



## PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

February 11, 2021

President Joseph R. Biden, Jr.  
The White House  
Washington, D.C. 20500

Dear President Biden:

As you begin your service as our nation's 46<sup>th</sup> president, the Partnership for Employer-Sponsored Coverage (P4ESC) offers our sincerest congratulations and best wishes for your administration. Beginning your term in the midst of the COVID-19 pandemic is very challenging and we stand ready to work with you and Congress to address our nation's on-going public health and economic crises.

P4ESC is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of Americans who rely on employer-sponsored health coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

No public health crisis has been more challenging in our nation's history than the current COVID-19 pandemic. P4ESC is extremely grateful for the care our nation's health professionals, doctors, nurses, nursing aides, and first responders have provided to Americans during the pandemic. We are also very thankful for the pharmacists, pharmacy aides, and volunteers staffing vaccination sites throughout the country that stand ready to help vaccinate millions of frontline workers and the general public.

Vaccinating Americans against COVID-19 and getting our economy back on track are goals we share with you. As organizations representing small, medium, and large businesses employing millions of hardworking Americans, we have a vested interest in ensuring that mass vaccination efforts succeed, and our nation's economy moves forward. We welcome any opportunity to help in the public education campaign on vaccinations, including disseminating information to our member businesses and their employees and provide input on policy development and compliance relief measures for employees and employers. Additionally, employers are seeking clarification on their ability to offer employees incentives to vaccinate without running afoul of federal laws.

As your administration continues to address pandemic-related issues and looks forward to developing larger-scope public policy proposals, P4ESC would like to highlight the following principles and priorities that are important for ensuring employment-based health coverage thrives.

- Preserve and strengthen employer-sponsored health coverage
- Promote innovations and diversity of plan designs and offerings for employees
- Uphold the current tax-treatment of employer-sponsored coverage
- Address health system costs and challenges
- Provide employers with compliance relief from burdensome regulations

### ***Preserve and strengthen employer-sponsored health coverage***

Employer-sponsored coverage has been the backbone of our nation's health system for nearly eight decades. Businesses of all sizes contribute vast resources to employees and their families through the employer-sponsored system and have a vested interest in health care quality, value, and system viability. Employers have been on the leading edge of health delivery innovation and modeling for decades.



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Benefits offerings and coverage plans in the employer-sponsored system are as diverse as employers and employees themselves.

COVID-19 has brought an unprecedented amount of uncertainty for employees and businesses. The employer-sponsored system has been a steadfast safety net for the millions who have suffered from COVID and the millions more receiving care for a host of health and wellness issues. As our nation continues to weather the current public health crisis, P4ESC urges you to help preserve and strengthen employment-based health coverage and work with employers to address the long-term health and economic issues.

### *Promote innovations and diversity of plan designs and offerings for employees*

Employers have led the way in benefits design and innovation for decades and will continue to do so for decades to come. There is no one-size-fits-all employer health plan, nor should the federal government enact or implement laws to undercut the Employee Retirement Income and Security Act (ERISA) and stifle an employer's ability to develop benefits offerings that meet the specific workforce's needs. All levels of government should work constructively with private sector employers to ensure that employers have the tools and flexibility to foster benefits design and innovations that provide employees with benefits that are crucial to the wellbeing of themselves and their families.

P4ESC appreciates the COVID-related policies adopted over the last year to help employees and employers including federally funding the COVID vaccine for all Americans, expanding telemedicine availability to employees, enabling employees to rollover unused flexible spending account funds, allowing for first-dollar coverage of COVID testing and treatment under a high deductible health plan, and treating health expenses as an employment expenses under the employee retention tax credit. We support building on these policies, and others, to provide employers with the ability to enhance employee coverage permanently.

