Talking Points for Opposition to State Regulation of ERISA Covered Health Plans

- ERISA preemption has been the linchpin for employer- and union-sponsored benefits in America for nearly 50 years.
- ERISA preemption allows multi-state businesses to offer affordable, uniform, and equitable health coverage – including for prescription drugs – for their beneficiaries, regardless of where they live.
- Erosion of ERISA preemption would defeat the common set of legal requirements for the provision of benefits nationwide and result in a cumbersome, inefficient, and costly patchwork of potentially conflicting state-by-state benefit requirements.
- Fraud, waste, and abuse are known problems in healthcare. Best practices in benefit plan design help solve this problem and drive higher value healthcare for patients and plan sponsors.
- Recent action by states is limiting choice plan sponsors have to drive patients to the highest value healthcare.
- Restricting pharmacy benefit companies and health plans from designing quality-enhancing and cost-reducing plan designs that advance plan affordability and choice is contrary to the ERISA fiduciary requirement that plan administrators operate the plan in the sole and exclusive benefit of the plan participants.
- ERISA preemption protects employer-and union-sponsored health coverage by promoting employers' choice and flexibility over benefit design.
- State-by-state regulation of ERISA benefit plans rejects well-settled precedent of enforcing federal supremacy laws.

111 West 16th Avenue, Suite 203, Anchorage, AK 99501
907.474.4226, 888.474.4226 (toll-free)
phcoalition.org

- State-by-state regulation of ERISA benefits plans is administratively unfeasible and would result in a reduction in the quality of benefits provided due to the overwhelming administrative burden state-by-state compliance would require.

- Plan sponsors and fiduciaries are best suited to design benefits to suit their participants' needs and should not be restricted in those choices by state regulatory mandates, including such decisions as offering and incentivizing mail-order pharmacy benefits, rebating contracts or spread pricing models, treatment of copay coupons...all of which are plan design decisions reserved to the plan sponsors by ERISA.

- If state regulations result in added cost to administer a plan, there will be a point at which the cost directly drives plan design choices, which is a violation of ERISA preemption.

- Mandates on plan designs and coverage are ultimately shared by employers and plan participants through higher premium and cost share.

- Rural and independent pharmacies are pushing state regulation of PBMs to override the cost saving of such proven cost management tools as mail-order pharmacy options and specialty pharmacy networks as it will add to their bottom line, not provide better access to prescription drugs for the consumer.

- Rural and independent pharmacies have also pushed to mandate the amount they are reimbursed to dispense medications. The amount paid at the counter has a direct correlation to how much patients and plan sponsors pay.

- ERISA benefit plan fiduciaries are better suited to determine cost efficiencies and consumer access enhancements than are independent and rural pharmacies or state legislators, consistent with the federal requirements of ERISA.

- ERISA already affords the consumer/plan participant protections that states are trying to regulate and consistent remedies for participant grievances.