



January 23, 2023

United States Senate
The Capitol
Washington, DC 20510

U.S. House of Representatives
The Capitol
Washington, DC 20515

Dear Senators and Representatives:

As the 118th Congress convenes, the Partnership for Employer-Sponsored Coverage (P4ESC) writes to commend you for your service to our nation. P4ESC stands ready to work with you to help ensure that employer-sponsored coverage is strengthened and will remain a viable and affordable private-sector health coverage option.

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

P4ESC would like to highlight the following principles and priorities that are important to ensuring that employment-based coverage thrives into the future.

- Preserve and strengthen employer-sponsored health coverage
- Address medical costs and challenges to help keep coverage affordable
- Uphold the current tax-treatment of employer-sponsored coverage
- Provide employers with compliance relief from burdensome regulations governing health coverage
- Promote innovations and diversity of plan designs and offerings for employees

Preserve and strengthen employer-sponsored health coverage

Employer-sponsored coverage has been the backbone of our nation's health system for more than eighty years. Businesses of all sizes contribute vast financial, administrative, and other resources to employees and their families through the employer-sponsored system and have a vested interest in health care quality, value, and system viability. Benefit offerings and coverage plans in the employer-sponsored system are as diverse as our employers and employees themselves.

With self-insured coverage under the *Employee Retirement Income Security Act* (ERISA), employers tailor coverage to meet their workforces' specific needs across state lines. Many

employers operate in multiple states with employee populations in each. Self-insured coverage allows a common benefit plan for all of these employees. These employers pay all health care claims and bear the financial risk of claims made by covered employees under the plan. Employers often utilize a third-party administrator (TPA) for plan management, and in most cases, rent insurance carrier provider networks and other vendors to ensure quality plan operation. Most importantly, employers maintain a fiduciary interest under ERISA in the cost and quality of coverage for their employees.

Under fully insured coverage, employers purchase a plan that meets federal *Affordable Care Act* (ACA) requirements as well as other state regulations from insurance carriers. These employers do not bear the full financial risk of claims, but still hold a fiduciary interest in the cost and quality of coverage under ERISA.

Whether or not a business self-insures its coverage is largely but not entirely a question of size. In 2021, 78.1 percent of businesses with 1,000 or more employees self-insured at least one plan offering. In contrast, only 17.7 percent of businesses with 25 to 99 employees self-insured their coverage¹. Where a business is located (intrastate versus multistate) could have a bearing on their decision. More small employers would likely buy a fully insured plan, subject to state mandates and other state regulation.

Employer-sponsored coverage – whether self-insured or fully insured – holds a distinct advantage over coverage sold in the individual market. Workplace-based coverage groups together employees without regard to their health status. These pools tend to be more stable over time and more predictable leading to lower premium trends than other pooling arrangements. Controlled entry and exit from the plan, employer contributions and the ability of younger, healthier employees to offset the cost of older or less healthy employees helps keep coverage more affordable across the entire workforce. This natural pooling of employees in the private sector is more affordable and effective than pools in which less healthy individuals have a greater incentive to join than do healthier ones.

Employer-based coverage has been stressed by cost pressures and crises such as the COVID-19 pandemic, which tested the link between work and health care benefits. However, the number of Americans with employer-provided coverage fell only 1-2 percent despite the unemployment rate peaking at over 14 percent in 2020, according to the Commonwealth Fund². Employer-based insurance can and should continue to be the foundation of our nation's coverage.

Address medical costs and challenges

¹ Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey (MEPS) 2021. [Chartbook #26: MEPS Insurance Component Chartbook 2021 \(ahrq.gov\)](#).

² [As Pandemic Eases What's State of Coverage Affordability in U.S.? | Commonwealth Fund](#)

Rising health care costs are the greatest challenge in employer-sponsored health coverage. Small business owners have cited this as their number one problem for more than 30 years.³ Medical care from doctors, hospitals, and other medical providers is too expensive as are prescription drugs and biologics. P4ESC strongly supports greater congressional oversight of the Federal Trade Commission (FTC) review of hospital and physician practice consolidation with emphasis on the growth of private equity acquisition of hospitals and physician practices. P4ESC also supports building on site-neutral rules to deter location-based gaming of coverage (e.g., the *Transparency of Hospital Billing Act*). Greater oversight of the high cost of medical care is long overdue.

Surprise medical bills – which have financially impoverished millions of Americans – have been addressed preliminarily by enactment of the *No Surprises Act*. But some medical providers (particularly those bought by private equity interests) continue to add cost artificially to the system through litigation seeking to undercut or repeal the *No Surprises Act* and by swamping the appeals process under that law through spurious appeals.

