

March 13, 2024

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

Dear Chairwoman Foxx:

On behalf of the more than 159,000 members of the American Dental Association (ADA) we write to thank you for the opportunity to provide feedback in advance of the 50<sup>th</sup> anniversary of the Employee Retirement Income Security Act (ERISA). As the Committee examines ways to increase the affordability of coverage, as well as quality and access to care, we would like to offer our support for legislative efforts to prohibit “non-covered services” provisions in dental and vision plans currently governed by ERISA, specifically H.R. 1385, the DOC Access Act.

In general, dental coverage can be separated into plans that are defined as either: “self-funded” or “fully insured” and this distinction determines how the plan is regulated. Self-funded plans are when an employer pays fees to an insurance carrier for certain administrative services, but the employer bears the cost of any employees’ health care claims. These plans are regulated by ERISA. Nationwide, approximately 46 percent of subscribers are covered by self-funded dental plans. Fully insured plans are when an employer pays a premium to an insurance carrier, and the carrier pays the cost of health care claims for anyone in the plan (employees). These plans are regulated by state insurance laws.

We believe that most state laws designed to protect patients and providers should not be preempted by ERISA. In general, preemption should be limited to those topics that Congress originally intended to reserve for federal regulation, such as who qualifies as a beneficiary, what benefits are provided, and other core administrative decisions about how a plan is organized.

We do not believe state laws regulating how plans can limit what providers charge for non-covered services should trigger preemption, and therefore such laws should apply to all plans regardless of whether a plan is self-funded. The Supreme Court in *Rutledge v. PCMA* made clear that ERISA does not preempt cost regulations—i.e., regulations regarding what a provider charges or a plan pays to providers—and we believe non-covered services are within the scope of that ruling. Additionally, non-covered services laws definitionally apply only to services that plans do not cover, so there is even less of an argument that somehow laws regarding non-covered laws could interfere with uniform plan administration.

Nevertheless, there is significant disagreement about the scope of *Rutledge* and ERISA preemption, and given that uncertainty, some states are reluctant to enforce such laws. Until the Supreme Court resolves these disagreements definitively, we are pushing for federal law on issues such as non-covered services to provide the protection that patients and providers need while avoiding any potential arguments about ERISA preemption.

The current landscape adversely impacts competition in the dental plan market, which is dominated by only a few national carriers in many states and shifts costs to patients who are paying for their coverage out of their own pockets or are seeing a dentist out-of-network. H.R. 1385 would provide greater access to high-quality care by helping to curb anti-patient and anti-competitive practices of dental insurance

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plans. This legislation is crucial to bring a needed balance to contract negotiations between providers, who are often small business owners, and large dental insurance companies who can leverage their greater market share to push doctors into accepting provisions, such as non-covered services, as part of their "take it or leave it" contracts.

Passage of H.R. 1385 would balance the scales and bring equity to insurer/provider contracting at the federal level. On behalf of our members and their patients, we would like to thank you again for seeking feedback on ERISA and employer-sponsored health care. We look forward to working with you to increase the affordability of coverage and access to oral health care nationwide. If you have any questions, please contact Ms. Natalie Hales at (202) 898-2404 or [halesn@ada.org](mailto:halesn@ada.org).

Sincerely,

Linda J. Edgar, D.D.S., M.Ed.  
President

Raymond A. Cohlmia, D.D.S.  
Executive Director

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