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Part 1

SELF-INSURANCE PROTECTION ACT

JUNE 20, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. FOXX, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2813]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2813) to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to exclude from the definition of health insurance coverage certain medical stop-loss insurance obtained by certain plan sponsors of group health plans, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Self-Insurance Protection Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Small and large employers offer health benefit plan coverage to employees in self-funded arrangements using company assets or a fund, or by paying premiums to purchase fully-insured coverage from a health insurance company.

(2) Employers that self-fund health benefit plans will often purchase stop-loss insurance as a financial risk management tool to protect against excess or unexpected catastrophic health plan claims losses that arise above projected costs paid out of company assets.

(3) Stop-loss coverage insures the employer sponsoring the health benefit plan against unforeseen health plan claims, does not insure the employee health benefit plan itself, and does not pay health care providers for medical services provided to the employees.

(4) Employer-sponsored health benefit plans are regulated under the Employee Retirement Income Security Act of 1974, however, States regulate the availability and the coverage terms of stop-loss insurance coverage that employers purchase to protect company assets and to protect a fund against excess or unexpected claims losses.

(5) Both large and small employers that choose to self-fund must also be able to protect company assets or a fund against excess or unexpected claims losses and States must reasonably regulate stop-loss insurance to assure its availability to both large and small employers.

SEC. 3. CERTAIN MEDICAL STOP-LOSS INSURANCE OBTAINED BY CERTAIN PLAN SPONSORS OF GROUP HEALTH PLANS NOT INCLUDED UNDER THE DEFINITION OF HEALTH INSURANCE COVERAGE.

Section 733(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(b)(1)) is amended by adding at the end the following sentence: "Such term shall not include a stop-loss policy obtained by a self-insured group health plan or a plan sponsor of a group health plan that self-insures the health risks of its plan participants to reimburse the plan or sponsor for losses that the plan or sponsor incurs in providing health or medical benefits to such plan participants in excess of a predetermined level set forth in the stop-loss policy obtained by such plan or sponsor.".

SEC. 4. EFFECT ON OTHER LAWS.

Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end the following:

"(10) The provisions of this title (including part 7 relating to group health plans) shall preempt State laws insofar as they may now or hereafter prevent an employee benefit plan that is a group health plan from insuring against the risk of excess or unexpected health plan claims losses.".

Amend the title so as to read:

A bill to amend the Employee Retirement Income Security Act of 1974 to exclude from the definition of health insurance coverage certain medical stop-loss insurance obtained by certain plan sponsors of group health plans, and for other purposes.

PURPOSE

H.R. 2813, the *Self-Insurance Protection Act*, amends the *Employee Retirement Income Security Act of 1974* (ERISA)[1] to clarify that federal regulators cannot redefine stop-loss insurance as traditional health insurance in order to preserve the option of self-funding. The bill also prohibits states from regulating stop-loss insurance if regulations make stop-loss insurance inaccessible to employers. By providing legal certainty, the bill will help ensure workers and families continue to have access to affordable, flexible self-insured health plans.

COMMITTEE ACTION

112TH CONGRESS

First Session—Hearings

On February 9, 2011, the Committee on Education and the Workforce (Committee) held a hearing entitled "The Impact of the Health Care Law on the Economy, Employers, and the Workforce," which examined, among other things, the benefits of self-insuring. Testifying before the Committee were Dr. Paul Howard, Senior Fellow, Manhattan Institute, New York, New York; Ms. Gail Johnson, President and CEO, Rainbow Station, Inc., Glenn Allen, Virginia; Dr. Paul Van de Water, Senior Fellow, Center on Budget and Policy Priorities, Washington, D.C.; and Mr. Neil Trautwein, Vice

[1] 29 U.S.C. § 1001 *et seq.*

President and Employee Benefits Policy Counsel, National Retail Federation, Washington, D.C.

On March 10, 2011, the Subcommittee on Health, Employment, Labor and Pensions (HELP) held a hearing entitled "The Pressures of Rising Costs on Employer Provided Health Care," which examined, among other things, the benefits of self-insurance. The witnesses were Mr. Tom Miller, Resident Fellow, American Enterprise Institute, Washington, D.C.; Mr. Brett Parker, Vice Chairman and Chief Financial Officer, Bowlmor Lanes, New York, New York; Mr. Jim Houser, Owner, Hawthorne Auto, Portland, Oregon; and Mr. J. Michael Brewer, President, Lockton Benefit Group, Lockton Companies, LLC, Kansas City, Missouri.

