February 11, 2025

The Honorable John Thune
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Mike Johnson
Speaker
United States House of Representatives
Washington, DC 20515

Dear Leader Thune and Speaker Johnson:

The ERISA Industry Committee (ERIC) writes to share the policy positions of our large employer member companies, in their capacities as sponsors of health, retirement, and other benefit plans for workers and families, as you consider committee instructions for the budget reconciliation process. ERIC is a national advocacy organization exclusively representing the largest employers in the United States in said capacity. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans.

ERIC member companies offer comprehensive health care and retirement benefits to millions of active and retired workers and their families in every state, city, and congressional district. Our members offer these great benefits to attract and retain employees, be competitive for human capital, improve health – physical, mental, and financial – and provide peace of mind.

Below you will find ERIC's policy recommendations with respect to the work of several committees of jurisdiction impacting plan sponsors. We ask that you consider some of these policies as these committees work on a package of reforms to advance through the reconciliation process.

Committee on the Budget

Preserve the Tax Exclusion for Employer-Sponsored Coverage

ERIC is concerned with proposals to cap the federal income tax exclusion for employer-sponsored health coverage as conversations occur for 2025 tax reform. Doing so would be a direct tax increase on working families, and would be detrimental to employment-based coverage – the single largest source of coverage for millions of workers and their families. ERIC strongly opposes any changes to this tax exclusion.

The employer tax exclusion for health insurance is a critical component of the U.S. health care system, as it encourages employers to offer health benefits to their employees. The tax exclusion also plays an important role in increasing access to health care, enabling employees to receive comprehensive coverage without facing the full financial impact of insurance costs. Employers historically have covered a large portion of premiums for employees and have done so to attract and retain workers.[1] Ultimately, this approach helps promote healthier workplaces, reduces employee turnover, and can lead to increased productivity, benefiting both employers and employees.

[1] KFF. "Employer Health Benefits Annual Survey Archives" available at https://www.kff.org/health-costs/report/employer-health-benefits-annual-survey-archives/

You are likely familiar with the now-repealed provisions in the *Affordable Care Act* (ACA) that would have taxed employee health insurance, dubbed the "Cadillac tax." ERIC had a first-hand perspective on the effects of this tax, as employers prepared for its implementation. The real-world effect, far from the prognostications of economists, was higher health insurance premiums, deductibles, copays, and coinsurance for workers. It led to narrower provider networks which caused many employees to lose access to the doctors or hospitals that they preferred. More restrictive drug formularies with more utilization management such as step-therapy and try-first requirements created new barriers for patients. Proposals put forth by groups such as the Paragon Institute[2] and the American Enterprise Institute[3] would have the exact same effect. They would increase taxes on working families, and would lead to lower quality health benefits for your constituents.

Preserve the Tax Incentives that Help Millions of Workers Save for Retirement

ERIC would also strongly oppose any proposal to weaken the incentives that working Americans rely on to save for retirement. Employer-provided retirement plans are the backbone of retirement savings for tens of millions of Americans. These plans, such as those offered by ERIC member companies, often constitute a large proportion of a family's savings and provide financial security for retirees across the income spectrum. Middle class workers rely on tax incentives, longstanding in the tax code, that promote responsible savings and drive investment. These vital provisions help tens of millions of Americans build a secure financial future. That's why there has long been bipartisan consensus about the importance of these incentives. We are attaching additional information explaining just how successfully the retirement benefits large employers offer deliver prosperity to their workers. Reducing the amount Americans can save in tax-preferred vehicles or changing when savings is taxed are counterproductive, short-sighted policies that would only undermine the success of the retirement system.