The present and growing cost of pharmaceutical and biological therapies is as much a threat to employer-sponsored coverage as it is essential to modern health care. Pharmaceutical manufacturers, Pharmacy Benefit Managers (PBMs), and others are wrapped up in a convoluted and mutually dependent web that adds needless cost to coverage. Greater transparency of the pharmaceutical supply chain has helped to a degree, but the market has ultimately proven to be an insufficient governor of supply and cost. Additional steps to improve transparency and greater oversight and regulation of the pharmaceutical supply chain are needed. We also urge Congress to investigate patent extensions gained by pharmaceutical companies.

Proposals to address the cost of insulin are a good cautionary tale. Prices for insulin are outrageous and unsustainable, particularly when compared to the cost of manufacturing insulin. P4ESC opposes legislation (e.g., the *Insulin Act*) that would only cap out-of-pocket costs for employees. Such an approach shifts the high cost of insulin to employer plans but does nothing to address the cost of insulin overall. We strongly urge you to employ additional oversight and other means of addressing this problem comprehensively rather than merely capping the out-of-pocket cost as that will increase coverage costs for employers and all of their covered employees, including those who are insulin reliant.

Health sector consolidation

P4ESC and businesses of all sizes long have been concerned by health sector consolidation and limited access to certain provider groups. The growth of private equity involvement in health care has steadily increased health care costs.

³ [NFIB-Problems-and-Priorities-2020.pdf](#)

Not all consolidation is bad, but rampant consolidation in health care is increasing medical costs for employees and employers. Congress should encourage the FTC to examine consolidation of hospitals and physician practices more closely and continue oversight on its progress.

The dialysis market has only two major dialysis providers. P4ESC opposes legislation (e.g., the *Restore Protections for Dialysis Patients Act*) that seeks to extend their market dominance through federal law by impacting employers' plan designs. If successful, this would likely create a roadmap for similar efforts by other providers.

Employers and employees face particular challenges in finding available and affordable mental and behavioral health care. Some mental health providers – especially in rural areas – decline to participate in health insurance networks at any price. Because many mental and behavioral health providers choose not to go in-network, employees can face large out-of-network bills for care sought and experience trouble finding available providers. The decision to join a network lies with the provider.

It is important to stress that efforts to evaluate provider availability in health insurance networks must also consider whether these providers make themselves available and affordable to employees. Coverage requirements and civil monetary penalties on employers are counterproductive unless there is a countervailing requirement for providers to fully participate in one or more networks for both new and existing patients. We strongly urge mental health care providers to join our networks to provide needed care to our employees and covered dependents.

Uphold the tax treatment of employer-sponsored coverage

The exponential growth in our nation's employment-based health coverage system can be traced back to a cap on wages initiated during World War II to stifle inflation. Employers began offering fringe benefits – such as health coverage – to offset the limit on wages and attract employees. For decades, employees and employers have benefited from the preferences in the federal tax code that: exclude employer payments for employment-based health coverage from an employee's income; allow for the pre-tax payment of an employee's share of premiums for employment-based health coverage; and enable employers to deduct the cost of health coverage as a business expense.

The direct benefits and federal spending offsets of employer-provided coverage result in an annual net social impact of \$1.5 trillion, driven by increased labor participation, business formation, increased health coverage, and reduced federal health subsidies⁴. Each dollar of

⁴ [National Bureau of Economic Research working papers](https://www.nber.org/system/files/working_papers/w28590/w28590.pdf)
https://www.nber.org/system/files/working_papers/w28590/w28590.pdf

federal expenditure – the tax revenue foregone for employer-provided coverage – yields approximately \$5.34 in benefits for covered employees and their families⁵.

Capping or eliminating the tax exclusion of employer-sponsored coverage for individuals has been seen by some as a means to raise federal revenue and/or offset the cost of other federal reforms or programs. P4ESC strongly opposes capping or modifying the individual tax exclusion of employment-based coverage as that would be a direct tax increase on working Americans and their families and would discourage employees who perceive themselves as healthy from participating in their employer-sponsored plan, upsetting the balance of the employer plan pool.

A cap on the exclusion does not address rising medical costs or limit utilization of medical services and will stifle private-sector innovation of benefits and delivery designs. To tamper with the current tax-treatment of employer-sponsored coverage would be especially devastating to businesses and American workers.

Provide employers with compliance relief from burdensome regulations

The ability to offer coverage to employees and the capacity to operate a business for its core purpose are not mutually exclusive functions. An employer's offer of coverage is not merely a transaction in which an employee fills out paperwork, enrolls in coverage, and receives an insurance card. It is a multifaceted fiscal and operational commitment at the core of any business. As employers are making the decision to offer coverage and determine which type of coverage to offer their employees, the administrative compliance costs and complexities associated with coverage is critical to their consideration.

