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July 19, 2023

Christine Monahan
Assistant Research Professor
Georgetown University
500 First Street NW
Washington, DC 20001

Dear Professor Monahan:

Thank you again for testifying at the June 21 Subcommittee on Health, Employment, Labor, and Pensions hearing on "Competition and Transparency: The Pathway Forward for a Stronger Health Care Market."

Enclosed are additional questions submitted by Subcommittee members following the hearing. Please provide written responses no later than August 9,2023, for inclusion in the hearing record. Responses should be sent to Michael Davis of the Committee staff who can be contacted at Michael.Davis@mail.house.gov or (202) 225-7101.

We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Bob Good
Chairman
Subcommittee on Health, Employment, Labor, and Pensions

Enclosure

Questions for the Record for
CHRISTINE MONAHAN

Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions
"Competition and Transparency: The Pathway Forward for a Stronger Health Care Market"
Wednesday, June 21, 2023
10:15 a.m.

Rep. Rick Allen (R-GA)

1. Ms. Monahan, the Transparency in Coverage rule requires insurers to provide a great deal of pricing information in machine-readable files. This has led to insurers posting massive data files that are impossible to comprehend, which completely defeats the purpose and intent of the legislation. What are ways the Transparency in Coverage reporting requirements could be improved or streamlined to make pricing data more accessible for employers and patients?

Rep. Mark DeSaulnier (D-CA)

1. The *Consolidated Appropriations Act, 2021* prohibited contract provisions that prevent plan fiduciaries from accessing quality and cost information (so-called "gag clauses"). However, there are increasing reports that vendors such as third-party administrators are throwing up roadblocks that prevent access to this information.
    a. What barriers do plan fiduciaries face in accessing the data described in the CAA?
    b. What is your assessment of the effectiveness of the requirement that plans attest that their contracts do not contain these provisions?
    c. What would the implications be of treating data as a plan asset under ERISA?
    d. Would it be useful for the Department of Labor to issue guidance on situations in which plan data is considered a plan asset? Is legislation needed?
    e. How would you recommend Congress improve this provision?

2. One issue that frequently comes up is whether service providers, including pharmacy benefit managers (PBMs) and third-party administrators (TPAs), have conflicts of interest when they administer group health plans. These companies often successfully argue that they are not acting as fiduciaries with respect to the health plans they contract with.
    a. Would identifying functions performed by entities like TPAs and PBMs in which they are acting as fiduciaries change their business practices?
    b. What are some considerations that we should weigh when looking at this issue?
    c. Would it be possible for the Department of Labor to issue guidance clarifying functions of TPAs and PBMs that are fiduciary in nature or is legislation needed?

3. The *Consolidated Appropriations Act, 2021* amended ERISA to require that plan fiduciaries must be provided with detailed disclosures of direct and indirect compensation earned by service providers that contract with the plan. The statute specifically states that covered service providers include pharmacy benefit managers and third-party administrators, among many others.
    a. Why is this information necessary to ensure that compensation paid to vendors is reasonable?
    b. To what extent are entities described in this provision currently providing fiduciaries with the disclosures needed to ensure the reasonableness of their contracts?
    c. What improvements would you recommend that would strengthen the disclosures that vendors must provide?

4. Health care costs in the United States are the highest in the world, accounting for more than one sixth of our gross domestic product. Individuals covered under private health plans, including employer-sponsored plans, are billed by providers at rates that are usually multiple times what Medicare, Medicaid, and other public programs pay for the same services.
    a. Why is it so difficult for employers to reduce how much they pay for health care?
    b. How would payment reforms, such as improving hospital outpatient billing practices, help lower costs for consumers and for businesses?
    c. Is there an argument that under ERISA plan fiduciaries have an obligation to seek lower costs and, if so, how could this help reduce health care spending?