Way and Means Committee

Enhance High Deductible Health Plans and Health Savings Accounts

ERIC has previously submitted to the committee several recommendations that can improve health care affordability and competition that we urge you to consider.[4] These include enacting long-overdue updates to High Deductible Health Plans (HDHPs) paired with Health Savings Accounts (HSAs) to help patients further plan for and mitigate their out-of-pocket costs associated with health care services. The House Ways and Means Committee has advanced several HDHP/HSA modernization policies, including the "*Bipartisan HSA Improvement Act of 2023*" (H.R. 5688 – 118th Congress) and the "*HSA Modernization Act of 2023*" (H.R. 5687 – 118th Congress). These bills make several key improvements to HSAs that would significantly help persons with HDHPs mitigate their out-of-pocket financial costs when seeking commonplace, routine health care.

[2] Paragon Health institute. "Follow the Money: How Tax Policy Shapes Health Care" (2024) available at https://paragoninstitute.org/private-health/follow-the-money-how-tax-policy-shapes-health-care/
[3] American Enterprise Institute. "A Tax Reform That Would Improve Health Care Too" (September 30, 2024) available at https://www.aei.org/health-care/a-tax-reform-that-would-improve-health-care-too/
[4] ERIC House Budget Health Care Task Force Response (2023) available at https://www.eric.org/wp-content/uploads/2023/10/10-13-23-House-Budget-Health-Task-Force-RFI-FINAL.pdf

However, we would like to take the opportunity to highlight specific HSA legislation that has a history of broad, bipartisan support in both the House and Senate.[5] Some of these policies were included in H.R. 5688 and H.R. 5687, while others were not. ERIC supports enactment of the following policies:

- *Telehealth Expansion Act* (H.R. 1843 – 118th Congress). Employers want to offer free or low-cost telehealth visits to their employees, as these visits are more affordable than in-person care and offer preventive care that can help avoid high-cost interventions later. Congress has now voted three times to allow access to 1st-dollar coverage of telehealth for HSA beneficiaries, but each time the policy has remained temporary. Patients lost access to this benefit at the end of 2024. We urge the Committee to make this policy permanent.

- *Primary Care Enhancement Act*, (H.R. 1026 – 119th Congress), to allow individuals who are eligible for an HSA to participate in a direct primary care (DPC) arrangement without losing their ability to contribute to the HSA, and permits HSA funds to be used to pay for a DPC arrangement.

- *Employee Access to Worksite Health Services Act* (H.R. 7487 - 117th Congress), to allow HDHP/HSA beneficiaries to receive low-cost care at a worksite health center. While similar language was included in the bills the Committee advanced last year, this version updates the significantly dated text to reflect the modern services and care offered by worksite clinics to employees and families. We urge the committee to include this version of the bill in the reconciliation process.

- *Chronic Disease Management Act of 2021* (H.R. 3563), to allow plan sponsors to cover a limited but critical set of medical needs related to chronic disease management before patients meet their plan deductibles. This version reflects the best practices and standards of care by codifying the HSA and HDHP improvements introduced by the Trump Administration in July 2019, and should produce a reduced score.[6]

- *Health Savings for Seniors Act* (H.R. 7435 - 117th Congress), to permit Medicare beneficiaries to participate in and contribute to HSAs.

- *Veterans Health Savings Account Act* (H.R. 3565 - 116th Congress), to permit veterans who receive hospital care or medical services under any law administered by the VA to remain eligible to participate in or contribute to an HSA.

- *Native American Health Savings Improvement Act* (H.R. 5546 - 118th Congress), to permit individuals who are eligible for a medical care program of the Indian Health Service or a tribal organization to participate in an HSA.

