

September 11, 2024

The Honorable Thomas Massie
Chairman
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Lou Correa
Ranking Member
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Massie and Ranking Member Correa,

On behalf of the 159,000 members, the American Dental Association (ADA), I am writing in regard to the House Judiciary Committee's hearing on September 11, 2024, titled, *The Role of Pharmacy Benefit Managers*. The ADA appreciates the opportunity to share its perspective on the impact of preemption under the Employee Retirement Income Security Act (ERISA) and its implications for state regulation of health care, particularly dental benefits. We believe that ensuring states retain their authority to regulate health care, including dental benefits, is essential for the fair treatment of patients and policyholders, and it promotes consistency in the state insurance marketplace.

The pharmacy benefit managers (PBMs) have sought expansive ERISA preemption to prevent states from implementing solutions to address their exploitative exercise of concentrated market power, which allows them to extract disproportionate profits from the transmission of drugs from pharmaceutical companies to patients. Specifically, PBMs have advocated for a broad interpretation of ERISA preemption that would preclude states from regulating health care "benefits"—that is, how healthcare is provided and paid for. PBMs are seeking a regulatory vacuum where states can no longer restrict their behavior due to a conflated notion of ERISA preemption, and the federal government will not step in because the regulation of insurance and healthcare has historically been recognized as part of the states' police powers.

This broad preemption would not only impact PBMs or pharmaceuticals; it also would severely limit the authority of states to regulate every aspect of how healthcare is provided, particularly through dental insurance programs. Insurance companies profit by collecting premiums and minimizing claims payouts for enrollees' health care expenses. As a result, every state has enacted insurance laws and established departments of insurance to ensure that insurance companies treat their policyholders fairly. This oversight is just as important for protecting public health as it is for safeguarding homes and automobiles.

In *Rutledge v. Pharmaceutical Care Management Assoc.*, 592 U.S. 80 (2020), the Supreme Court of the United States rejected the PBMs' argument for broad ERISA preemption and held that preemption should generally be limited to "central matters of plan administration." However,

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PBMs and insurers alike have continued to invoke ERISA preemption in defiance of Rutledge to justify violating state healthcare laws that they find unfavorable. If the legislature considers any action regarding ERISA preemption, it should reaffirm both the limits on preemption recognized in Rutledge and Congress's commitment to preserving the traditional authority of states to regulate healthcare and dental insurance.

We appreciate your attention to these issues and are available to provide further information as needed. Please contact Mr. Chris Tampio, tampioc@ada.org or 202-789-5178 for further discussion.

Sincerely,

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

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

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