On June 7, 2011, the HELP Subcommittee held a field hearing in Evansville, Indiana, entitled "The Recent Health Care Law: Consequences for Indiana Families and Workers," which examined, among other things, the impact of the *Affordable Care Act* (ACA) on self-funded plans. The witnesses were the Honorable Mark Messmer, Indiana House of Representatives, Messmer Mechanical, Jasper, Indiana; Ms. Robyn Crosson, Company Compliance Services, State of Indiana Department of Insurance, Indianapolis, Indiana; Ms. Sherry Lang, Human Resources Director, Womack Restaurants, Terre Haute, Indiana; Mr. Denis Johnson, VP of Operations, Boston Scientific, Spencer, Indiana; Mr. David J. Carlson, M.D., General Surgeon, Deaconess Hospital, Evansville, Indiana; and Mr. Glen Graber, President, Graber Post Building, Inc., Odon, Indiana.

On October 13, 2011, the HELP Subcommittee held a hearing entitled "Regulations, Costs, and Uncertainty in Employer Provided Health Care," which examined, among other things, the characteristics and attributes of self-funded plans. The witnesses were Ms. Grace-Marie Turner, President, Galen Institute, Alexandria, Virginia; Mr. Dennis M. Donahue, Managing Director, Wells Fargo Insurance Services USA, Inc., Chicago, Illinois; Mr. Ron Pollack, Executive Director, Families USA, Washington, D.C.; and Ms. Robyn Piper, President, Piper Jordan, San Diego, California.

Second Session—Hearings

On February 22, 2012, the HELP Subcommittee held a field hearing in Butler, Pennsylvania, entitled "Health Care: Challenges Facing Pennsylvania's Workers and Job Creators," which examined, among other things, the benefits of self-insuring. The witnesses were the Honorable Donald C. White, Senator, Pennsylvania State Senate, Harrisburg, Pennsylvania; Ms. Kathleen Bishop, President and CEO, Meadville-Western Crawford, County Chamber of Commerce, Meadville, Pennsylvania; Ms. Georgeanne Koehler, Pittsburg, Pennsylvania; Ms. Lori Joint, Director of Government Affairs, Manufacturer and Business Association, Erie, Pennsylvania; Ms.Patti-Ann Kanterman, Chief Financial Officer, Associated Ceramics and Technology, Inc., Sarver, Pennsylvania; Mr. Paul T. Nelson, Owner and CEO, Waldameer Park, Inc., Erie, Pennsylvania; Mr. Ralph Vitt, Owner, Vitt Insure, Pittsburg, Pennsylvania; and Mr. Will Knecht, President, Wendell August Forge, Grove City, Pennsylvania.

On May 31, 2012, the HELP Subcommittee held a hearing entitled "Barriers to Lower Health Care Costs for Workers and Em-

ployers," which examined, among other things, self-insured plans. The witnesses were Mr. Ed Fensholt, Senior Vice President, Lockton Companies, LLC, Kansas City, Missouri; Mr. Roy Ramthun, President, HAS Consulting Services, Washington, D.C.; Ms. Jody Hall, Founder & Owner, Cupcake Royale, Seattle, Washington; and Mr. Bill Streitberger, Vice President of Human Resources, Red Robin, Greenwood Village, Colorado.

113TH CONGRESS

First Session—Hearings

On April 30, 2013, the HELP Subcommittee held a field hearing in Concord, North Carolina, entitled "Health Care Challenges Facing North Carolina's Workers and Job Creators," during which witnesses discussed the negative impact of the ACA, including on businesses that self-insure. The witnesses were Mr. Chuck Horne, President, Hornwood Inc., Lilesville, North Carolina; Ms. Tina Haynes, Chief Human Resource Officer, Rowan-Cabarrus Community College, Salisbury, North Carolina; Mr. Adam Searing, Director, Health Access Coalition, Raleigh, North Carolina; Mr. Ken Conrad, Chairman, Libby Hill Seafood Restaurants, Greenboro, North Carolina; Mr. Dave Bass, Vice President, Compensation and Associate Wellness, Delhaize America, Concord, North Carolina; Mr. Ed Tubel, Founder and CEO, Tricor Inc., Charlotte, North Carolina; Dr. Olson Huff, Pediatrician, Asheville, North Carolina; and Mr. Bruce Silver, President and CEO, Racing Electronics, Concord, North Carolina.

On June 4, 2013, the Committee held a hearing entitled "Reviewing the President's Fiscal Year 2014 Budget Proposal for the U.S. Department of Health and Human Services," during which members discussed the experiences of employers that self-insure. The sole witness at the hearing was the Honorable Kathleen Sebelius, Secretary of the U.S. Department of Health and Human Services, Washington, D.C.

On July 23, 2013, the HELP Subcommittee and the Workforce Protections Subcommittee jointly held a hearing entitled "The Employer Mandate: Examining the Delay and Its Effect on Workplaces," which reviewed, among other things, the impact of the ACA on the self-insured market. Witnesses were Ms. Grace-Marie Turner, President, Galen Institute, Alexandria, Virginia; Mr. Jamie T. Richardson, Vice President, White Castle System, Inc., Columbus, Ohio; Mr. Ron Pollack, Executive Director, Families USA, Washington, D.C.; and Dr. Douglas Holtz-Eakin, President, American Action Forum, Washington, D.C.

