



December 19, 2017

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor, & Pensions
United States Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, & Pensions
United States Senate
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

The National Coalition on Benefits (“NCB”) is a coalition of businesses and associations established to protect the ability of employers to provide uniform health and retirement benefits to employees and retirees across the country. The Coalition is dedicated to the preservation of *Employee Retirement Income Security Act* (“ERISA”) — the foundation for employer sponsored coverage valued by the more than 178 million Americans who receive health coverage as an employment benefit.

American companies depend on ERISA’s preservation in order to ensure our employees continue to receive quality and affordable coverage. Our employees recognize the strengths of our benefit offerings, as 88 percent of workers report that employment-based health insurance is extremely or very important, far more than for any other workplace benefit.

As Congress considers ways to permit states flexibility to design their state health insurance markets and encourages the use of Section 1332 Waivers, it should do so in a way consistent with ERISA’s goals and the State Innovation Waivers final rule. The final rule’s preamble clearly seeks to preserve ERISA’s uniform scheme and protections by narrowly limiting the waiver authority.¹

ERISA forms the backbone of the success of employer sponsored coverage:

¹ First, the preamble states that “waiver authority is limited to parts I and II of subtitle D of the Affordable Care Act; section 1402 of the Affordable Care Act; and sections 36B, 4980H, and 5000A of the Internal Revenue Code.” In addition, the preamble states that “while the Secretaries have broad discretion to determine the scope of a waiver, **Federal laws or requirements may be waived that are not within the Secretaries’ authority.**” U.S. Department of the Treasury and U.S. Department of Health and Human Services. Final Rule. “Application, Review, and Reporting Process for Waivers for State Innovation.” *Federal Register* 77, no. 38 (Feb. 27, 2012):11700 (emphasis added).

1. ERISA permits multi-state employers to offer the same coverage to all employees no matter what state they live in and to adopt consistent rules governing the administration of the benefit to all employees. ERISA requirements apply to all employers that offer benefits. Simplicity and predictability permit employers to continue offering coverage, lower costs and provide greater health and financial security for millions of Americans. In 2011, state insurance laws imposed more than 2,200 health insurance mandates across the United States, equating to an average of 45 mandates per state.²
2. ERISA is the foundation of employer-sponsored coverage and we encourage you to strengthen the protections under ERISA. ERISA permits employers to offer uniform employer-sponsored coverage nationwide. This leads to better benefit design, reduction in administrative costs through economies of scale and increased purchasing power. Employers demand quality and efficiency from the health care providers with whom they contract, applying best practices across all markets.

ERISA recognizes that every employer is different. Each employer-group plan has different characteristics of those they cover – older, younger, sicker, retirees, families. Employer plans need to vary, depending on their specific workforce demographics. Additionally, three-fifths of employment-based health insurance is offered through self-insured plans and solely governed under ERISA. We urge you to support the employer-based system and ERISA protections that could impact the value of these benefits for American workers and their families.

Waivers need to be carefully structured so that the resulting solution applies only to the individual health insurance market and does not impose requirements on employer plans. We are happy to provide you and your staff further information. Thank you for the opportunity to be part of this important discussion.

Sincerely,

The National Coalition on Benefits

cc: The Honorable Kevin Brady, Chairman
The Honorable Richard Neal, Ranking Member
Ways and Means Committee

The Honorable Greg Walden, Chairman
The Honorable Frank Pallone, Ranking Member
Energy & Commerce Committee

The Honorable Virginia Foxx, Chairman
The Honorable Robert C. “Bobby” Scott, Ranking Member
Committee on Education and the Workforce

² National Conference of State Legislatures, *State Insurance Mandates and the ACA Essential Benefits Provisions*, <http://www.ncsl.org/research/health/state-ins-mandates-and-aca-essential-benefits.aspx>.