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April 12, 2024

Senator Virginia Lyons, Chairwoman of the
Senate Committee on Health and Welfare
115 State Street
Room 17
Montpelier, VT 05633

RE: AHIP Comments on H.233, An act relating to licensure and regulation of pharmacy benefit managers – OPPOSE

To Chairwoman Lyons and Members of the Senate Committee on Health and Welfare,

America's Health Insurance Plans (AHIP) and our members appreciate the opportunity to respectfully express our opposition to H.233, legislation that would establish a regulatory framework for the regulation of pharmacy benefit managers through licensure requirements. We are particularly concerned with the definition of "Health insurer," which may be interpreted to apply to self-funded plans subject to the Employment Retirement Income Security Act of 1974 (ERISA) as well as Medicare Part D plans.

ERISA Preemption Protections for Employers

ERISA's preemption provision is part of Congress's carefully calibrated effort to increase the availability of employer-covered sponsored health insurance coverage.¹ By including an express preemption provision, Congress sought to preclude disruptive state rules that would threaten the formation and uniform administration of ERISA plans. The Supreme Court's ERISA jurisprudence has long recognized Congress's desire to encourage employers to sponsor health benefit plans and the role that ERISA's preemption provision plays in carrying out that purpose.²

Thus, AHIP strongly opposes any attempt to regulate self-funded plans under ERISA that may move beyond the limits allowed under current federal preemption law and jurisprudence. Should H.233 move beyond such limits, interpretations of the bill's application may jeopardize the cost-saving, uniform standards your state's ERISA self-insured employers rely upon to provide affordable health insurance coverage.

AHIP supports a single, cost-saving national standard for self-funded coverage so that employers have the option to assume financial risk, making costs more affordable, and allows the employer to choose specifically tailored and uniform benefits for their employees regardless of where they live. This ensures more affordable coverage and is easier to administer and understand. The alternative, a 50-state patchwork of complicated and inconsistent mandates for employer-provided coverage will cause more confusion and make coverage more expensive for Vermont's employers and employees.

Vermont employers rely upon ERISA and its preemption provisions, which affords employers consistency, uniformity as well as flexibility of health plan administration. Indeed, 58% of Vermonters are enrolled in

¹ *Shaw v. Delata Airlines, Inc.*, 463 U.S. 85, 90 (ERISA is "a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans.").

² See, e.g., *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319-320 (2016).

private coverage, with 116,937 of those residents participating within a self-funded plan³ – H.233 could have a detrimental impact to these constituents.

Part D Preemption

In the 2003 Medicare Modernization Act (MMA), Congress enacted a broad preemption provision that prevents states from enacting **any** laws that seek to regulate Medicare Part D beyond basic licensure and solvency requirements. The comprehensive nature of that preemption is explicit in the MMA's statutory text and evidenced by legislative history, and Courts have since acknowledged the scope and breadth of this preemption provision.

State regulation of the Medicare Part D program will also increase costs for seniors and other individuals served under these programs and the federal government. AHIP urges the Committee to follow Congress's clear and unambiguous directive that preemption applies to all state laws (outside of licensing and solvency) with respect to Medicare Part D plans.

Conclusion

For your review, we have attached a detailed analysis from ERISA experts at The Groom Law Group outlining the current ERISA jurisprudence landscape, Part D exemption law, and how they pertain to H.233.

For these reasons, AHIP opposes H.233 as currently drafted. We respectfully urge the Committee to include language that would explicitly exempt self-funded ERISA plans and Medicare Part D plans from H.233's requirements.

Thank you for your consideration of these comments. AHIP stands ready and willing to work with policymakers in Vermont and we look forward to more opportunities to provide input in these areas. If you have any questions or concerns regarding our comments and would like to discuss these matters further, please contact Sarah Lynn Geiger at sgeiger@ahip.org or by phone (609) 605-0748.

Sincerely,



Sarah Lynn Geiger, MPA
Regional Director, State Affairs

Attachment: H.233 Groom Law Group Preemption Analysis

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

³ https://www.ahip.org/documents/2023-AHIP_StateDataBook-VT.pdf.