Accessing mental and behavioral health services through telemedicine during the pandemic has been a critical benefit utilized by our employees. On October 21, 2020, we filed comments with the *Coronavirus Mental Health Working Group* highlighting the importance of this care for our employees. These telemedicine services should be expanded to enable employers to offer a telehealth service plan to all employees regardless of their enrollment in the employer's medical coverage. We also support bipartisan legislation to allow Americans with health savings accounts (HSAs) to better manage their health care and improve health outcomes, while lowering their out-of-pocket costs, and increasing access to innovative care options. Consumer-directed health products (CDHPs), such as HRAs, provide employers of all sizes with flexible coverage options for their employees and families.

Further, as the Administration conducts a review of the Affordable Care Act (ACA) per the directive under Executive Order (E.O.) 14009, we strongly urge you to retain the current policies regarding individual coverage health reimbursement arrangements (IHRAs). Providing employers the option of offering an HRA for the purchase of individual health coverage helps small employers who would otherwise be unable to provide coverage of any kind to their employees. Additionally, permitting employers to offer an HRA for excepted benefits coverage provides employees with additional financial assistance for services such as dental and vision.

***Uphold the current tax treatment of employer-sponsored coverage***

Our nation’s employment-based health coverage system sprung out of a cap on wages initiated during World War II to stifle inflation. Employers began offering benefits, such as health coverage, to workers to offset the limit on wages. For decades, employees and employers have benefited from preferences in the federal tax code that: exclude the value of employment-based health coverage from an individual’s income; allow for the pre-tax payment of an individual’s premiums of employment-based health coverage; and enable employers to deduct the cost of health coverage expenses.

Eliminating or capping the tax exclusion of employer-sponsored coverage for individuals has been seen as a way to raise federal revenue and/or offset the cost of other federal reforms or programs. Some also see capping the exclusion as a way to address the demand side of health care spending. P4ESC opposes capping or modifying the individual tax exclusion of employment-based coverage, as it is a direct tax increase on working Americans and their families. A cap on the exclusion does not address rising health system costs or utilization and will stifle private-sector innovation and delivery designs. To tamper with the current tax-treatment of employer-sponsored coverage amid the COVID-induced economic crisis would be especially devastating to struggling businesses and American workers.

***Address health system costs and challenges***

While employer-sponsored coverage has served as a vital safety net during the pandemic, the system has been tested and will continue to be so during the duration of the crisis. This does not mean that employment-based coverage should be eliminated or undercut in favor of a government-run option. The fiscal viability and rising costs of our nation’s health system have been debated topic for decades, long before COVID-19. The pandemic has heightened the awareness of system readiness, and cost issues for businesses and employees alike.

P4ESC is concerned about the long-term effects of COVID-19 on our employees’ health and fiscal constraints on both employees and employers. For those who have been diagnosed with COVID, little is known about the long-term health effects. Additionally, many Americans have forgone routine medical care and surgeries during the pandemic. Initial feedback we have received from businesses regarding future coverage issues, complexities, and costs include areas such as: actuarial considerations of COVID-related testing and treatments (as well as complexities related to mental health parity rules); self-funded and fully insured premium increases; increased cost of stop-loss insurance for self-funded employers; and risk pool changes. With the foundation of the employer-sponsored coverage system being rooted in workforce policy and business operations, the COVID pandemic will leave an indelible mark on benefits planning and operations for many years.

P4ESC and businesses of all sizes have been concerned for decades about health system consolidation and limited access to certain provider groups. Specifically, employers and employees face challenges in finding available and affordable mental and behavioral health care. Some mental and behavioral health providers – particularly those in rural areas – decline to participate in health insurance networks. In the case of most ERISA self-insured plans, employers rent insurance carriers’ provider networks. The decision to join a network lies with the provider.

Because many mental and behavioral health providers choose not to go in-network, employees can face large out-of-network bills or even surprise medical bills for care sought. It is important to stress that regulatory efforts to evaluate mental and behavioral health providers’ availability in health insurance networks must also consider whether these providers make themselves available and affordable to

employees. Coverage requirements on employers and insurance carriers are counterproductive, particularly regarding affordability, unless there is a countervailing requirement for providers to participate in one or more networks.

