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July 19, 2023

Gloria Sachdev
President and CEO
Employers' Forum of Indiana
3352 Walnut Creek Drive North
Carmel, IN 46032

Dear Dr. Sachdev:

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 a Subcommittee member 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,

A handwritten signature in blue ink that reads "Bob Good".

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

Enclosure

**Questions for the Record for
GLORIA SACHDEV**

**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. Mark DeSaulnier (D-CA)

1. The *Consolidated Appropriations Act, 2021* prohibited certain contract terms, known as gag clauses, that limit access to cost and quality data. Despite this prohibition, many employers report that they continue to face onerous requirements imposed by their third-party administrators (TPAs) and other service providers that prevent accessing data.
 - a. What are some of the barriers that prevent compliance with the CAA’s gag clause requirements?
 - b. If a plan fiduciary wants to audit the data, do TPAs and other service providers choose who conducts the audit? Are the fees imposed reasonable?
 - c. What are your recommendations for improving this provision?
2. In your testimony you discuss the issue of who owns data that is generated in the course of administering an employer-sponsored group health plan. This information is very important and has the potential to be used for the benefit of the plan participants to lower costs and improve quality.
 - a. Do you agree that the data is not the property of the TPA or other service providers? If it does not belong to the TPA, should it be treated as a plan asset under ERISA?
 - b. Should the Department of Labor help plans determine when and how this data should be treated as a plan asset?
 - c. Is legislation necessary to clarify this matter?
3. In 2020, the Departments of Health and Human Services, Labor, and the Treasury issued final rules under the ACA regarding Transparency in Coverage. These rules have been a step forward for both consumers, who now have access to cost-sharing information, and for researchers, employers, and policymakers, who now have access to detailed information regarding health care costs. But challenges remain, and I am curious to learn more about the employer perspective on this issue.
 - a. What has been the experience of employers in navigating the data? Has it been useful or does more work need to be done to ensure it is useable?
 - b. How can CMS include provider quality transparency as part of the data?
 - c. If this Committee considers legislation to codify the regulation, what suggestions would you have for additional changes that should be made?

- d. Should health plans be required to submit this information to HHS, DOL, and Treasury? How would this help facilitate establishment of a federal database and perhaps a national All-Payer Claims Database?
- 4. Under ERISA, fiduciaries have important responsibilities with respect to the plan, including a duty to act prudently and solely in the interest of plan participants and beneficiaries. However, in many cases entities such as third-party administrators and pharmacy benefit managers argue that they are not fiduciaries and are not subject to these obligations.
 - a. How would adhering to a fiduciary standard change the practices of third-party administrators and pharmacy benefit managers?
 - b. Would it be useful for federal policymakers – either through legislation or regulatory action – to specify which functions performed by third-party administrators, pharmacy benefit managers, and others entail fiduciary duties under ERISA?
- 5. The *Consolidated Appropriations Act, 2021* amended Section 408(b)(2) of ERISA to provide that contracts or arrangements between plan fiduciaries and service providers must include disclosures of direct and indirect compensation earned by service providers. The statute specifically specifies that contracts for the design and implementation of pharmacy benefit management services and third-party administrative services are subject to this requirement.
 - a. Is it your understanding that service providers such as third-party administrators and pharmacy benefit managers are providing these disclosures to employers?
 - b. If employers are not provided this information, how are they able to determine if the compensation their vendors are receiving is reasonable?