NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

May 1, 2025

The Honorable Tim Walberg, Chairman
Committee on Education & the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott, Ranking Member
Committee on Education & the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walberg and Ranking Member Scott:

We write as the chief insurance regulators of our respective states and officers of the National Association of Insurance Commissioners. On behalf of the NAIC, we wish to share our views on legislation before the Committee that would affect state regulation of health coverage for small businesses. We also wish to raise concerns with potential legislation that would treat coverage of telehealth services as an excepted benefit under federal law.

We appreciate Congress' continued attention to small group health insurance markets. Small employers and their workers face rising costs, leading many to seek coverage outside of the traditional small group market. State insurance regulators have observed small group markets shrinking and we agree that action is necessary to maintain their viability.

Your committee is currently considering HR 2528, which would expand options for businesses to offer coverage through Association Health Plans (AHPs). We support this legislation as it maintains state authority to regulate AHPs as multiple employer welfare arrangements (MEWAs). Also before the Committee is HR 2571, which would preempt state regulation of stop loss coverage used by many group plans to protect against excess health costs. We strongly oppose this bill since it would remove states' ability to set reasonable protections for small businesses and their employees.

While it is not currently before the Committee, in the last Congress, the Education and the Workforce Committee approved legislation to classify coverage for telehealth services as excepted benefits under Federal law. State regulators continue to have concerns with such treatment, since it will exempt stand-alone telehealth plans from important consumer protections.

Association Health Plans Act – HR 2528

Association health plans are one type of multiple employer welfare arrangement (MEWA). States have a long history of regulating insurance in general, Multiple Employer Welfare Arrangements (MEWAs), and association health plans (AHPs). Since 1983, Congress has recognized that it was necessary and appropriate for states to establish, apply, and enforce state insurance laws with respect to MEWAs.

In 2018, the Department of Labor adopted a revised definition of "employer" under ERISA, creating a new pathway for the formation of AHPs. While state insurance regulators highlighted a number of considerations for the Department in the rulemaking process, we were satisfied that DOL clarified with the final rule that AHPs remained MEWAs subject to state regulation.

HR 2528 would similarly expand opportunities for forming association health plans in line with the 2018 rule. The bill specifies that employees in an AHP are participants in a single plan MEWA and the bill would not alter the provisions of ERISA that give states authority to regulate MEWAs. States, then, would retain their authority to regulate as MEWAs the new AHPs the legislation would permit. State regulators believe this is a crucial clarification in the legislation and appreciate its inclusion. We opposed the CHOICE Arrangement Act (HR 3799 in the last Congress) in part because it did not include this clarification and threatened to exempt AHPs from state supervision.

HR 2528 further improves on the CHOICE Arrangement Act by strengthening the requirement for self-employed individuals to have an ownership right in their businesses and allowing premium variation only as permitted by state law. With these updates, we believe HR 2528 would expand the ability of businesses to form AHPs without sacrificing the important protections offered by state regulation.

Self-Insurance Protection Act – HR 2571

State insurance regulators remain opposed the stop loss provisions that were included in the CHOICE Arrangement Act and are now included in the Self-Insurance Protection Act, HR 2571. This legislation would limit states' valid authority over insurance, encourage risk selection, and put workers at risk. Some so-called level-funded plans for small businesses seek to exploit ERISA's preemption of state insurance laws to offer lower costs to some by eliminating important consumer protections and raising costs for those who purchase small group insurance.

An employer self-insures when it pays directly for its employees' health care expenses, rather than transferring risk to an insurer. A stop loss insurance plan allows an employer to manage its risk of unexpected, excessive health care expenses when it self-insures. However, some stop loss policies are structured to cover health expenses that can and should be reasonably expected. Several states have chosen to regulate stop loss policies to ensure they do not serve as unregulated health insurance. Some have adopted NAIC's Stop Loss Insurance model act, while others have taken a different approach, showing states have weighed their own needs, preferences, and considerations in this area.

HR 2571, however, would threaten states' authority to enforce such regulations. It would allow federal law to overrule a state's laws if the state law is determined to limit the ability of employers to self-insure. The legislation is not specific as to which state laws would be preempted, creating uncertainty and leaving the decision in the hands of judges. We urge Congress to reject this bill that preempts state insurance authority. With attention to the state of their insurance markets and state-specific health care costs, state insurance regulators are best positioned to determine when a stop loss policy's terms cover more than unexpected expenses.

More fundamentally, the bill's preemption provisions would unnecessarily impinge on the nation's state-based system of insurance regulation. Whether or not it encroaches on the boundaries of health insurance, stop loss insurance is insurance and states are the primary regulators of insurance

products. The bill's preemption provisions are inappropriate under the principles and text of the McCarran-Ferguson Act.

Telehealth as an Excepted Benefit

During the Covid-19 pandemic, state and federal policymakers took steps to expand access to telehealth, allowing patients to receive health care more safely and conveniently. One pandemic-era step from federal regulators was to treat coverage of telehealth services as an excepted benefit for employees not eligible for their employer's group health plan. This expanded valuable access to telehealth to workers who could not access it through the group health plan.

Legislation advanced by the Committee in the last Congress, HR 824, would treat a plan that covers only telehealth services as an excepted benefit plan regardless of whether the employee is eligible for or enrolled in the employer's group health plan. State insurance regulators are concerned legislation of this type would eliminate the important consumer protections of the Public Health Services Act (PHS Act). Excepted benefits plans are not required to comply with the provisions of the PHS Act that prohibit annual and lifetime benefit limits, require no-cost coverage of preventive services, and mandate parity between mental health and medical benefits. Further, states' enforcement authority is more limited for excepted benefits plans.

Other types of coverage that are currently included in the definition of excepted benefits, like dental and vision coverage, are not commonly part of comprehensive health coverage and could not be considered comprehensive. Telehealth benefits, though, are generally covered by health insurance and employer group health plans. Thus, telehealth-only plans would duplicate health coverage offered to employees or available in the individual market. Because telehealth-only plans have more limited benefits and lack key consumer protections, they can be offered at lower cost than comprehensive health coverage. State regulators are concerned that employers or consumers may inappropriately substitute telehealth-only plans for comprehensive health coverage.

The consumer protections of the PHS Act not only keep needed services accessible, they also help maintain a level playing field in insurance markets. Allowing telehealth-only plans to bypass these regulations as excepted benefits would allow one set of plans to offer more limited benefits in a way that may not be apparent to consumers and may run afoul of state telehealth parity laws. We recommend keeping excepted benefits limited to benefits not generally covered by comprehensive health coverage, like dental, vision, and supplemental benefits.

We urge Congress to maintain a continuing role for state insurance regulators in protecting small businesses, their workers, and broader insurance markets. HR 2528 does this by keeping AHPs under state supervision. HR 2571, though, would remove the ability of states to protect businesses and consumers by enforcing appropriate limitations on stop loss coverage. Thus, we support HR 2528, we oppose the passage of HR 2571, and object to proposals to designate telehealth coverage as excepted benefit plans.

Thank you for your consideration. We look forward to continued conversations with lawmakers and staff as the Committee works on this legislation.

Sincerely,

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North Dakota Insurance Department

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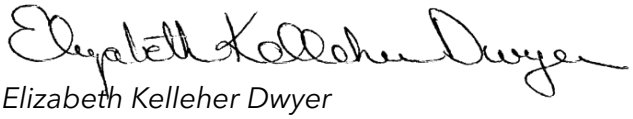
Virginia Bureau of Insurance



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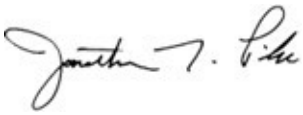

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