

July 14, 2022

The Honorable Lizzie Fletcher
U.S. House of Representatives
119 Cannon House Office Building
Washington, D.C. 20515

The Honorable Patty Murray
U.S. Senate
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Marilyn Strickland
U.S. House of Representatives
1004 Longworth House Office Building
Washington, D.C. 20515

The Honorable Catherine Cortez Masto
U.S. Senate
313 Hart Senate Office Building
Washington, DC 20510

The Honorable Jamie Raskin
U.S. House of Representatives
2242 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Fletcher, Strickland, Raskin and Senators Murray and Cortez Masto:

On behalf of HR Policy Association and the American Health Policy Institute, I write in support of H.R. 8297, the Ensuring Access to Abortion Act and S.4504, the Freedom to Travel for Health Care Act. Both bills will provide certainty to multi-state employers that state law may not be used to prevent, restrict, impede, or retaliate against them for offering travel benefits to employees for the purpose of obtaining an abortion service that is lawful in another state.

The HR Policy Association (Association) is the leading organization representing chief human resource officers of 400 of the largest employers in the United States. Collectively, the Association's member companies employ over 9% of the private sector workforce and provide health care coverage to over 20 million employees and dependents in the United States. The American Health Policy Institute (Institute), a part of the Association, examines the challenges employers face in providing health care to their employees and recommends policy solutions to promote affordable, accessible, high-quality, employer-based health care. The Institute serves to provide thought leadership grounded in the practical experience of America's largest employers.

The Supreme Court's *Dobbs v. Jackson Women's Health* decision deemed that abortion procedures and medication are now governed by the laws of each state. Access to abortion is expected to be severely restricted or prohibited in a number of states. In response, and consistent with the *Dobbs* decision,¹ a number of private sector employers with self-funded health plans are taking steps to support employees traveling to obtain safe and legal access to an abortion procedure or medications.

Employers that offer travel benefits for health care services are concerned that some states (*e.g.*, Oklahoma and Texas) attach liability to those who "aid and abet" others in violating their state's abortion laws and this liability could extend to employers who pay for an employee's travel to obtain a legal abortion in a different state. H.R.8297 and S.4504 will provide multi-state employers protections against

¹ *Dobbs v Jackson Womens Health Org.* 597 US ____ (no reporter yet) (2022). Justice Kavanaugh wrote in his concurrence "as I see it, some of the other abortion-related legal questions raised by today's decision are not especially difficult as a constitutional matter. For example, may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel."

this legal and liability uncertainty and enable ERISA plans to provide uniform travel benefits through their health care plans. Looking ahead, as the bills make its way through the legislative process, we encourage you to strengthen the bill text by defining “entity” to include “employer-sponsored health plans” which will provide greater certainty to companies who choose to offer travel coverage for abortion services.

Furthermore, as states continue to act in response to *Dobbs*, we encourage you to support ERISA preemption. ERISA protects self-insured employer-sponsored health care plans from state laws that would otherwise mandate benefit requirements or impose administrative burdens, bind employers to particular plan designs, or preclude employers from implementing uniform plan administrative practices across states. ERISA’s preemption provisions allow plan sponsors to seek lower-cost, nationwide pricing for health care services, allowing for uniformity of benefits design and equity across an employer’s workforce. Any weakening of the foundation provided by ERISA preemption will lead to increase costs of health benefits for employees and employers and will disrupt access to care to over 177 million Americans who rely on employer-sponsored health coverage.

Thank you for your leadership on this critical issue and we look forward to working with you to support the proposals as they move through Congress.

Sincerely,



Chatrane Birbal
Vice President, Government Relations
HR Policy Association

cc: U.S. House of Representatives
U.S. Senate