

September 29, 2023

The Honorable Bernie Sanders
Chairman
U.S. Senate Committee of Health, Education, Labor and Pensions
428 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee of Health, Education, Labor and Pensions
455 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Sanders and Ranking Member Cassidy:

The undersigned seek to draw your urgent attention to the need to protect federal preemption for self-funded health plans that are established as part of the Employee Retirement Income Security Act of 1974 (“ERISA”). On a bipartisan basis, you have passed the Pharmacy Benefit Manager Reform Act (S. 1339) through your Committee.

As you know, over the past several years, both the states and the federal government have sought to address various issues that have arisen regarding Pharmacy Benefit Managers (“PBMs”). In particular, however, seven states have sought not only to regulate the PBMs themselves, but to indirectly regulate the health plans that provide prescription drug benefits, including employee benefit plans governed by the Employee Retirement Income Security Act of 1974 (“ERISA”). As you are also aware, ERISA includes a broad preemption provision intended to permit the uniform administration of these employee benefit plans nationwide.

Nevertheless, these state laws impede the national uniform plan administration by either mandating or forbidding particular elements of plan structure or benefit design. This is a serious issue for the U.S. government and an affront to the U.S. Constitution. The Supremacy Clause of the U.S. Constitution establishes that federal laws are supreme to any conflicting state law. While federal preemption is constitutionally established simply by a federal law’s passage, Congress has included express preemption language in a number of federal statutes, including ERISA, to avoid any doubt as to that federal law’s supremacy.

For self-funded plans, PBM’s are important service providers, allowing plans to design prescription drug benefits that are convenient and cost effective for plans and participants. At the time of ERISA’s passage in 1974, PBM’s remained a nascent industry. Today, although there are approximately seventy PBM’s in the United States, the three largest PBM’s control more than 80% of the market. While we appreciate the need for meaningful and thoughtful regulation of PBMs, such regulation should not come at the expense of such a basic goal of ERISA – the ability of plans to maintain uniform plan design and administration nationwide.

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We have seen drafts of language designed to gut Federal preemption under ERISA about which some members of the Committee have expressed an interest, which would be a shocking rejection of the basic constitutional principle of federal supremacy. We do wish to point out that many of those advocating for this assault on federal preemption are doing so to advance their own financial interests, albeit at the expense of the interests of the participants and beneficiaries served by these employee benefit plans. We urge you to stand with ERISA-governed plans and their stakeholders, and, rather than chipping away at federal preemption under ERISA, to take this opportunity to shore-up federal preemption. It is notable that the U.S. Court of Appeals for the Tenth Circuit recently rejected the State of Oklahoma's attempt to interfere with the uniform administration of self-funded plans and their structure and benefit design. Fighting these attempts by states to interfere with ERISA plans on a state-by-state basis is a time consuming and costly exercise that diverts resources and frequently requires plan changes until the issue is resolved by the Courts. It is important to note that Taft-Hartley plans are the result of a collective bargaining process, and that the only money that such a plan has is the participants' money, held in trust to provide healthcare benefits. There are no corporate deep pockets to tap to pay increased benefit costs or litigation costs due to state interference.

Our multiemployer health plans, the vast majority of which are Taft-Hartley plans governed by equal numbers of employer and employee representatives, have been leaders in providing high quality health benefits to our members and in controlling costs in a difficult macro environment for healthcare inflation. State interference of our benefits and the delivery of these benefits is a serious issue that S. 1339 should address in a positive manner.