Further, P4ESC would like to work with the Administration as implementation begins on the surprise medical billing and state all payers claims databases provisions of P.L. 116-260. While we supported the overall purpose of addressing surprise medical billing, we did not support the law's creation of an independent dispute resolution (IDR) process. We want to work with you to ensure that implementing these two new federal policies will not add administrative costs and burdens on employers.

### ***Provide employers with compliance relief from burdensome regulations***

The ability to offer coverage to employees and the capacity to operate a business for its core purpose are not mutually exclusive functions. An employer offer of coverage is not merely a transaction in which an employee fills out paperwork, enrolls in coverage, and receives an insurance card – it is a multifaceted fiscal and operational commitment at the core of any business. As employers are making the decisions to offer coverage and determine which type of coverage to offer their employees, a critical aspect of this deliberation is the administrative compliance costs and complexities associated with coverage.

The compliance requirements under the ACA have always been complex and administratively burdensome on employers. With the current pandemic, the compliance complexities and tracking requirements are further exacerbated because employers are managing closures, decreased demand, work from home policies, furloughs, reduced hours, temporary layoffs, and more. As the pandemic rages on, we strongly urge the Administration to 1) provide employers with COVID-related relief under the ACA requirements in the very near term, and 2) reform the information-reporting requirements to implement a consumer-friendly process for individuals, and a less burdensome and costly compliance process for employers, the federally facilitated and state-based Exchange systems, and IRS alike.

On January 28, 2021, P4ESC filed comments to Treasury Secretary Janet Yellen and IRS Commissioner Charles Rettig under Notice 2020-76, *Transition Relief Related to Health Coverage Reporting Required by Sections 6055 and 6056 for 2020*, on several near-term COVID-related issues and long-term compliance relief policies. We request the Administration consider acting upon the following compliance issues:

- Provide immediate COVID-related safe harbor relief under Code sections 4980H, 6055 and 5065. Due to the pandemic, businesses have experienced unforeseen closures or rapid staffing changes and transitions that are out of their control. The affordability test is particularly complicated during the pandemic with many businesses experiencing unstable workforces and economic volatility, and inconsistent workforces from month to month;
- Revise the list of data requirements under sections 6055 and 6056 to be relevant and practical, including eliminating the requirement to collect and retain Social Security numbers for employees' spouses and dependents;
- Decouple information reporting for sections 6055 and 6056 from Form 1095-C;
- Establish a simple web-based platform or landing page for an employer to enter basic contact information for use by the federal facilitated and state-based Exchanges when needing to verify information on an individual's Exchange coverage application;
- Enable applicable large employers (ALEs) to prospectively report to the IRS relevant data items about the type of coverage offered to their workforce of full-time employees prior to open enrollment season in the Exchanges;



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- Eliminate the requirement that self-insured employers send an individual 1095-C form to all enrolled employees;
- Require review of ALE-filed data before a 226-J penalty notification letter is sent;
- Provide employers with 90 days, rather than 30 days, to appeal a 226-J tax penalty letter for any tax compliance year;
- Establish a statute of limitations on section 6055 and 6056 information so employers do not have to keep this data for all current and former employees, dependents and spouses indefinitely; and
- Work with employers to identify opportunities to streamline document requirements across various federal agencies and departments to bring compliance into the 21<sup>st</sup> century by enabling electronic transmission instead of by paper and through the mail.

### Conclusion:

The current war against COVID-19 is an all-hand-on-deck crisis and commercial market-based, employment-based health coverage plays a crucial role in care delivery. As a coalition representing businesses of all sizes, the Partnership for Employer-Sponsored Coverage has the unique ability to provide operational input across the full spectrum of the employer system – from the smallest family-owned business to the largest corporation. Employers have a significant stake in developing and implementing health care policies. We look forward to working with the Administration to ensure employer-sponsored coverage continues to thrive.

Sincerely,

American Hotel & Lodging Association  
American Rental Association  
Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
Auto Care Association  
Business Group on Health  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee (ERIC)  
FMI – The Food Industry Association  
HR Policy Association  
National Association of Health Underwriters  
National Association of Wholesaler-Distributors  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
Society for Human Resource Management