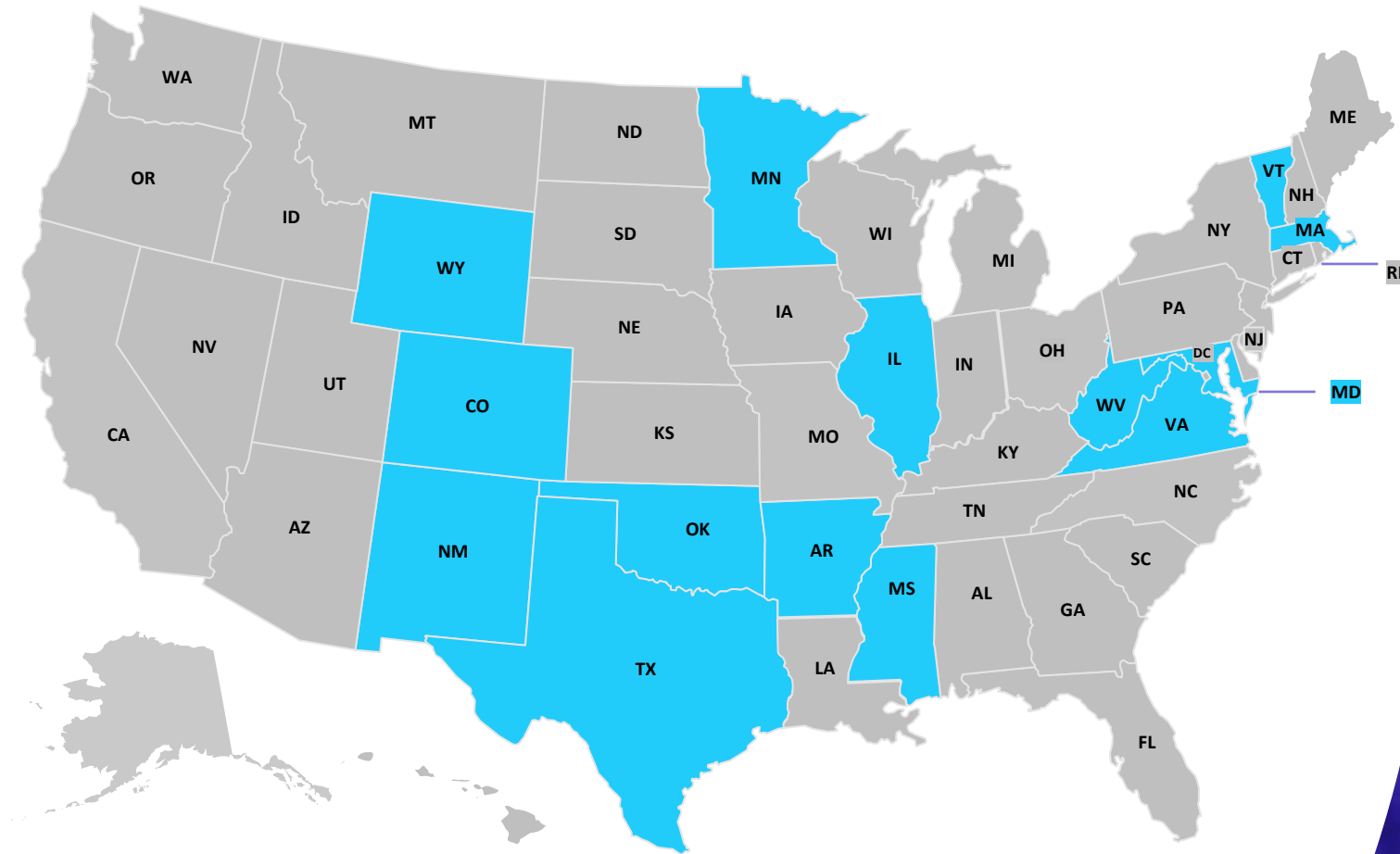
NEW: Claim Editing (Vermont), automated algorithmic processes (IL)

# State Legislative Focus – Prior Authorization

## CURRENT STATE

### PA reform legislation

- 10 states enacted broad PA reform in 2024
- Gold Carding specific legislation
  - 6 states enacted and 8 states proposed gold card legislation



# Larger Insurers Still Face Lawsuits Over the Use of AI in Prior Authorization



**July 24, 2023**

**A lawsuit is filed against Cigna** for allegedly using their AI software to reject 300,000 claims *en masse* with minimal physician review.



**December 12, 2023**

**A federal class action lawsuit is filed against Humana** for claiming they used an AI tool to perform MA prior auth reviews, similar to UnitedHealthcare.

**Humana**



**November 14, 2023**

**A federal class action lawsuit is filed against UnitedHealthcare**, claiming United used an AI tool with a 90% error rate to perform MA prior auth reviews.



**March 28, 2024**

**A class action complaint is filed against Blue Shield of California** for using their Claims Data Activator AI software to allegedly automatically deny claims *en masse*.



