



June 6, 2023

The Honorable Virginia Foxx
 Chairwoman
 Committee on Education & the Workforce
 U.S. House of Representatives
 2176 Rayburn House Office Building
 Washington, DC 20515

The Honorable Robert C. “Bobby” Scott
 Ranking Member
 Committee on Education & the Workforce
 U.S. House of Representatives
 21011 Rayburn House Office Building
 Washington, DC 20515

Re: Patient community concerns about the detrimental impact of policies included in HR 2868, the Association Health Plans Act; HR 824, the Telehealth Benefit Expansion for Workers Act; and HR 2813, the Self-Insurance Protection Act

Dear Chairwoman Foxx and Ranking Member Scott,

The 31 undersigned organizations represent more than 120 million people living with a pre-existing condition in the US. Collectively, we have a unique perspective on what individuals and families need to prevent disease, cure illness, and manage chronic health conditions. The diversity of our organizations

and the populations we serve enable us to draw upon a wealth of knowledge and expertise that are critical components of any discussion aimed at improving or reforming our healthcare system.

Our organizations share three principles that we use to help guide our work on healthcare to continue to develop, improve upon, or defend the programs and services our communities need to live longer, healthier lives.ⁱ These principles state that healthcare must be adequate, affordable, and accessible.

With these principles at the forefront, we write to convey our concerns about three bills scheduled for consideration today by the full committee: HR 2868, the Association Health Plans Act; HR 824, the Telehealth Benefit Expansion for Workers Act; and HR 2813, the Self-Insurance Protection Act. In the report “Under-covered: How ‘Insurance-Like’ Products Are Leaving Patients Exposed,” many of our organizations documented our concerns with health insurance products that are not required to comply with the patient protections enacted in the Affordable Care Act.ⁱⁱ We are concerned that policies included in the legislation considered today would decrease the number of consumers enrolled in comprehensive health insurance plans and threaten access to quality, affordable health care for the patients and consumers we represent.

H.R. 2868, the Association Health Plans Act

Current law allows employers to work together to form a multiple employer welfare arrangement (MEWA) to provide certain benefits to their employees. An Association Health Plan (AHP) — a health benefit plan sponsored by an employer-based association — is one type of MEWA.

Some AHPs can be classified as large employers and are therefore not subject to critical patient protections and state insurance regulations. This can pose risks to employers and their employees. The track record of AHPs and MEWAs in reliably providing comprehensive coverage for consumers is quite poor. According to state insurance regulators, these entities have a long history of fraud and “[making] money at the expense of their participants.” State insurance regulators also say AHPs “have been notoriously prone to insolvencies.”ⁱⁱⁱ

AHPs are not required to provide comprehensive coverage or cover the Essential Health Benefits (EHB). AHPs may also charge higher premiums based on occupation (a loophole that allows discrimination based on gender and other factors^{iv}) or even health status in some cases. As a result, these plans expose enrollees to high financial and health risks and exacerbate rural and/or regional health disparities. Meanwhile, marketing these products can be confusing or misleading and can cause individuals to enroll in plans that do not align with their medical needs or expectations.

AHPs also pose risks to the many consumers who do not enroll in them. AHPs can siphon away healthy individuals from state individual and small-group markets by leveraging the regulatory advantages they enjoy. This leaves the individual and small group markets smaller and with a larger proportion of individuals with pre-existing conditions, leading to higher premiums and fewer plan choices for those who depend on those markets to access comprehensive coverage.

Despite the harm AHPs can pose to those who enroll in them as well as those who remain in comprehensive insurance plans, the Association Health Plans Act would promote additional enrollment in AHPs for groups that cannot use them today. We believe additional enrollment in AHPs by small employers and the self-employed will weaken patient and consumer protections and lead to higher costs for consumers who rely on comprehensive insurance. Rather than advance the Association Health Plans Act, we urge the Committee to partner with us to set common-sense restrictions that protect

patients, consumers, and employers – limiting low-value plans rather than allowing them to proliferate further.

HR 824, the Telehealth Benefit Expansion for Workers Act

Telehealth has long been a vital care delivery method for improving access in underserved communities, particularly rural areas, areas with physician shortages, and areas with limited access to primary care services. However, the COVID-19 pandemic has highlighted the role of telehealth in helping patients continue to receive timely and safe healthcare services and treatments from their providers. Telehealth – including telemedicine and telemental health – can help reduce gaps in access to services and care, including access to primary care and specialized providers, when in-person visits are not a safe or feasible option. Today, nothing prevents an employer or health insurance carrier from offering telehealth coverage in conjunction with their health coverage, and many do.

Telehealth can and should be used to increase patient access to care and our organizations have issued principles to aid lawmakers in setting appropriate policies to achieve that goal.^v

We are concerned that HR 824 would create a new excepted benefit for telehealth services. Excepted benefits are a category of coverage exempt from most federal and state standards that apply to health insurance. This means that a telehealth excepted benefit could discriminate against patients with a pre-existing condition by refusing to cover certain treatments, charging more for coverage, or denying coverage altogether.

Excepted benefits coverage can take many forms, including disease-specific policies like cancer-only, dental, and fixed indemnity plans. These plans are designed to supplement a major medical insurance plan. They are *not* comprehensive coverage and, in many cases, they are not allowed to coordinate with other coverage. These products are often exempted from federal regulation and primary regulation authority lies at the state level. While telehealth is an important coverage, it is insufficient on its own without major medical health insurance.

