



March 15, 2024

The Honorable Virginia Foxx
Chairwoman
Committee on Education & The Workforce
2176 Rayburn House Office Building
Washington, DC 20515

Submitted electronically via: EdandWorforceRFI@mail.house.gov

Dear Chairwoman Foxx:

The Partnership for Employer-Sponsored Coverage (P4ESC) welcomes the opportunity to respond to the Committee on Education & The Workforce Request for Information (RFI) on the *Employee Retirement Income Security Act* (ERISA) and its preeminent role in employer sponsored health coverage. Without ERISA, employer-based health coverage likely would never have grown to support coverage for more than 180 million Americans.

P4ESC is a nonpartisan advocacy alliance of employer-based and oriented organizations and trade associations representing businesses of all sizes and sectors, and the millions of Americans and their families who rely upon employer-sponsored coverage every day. Employer-sponsored coverage is the single largest source of coverage in our nation.

Employer-sponsored coverage has been the backbone of our nation's health system for nearly eight decades. Businesses of all sizes contribute vast resources to employees and their families through employer-sponsored health coverage and have a vested interest in health care cost, quality, and system viability. Employers have been on the leading edge of health delivery innovation for decades. Benefit offerings and coverage plans in the employer-sponsored system are as diverse as employers and employees themselves.

ERISA was enacted in 1974 to encourage voluntary employee benefit plans (particularly retirement and health benefits) and to promote uniformity in these plans across state boundaries. The ERISA law preempts application of state laws that "relate to" these employer-sponsored plans. ERISA does not preempt the states from regulating health insurers or health insurance products. ERISA also does not preempt state laws of general applicability (e.g., taxes). ERISA applies to all employer-sponsored plans, whether self-insured or fully insured. In its 50-year history, ERISA has worked well and effectively to the benefit of employees and employers.

Multistate employers seek to build an equitable workplace culture by providing uniform and affordable benefits to their employees regardless of where they live. Employers also want to be

able to administer these benefits in an efficient, consistent manner. Uniform design and administration of health benefits promotes substantial efficiencies and significantly reduces health care costs for employees and plan sponsors.

ERISA uniformity is important to maintain common benefit coverage for employees in multiple states. But it is also vitally important to finding economies of scale in benefit administration. This ability to lower plan costs while maintaining high quality has and continues to be of critical importance.

P4ESC urges the Committee to clarify that ERISA preemption applies equally to *plan design* and *plan administration*. Specialty providers such as pharmacies should not be allowed to undercut ERISA preemption by state action.

P4ESC is greatly concerned by the line of U.S. Supreme Court cases that have taken an increasingly restrictive view of ERISA preemption of state regulation. The *Travelers*¹ case in 1995 held that a New York law regulating hospital billing rates to insurers was not preempted merely because of its “indirect economic influence” on the plan. The *Rutledge*² case in 2020 held that an Arkansas law regulating Pharmacy Benefit Managers (PBMs) was not preempted for merely increasing plan costs or altering incentives. In our view, the Court has needlessly sacrificed ERISA uniformity in an effort to save state regulation. The Court ought to have given greater deference to the importance of ERISA uniformity.

The dividing line between state regulation of insurance and ERISA uniformity has always been difficult for policymakers. P4ESC believes that uniformity of administration of plan benefits in pharmacy, medical benefits and others should trump parochial state interests in regulating local providers.

We look forward to working with you to maintain and strengthen ERISA preemption to the benefit of employer-sponsored coverage. We would welcome the opportunity to discuss these issues with you or your staff. If such a meeting would be of interest to you, please have your staff contact P4ESC’s Executive Director Neil Trautwein at neil@trautweinstrategies.com.

Sincerely,

The Partnership for Employer-Sponsored Coverage

www.p4esc.org

¹ New York State Conference of Blue Cross & Blue Shield plans v. Travelers Insurance Company, 514 U.S. 645 (1995)

² Rutledge v. Pharmaceutical Care Management Association (U.S. S.Ct. 2020)