# State Activity – Artificial Intelligence

- Broader policy developments are taking shape at the federal level, but states trying to put their mark on this issue as well.
- 45 states considered AI legislation.
- 31 states enacted or adopted some form of AI legislation or resolution.
  - Notable examples:
    - **Colorado Consumer Protections for Interactions with AI SB 205:** Sets a comprehensive framework for the ethical and transparent use of high-risk AI systems, like those used in healthcare
    - **California Safe and Secure Innovation for Frontier AI Models Act SB 1047:** Designed to enhance the security, ethical use, and accountability of AI models, including those used in healthcare / public health

# Federal Agencies Are Trying to Embrace Technology Advancements that Will Impact Lab Testing

- August 1: ARPA-H launches new program to develop an at-home multi-cancer screening test
- August 5: ASTP/ONC releases updated health IT certification criteria for public health and sharing lab results
- August 22: FDA issues draft guidance for predetermined change control plans for medical devices
- September 9: CMS wants information from organizations on AI technologies that are improving healthcare outcomes and service delivery; CMS will invite some to present their tools to the agency during "AI Demo Days"
  - Submissions due October 7, 2024 – decisions on participants will be made on quarterly basis, starting October 2024
  - Types of organizations they are seeking info from include diagnostic and imaging analysis, utilization management/billing, clinical decision support

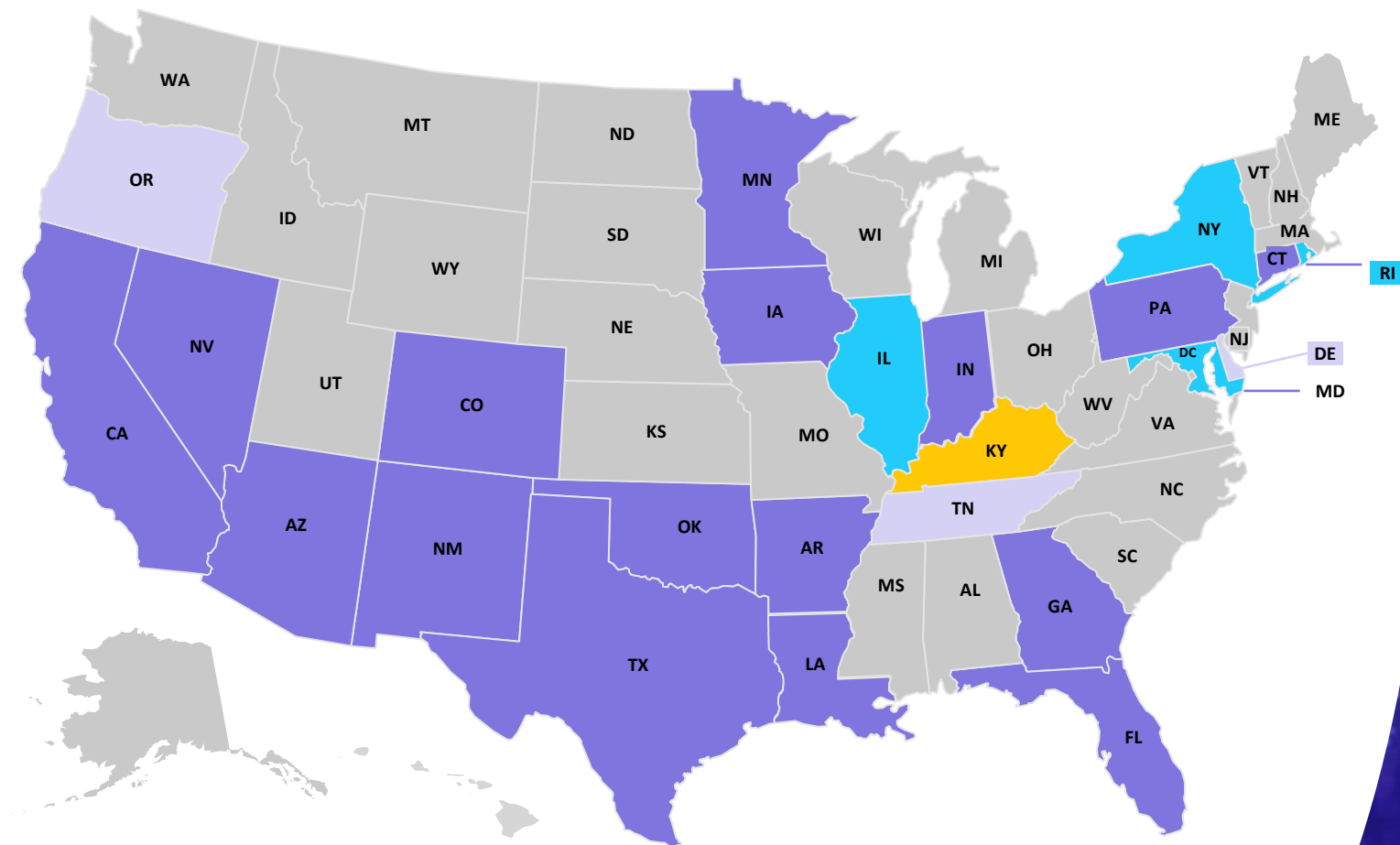




# State Activity – Coverage Mandates for Lab Testing

- Biomarker testing – 21 states
  - *New in 2024:* Colorado, Connecticut, Florida, Indiana, Iowa, Pennsylvania
- Prostate cancer screening – 7 states
- General cancer screening – alignment to national standards, federal law
  - *Kentucky HB 52*

