THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

STATEMENT FOR THE RECORD BY

THE ERISA INDUSTRY COMMITTEE (ERIC)

TO THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON HEALTH

"HEALTH CARE SPENDING IN THE UNITED STATES: UNSUSTAINABLE FOR PATIENTS, EMPLOYERS, AND TAXPAYERS"

January 31, 2024

Chairman Guthrie, Ranking Member Eshoo, and Members of the subcommittee, thank you for the opportunity to submit a statement for the record on behalf of The ERISA Industry Committee (ERIC) for the hearing entitled "*Health Care Spending in the United States: Unsustainable for Patients, Employers, and Taxpayers*." We appreciate the subcommittee's interest in how the unsustainable rise of health care costs impacts employer benefits and employees' health, and look forward to working with you to find solutions that will make quality health care more affordable and accessible.

ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. 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 benefits to tens of millions of employees and their families, located in every state, city, and Congressional district.

ERIC member companies offer comprehensive health coverage for employees, their families and retirees through self-insured plans governed by the Employee Retirement Income Security Act of 1974 (ERISA). They do so to attract and retain employees, to be competitive for human capital, to improve health and productivity, and to provide peace of mind. Large employers, like ERIC member companies, roll up their sleeves to improve how health care is delivered in communities across the country. They do this by developing value-driven and coordinated care programs, implementing employee wellness programs, providing transparency tools, and a myriad of other innovations that improve quality, reduce costs, and drive value for working families.

Below, we highlight the topline policy proposals ERIC urges you to consider to address the rising costs of health care for employees, their families, retirees, and employers. More than 179 million Americans receive health insurance from their employers, and employers can and should be important partners to help forge affordability solutions. ERIC looks forward to working with you on the following policy proposals identified by our member companies as key to this shared goal.

I. Transparency and Accountability Reforms

ERIC member companies believe transparency is integral both to reduce health care costs and improve quality of care. Health care costs for employers continue to rise at an unsustainable rate. To help mitigate these costs, Congress should significantly strengthen transparency in the health care system, thus giving rise to better care for patients, more competition, greater value, and improved quality and safety.

ERIC applauds the passage of the "*Lower Costs, More Transparency Act"* (LCMT, H.R. 5378) as an important step in addressing the need for greater health care transparency. Too many hospitals are still failing to meaningfully comply with the U.S. Department of Health and Human Services (HHS) regulations requiring them to make public standard charges, including negotiated rates. Notably, the legislation would enshrine in statute the requirement that hospitals publicly post the negotiated price for health care items and services in a machine-readable format and increase compliance with and enforcement of this requirement. And LCMT brings price transparency to other health care facilities that were left out of the transparency regulations. In addition, the legislation strengthens group health plan transparency in coverage requirements and makes important changes to facilitate better access by plan sponsors to much needed data.

While these policies are significant and necessary, we urge Members of Congress to continue to push forward on additional reforms to ensure optimal transparency. The more accurate, complete, accessible, and up-to-date the data is when shared with employer-sponsored health plans, the more plan sponsors may do to ensure not only their own compliance with current law and regulations, but also continued access to affordable, quality health care for the millions of workers who receive health coverage through employer-sponsored insurance. If Congress wants employers to be active purchasers who make changes and advocate on behalf of employees throughout the plan year, then employers need information about costs throughout the plan year – not just in an end-of-the-year summary.

Additionally, ERIC applauds the LCMT Act's pharmacy manager benefit (PBM) data reporting requirements, which are a positive step forward. However, commonsense accountability reforms that would hold PBMs accountable to fair market practices when partnering with employers are critical. PBM transparency, as with transparency across all health care stakeholders, remains one component of the goal to lower costs and ensure access to affordable, quality care. However, PBM transparency alone will not be enough to address the issues employers face in ensuring that people covered by employer-sponsored plans are truly receiving the best care at the best price. To that end, ERIC remains strongly supportive of the PBM accountability reforms contained in the "*Pharmacy Benefit Manager Reform Act"* (S. 1339) and supports additional policies to reorient the PBM industry away from deriving revenues via drug price arbitrage, and instead to delivering value for plans and patients.

II. Provider Consolidation and Unfair Pricing Practices

Health care provider market consolidation continues to rise, including mass purchase of provider practices by hospital systems. With such widescale consolidation comes great market power to demand higher prices. ERIC member companies are seeing the impact of this through enhanced pressures regarding provider contracting, as well as varying payment rates across sites of care for the same service performed by a provider.

There is no case for a laissez-faire approach to such egregious market failures. Immediate intervention is needed to preserve free markets in health care as they continue to spiral out of control leading to affordability concerns for employers and their workforce. The subcommittee should consider three ways it can help further the goal of discouraging consolidation and unfair pricing. This would include applying site-neutral policies in full across payment settings, requiring honest billing by providers to appropriately reflect services provided at the point of care, and fostering fairness in contracting practices.