Respectfully,

AEPC – A Labor Management Purchasing Coalition
Alaska Laborers-Construction Industry Health & Security Fund
Alaska Pipe Trades Association – U. A. Local No. 375 Health and Security Trust Fund
Associated General Contractors of America
Association of Benefit Administrators
Boilermakers National Health and Welfare Fund
Boston Plasterers' & Cement Masons' Local 534
Boston Plasterers' & Cement Masons' Local 534 Health & Welfare Fund
Bricklayers and Allied Craftworkers Local 1 of MD, VA & DC Health & Pension Funds
Cement Masons and Plasterers Health and Welfare Trust
Central States, Southeast and Southwest Areas Health and Welfare Fund
Connecticut Coalition of Taft-Hartley Health Funds
Delaware Valley Health Care Coalition
Equity-League Health Trust Fund
FCA International
Hagerstown Motor Carriers and Teamsters Pension Fund
Hagerstown Teamsters and Motor Carriers Health and Welfare Fund

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Health Care Cost Containment Corp. Mid-Atlantic Region
HealthWORKS Coalition
IATSE National Benefit Funds
IBEW, Local No. 1 Health and Welfare Fund
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (IW)
International Association of Heat and Frost Insulators and Allied Workers
International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART") Local
Union No. 36 Welfare Fund
International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART)
International Association of Sheet Metal, Air, Rail and Transportation Workers Local Union
No. 36
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Teamsters (IBT)
International Union of Bricklayers and Allied Craftworkers (BAC)
International Union of Elevator Constructors (IUEC)
International Union of Painters and Allied Trades (IUPAT)
IUOE of Eastern Pennsylvania and Delaware Benefit Funds
Labor Health Alliance
Laborers' International Union of North America (LIUNA)
Laborers' Local 341
Local 309 Electrical Health and Welfare Fund
Local 338 Health & Welfare Fund (Local 338 RWDSU/UFCW)
Local 641 Welfare Fund
Local 641 Welfare Trust Fund
Local 802 Musicians Health Plan
Local Union No 598 Plumbing and Pipefitting Industry Health & Welfare Plan & Trust &
Supplemental Pension Plan
Local Union No. 704 IBEW Health and Welfare Fund
Marble, Tile & Terrazzo Workers Pension and Annuity Funds
Masonry Security Plan of Washington (Bricklayers)
Massachusetts Coalition of Taft Hartley Trust Funds, Inc.
Mechanical Contractors Association of America (MCAA)
Midwest Employee Benefit Funds Coalition
National CooperativeRx
National Coordinating Committee for Multiemployer Plans (NCCMP)
National Electrical Contractors Association (NECA)
National Labor Alliance of Healthcare Coalitions, Inc.
New York Labor Health Care Alliance
North America's Building Trades Unions (NABTU)
Northwest Ironworkers Health and Security Trust
Northwest Sheet Metal Workers
Ohio Valley Health Care Coalition

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Operative Plasterers' and Cement Masons' International Association (OPCMIA)
Pacific Health Coalition
Plumbers and Pipefitters Local 653 Health & Welfare Plan
SDC-League Health Fund
Seattle Area Plumbing & Pipefitting Industry Health Plan
Service Employees International Union (SEIU)
Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)
Sheet Metal Workers Local 17 Insurance Fund
Sheet Metal Workers Local 17 Pension Fund
Signatory Wall and Ceiling Contractors Alliance (SWACCA)
St. Louis Chapter NECA
St. Louis Chapter SMACNA
Teamster Center Services Fund
Teamsters Benefit Trust
Teamsters Joint Council #16
Teamsters Local 11
Teamsters Local 272
Teamsters Local 553
Teamsters Local 639 – Employers 401(h) Retiree Medical Plan
Teamsters Local 639 – Employers Health Trust Fund
Teamsters Local 641
Teamsters Local 670
Teamsters Local 808
Teamsters Local 814
The Association of Union Constructors (TAUC)
The Broadway League
U.A. Plumbers and Pipefitters Local Union #653
UA Local 32 Plumbers, Pipefitters, Refrigeration & HVAC Union
UA Local 367 Health & Welfare Trust
UA Local 598 Plumbers and Steamfitters
UNITE HERE
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of
the United States and Canada (UA)
United Brotherhood of Carpenters and Joiners of America (UBC)
United Employees Benefit Trust
United Mine Workers of America (UMWA)
Upper Midwest Labor/Management Health Care Coalition
Western Health Care Coalition, Inc.

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cc: Member of the Committee
The Honorable Charles Schumer
The Honorable Mitch McConnell
The Honorable Kevin McCarthy
The Honorable Hakeem Jeffries