- Biomarker Testing Mandates
- Prostate Cancer Screening Coverage
- Biomarker & Prostate Cancer Screening Coverage
- General Cancer Screening



# 2024 Federal Elections Timeline



July 15-18:  
Republican  
National  
Convention



August 19-22:  
Democratic  
National  
Convention



September 30:  
Gov't Funding  
Expires



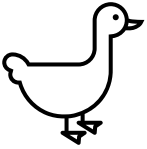
November 5:  
Election Day



January 3:  
119th Congress  
Sworn in



January 6:  
Inauguration  
Day



### What's Next?

- Lame-Duck Health Package?
  - Funding for Medicare extenders?

## What health care issues do voters care about?



Cost



Access

Biggest Cost Drivers	
Inflation (higher wages increases prices)	Aging, sicker population
Workforce shortages and supply chain	New drugs (GLP-1s) and tech

# Democrats v. Republicans on Health Care

## Democrats



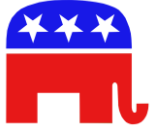
### Skeptical of MA plans

- Will address upcoding (e.g., UHC artery disease dx scandal)

### Expand fed gov't power

- Medicare drug negotiation list
- Extend ACA subsidies and navigator program
  - Benefits Blues plans
- Strengthen Medicaid benefits

## Republicans



### Pro-private sector

- Favorable to MA plans to foster competition, benefits Humana, UHG, CVS
- Eliminate Medicare's authority to negotiate prescription drug costs

### Medicaid and ACA plans will not do as well

- Bad for Oscar, Centene, Molina

Congressional Seats up for Election	
HOUSE	SENATE
<ul style="list-style-type: none"> <li>• All 435 seats</li> </ul>	<ul style="list-style-type: none"> <li>• 23 Dem. seats</li> <li>• 11 Rep. seats</li> </ul>

# What does the Presidential Election mean for health care?

## If Harris is elected



### Anticipate legislative activity

- Close insurance coverage gaps
  - APTC tax credits
- Expand health benefits
  - Mental health services
- Focus on reproductive rights
  - Abortion access, EMTALA, IVF
- Accelerate Medicare prescription drug price negotiations under the Inflation Reduction Act (IRA)

## If Trump is elected



### Anticipate executive orders

- Eliminate insurance coverage subsidies and rollback ACA benefits
- Renew association health plans
- Impose federal income tax on ESI
- States determine abortion rights
- Strengthen Medicare Advantage
  - Previously broadened scope of private insurer plans and expanded telehealth coverage during COVID-19
- End Medicare drug price negotiations

# Three Big Issues to Be Decided by Congress



## Site Neutral Payments

### MedPAC

- Commission recommends more closely aligned payment rates across ambulatory settings for selected services
- Lower Costs, More Transparency first step
- AHA keeps killing it but there is momentum
- Related to consolidation

## PBM Reform

### Pharmacists Fight Back

- Legislation would lower costs and allow people to choose pharmacy
- U.S. House Oversight & Accountability Committee hold three-part investigation into PBMs and their role driving up health care costs
- AMA annual analysis reported four largest PBMs -- CVS Health, OptumRx, Express Scripts, and Prime Therapeutics -- control 70% of the market

## Risk Adjustment

### Medicare Advantage

- March: MedPAC report -- MA risk scores are 18% higher than similar FFS benes due to higher coding intensity
- April: CMS change to RA model – removed 2000 dx codes that are most used to make patients appear sicker and inflate risk scores
- July: Investigative reports from WSJ and STAT news

# Three Big Issues To Be Decided By Courts



## Free Preventive Care

### **Braidwood**

- Religious objections to ACA mandate to offer free preventive services, including HIV drugs and vaccines
- June: 5th Circuit ruled that the U.S. Preventive Services Task Force is unconstitutional, ruling in favor of Plaintiffs, but remanding the case
- Preventive services can continue to be required without cost-sharing nationwide for now
- Additional challenges are expected

## Employer Shared Responsibility

### **Faulk v. HHS**

- Large employers must offer min essential coverage to at least 95% of their FTEs or pay \$2k penalty for each FTE if the FTE received tax credits in the marketplace
- The janitor company stopped offering MEC because no employees enrolled in it.
- Janitors suing about tax penalties for failing to meet ACA MEC rule

## Regulatory Survival

### **Chevron**

- *Loper Bright* reversed a prior ruling that gave federal agencies wide latitude to interpret congressional statutes that were non-specific or ambiguous
- *Corner Post* held that agency rules are no longer exempt from legal challenges 6 years after going into effect

# Thank you



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## **SAVE THE DATE**

Avalon November webinar – November 19, 2024

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