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[5] ERIC. "Making a Mark in Addressing Health Care Affordability Through HDHP and HSA Legislation" (2023) https://www.eric.org/wp-content/uploads/2024/10/Memorandum-for-Ways-and-Means-Committee-Re-HDHP-HSA-legislation.pdf
[6] IRS Notice 2019-45, https://www.irs.gov/pub/irs-drop/n-19-45.pdf

- *Health Out-of-Pocket (HOPE) Act* (H.R. 9394 – 118th Congress), to create a tax-advantaged account that enables millions of Americans with most types of insurance coverage to save for health care costs through both individual and employer contributions.[7]

Enact Site-Neutral Payments in Medicare

The Committee should consider legislation adopting site-neutral payment policy. Beneficiaries often pay two to three times more[8] for the same routine services when they are provided in a hospital outpatient department rather than in an independent doctor's office. When a physician's office is acquired by a hospital system, the prices increase by more than 14 percent[9] – simply because the logo on the door changed. Higher payments for the same services based on different locations create incentives driving provider consolidation, eroding a competitive health care market. This results in reduced patient choice and access to care and increases what patients, employers, and taxpayers pay for health care.

Enacting the "Facilitating Accountability In Reimbursement (FAIR) Act" (H.R. 3417 – 118th Congress) and the "Site-Based Invoicing and Transparency Enhancement (SITE) Act" (S. 1869 – 118th Congress) along with Section 203 of the "Lower, Costs More Transparency Act" (H.R. 5378 – 118th Congress) would ensure that Medicare rates for physician-administered drugs in off-campus hospital out-patient departments are the same rate that is charged in independent physician offices.[10] Senators Bill Cassidy (R-LA) and Maggie Hassan (D-NH) developed a bipartisan legislative framework for comprehensive site-neutral payment reform in 2024 that should also be considered, and which ERIC supports. While these modest site-neutral policies are projected to save $146 billion, applying the policy to employer-sponsored plans will increase these savings.

Reevaluate Hospitals' Nonprofit Status

Nonprofit hospitals, despite their tax-exempt status, frequently prioritize profits over patient care. Many have deeply questionable arrangements with for-profit entities such as management companies or collections agencies, while others have "joint ventures" with Wall Street hedge funds or other for-profit provider or staffing companies. Nonprofit hospitals often shift the burden of their costs onto taxpayers and the communities they serve by overcharging for health care services, or abusing programs intended to provide access to low-cost care and prescription drugs for low-income patients. By eliminating nonprofit hospital status, resources could be more evenly distributed across the healthcare system, ensuring that hospitals are held accountable for their charitable care both to their communities and the tax laws that govern them.

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[7] National HOPE Alliance Applauds Congressional Problem Solvers Caucus Endorsement of the Health Out-of-Pocket Expense (HOPE) Act to Help More than 100 Million, https://www.hopeactnow.com/news-1/national-hope-alliance-applauds-congressional-problem-solvers-caucus-endorsement-of-the-health-out-of-pocket-expense-(hope)-act-to-help-more-than-100-million-americans-confront-the-crisis-of-runaway-healthcare-costs
[8] Actuarial Research Corporation, *Potential Impacts of Medicare Site Neutrality on Off-Campus Drug Administration Costs,* October 18, 2023
[9] Capps C, Dranove D, Ody C. The effect of hospital acquisitions of physician practices on prices and spending. J Health Econ. 2018;59:139-152. doi:10.1016/j.jhealeco.2018.04.001
[10] ERIC One-Pager: Congress Must End Arbitrary Price Increases and Unfair Contracting Practices

Codify the Hospital Price Transparency Rule and Transparency in Coverage Rule

Codification of the Hospital Price Transparency Rule and the Transparency in Coverage Rules may come with a budget-neutral score, but health policy experts and health economists across the board believe that health care price transparency will lead to reduced prices and costs, and as such, lower outlays for federal health spending. Codifying these rules will memorialize these very important requirements in statute, protecting them from likely future court challenges, or from the changing whims of future administrations. These rules will solidify disclosure of pricing information, allowing for a more transparent health care system, and empowering health plan sponsors to aid them in lowering health care costs by, for example, re-negotiating provider network contracts and developing cost-containment and disease management programs.[11]

