



Advancing employer-provided coverage

March 15, 2024

The Honorable Virginia Foxx  
Chair  
Committee on Education and the Workforce  
United States House of Representatives  
2176 Rayburn House Office Building  
Washington, DC 20515

The Honorable Robert Scott  
Ranking Member  
Committee on Education and the Workforce  
United States House of Representatives  
2176 Rayburn House Office Building  
Washington, DC 20515

Dear Chair Foxx, Ranking Member Scott, and members of the committee,

Thank you for the opportunity to share how we can work together to build upon and strengthen the Employee Retirement Income Security Act of 1974 (ERISA) as the 50th anniversary of this critical law approaches. We applaud the committee's focus on identifying innovative ways to increase coverage affordability, access to care, and the quality of care provided to those enrolled in employer-sponsored health coverage. The **Alliance to Fight for Health Care** wholeheartedly supports the goal of protecting and strengthening ERISA and applauds the committee for seeking input from the employer-sponsored health care community.

The **Alliance to Fight for Health Care** is a diverse coalition comprised of businesses, unions, patient advocates, employer organizations, health care companies, consumer groups and other stakeholders that support employer-provided health coverage. Together, we are working to ensure that employer-provided coverage remains an available and affordable option for working Americans and their families.

Employer-provided health care coverage is the backbone of the U.S. health care system — covering nearly 180 million workers and their families. More people receive health insurance through an employer than all other sources of coverage combined (Medicare, Medicaid, Marketplace, Tricare and the U.S. Department of Veterans Affairs). Employer-provided coverage produces substantial return on the federal government's investment in it, economically and when it comes to our health. For every tax dollar invested in employer-sponsored coverage, employers pay nearly \$3.73 toward their workers' health benefits<sup>1</sup>. Research also finds that employer-provided coverage provides significant economic, social, and public health [benefits](#). According to a National Bureau of Economic Research [working paper](#), employer-provided coverage delivers significant value — at least \$1.5 trillion in social value annually beyond the cost of insurance borne by businesses, workers, and government tax exemptions, at nearly \$10,000 per person.

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<sup>1</sup> This figure is calculated by dividing the employer contributions for group health insurance (U.S. Bureau of Economic Analysis, "[Table 6.11D. Employer Contributions for Employee Pension and Insurance Funds by Industry and by Type](#)," Line 32 (accessed Tuesday, March 12, 2024)) by the amount of forgone revenue attributable to the exclusion of employer contributions for medical insurance premiums and medical care (White House Office of Management and Budget, "[Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2024](#)," Table 19-2 (accessed Tuesday, March 12, 2024)). In 2022, the latest year for which both figures are available, that equation is \$839 billion divided by \$225 billion, or \$3.73 per each dollar of forgone revenue.

Simply put, employers would not be able to provide the affordable, high-quality care and robust offerings that nearly 180 million workers and their families depend on for their health and financial security without ERISA. **We thank you again for the opportunity to weigh in on ERISA and ways to protect the important role employer-sponsored coverage plays in the US health care system.**

## **Preemption**

ERISA preemption is the foundation that enables employer-sponsored plans to offer uniform benefits and manage plan costs for all employees, regardless of the state in which they live and work.

The **Alliance to Fight for Health Care** commends the committee for seeking comment on ways to strengthen and clarify ERISA preemption, and we [strongly](#) oppose any proposals that would seek to remove or narrow ERISA preemption as this would increase costs for employees and their families, reduce access to coverage, and undermine the ability of self-funded employers to provide equitable benefits to their employees nationwide. In enacting ERISA, Congress sought to minimize those harmful effects of each state enacting their own laws regulating employee benefits by establishing national standards for employee benefit plans and ensuring uniform, equitable and affordable benefits irrespective of where Americans live or work. ERISA's preemption provisions enable nationwide and multi-state employers to create innovative plan designs, develop effective health care costs controls, and improve the quality of care, as well as the efficiency within our health care system. Most importantly for workers, this means equitable benefits regardless of where they live.