On August 27, 2013, the HELP Subcommittee held a field hearing in Lexington, Kentucky, entitled "Health Care Challenges Facing Kentucky's Workers and Job Creators," which included an examination of self-insurance. Witnesses before the subcommittee were Mr. Tim Kanaly, Owner and President, Gary Force Honda, Bowling Green, Kentucky; Mr. Joe Bologna, Owner, Joe Bologna's—Italian Pizzeria and Restaurant, Lexington, Kentucky; Ms. Carrie Banahan, Executive Director, Office of the Kentucky Health Benefit Exchange, Frankfort, Kentucky; Mr. John Humkey, President, Employee Benefit Associates, Inc., Lexington, Kentucky; Ms. Janey Moores, President and CEO, BJM and Associates, Inc.,

Lexington, Kentucky; Mr. Donnie Meadows, Vice President of Human Resources, K–VA–T Food Stores, Inc., Abingdon, Virginia; Ms. Debbie Basham, Southwest Breast Cancer Awareness Group, Louisville, Kentucky; and Mr. John McPhearson, CEO, Lectrodryer, Richmond, Kentucky.

Second Session—Hearings

On February 26, 2014, the HELP Subcommittee held a hearing entitled "Providing Access to Affordable, Flexible Health Plans through Self-Insurance," which examined self-insurance and stop-loss insurance. The witnesses were Mr. Michael Ferguson, President and CEO, Self-Insurance Institute of America, Simpsonville, South Carolina; Mr. Wes Kelley, Executive Director, Columbia Power and Water Systems, Columbia, Tennessee; Ms. Maura Calsyn, Director of Health Policy, Center for American Progress, Washington, D.C.; and Mr. Robert Melillo, National Vice President of Risk Financing Solutions, USI Insurance, Glastonbury, Connecticut.

On March 26, 2014, the Committee held a hearing entitled "Reviewing the President's Fiscal Year 2015 Budget Proposal for the Department of Labor," during which the Secretary of Labor was questioned about whether the Department had plans to regulate stop-loss insurance. The sole witness was the Honorable Thomas E. Perez, Secretary of the U.S. Department of Labor, Washington, D.C.

On September 4, 2014, the HELP Subcommittee held a field hearing in Greenfield, Indiana, entitled "The Effects of the President's Health Care Law on Indiana's Classrooms and Workplaces," during which witnesses testified about employer-provided health coverage and self- insured plans. The witnesses were Mr. Mike Shafer, Chief Financial Officer, Zionsville Community Schools, Zionsville, Indiana; Mr. Tom Snyder, President, Ivy Tech Community College, Indianapolis, Indiana; Mr. Danny Tanoos, Superintendent, Vigo County School Corporation, Terre Haute, Indiana; Mr. Tom Forkner, President, Anderson Federation of Teachers, AFT Local 519, Anderson, Indiana; Mr. Mark DeFabis, President and Chief Executive Officer, Integrated Distribution Services, Plainfield, Indiana; Mr. Nate LaMar, International Regional Manager, Draper, Inc., Spiceland, Indiana; Mr. Dan Wolfe, Owner, Wolfe's Auto Auction, Terre Haute, Indiana; and Mr. Robert Stone, Director of Palliative Care, IU Health Bloomington Hospital, Bloomington, Indiana.

114TH CONGRESS

First Session—Legislative Action

On March 18, 2015, Rep. David "Phil" Roe (R–TN), then-Chairman of the HELP Subcommittee, introduced the *Self-Insurance Protection Act* (H.R. 1423), to ensure employees and employers could continue to have access to affordable, flexible health care plans by having the option to self-fund those plans.

First Session—Hearings

On March 18, 2015, the Committee held a hearing entitled "Reviewing the President's Fiscal Year 2016 Budget Proposal for the

Department of Labor," during which the Secretary of Labor was questioned about the Department's plans to regulate stop-loss. The sole witness was the Honorable Thomas E. Perez, Secretary of the U.S. Department of Labor, Washington, D.C.

On April 14, 2015, the HELP Subcommittee held a hearing entitled "Five Years of Broken Promises: How the President's Health Care Law is Affecting America's Workplaces," which examined the continuing negative impact of the ACA on employer-sponsored health coverage, including on self-insured plans. Witnesses were the Honorable Tevi Troy, President, American Health Policy Institute, Washington, D.C.; Mr. Rutland Paal, Jr., President, Rutland Beard Floral Group, Scotch Plains, New Jersey; Michael Brev, President, Brev Corp. t/a Hobby Works, WingTOTE Manufacturing, LLC, Laurel, Maryland; and Ms. Sally Roberts, Human Resources Director, Morris Communications Company, LLC, Augusta, Georgia.