During the COVID-19 public health emergency, the federal government temporarily allowed employers to offer stand-alone telehealth benefits as a means to give individuals not eligible for their employer plan access to at least some care at a time when many patients and providers were worried about the health risk of in-person care. However, employers were not allowed to offer the stand-alone telehealth benefit to individuals who could enroll in their employer plan, nor did the guidance exempt these stand-alone benefits from all consumer protections.

HR 824 would go well beyond that guidance: Employers would be able to offer the stand-alone benefit as an alternative to their comprehensive plan. Low-wage workers, in particular, would be at risk of enrolling in the lower-cost telehealth plan, thinking it will provide comprehensive coverage when it won't.

Even in the best-case scenario, where an individual enrolls in a comprehensive employer plan and the telehealth-only policy, we are concerned that a telehealth-only policy could create significant frustration and confusion for consumers who need in-person care to diagnose and treat their symptoms. Consider the scenario of a patient who sees a provider via telehealth and then in person, as many do in the course of receiving a diagnosis and treatment. Then imagine navigating two separate insurance companies to receive that care – two sets of paperwork, two sets of prior authorization, two sets of network limitations, two sets of cost-sharing responsibilities, and so on. Not to mention the telehealth

provider and in-person provider may be two different providers within two different medical systems. As a result, the telehealth provider would not necessarily have access to the patient's medical history and thus would be hampered in their ability to adequately treat and diagnose the patient.

Lastly, we want to draw the committee's attention to a concerning trend. In recent years, excepted benefits have been marketed and sold – sometimes bundled – as replacements for traditional health insurance.^{vi} This can lead to significant consumer confusion and a false sense of security for people who believe they've purchased high-quality coverage, only to find substantial gaps and higher out-of-pocket costs when they use their plan.

In sum, we are concerned that HR 824 would be harmful to patients and consumers, and we encourage the Committee to instead consider approaches that would promote consumer access to integrated telehealth benefits within a comprehensive health plan.

HR 2813, the Self-Insurance Protection Act

Stop-loss insurance is intended to be used as a tool to protect a health plan sponsor—typically an employer—from unpredictably high losses due to unexpected claims. As such, it can be an important tool to promote stability for sponsors of health insurance plans, particularly sponsors providing coverage for small numbers of insured individuals, whose unique health needs sometimes necessitate very expensive health services.

We are concerned that HR 2813 would remove an important level of consumer and patient protection by eliminating the ability of states to exercise oversight of stop-loss plans. State insurance commissioners play an important role in the health insurance marketplace. Removing states' ability to regulate stop-loss coverage would lead to less oversight of these plans, which would increase the likelihood of misleading marketing and other fraudulent practices that would prove harmful to employers purchasing stop-loss coverage as well as their employees.

Conclusion

We urge the Committee to reject the three bills referenced above and, instead, partner with organizations like ours to identify opportunities to expand affordable, accessible, and adequate healthcare coverage for patients. If you have questions or would like to discuss further, please contact Brian Connell, VP Federal Affairs with The Leukemia & Lymphoma Society at brian.connell@lls.org.

Sincerely,

Alpha-1 Foundation
ALS Association
American Cancer Society Cancer Action Network
American Heart Association
American Kidney Fund
American Lung Association
Arthritis Foundation
The Asthma and Allergy Foundation of America
CancerCare
Child Neurology Foundation

Chronic Disease Coalition
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Immune Deficiency Foundation
Lupus Foundation of America
March of Dimes
Muscular Dystrophy Association
National Alliance on Mental Illness (NAMI)
National Eczema Association
National Health Council
National Hemophilia Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
Pulmonary Hypertension Association
Susan G. Komen
The AIDS Institute
The Leukemia & Lymphoma Society
The Mended Hearts, Inc.
WomenHeart

ⁱ Consensus Healthcare Reform Principles. <https://www.lung.org/getmedia/0912cd7f-c2f9-4112-aaa6-f54d690d6e65/PPC-Coalition-Principles-FINAL.pdf>.

ⁱⁱ Under-Covered: How “Insurance-Like” Products Are Leaving Patients Exposed. <https://www.ils.org/advocate/under-covered-how-insurance-products-are-leaving-patients-exposed>.

ⁱⁱⁱ National Association of Insurance Commissioners. (2018, March 6). NAIC Letter to Employee Benefits Security administration, U.S. Department of Labor Definition of Employer—Small Business Health Plans RIN 1210- AB85-. NAIC. https://www.naic.org/documents/index_health_reform_section_180306_comments_assoc_plan_nprm.pdf

^{iv} Patient Groups Comments on RIN 1210-AB85; Definition of “Employer” Under Section 3(5) of ERISA— Association Health Plans (2018, August 22). <https://www.lung.org/getmedia/9d61d488-e40c-4af5-90e4-4bc5d2754dbe/partner-comments-dol-re-rin-1210-ab85.pdf>.

^v Principles for Telehealth Policy. [https://www.lung.org/getmedia/ac136df2-5984-46b6-9503-8523f71f5425/FINAL-Principles-for-Telehealth-Policy- 8 27 2020-\(003\).pdf](https://www.lung.org/getmedia/ac136df2-5984-46b6-9503-8523f71f5425/FINAL-Principles-for-Telehealth-Policy- 8 27 2020-(003).pdf).

^{vi} Limited Plans with Minimal Coverage Are Being Sold as Primary Coverage, Leaving Consumers at Risk. <https://www.commonwealthfund.org/blog/2021/limited-plans-minimal-coverage-are-being-sold-primary-coverage-leaving-consumers-risk>.