

March 15, 2024

Chairwoman Virginia Foxx
U.S. House of Representatives
Committee on Education and The Workforce
2176 Rayburn House Office Building
Washington, DC 20515-6100

Re: Request for Information: ERISA's 50th Anniversary: Reforms to Increase Affordability and Quality in Employer-Sponsored Health Coverage

Dear Chairwoman Foxx,

On behalf of HR Policy Association (the Association), its American Health Policy Institute, and our membership, thank you for your leadership in seeking feedback on ways to build upon and strengthen the *Employee Retirement Income Security Act* (ERISA). The Association views this request as recognition of ERISA's importance in providing vital health benefits relied upon by many American workers and their families.

Background

HR Policy Association is the leading public policy association of chief human resource officers (CHROs) representing nearly 400 of the largest employers doing business in the United States and globally. Collectively, their companies provide health care coverage to over 20 million employees and dependents in the United States. The American Health Policy Institute, which was created by the Association, serves to examine the challenges employers face in providing health care to their employees and recommends policy solutions to promote the provision of affordable, high-quality, employer-based health care.

ERISA Preemption

The vast majority of Association members operate in more than one state and are self-insured. ERISA's preemption provisions enable self-insured businesses to offer uniform, tailored, and valued health benefits to their employees. Effective implementation and administration of these benefits is only possible because of the national framework provided by ERISA. Without this framework, employers would be subject to a patchwork of state requirements, making it increasingly difficult to design and uniformly administer health, welfare, and retirement benefits for employees and families. We urge the Committee to reject any attempts to weaken the federal restriction on state-by-state regulation of self-insured employers.

Employers in the U.S. voluntarily provide more than 153¹ million workers, retirees, and their families with comprehensive health care benefits. Furthermore, employers have long been innovators in the health care space, adapting to and implementing changes to meet the evolving needs of employees and their families, including in areas of inclusion and diversity. In fact, 75% of Association members stated that their company evaluated health care and wellbeing benefits as part of their strategy to improve the inclusion and diversity of their workforce.²

The flexibility of a national framework also allowed HR Policy members to adapt to the COVID-19 pandemic. While many of these adaptations were in response to changes in health care delivery, they also reflected a focus on employee expectations with 87% of Association members altering their approach to health and wellbeing benefits to meet those changing expectations.³ For example, during the pandemic, HR Policy members quickly acted to provide crucial health care services, like telehealth visits, to their benefit design. Without the current federal framework under ERISA, employers would not have been able to implement the additional high-quality benefits employees not only expected but needed.

We urge the Committee to clarify that ERISA preemption applies to both plan design and administration. The ability to offer uniform pharmacy benefits is a key part of the role ERISA plays for multi-state employers who want to build an equitable workplace culture by providing uniform and affordable benefits to their employees regardless of where they live. Recent state efforts to implement PBM reform can and should be addressed without diminishing the important role ERISA plays for geographically dispersed employers.

E-Delivery

HR Policy appreciates the Committee's work with the Tri-Agencies to prioritize rulemaking that would enable ERISA plans to use electronic delivery (e-delivery) as a default means for providing plan communications. Under current ERISA regulation, health and welfare plans are required to print and mail communications to members. E-delivery allows for more secure delivery of sensitive information and makes it easier for patients to search through large documents and better understand their benefits coverage. For those that prefer paper delivery, there would be an easy process for patients to opt-in to paper delivery.

Data Sharing

Transparency in health care is a critically important issue for large employers providing health

¹ Estimate from the KFF's analysis of the 2021 American Community Survey. KFF. Health insurance coverage of the nonelderly 0–64. San Francisco (CA): KFF; 2021 [cited 2023 Aug 29]. <https://www.kff.org/report-section/ehbs-2023-summary-of-findings/#fn1>

² HR Policy Association CHRO Survey, June 2022.

³ HR Policy Association CHRO Survey, June 2022.

care coverage. Rising costs directly impact the ability of employees and their families to access and receive affordable, high-quality health care. Employers continue to face challenges in accessing health care price data that they should own as self-insured plan fiduciaries. Without this data, employers are restricted in how they implement benefit design and employees are left without the necessary data to be prudent customers of health care. The Association believes that appropriate health care value, price, and quality data, while protecting individual privacy and security, has the potential to greatly improve the experience patients have when interacting with the health care system. Common data definition and standards are necessary to allow consistent evaluation of value across the healthcare ecosystem.

The Association asks the Committee to require robust and complete PBM reporting more frequently. Employers need to know what they are paying to provide drug benefits, including the fees, rebates, and other revenue PBMs receive from manufacturers and other third parties. Annual reporting is not sufficient for employers and researchers to identify and understand all the misaligned incentives that are in the pharmacy supply-chain black box.

Prohibited Transactions

Regarding the anti-competitive practices of health care providers, it is not uncommon for providers with significant market share to require employer plans and carriers to contract with all affiliated facilities and prevent plans from educating plan participants about the lower-cost, higher-quality care options they may have available to them. These anti-competitive contract terms are often referred to as “all-or-nothing,” “anti-steering,” “anti-tiering” and “most-favored-nation” contract provisions. These contract provisions can significantly limit employer plan innovation and flexibility that employers need to promote access to high-quality lower-cost care. The Association recommends Congress prohibit these anti-competitive contract terms that raise the cost of health care.

HR Policy appreciates the opportunity to respond to your RFI and we look forward to serving as a resource for you on these critical issues. For questions or comments, please contact Margaret Faso at mfaso@hrpolicy.org.

Sincerely,

A handwritten signature in black ink that reads "Margaret Faso". The signature is written in a cursive, flowing style.

Margaret Faso
Executive Director, American Health Policy Institute
Senior Director, Public Policy, HR Policy Association