Protect the Tax Treatment of Employer-Provided Fringe Benefits

In addition to preserving the tax incentives that help tens of millions of American save for a dignified retirement, ERIC urges you to avoid weakening fringe benefit offerings for employees. These provisions benefit both workers and employers. Proposals have recently surfaced to weaken or eliminate tax exclusions for certain commuter benefits, on-site gyms, and meals and lodging provided for an employer's convenience. Millions of Americans rely on tax code exclusions of assistance their employers provide to help get to work and stay healthy while on the job, among other objectives. Employers use these benefits to attract and retain talent, meet business needs, and to demonstrate their commitment to their workers. Changing the tax code to require employees to pay taxes on these benefits would be punitive. Furthermore, disrupting these benefits solely for the sake of meeting revenue targets would not serve Congress' goals of a healthy, productive workforce.

Committee on Education & Workforce

Protect and Strengthen ERISA

The Employee Retirement Income Security Act of 1974 (ERISA) is fundamental to employee benefits -- large employers operating in multiple states need the consistency and certainty provided by ERISA to ensure that they can offer uniform, national benefits to their employees, families, and retirees. ERISA protects employers from conflicting state mandates by keeping regulation at the federal level so that benefit plans can be administered fairly and uniformly across the country. ERISA also provides employer plan sponsors with the flexibility and autonomy to create benefit plans that best serve their workforce.

ERIC strives to preserve and reinforce ERISA preemption and defend plan sponsors' ability to design benefits that drive value. We oppose any attempt to mandate state reporting or other administrative obligations on companies that offer ERISA-regulated plans. Further erosion of ERISA preemption will adversely impact labor markets, disadvantage employees based on where they live or work, cause employers to cut back on benefit coverage, and raise the cost of health benefits – ultimately pricing some employees and their families out of coverage and undermining financial health and well-being.

[11] ERIC One-Pager: Full Transparency is Needed to Help Lower Health Care Costs

One key way to strengthen ERISA would be clarifying that third parties performing services on behalf of plan sponsors for ERISA health benefit plans are subject to the same fiduciary duty to the plan as plan sponsors. ERIC released an issue brief detailing how pharmacy benefit managers (PBMs) have engaged in problematic practices driven by profits and resulting in a less competitive market, and calling on Congress to make this simple clarification in current law to drive real change.[12] Support for reforming PBM practices, including applying fiduciary standards to PBMs, has broad support from stakeholders in the employer community and bipartisan support in Congress.

Expand Telehealth Access

ERIC's member companies are pioneers in offering robust telehealth benefits. Telehealth enables beneficiaries to obtain the care they need, when and where they need it, affordably and conveniently. Nearly every ERIC member company offers comprehensive telehealth benefits and did so long before the COVID pandemic. As in most aspects of health insurance and value-driven plan design, self-insured employers have been the early adopters and drivers of telehealth expansion. With the onset of the pandemic, ERIC's member companies led the way in rolling out telehealth improvements – held back only by various federal and state government barriers.

Congress should enact the "*Telehealth Benefit Expansion for Workers Act of 2023*" (H.R. 824 – 118th Congress), legislation that would allow employers to offer standalone telehealth benefits to millions of individuals who are not enrolled on the employer's full medical plan, such as part-time workers, interns, seasonal workers, persons on a waiting period, and others, by removing barriers presented under current law, such as the ACA. This legislation will ensure hardworking employees, retirees, and their families can access high-quality, cost-effective care when and where they need it most, regardless of employment status.

We are also supportive of targeted changes that would allow employers to offer COBRA-enrollees access to a telehealth platform within the employer's existing health plan.