A. Site Neutral Payments

By expanding site-neutral payment policies, Congress can remove a powerful incentive for hospitals to purchase physician practices in order to collect higher rates from rebranded off-campus hospital outpatient departments (HOPDs). We strongly support Section 203 of the LCMT Act, which ensures that Medicare rates for physician-administered drugs in off-campus HOPDs are the same as in physician offices. However, comprehensive site-neutral payment reforms are essential, and we urge Congress to take additional action to enact comprehensive site-neutral payment reform to additional services and facilities. Positive changes like this in the Medicare program provide a critical stepping stone to enable private payers to enact similar policies.

B. Improved Billing Requirements

Provider consolidation has also given rise to unethical medical billing practices. The subcommittee should support, and Congress should enact legislation that will stop hospitals from reclassifying a doctor's office they own as a hospital setting in order to charge more money ("*Facilitating Accountability in Reimbursement (FAIR) Act"* (H.R. 3417) and "*Site-based Invoicing and Transparency Enhancement (SITE) Act"* (S. 1869)). We support the "honest billing" provisions included in Section 204 of the LCMT Act that are applicable to Medicare payments as an initial step towards mitigating these distorted practices. However, we strongly urge Congress to expressly extend such honest billing requirements to the commercial market. Requiring transparency of sites of care in medical bills is in no way a violation of free market principles, and indeed is exactly the kind of regulation needed to preserve free markets.

Congress should also direct the Government Accountability Office (GAO) to investigate billing by medical providers, to determine whether fraudulent billing is common. ERIC member companies have reported a significant increase in "up-coding," wherein providers bill for more difficult or lucrative services or procedures, as well as instances of providers who are more junior, yet bill at higher rates by subsuming their charges under the auspices of a more senior provider (which would have severe consequences in other realms, such as the legal profession). Based on the findings of GAO, Congress should consider legislation to further discourage these harmful and inappropriate billing practices to protect patients from high health care costs.

Patients also need to receive timely hospital bills for their health care services. Timely bills are a key step in preventing surprise billing, which Congress aimed to end starting in 2022. We encourage the subcommittee to revisit a policy requiring hospitals to issue medical bills to patients within 30 days of a patient's discharge. This provision has been scored and previously vetted by the committee and could be picked back up immediately.

C. Fairness in Contracting

Health care providers are using market power to demand unethical and deeply unfair contractual terms, which reduce the quality and safety of care while increasing costs for patients. We encourage the subcommittee to promote competition and reduce network consolidation by crafting legislation that would allow:

- Discounts or incentives for enrollees who choose high-quality and low-cost providers;
- Insurers and employers to contract with hospitals and providers for their patients, without requirements to enter additional contracts with other affiliated providers or hospitals;

- Health insurance issuers to negotiate their own rates with other providers who are not a party to the contract of the provider involved; and

- Hospitals and issuers to freely negotiate prices, without requirements to pay higher amounts for items or services than other issuers have agreed to.

III. Innovation in Patient Safety

Preventable medical errors are one of the leading causes of death in the United States. The Energy and Commerce Committee has been at the forefront of congressional work towards preventing and reducing medical errors for the past two decades, evidenced by its leadership in enacting the *Patient Safety and Quality Improvement Act of 2005* (PSQIA). Despite the importance of this statute and the many years of work to address the issue, patient safety remains a significant issue and one for which additional steps are needed to complement PSQIA.

Specifically, more can and should be done so that current technology can be applied to the health care system to reduce preventable adverse events in the future. ERIC supports bipartisan proposals that are targeted to bring real change to these concerns.

A. *Creation of a National Patient Safety Board*

Patient safety reportable events have not decreased since 1999. Most policies related to reducing preventable medical errors have been focused on the actions of frontline workers, but the reliance on individuals is part of why efforts to sustain, spread, or standardize progress have been unsuccessful. Meanwhile, other industries have seen dramatic improvements in safety. The aviation industry has had a stellar safety record thanks to the work of the Commercial Aviation Safety Team (CAST) and the National Transportation Safety Board (NTSB), which together have been improving and promoting transportation safety in the United States for more than 25 years.

An independent federal board housed within the Department of Health and Human Services -- the National Patient Safety Board (NPSB) -- would model the efforts of CAST and NTSB within health care. The NPSB, with its nonpunitive, multidisciplinary Research and Development Team, would complement existing agencies in monitoring and anticipating patient safety events with modern tools such as machine learning, predictive analytics, and artificial intelligence. It would provide expertise to study the causes of errors and create recommendations and solutions to prevent future harm. By serving as a central repository for these patient safety solutions, NPSB will leverage existing systems to bring key learnings into practice. The NPSB would guarantee a data-driven, scalable approach to preventing and reducing patient safety events in health care settings. No other government agency, including the Agency for Healthcare Research and Quality (AHRQ), is undertaking the work that NPSB would do. ERIC urges Congress to advance legislation to establish the NPSB and appropriate the necessary funding to save patient lives.

B. *Serious Reportable Events or "Never Events"*

The National Quality Forum (NQF) created a set of serious, preventable, and harmful clinical events that occur throughout different clinical settings so that health professionals could assess, measure, and report performance. This list includes events such as wrong-site surgeries, malfunctioning devices, medication errors, and more – each of which is 100 percent preventable with proper safeguards and processes in place. These events happen to patients in employer-sponsored health plans and those in government programs such as Medicare, but are handled quite differently depending on a patient's insurance.