We are also concerned that certain state legislation has attempted to undermine ERISA preemption in recent years. The **Alliance to Fight for Health Care** is particularly concerned with the implications of the U.S. Supreme Court's decision in *Rutledge v. Pharmaceutical Care Management Association* and the proliferation of state laws that seek to undermine ERISA preemption by regulating contracted service providers. We were particularly alarmed by the U.S. Department of Labor's (DOL) misguided and unfounded position (as articulated through the U.S. Department of Justice) in a brief filed in the 10th Circuit's *Mulready* case. We believe the reasoning provided in the brief contradicts federal law. The **Alliance to Fight for Health Care** notes that these contractual partnerships are preempted from state interference under current law and we encourage all stakeholders to continue to support ERISA preemption as a tool to maintain lower costs and broader coverage for working Americans.

In addition to state laws, the **Alliance to Fight for Health Care** is concerned that some members of congress are contemplating provisions to weaken ERISA preemption in relation to pharmacy benefit managers (PBMs). We warn that efforts to weaken or erode ERISA preemption, be it in relation to PBMs or otherwise, would directly increase health care costs for workers and their families. **We believe the goal of any congressional action in this space should be to preserve and reaffirm ERISA preemption as Congress originally intended it and enable employers to offer uniform, national benefits even when those benefits are offered with the help of a contracted service providers.**

## Prohibited Transactions

We thank the committee for seeking feedback on the impact consolidation has had on the health care sector. The Alliance is dedicated to pursuing policies that increase competition and transparency to bring meaningful change — and cost savings — to our health care system and patients everywhere. The Alliance believes that robust competition is essential to a functioning and affordable health care system. We encourage the committee to carefully consider the implications of adding new prohibited transactions, before the market has evolved to offer employers reasonable alternatives that would not raise costs or reduce quality or access.

In addition to encouraging more hospital price transparency, as a first step to addressing consolidation, the Alliance encourages congress to consider site-neutral payment policies. Implementing site neutral payments may help correct a Medicare payment structure that is driving consolidation among health care providers and raising hospital prices, which are a leading driver of increased costs for patients. CMS' actuaries [concluded](#) that “hospital spending growth is the principal reason for Medicare’s faster growth.”

Current Medicare payment rules reimburse hospital outpatient departments (HOPDs) more for the same service than freestanding physician offices, which is encouraging hospitals to purchase doctors’ offices (where care is less expensive) to turn them into HOPDs, which increases the hospital’s revenue and increases costs for the federal government and for Medicare patients.

Site-neutral payment reforms will reduce costs for patients and the federal government. MedPAC estimates up to \$6.6 billion in annual savings for the Medicare program and \$1.7 billion in savings from lower cost-sharing for Medicare beneficiaries from a limited expansion of site-neutral payments.<sup>2</sup> The potential for savings expands beyond Medicare. New research by University of Minnesota economist Steve Parente conducted on behalf of the Alliance estimates that expanding site-neutral payment reform could result in nearly \$60 billion in savings annually if adopted in the commercial market<sup>3</sup>.

We thank the members of the committee for your support for expanding site-neutral payment policies Section 203 of the bipartisan Lower Costs, More Transparency Act (HR 5378). However, we believe that bill, which aligns Medicare payments for physician-administered drugs in off-campus HOPDs and freestanding physician offices, is just a start. **We encourage Congress to look at more expansive proposals such as those in the bipartisan SITE Act (S 1869) and recommended by MedPAC.**

We also urge the committee to explore proposals that would require off-campus HOPDs owned by a Medicare provider to obtain and use a unique national provider identifier (NPI) on billings for claims for services. This specificity of documentation is important because current Medicare and private

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<sup>2</sup> Medicare Payment Advisory Commission (MedPAC), “June 2022 Report to the Congress: Medicare and the Health Care Delivery System,” June 15, 2022, <https://www.medpac.gov/document/june-2022-report-to-the-congress-medicare-and-the-health-care-delivery-system/>