Second Session—Hearings

On March 15, 2016, the Committee held a hearing entitled "Examining the Policies and Priorities of the U.S. Department of Health and Human Services," during which self-insured plans were discussed. The sole witness at the hearing was the Honorable Sylvia Mathews Burwell, Secretary of the U.S. Department of Health and Human Services, Washington, D.C.

On April 14, 2016, the HELP Subcommittee held a hearing entitled "Innovations in Health Care: Exploring Free-Market Solutions for a Healthy Workforce," which examined, among other things, the benefits of self-insuring. Witnesses before the subcommittee were Ms. Sabrina Corlette, Senior Research Professor, Center on Health Insurance Reforms, Georgetown University's Health Policy Institute, Washington, D.C.; Ms. Tresia Franklin, Director, Total Rewards and Employee Relations, Hallmark Cards, Inc. Kansas City, Missouri; Ms. Amy McDonough, Vice President and General Manager of Corporate Wellness, Fitbit, San Francisco, California; and Mr. John Zern, Executive Vice President and Global Health Leader, Aon, Chicago, Illinois.

115TH CONGRESS

First Session—Hearings

On February 1, 2017, the Committee held a hearing entitled "Rescuing Americans from the Failed Health Care Law and Advancing Patient-Centered Solutions," which examined failures of the ACA, including its effects on self-insurance. Witnesses were Mr. Scott Bollenbacher, CPA, Managing Partner, Bollenbacher and Associates, LLC, Portland, Indiana; Mr. Joe Eddy, President and Chief Executive Officer, Eagle Manufacturing Company, Wellsburg, West Virginia; Ms. Angela Schlaack, St. Joseph, Michigan; and Dr. Tevi Troy, Chief Executive Officer, American Health Policy Institute, Washington, D.C.

On March 1, 2017, the Committee held a hearing entitled "Legislative Proposals to Improve Health Care Coverage and Provide Lower Costs for Families," which examined H.R. the *Self-Insurance Protection Act* (H.R. 1304), among other proposals. Witnesses were Mr. Jon B. Hurst, President, Retailers Association of Massachu-

setts, Boston, Massachusetts; Ms. Allison R. Klausner, Principal, Government Relations Leader, Conduent, Secaucus, New Jersey; Ms. Lydia Mitts, Associate Director of Affordability Initiatives, Families USA, Washington, D.C.; and Mr. Jay Ritchie, Executive Vice President, Tokio Marine HHC, Kennesaw, Georgia.

Legislative Action

On March 2, 2017, Rep. Roe introduced the *Self-Insurance Protection Act* (H.R. 1304) along with then-HELP Subcommittee Chairman Tim Walberg (R–MI) to ensure self-funding remains an option for employee and employers offering health care coverage.

On March 8, 2017, the Committee considered the *Self-Insurance Protection Act* (H.R. 1304). Rep. Roe offered an amendment in the nature of a substitute, making a technical change to the introduced bill. The Committee voted to adopt the amendment in the nature of a substitute by voice vote. Rep. Jared Polis (D–CO) offered an amendment that was ruled non-germane, and the ruling of the Chair was upheld by a vote of 22 to 17 on a motion to table the appeal of the ruling of the Chair. Rep. Bonamici (D–OR) offered a clarifying amendment to ensure that the legislation would not be construed to restrict the ability of states to regulate stop-loss policies. H.R. 1304 does not preempt states from regulating stop-loss coverage. At the request of Ranking Member Robert C. "Bobby" Scott (D–VA), Committee Chairwoman Virginia Foxx (R–NC) agreed to include such clarifying language in the Committee report. This clarification ensures that nothing in the bill is erroneously construed to restrict states' ability to regulate stop-loss policies. Based on the understanding between Chairwoman Foxx and Ranking Member Scott that this clarification would be included in the Committee's official report, Rep. Bonamici withdrew her amendment. The Committee favorably reported H.R. 1304, as amended, to the House of Representatives by voice vote.

On April 5, 2017, the House of Representatives passed H.R. 1304, the *Self-Insurance Protection Act* by a vote of 400–16.

118TH CONGRESS

First Session—Hearing

On April 24, 2023, the HELP Subcommittee held a hearing entitled "Reducing Health Care Costs for Working Americans and Their Families," which examined the *Self-Insurance Protection Act* (H.R. 2813), among other proposals. Witnesses were Mr. Joel White, President, Council for Affordable Health Coverage (CAHC), Washington, D.C.; Mrs. Tracy Watts, Senior Partner, Mercer, Washington, D.C.; Ms. Marcie Strouse, Partner, Capitol Benefits Group, Des Moines, Iowa; and Ms. Sabrina Corlette, J.D., Senior Research Professor, Center on Health Insurance Reforms, Georgetown University's Health Policy Institute, Washington, D.C.