Curtail Anticompetitive Hospital Practices

Congress should enact legislation banning hospitals from charging facility fees for telehealth services, along with facility fees at hospital-purchased physician offices. Along the same lines, we urge Congress to enact legislation that will stop hospitals from reclassifying physician practices and other outpatient facilities that they own to charge higher prices, including the "*Facilitating Accountability In Reimbursement (FAIR) Act*" (H.R. 3417 – 118th Congress). Further, we ask Congress to require honest billing by enacting Section 204 of the House-passed "*Lower Costs, More Transparency (LCMT) Act*" (H.R. 5378 – 118th Congress) to require each off-campus hospital outpatient department (HOPD) to obtain and use a unique identifier for Medicare billing. Congress should consider going further, and requiring a unique identifier for every HOPD bill. Each of these measures will greatly contribute to combatting the anti-competitive effects of provider consolidation.

[12] ERIC. PBM Reform: Deem PBMs a "Fiduciary" Under ERISA

Affordable Prescription Drugs

Prescription drug costs in the U.S. represent the single fastest growing component of health care costs for employers and the workers for whom they provide coverage. ERIC supports efforts to provide employers with the flexibility needed to ensure their beneficiaries can have access to gene and cell therapies. Additionally, ERIC supports full transparency in the 340B drug discount program, and supports the proposal to make it a prohibited transaction for employer-sponsored health plans to pay more for 340B drugs than the discounted price.

Reduce PBGC Premiums

We also urge the Committee to address out of control, unjustified premiums assessed to defined benefit pension plan sponsors to pay for the Pension Benefit Guaranty Corporation's (PBGC) single-employer insurance program. Premiums are set by Congress, not PBGC. Congress has increased premiums several times in the previous 12 years, beginning with the Moving Ahead for Progress in the 21st Century (MAP-21) Act of 2012.[13] These premium increases were not considered in regular order by the relevant committees; instead, they were used to offset unrelated spending priorities.

PBGC premiums are not paid into general revenues; they are held in revolving trust funds by PBGC to pay benefits and administrative expenses. Since 2012, assets have ballooned while expected claims have decreased, and the program now has a $54 billion surplus that is expected to continue to increase. The program is projected to have a $71.6 billion surplus at the end of FY 2033, and PBGC admits "[e]ven under the most extreme downside economic scenarios, the Single-Employer Program does not fall into deficit during the projection period."[14] The Committee should take this opportunity to reduce further premium assessments to the maximum extent possible.

<u>Committee on Energy and Commerce</u>

Enact Site-Neutral Payments

As referenced above, the Committee should also consider legislation adopting site-neutral payment policy. Enacting the "Facilitating Accountability In Reimbursement (FAIR) Act" (H.R. 3417 – 118th Congress) and the "Site-Based Invoicing and Transparency Enhancement (SITE) Act" (S. 1869 – 118th Congress) along with Section 203 of the "Lower, Costs More Transparency Act" (H.R. 5378 – 118th Congress) would ensure that Medicare rates for physician-administered drugs in off-campus hospital out-patient departments are the same rate that is charged in independent physician offices.[15] Senators Bill Cassidy (R-LA) and Maggie Hassan (D-NH) developed a bipartisan legislative framework for comprehensive site-neutral payment reform in 2024 that should also be considered and that ERIC supports.

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[13] In the last decade, single-employer PBGC premiums have been raised three times – each time outside of the context of comprehensive pension reform

- 2012: Moving Ahead for Progress in the 21st Century (P.L. 112-141)
- 2013: Bipartisan Budget Act of 2013 (P.L. 113-67)
- 2015: Bipartisan Budget Act of 2015 (P.L. 114-74)

[14] "PBGC's FY 2023 Projections Report Shows Insurance Programs Remain Strong," PBGC, July 19, 2024, available at https://www.pbgc.gov/news/press/releases/pr24-022.

[15] ERIC One-Pager: Congress Must End Arbitrary Price Increases and Unfair Contracting Practices

ERIC strongly supports site-neutral policies, and the modest reforms included in the above referenced legislation would save the government $146 billion. We urge Congress to enact site-neutral payment policy this year[16].

Judiciary Committee

Drive Prescription Drug Competition through Targeted Patent Reforms

Acting to reform America's broken prescription drug patent system is critical to striking the balance between innovation and competition so Americans have more timely access to more affordable drug therapies, including biosimilars.

