

March 1, 2024

The Honorable Virginia Foxx  
Chairwoman  
Committee on Education and the Workforce  
U.S. House of Representatives  
Washington, DC 20515

Dear Madame Chairwoman:

Thank you for the opportunity to provide the following comments on ERISA as it approaches its 50<sup>th</sup> anniversary. The National Association of Insurance Commissioners (NAIC) represents the insurance regulators in the 50 states, the District of Columbia, and 5 U.S. Territories. As the primary regulators of health insurance, our members have had extensive and personal experience working with federal officials on the implementation of ERISA.

Since 1974 when ERISA was enacted, with group health plans added to the legislation in the eleventh hour, enforcement of the law has required considerable coordination between federal and state regulators. The federal courts also have been actively involved in interpreting the ERISA statute. State insurance regulators closely monitor these decisions to inform our state legislatures' deliberations on health benefits and our regulatory activities. Over the past 50 years, this coordination has resulted in a regulatory construct that has allowed multistate employers to provide group health plans that meet their needs and those of their employees. ERISA ensures that employers are free to self-fund without being regulated by the states, to purchase fully-insured health insurance plans that comply with state law, or to establish plans that combine self-funded benefits and state regulated insurance. Congress has recognized the important role that state regulation of insurance plays in protecting consumers, including the Erlenborn-Burton Amendment in 1983, which was enacted out of concern regarding the financial insolvency of multiple employer welfare arrangements and a desire to remove impediments to state regulatory action to prevent those abuses. While there have been some bumps along the way, and there are still some issues to iron out, ERISA has been an effective law overall.

As Congress reviews ERISA on its 50<sup>th</sup> anniversary, state regulators would like to provide the following observations:

First, the overarching goal of multistate employers is not always to provide uniform coverage for their employees. Neither is their primary goal to avoid state regulation. Their objective is to provide the health insurance coverage that best meets the needs of their workforce and their budgets. Many employers purchase state-regulated insurance that meets state laws. Some have chosen, even as a self-funded plan, to comply with certain state regulations. For example, in Washington State alone over 440 self-funded group health plans have opted to comply with the state's balance billing law so they can offer greater consumer protections to their employees than those provided under the No Surprises Act. These self-funded plans cover over 500,000 employees and dependents in Washington State.

Second, not all self-funded plans are offered by multistate employers. Often, both the employer and their employees reside and receive care in a single state. Some employers who use self-funded plans are not even large employers. This has raised some concerns among state regulators who want to ensure that all health insurers doing business in their respective states are solvent – able to meet their obligations – and that federal preemption protects only employers that are truly “self-funded,” not third parties that act as insurers and insurance agents selling coverage to employers.

Finally, while addressing the high cost of health insurance is a goal we all share, everyone must understand that lowering the premiums for one employer or group of employers does not mean health care costs are systemically lowered. Most often, this means costs are being shifted to employees (especially those who need assistance the most) or to other employers and their employees. ERISA has been used by some as a weapon to disrupt state markets to their own gain. Unauthorized entities, employers that are not really employers, employees who are not really employees, and other tactics have been used under the ERISA umbrella to benefit some to the detriment of others, especially employees. And at no point do these schemes address the real cost of health care. Lowering the overall cost of health care should be the objective – lower spending lowers premiums for all.

This raises a key concern of state regulators—federal interference in the ability of states to lower health care costs. Over the years ERISA preemption has limited the ability of states to collect data, including submission of claims data to state all payer claims databases, and implement programs designed to lower costs. Most recently there have been challenges to state laws that attempt to address the business practices of Pharmacy Benefit Managers (PBMs) and the cost and access to care consequences of those practices on consumers.

NAIC appreciates the history of the House Education and the Workforce Committee seeking out the expertise and experience of state regulators as they considered health insurance policy changes. We welcome continued communication as you consider policies to improve ERISA while recognizing its core purpose to protect employees who are the beneficiaries of the plans regulated under ERISA. We look forward to working with you to address high health care costs and improve access to health insurance and quality care.

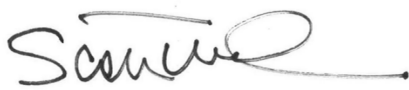
Sincerely,



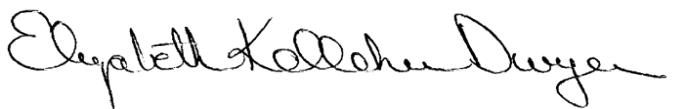
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