Legislative Action

On April 25, 2023, HELP Subcommittee Chairman Bob Good (R–VA) introduced the *Self-Insurance Protection Act* (H.R. 2813) along with Rep. Tim Walberg (R–MI) to ensure self-funding remains an option for employee and employers offering health care coverage. The bill was referred to the Committee on Education and the

Workforce, the Committee on Energy and Commerce, and the Committee on Ways and Means. On June 6, 2023, the Committee considered H.R. 2813 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 24–18. The Committee adopted the following amendment to H.R. 2813: Rep. Good offered an Amendment in the Nature of a Substitute (ANS) that, with respect to the language amending ERISA, strikes duplicate language amending the *Public Health Service Act* and the Internal Revenue Code. The ANS also changes the term "self-funded health plan" to "self-insured group health plan."

COMMITTEE VIEWS

INTRODUCTION

Background on employer-sponsored insurance coverage

Since World War II, employers have offered health care benefits to recruit and retain talent and to ensure a healthy and productive workforce. Employer-sponsored health insurance is one of the primary means by which Americans obtain health care coverage. Almost 159 million American workers and family members are covered by a health benefit plan offered by an employer.[2] The U.S. Census Bureau reports that 54.3 percent of Americans were covered by employment-based health coverage in 2021.[3] When given the option for employment-based health coverage, 77 percent of workers take up coverage.[4] Almost all businesses with at least 200 or more employees offer health benefits.[5] According to the Kaiser Family Foundation, however, smaller firms (with 3 to 199 employees) are significantly less likely to offer health benefits.[6] As a result, in 2022, just over half of all employers offered some health benefits.[7]

Employer-provided health benefits are regulated by a number of laws, including ERISA as amended by the ACA. The Department of Labor (DOL) implements and enforces ERISA. By virtue of its jurisdiction over ERISA, the Committee has jurisdiction over employer-provided health coverage.

Self-insured health plans

Small and large employers offer health care coverage to employees in self-funded arrangements (self-insurance) or purchase fully insured plans. ERISA regulates both fully insured and self-insured plans, but only self-insured plans are exempt from a patchwork of benefit mandates and regulations imposed under state insurance law. Employers sponsoring self-insured plans are not subject to the same requirements under ACA as those with fully-insured plans. Therefore, employer-provided plans have different requirements and costs depending on funding arrangements. Last year, approximately 65 percent of workers with employer-sponsored health cov-

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[2] KAISER FAMILY FOUND., EMPLOYER HEALTH BENEFITS: 2022 ANNUAL SURVEY, 2022 EMPLOYER HEALTH BENEFITS SURVEY 58, http://files.kff.org/attachment/Report-Employer-Health-Benefits-2022-Annual-Survey.pdf.

[3] U.S. CENSUS BUR., U.S. DEP'T OF COM., HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2021, http://census.gov/content/dam/Census/library/publications/2022/demo/p60-278.pdf.

[4] Kaiser Family Found., *supra* note 2, Summary of Findings, 12.

[5] *Id.*

[6] *Id.*

[7] *Id.*

erage were enrolled in a self-funded plan, up from 44 percent in 1999 and 55 percent in 2007.[8]

An employer can provide health insurance to employees either by fully insuring or self- insuring. An employer who is fully insured enters into a contractual agreement with a health insurer to purchase a product for the employer's employees. The employer and employees pay a fixed, monthly premium to the insurance company. This arrangement is what many consider "traditional" insurance. An employer that self-funds provides for employees' medical costs by paying providers directly or reimbursing employees as claims arise, instead of paying a fixed premium to an insurance company. Although self-insured employers are responsible for employees' health care expenses, they may customize the design of their health plans to meet the specific needs of their workforce and can retain savings in years with low claims.

A self-insured employer may administer health claims in-house or subcontract the administrative services to a third party administrator (TPA).[9] The employer or TPA coordinates provider network contracts[10] and stop-loss insurance for unexpected high claims.[11] By making a conscious choice to bear the financial risk of an employee's health care expenses, employers can experience cost savings that are not available from a coverage purchased in the fully insured market. In 2017, Mr. Jay Richie, Executive Vice President, Tokio Marino HCC Stop-Loss Group, testifying before the Committee on behalf of the Self-Insurance Institute of America, Inc., discussed the value of self-funding:

> If you're a health insurer, you're going to take the increasing cost of medical insurance and, due to our new medical loss ratio law, get a profit percentage on the rising increase of that cost. So, you take it into a self-insured model, and you're not paying the health insurer's profits on top of your rising costs. That's the value of self-insurance. You're taking it and controlling your own destination, and keeping it at a true costs basis.[12]

According to Kaiser Family Foundation, 65 percent of employees with employer-sponsored health coverage receive that coverage through a self-insured plan.[13] The more employees an employer has, the more likely that employer is to self-insure. Kaiser reports that 20 percent of covered employees at small firms (3 to 199 employees) are covered through a self-insured plan, while 82 percent of employees at large firms are covered through a self-insured plan.[14] Small businesses are less likely to self-insure because unlike their larger counterparts, they have fewer employees to spread the risk[15] and often smaller margins to pay the claims. A combina-

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[8] *Id.* Fig. 10.2, at 157.