The compliance requirements under the *Affordable Care Act* (ACA) have always been complex and administratively burdensome on employers. The workforce changes wrought by COVID-19 continue to further challenge employers.

P4ESC has long advocated bipartisan legislation to provide a more streamlined approach to the IRS employer information reporting requirements, the employer mandate definitions of full-time and seasonal employment, and the large business threshold. The ACA tax-policy rules fundamentally altered business operations and continue to be costly and burdensome. Reforming the reporting requirements (e.g., the *Commonsense Reporting Act*) would provide a more consumer-friendly process for individuals, and a less burdensome and costly compliance process for employers, the federally facilitated and state-based Exchange systems, and the IRS alike.

Altering the definitions of an applicable large employer and flexibility in the definition of a full-time employee under the employer mandate would enable employers to pick up extra hours,

⁵ [Joint Committee on Taxation's Estimates of Federal Tax Expenditures For Fiscal Years 2019-2023](#); [The Bureau of Economic Analysis' National Income and Product Accounts](#) (Table 6.11).

provide consistent federal definitions across different laws, and enable businesses to hire more employees and grow their operations.

Promote innovation and diversity of plan designs and offerings for employees

Employers have led the way in benefit design and innovation for decades and will continue to do so for many decades to come. There is no one-size-fits-all employer health plan, nor should the federal government enact or implement laws to undercut ERISA and stifle an employer's ability to develop benefits offerings that meet the specific workforce's needs regardless of where that workforce is located.

A recent example is the onset of the pandemic, which presented immense challenges to the workforce. During that time, many employers expanded the ways through which enrollees could get mental health or substance abuse services, and others developed new resources, such as an employee assistance programs.

All levels of government should work constructively with private sector employers to ensure that employers have the tools and flexibility to foster benefits design and innovations that provide employees with benefits that are crucial to the wellbeing of themselves and their families. We urge Congress additionally to remove barriers for employers to participate in advanced provider payment initiatives, such as direct contracting, centers of excellence and high-performance networks.

P4ESC appreciates the COVID-related policies adopted during the pandemic to help employees and employers, including: expanding telemedicine availability to employees, enabling employees to rollover unused flexible spending account funds, allowing for first-dollar coverage of COVID-19 testing and treatment under a high deductible health plan, and treating health expenses as an employment expense under the employee retention tax credit. Congress should build on these policies to provide employers with the ability to enhance employee coverage permanently.

P4ESC is eager to work on bipartisan legislation to permanently expand employee access to telemedicine, including enabling employers to offer a telehealth service plan to all employees regardless of their enrollment in the employer's medical coverage. Pandemic relief offered employees the ability to receive mental and behavioral health services via telemedicine, and we strongly support making this access permanent.

P4ESC also urges action on bipartisan legislation to increase affordable options for patients and employers. Congress should empower and enable more Americans to have use of health savings accounts (HSAs). As higher deductibles have become the norm rather than the exception, more people at all income levels could benefit from paying out of pocket expenses with tax preferred dollars but may be hampered by the current definition of the qualified high deductible health plan that must accompany a Health Savings Account. One very important change to consider

would be to provide pre-deductible coverage for primary care. Updating the definition of a qualifying plan is long overdue and would go a long way to help people better manage their health care, improve health outcomes, increase access to innovative care options, and lower out-of-pocket costs. We urge lawmakers – whether or not they have supported HSAs in the past – to work together to modernize this very common benefit design.

Conclusion

As a coalition representing businesses of all sizes, the Partnership for Employer-Sponsored Coverage has the unique ability to provide operational input across the full spectrum of the employer system – from the smallest family-owned business to the largest corporation. Employers have a significant stake in developing and implementing health care policies, and we look forward to working with you and your colleagues in a bipartisan manner throughout the 118th Congress. If you or your staff would like to meet to discuss the issues raised in our letter, please have your staff contact P4ESC's Executive Director Neil Trautwein at neil@trautweinstrategies.com.

Sincerely,

Members of the Partnership for Employer-Sponsored Coverage

American Rental Association

Associated Builders & Contractors, Inc.

Associated General Contractors of America

The Council of Insurance Agents & Brokers

ERIC – The ERISA Industry Committee

FMI – The Food Industry Association

HR Policy Association

National Association of Benefits and Insurance Professionals

National Association of Wholesaler-Distributors

National Federation of Independent Business

National Restaurant Association

National Retail Federation

Retail Industry Leaders Association

Society for Human Resource Management

SPBA – Society of Professional Benefit Administrator