<sup>3</sup> The Alliance to Fight for Health Care press release, “Panel discussion highlights nearly \$60 billion in potential annual health care savings from site-neutral payment reform policies,” February 1, 2023, [https://www.fightforhealthcare.com/files/ugd/7fe67d\\_228278c47e404b0995ad5c892ced5148.pdf](https://www.fightforhealthcare.com/files/ugd/7fe67d_228278c47e404b0995ad5c892ced5148.pdf)

health insurance hospital billing practices make it difficult to tell whether a service was provided at a hospital or in an outpatient setting like a doctor's office, where care may be less expensive. Hospitals that own outpatient facilities often will use the main hospital's NPI and address on all claim forms -- even when care is provided outside the hospital at a hospital-owned doctor's office or facility. This makes it look like the care was provided within the hospital's walls even if the care was provided at an off-campus HOPD miles away from the main hospital.

By requiring off-campus HOPDs owned by a Medicare provider to obtain and use a unique NPI, the legislation will ensure patients and payers have the data necessary to dispute erroneous fees, unfair add-on costs, hospital upcharges and other "junk" fees.

In addition to advancing the above policies to address Medicare payment disparities in outpatient care, the Alliance also strongly encourages Congress to advance other cost-reduction policies, including continuing the move toward value-based payments by encouraging collaboration between public and private providers and payers and creating more opportunity for commercial sector participation in CMS Innovation Center models, as well as eliminating anti-tiering and anti-steering clauses in facility and insurance contracts that limit competition and access to higher quality, lower cost care.

The employer-sponsored coverage market has consistently led other insurance markets in innovative plan designs and effective health care costs controls, while improving the quality of care for workers. But these innovations can only flourish if plans have the flexibility to offer alternative payment and contracting models. **We encourage the committee to protect the flexibility employers need to design benefit offerings that best meet the needs of their employees, by preserving ERISA preemption.**

### **Data sharing**

The Alliance also thanks the committee for seeking feedback on data sharing and health care quality measures. We believe employers need access to robust quality measure data to best serve plan participants through innovative benefit design and cost controls. Inadequate access to cost and quality data about health care providers makes it difficult for employers to create value-based programs such as high-performance networks, which often depend on access to such data to develop their performance tiers. Additionally, a lack of standardized performance metrics and data collection make it difficult to identify areas for quality improvement and high-value care, as well as increasing reporting burden on health care providers. **Therefore, the Alliance supports federal and private efforts to create uniform quality metrics across payers as this would reduce the administrative and reporting burden for both providers and payers.**

### **ERISA Advisory Council**

We also thank the committee for seeking feedback on potential congressional activity regarding the ERISA Advisory Council, a 15-member council representing employee organizations, employers, the general public, and other fields. The ERISA Advisory Council currently is tasked with advising the DOL Secretary and to submit recommendations regarding the secretary's role under ERISA.

We believe there is an opportunity to redirect the focus of the ERISA Advisory Council to better serve consumers covered by employer-sponsored health insurance. However, we caution against congressional efforts that would seek to use the ERISA Advisory Council in a manner similar to the Medicare Payment Advisory Committee (MedPAC) as there are distinct and important differences between the two bodies. MedPAC oversees a government-run public health insurance program, while the ERISA Advisory Council is focused on the private employer market.

Instead, **we believe the ERISA Advisory Council could play an important role in examining and shaping innovation in the employer-insurance market by surveying key employer groups for areas of research interest. These could be shared with GAO and Congress or formulated into reports intended to help the market function more smoothly.**

The **Alliance to Fight for Health Care** thanks the committee again for their interest in these essential topics and we look forward to working together to find solutions to lowering health care costs for employers and patients. We strongly urge the committee to continue protecting ERISA preemption and advance policies that could generate federal savings and protect patients from increasing health care costs.

Sincerely,

The Alliance to Fight for Health Care