[9] SELF-INSURANCE INST. OF AMERICA, INC., SELF-INSURED GROUP HEALTH PLANS, http://www.siaa.org/i4a/pages/inde.cfm?pageid=7533.

[10] *Id.*

[11] SELF-INSURANCE INST. OF AMERICA, INC., STOP-LOSS EXCESS INSURANCE, https://www.siia.org/i4a/pages/index.cfm?pageid=7535.

[12] *Legislative Proposals to Improve Health Care Coverage and Provide Lower Costs for Families: Hearing Before the H. Comm. on Educ. & the Workforce*, 115th Cong. 83 (2017) (testimony of Jay Ritchie, Exec. Vice President, Tokio Marine HHC).

[13] Kaiser Family Found., *supra* note 2, at 156.

[14] *Id.*

[15] *Id.* ("Self-funding is common among larger firms because they can spread risk of costly claims over a larger number of workers and dependents.")

tion arrangement of self-funded insurance combined with significant stop-loss coverage (called "level-funded arrangements") has evolved in recent years to mitigate a small business' risk for self-funding.[16]

Many employers choose to self-insure because they can customize their plans to their workforce. For example, self-insured plans are not required to cover all categories of essential health benefits mandated by the ACA, so employers can structure their plans to meet the specific needs of their employees. The Self-Insurance Institute of America lists the following advantages of self-insured health plans:

> 1. The employer can customize the plan to meet the specific health needs of its workforce, as opposed to purchasing a 'one-size-fits- all' insurance policy.
> 2. The employer maintains control over the health plan reserves, enabling maximization of interest income—income that would be otherwise generated by an insurance carrier through the investment of premium dollars.
> 3. The employer does not have to pre-pay for coverage, thereby improving case flow.
> 4. The employer is not subject to conflicting state health insurance regulations/benefit mandates, [because] self-insured health plans are regulated under federal law (ERISA).
> 5. The employer is not subject to state health insurance premium taxes which are generally 2-3 percent of the premium's dollar value.
> 6. The employer is free to contract with the providers or provider network best suited to meet the health care needs of its employees.[17]

Self-insurance is also attractive to employers due to the long-term financial savings it may provide. Mr. Joel White, President of the Council for Affordable Health Coverage, explained that self-funding is a tool for small businesses "to better manage costs and innovate benefits."[18] In 2017, Mr. Jay Ritchie, Executive Vice President, Tokio Marino HCC Stop-Loss Group, explained why self-insurance may provide long-term financial savings when he stated

> [O]ver a three- to five-year period, we see that self-insurance is generally cheaper than health insurance. Now, on a year-to-year basis, that may be very different because the health insurance is prospectively priced where the self-insurance is actually priced. Whatever you actually spend that year is your cost, where for health insurance, they're predicting that."[19]

Stop Loss Insurance

Many self-insured employers also purchase stop-loss insurance, a financial risk- management tool designed to protect against catastrophic claims expenses. Stop-loss insurance reimburses a self-insured plan sponsor for medical claims that exceed a certain pre-es-

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[16] *Id.*

[17] SELF-INSURANCE INST. OF AMERICA, INC., SELF-INSURED GROUP HEALTH PLANS, http://www.siaa.org/i4a/pages/inde.cfm?pageid=7533.

[18] *Reducing Health Care Costs for Working Americans and Their Families: Hearing Before the H. Subcomm. on Health, Emp., Lab., & Pensions of the H. Comm. on Educ. & the Workforce*, 118th Cong. (2023) (statement of Joel White, President, Council for Affordable Health Coverage).

[19] *Legislative Proposals to Improve Health Care Coverage and Provide Lower Costs for Families: Hearing Before the H. Comm on Educ. & the Workforce*, 115th Cong. 110 (2017) (testimony of Jay Ritchie, Exec. Vice President, Tokio Marine HCC).

tablished level of liability; it does not insure employees, nor does it reimburse medical providers for care. As Mr. Ritchie stated in his testimony before the Committee in 2017, "stop-loss does not insure employees nor do we reimburse medical providers for care, but rather stop-loss reimburses a self- insured entity for health care payments they have made that exceed a certain, pre-determined level similar to a liability product."[20]

The point at which the stop-loss carrier begins to pay its obligations for stop-loss insurance is called the "attachment point."[21] There are two types of stop-loss insurance: "specific" and "aggregate." Specific stop-loss insurance protects against a high claim of a single employee (or dependent).[22] Aggregate stop-loss insurance limits the total amount a self-insured employer must pay for all claims during a certain period.[23] Stop-loss insurance may also be purchased for certain types of claims.[24] An employer could purchase more than one type of stop-loss coverage.[25] Kaiser reports that over the last few years, the percentage of employees in self-insured plans that have stop-loss insurance in 2022 is about the same for small firms (73 percent) and large firms (72 percent).[26]