Over the past two decades, drug manufacturers have abused the patent system to extend monopolies for biologics and certain brand-name prescription drugs far beyond the intent of Hatch Waxman.[17] Drug manufacturers engage in this "product lifecycle management" primarily by taking advantage of loopholes such as secondary-structure patents, obviousness-type double patenting, and terminal disclaimers.

Addressing these practices through the following bills from the 118th Congress will promote more access to affordable drug options:

- *The Interagency Patent Coordination and Improvement Act* (S. 79/H.R. 1717)[18]
  - This bill establishes the Interagency Task Force on Patents to support coordination and communication between the U.S. Patent and Trademark Office (USPTO) and the Food and Drug Administration (FDA) on applications and patent approvals related to drug and biologics.

- *The Prescription Pricing for the People Act of 2023* (S. 113)[19]
  - This bill requires the Federal Trade Commission (FTC) to report on anticompetitive practices and other trends within the pharmaceutical supply chain that may impact the cost of prescription drugs, and offer recommendations to increase transparency and prevent anticompetitive practices.

- *The Preserve Access to Affordable Generics and Biosimilars Act* (S. 142)[20]
  - This bill prohibits certain "pay-for-delay" anticompetitive settlement agreements that resolve patent infringement claims against manufacturers of generic drugs or biosimilar biological products. It creates a framework under which the FTC could block prohibited settlement agreements and seek penalties from parties to those agreements.

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[16] Congressional Budget Office (CBO), "Estimate of the Budgetary Effects of H.R. 1314, the Bipartisan Budget Act of 2015," 2015; CBO, "Proposals Affecting Medicare—CBO's Estimate of the President's Fiscal Year 2021 Budget," 2020; and CBO "Estimated Direct Spending and Revenue Effects of H.R. 5378, the Lower Costs, More Transparency Act," 2023.
[17] *Drug Price Competition and Patent Term Restoration Act* (Public Law 98-417)
[18] https://www.cbo.gov/system/files/2023-07/s79.pdf
[19] https://www.cbo.gov/system/files/2023-03/s113.pdf
[20] https://www.cbo.gov/system/files/2024-03/s142.pdf

- *The Stop STALLING Act (S.148)*[21]
    - This legislation would authorize FTC to initiate a civil action against any person or entity that submits a baseless petition to the FDA with the intent that the FDA's review of the petition would delay the approval of a generic drug, a biosimilar biological product, or certain other new drugs

- *The Affordable Prescriptions for Patients Act* (S. 150/H.R. 9070)[22]
    - This bill limits in certain instances the number of patents that a reference biological product manufacturer can assert in a patent infringement lawsuit against a company seeking to sell a biosimilar version.

- *The Medication Affordability and Patent Integrity Act* (S. 2780/H.R. 5429)
    - This bill requires pharmaceutical drug and biological product manufacturers to provide additional and consistent information to both FDA and USPTO for newly submitted or approved drug applications.

- *A Bill to Address Patent Thickets* (S. 3583/H.R. 6986)
    - This bill streamlines patent litigation by limiting the number of patents per patent thicket a pharmaceutical company can assert to one, reducing the burden on generic and biosimilar companies.

We encourage you to consider these policies during the budget reconciliation process.

Conclusion

ERIC and our member companies are committed to meaningfully improving benefits for workers, their families, and retirees. While we understand the budget reconciliation process is focused on extending provisions of the Tax Cuts and Jobs Act, national defense, and energy policy, it is a prime opportunity to make significant improvements and progress on employee benefits policy. Those policies can also help offset the broader package and deliver wins for workers and their families. We look forward to working with you to further help in the reconciliation process and enact legislation that can help tens of millions of Americans.

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[21] https://www.cbo.gov/system/files/2024-03/s148.pdf
[22] https://www.cbo.gov/system/files/2024-06/s150.pdf