Currently, for patients with employer-sponsored insurance who experience one of these "never events," the plan will not compensate providers or permit providers to bill the patient or the plan for services related to the serious reportable event. ERIC encourages Congress to improve patient safety by aligning Medicare patient safety standards with the private sector, by updating the current Medicare "no-pay list" policy established under the *Deficit Reduction Act* (Public Law 109-171) to cover all NQF serious reportable events, and to mirror the Leapfrog Group's hospital safety metrics and "never events" policy.

IV. Bipartisan Action Needed on Prescription Drug Competition

The subcommittee should consider taking action to address the gaming of Food and Drug Administration (FDA) rules, which continue to have an ill effect on the availability of and competition among prescription drugs. Many of the current problems in the prescription drug market are a result of failure by various parties to abide by the standards established by the 1984 *Drug Price Competition and Patent Term Restoration Act* (Public Law 98-417), usually referred to as the *Hatch Waxman Act*. The law strikes a balance wherein innovator companies are rewarded with market monopolies, for a limited duration of time, and then must face competition from generic products. Various strategies are now used to delay or escape entirely from that competition, and the result has been unconscionable prices and costs to plan sponsors and patients. ERIC supports policies to address drug shortages, increase competition and address market failures, including but not limited to:

- Enacting policies to promote an affordable and competitive market for biosimilars, including eliminating barriers to substitution such as the "interchangeability" designation;
- Ending the abuse of the drug patent system reflected in such practices as "product hopping", "ancillary product patents" (which occur because a lack of FDA coordination with the U.S. Patent and Trademark Office), and "patient thickets," among others.
- Stopping abuse of FDA "citizen petitions";
- Preventing the blocking of generic competition (and other forms of patent trolling);
- Addressing issues related to so-called "international free-riding" wherein Americans pay vastly higher drug costs than other wealthy, industrialized nations;
- Eradicating sovereign immunity schemes;
- Addressing unsustainable downward pricing pressure in the generic essential medicines market that leads to shortage;
- Preventing unconscionable markup of prescription drug costs at hospitals, and ending abuse in the 340(b) drug program;
- Implementing stop-gap policies until international prices are properly calibrated, for example, proposals to allow certain medication to be reimported or purchased from overseas pharmacies that are registered with and regulated by the FDA; and
- Investigating and addressing false or misleading information, discouraging anti-competitive behaviors, and increasing progress to get products to market.

V. Telehealth

ERIC member companies are pioneers in offering robust telehealth benefits. Telehealth enables individuals to obtain the care they need, when and where they need it, affordably and conveniently. Telehealth visits are generally less expensive than in-person visits and significantly less expensive than urgent care or emergency room visits. Telehealth visits allow individuals who may not have a primary care provider and are experiencing medical symptoms an affordable alternative to an otherwise unnecessary emergency room visit. Access to telehealth benefits saves individuals significant money and reduces the cost to the plan, which ultimately lowers health insurance premiums.

Telehealth benefits reduce the need to leave home or work and risk infection at a physician's office, provide a solution for individuals with limited mobility or access to transportation, and have the potential to address provider shortages, especially related to mental health, and improve choice, competition, and reduce costs in health care.

ERIC's member companies continue to innovate in their benefit designs to reflect telehealth improvements – held back only by various federal and state government barriers. This includes overly restrictive provider licensing, unnecessary barriers such as banning store-and-forward communications, or specific technology requirements. Additionally, ERIC member companies are interested in offering telehealth to certain sectors of their workforce who currently cannot be offered these services. We encourage Congress to pass the "*Telehealth Benefit Expansion for Workers Act of 2023*" (H.R. 824). This bill 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 *Affordable Care Act* (ACA).

Impediments to provider licensing seriously impact telehealth coverage offered to employees from state to state. For example, primary care is largely available to employees in every state, but offering behavioral health and mental health services to patients in each state is a challenge because there are not enough licensed providers in many states. Everyone's telehealth care access is limited based on state rules and what can be covered through the medical plan or Employee Assistance Program (EAP). ERIC urges the subcommittee to advance policies that would allow qualified mental health providers to practice across state lines to improve access to patient care for patients with employer-sponsored insurance. Congress should facilitate reciprocity of state-provided licenses. ERIC believes that all patients and providers can benefit from state licensing reciprocity for licensed and certified practitioners or professionals (those that treat physical and mental health conditions) in all states, and for all types of services, especially to link patients with providers of their choice. While there are different possible paths forward such as national reciprocity, a national license, or one comprehensive interstate compact with financial incentives for states, employers urge Congress to work through this challenge and come to consensus on a solution that will benefit all patients.

Conclusion

Thank you for this opportunity to share our views. ERIC is committed to helping forge solutions that result in improved health care access, affordability, quality, transparency, and safety for all Americans. We are confident that our policy recommendations can provide meaningful changes to our health care system. We look forward to working with the subcommittee to further help in policy development and enact legislation.