A combination arrangement of self-funded insurance combined with significant stop loss coverage (called "level-funded arrangements") has evolved in recent years to mitigate a small business' risk for self-insuring.[27] According to Mr. White's testimony in 2023, level-funded plans have three parts: administration (processing of claims and estimating premiums); claims costs (payment of actual employee medical expenses); and stop-loss (insurance coverage for excess losses). His testimony detailed the use of level-funding arrangements as a tool to allow small businesses flexibly to design their plans under the self-insured rules and to reduce risk with stop- loss coverage.[28]

Stop-loss insurance is sometimes regulated at the state level but not at the federal level. However, the Obama administration repeatedly signaled interest in regulating stop-loss insurance as health insurance. In 2014, DOL posted guidance on state regulation of stop-loss insurance[29] stating its position that a state law would not be preempted by ERISA. In response to DOL's guidance, then-Chairman of the HELP Subcommittee Phil Roe (R–TN) introduced H.R. 1304 (115th Congress), the *Self-Insurance Protection Act*, which passed the House on suspension by a vote of 400–16.

Mr. White testified that some states have started to limit small employers' ability to maintain self-funded group health coverage for employees.[30] Even though states may not directly regulate self-funded plans established under ERISA, "some states have effectively eliminated small employer access [to self-funded coverage] by banning the sale of level-funded plans to certain size groups or

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[20] *Id.* at 41 (statement of Jay Ritchie, Exec. Vice President, Tokio Marine HCC).
[21] Kaiser Family Found., *supra* note 2, at 163.
[22] *Id.* at 161.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* at 162. For these purposes, a small firm is 50 to 199 employees, and a large firm is 200 or more employees.
[27] *Id.* at 156.
[28] White statement, *supra* note 20.
[29] DOL, TECHNICAL RELEASE NO. 2014–01: GUIDANCE ON STATE REGULATION OF STOP-LOSS INSURANCE (Nov. 6, 2014), https://dol.gov/node/63762.
[30] White statement, *supra* note 20.

making the sale of low attachment point plans illegal."[31] Mr. White recommended that Congress clarify that ERISA preempts state laws which adversely impact the ability of small businesses to maintain self-funded arrangements, including the ability to coordinate stop-loss coverage that is paired with a self-funded arrangement.[32]

Stop-loss coverage is not and should not be defined as health insurance coverage under ERISA, the PHSA, or the Code. Stop-loss insurance differs from health insurance in that it does not insure employees or reimburse medical providers for care.

Support for creating options and flexibility for small businesses

The Council for Affordable Health Coverage, the Self-Insurance Institute of America, Inc., the Partnership for Employer-Sponsored Coverage, the U.S. Chamber of Commerce, the Associated General Contractors of America, the MLD Foundation, Main Street Freedom Alliance, National Association of Wholesaler-Distributors, National Federation of Independent Business, Small Business & Entrepreneurship Council, and the Coalition to Protect and Promote Association Health Plans support H.R. 2813 because it protects a funding mechanism option that businesses should be permitted to consider when offering a self-insured health plan to their employees. Moreover, the legislation ensures that thousands of employers—large and small—who currently self-insure their health plans will be able to continue providing affordable benefits that best meet the needs of workers and their families.

H.R. 2813, THE SELF INSURANCE PROTECTION ACT

H.R. 2813, the *Self-Insurance Protection Act*, amends ERISA to clarify that federal regulators cannot redefine stop-loss insurance as traditional health insurance in order to preserve the option of self-funding. The bill also prohibits states from regulating stop-loss insurance if state laws or regulations would make stop-loss insurance inaccessible to employers. By providing legal certainty, the bill will help ensure workers and families continue to have access to affordable, flexible self-insured health plans.

CONCLUSION

H.R. 2813, the *Self-Insurance Protection Act*, makes it easier for small businesses to promote a healthy workforce and offer more affordable health care coverage. By allowing small businesses to sponsor self-insured health coverage for their employees while mitigating financial risk for the employer through stop-loss insurance, the bill puts smaller businesses on a more level playing field with larger companies and unions. More importantly, it provides smaller employers— many of whom have limited resources—with a greater opportunity to offer their workers quality and affordable health care coverage. If enacted, H.R. 2813 will empower small businesses to provide quality health care for their employees.

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[31] *Id.*
[32] *Id.*

SUMMARY

H.R. 2813 SECTION BY SECTION

Section 1. Short title

Section 1 provides that the short title is "Self-Insurance Protection Act."

Section 2. Findings

Section provides the following findings by Congress:

(1) Small and large employers offer health benefits plan coverage to employees in self-funded arrangements using company assets or a fund, or by paying premiums to purchase fully insured coverage from a health insurance company.

(2) Employers that self-fund health benefit plans will often purchase stop-loss insurance as a financial risk-management tool to protect against excess or unexpected catastrophic health plan claims losses that arise above projected costs paid out of company assets.

(3) Stop-loss coverage insures the employer sponsoring the health benefit plan against unforseen health plan claims, does not insure the employee health benefit plan itself, and does not pay health care providers for medical services provided to the employees.

(4) Employer-sponsored health benefit plans are regulated under the Employee Retirement Income Security Act of 1974; however, States regulate the availability and the coverage terms of stop-loss insurance coverage that employers purchase to protect company assets and to protect a fund against excess or unexpected claims losses.

(5) Both large and small employers that choose to self-fund must also be able to protect company assets or a fund against excess or unexpected claims losses and States must reasonably regulate stop-loss insurance to assure its availability to both large and small employers.

Section 3. Certain medical stop-loss insurance obtained by certain plan sponsors of group health plans not included in the definition of health insurance coverage

Section 3(a) amends Subpart C, Part 7, Subtitle B, of Title I of ERISA by adding a new sentence at the end of Section 733(b)(1): "Such term shall not include a stop-loss policy obtained by a self-funded health plan or a plan sponsor of a group health plan that self-funds the health risks of its plan participants to reimburse the plan or sponsor for losses that the plan or sponsor incurs in providing health or medical benefits to such plan participants in excess of a predetermined level set forth in the stop-loss policy obtained by such plan or sponsor." This provision is to clarify that federal regulators cannot re-define stop loss insurance as traditional health insurance, thereby ensuring that employers can continue to use stop-loss insurance as an important financial tool to help provide health care coverage.

Section 4. Effect on other laws

Section 4 amends Part 5, Subtitle B of Title I of ERISA by adding a subsection (10) at the end of Section 514(b)) providing that Title I of ERISA (including part 7 relating to group health plans) preempts state laws that may prevent a group health plan from insuring against the risk of excess or unexpected health plan claims or losses. This provision renders ineffective any state law that may make stop-loss insurance inaccessible to employers.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 2813 takes important steps to preserve and expand access to affordable, high-quality health care coverage for small employers by ensuring that employers may continue to use stop-loss insurance as an important tool in providing employees with self-insured health coverage.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

EARMARK STATEMENT

H.R. 2813 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House rule XXI.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 06/06/2023

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 4 Bill: H.R. 2813 Amendment Number: 2

Disposition: Defeated by a Full Committee Roll Call Vote

Sponsor/Amendment: Courtney / SIPA_PREEMPT_AMD

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (CKDLrZRPDQ)		X		Mr. SCOTT (VA) (RDQNLQJ)	X		
Mr. WTLSON (SC)			X	Mr. GRTJALVA (AZ)	X		
Mr. THOMPSON (PA)		X		Mr. COURNTEY (CT)	X		
Mr. WALBERG (MT)		X		Mr. SABLAN (MP)			X
Mr. GROTHMAN (WT)		X		Ms. WTLSON (FL)			X
Ms. STEFANTK (NY)		X		Ms. BONAMTCT (OR)	X		
Mr. ALLEN (GA)		X		Mr. TAKANO (CA)	X		
Mr. BANKS (TN)		X		Ms. ADAMS (NC)	X		
Mr. COMER (KY)		X		Mr. DESAULNTER (CA)	X		
Mr. SMUCKER (PA)		X		Mr. NORCROSS (NJ)	X		
Mr. OWENS (UT)		X		Ms. JAYAPAL (WA)	X		
Mr. GOOD (VA)			X	Ms. WTLD (PA)	X		
Mrs. MCCLATN (MT)		X		Ms. MCBATH (GA)	X		
Mrs. MTLLER (TL)		X		Mrs. HAYES (CT)	X		
Mrs. STEEL (CA)		X		Ms. OMAR (MN)	X		
Mr. ESTES (KS)		X		Ms. STEVENS (MT)	X		
Ms. LETLOW (LA)		X		Ms. LEGER FERNANDEZ (NM)	X		
Mr. KTLEY (CA)		X		Ms. MANNTNG (NC)	X		
Mr. BEAN (FL)		X		Mr. MRVAN (TN)	X		
Mr. BURLTSON (MO)		X		Mr. BOWMAN (NY)	X		
Mr. MORAN (TX)			X				
Mr. JAMES (MT)		X					
Ms. CHAVEZ-DEREMER (OR)		X					
Mr. WTLLTAMS (NY)		X					
Ms. HOUCHTN (TN)		X					

TOTALS: Ayes: 18 Nos: 22 Not Voting: 5

Total: 45 / Quorum: / Report:

(25 R - 20 D)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 06/06/2023

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 5 Bill: H.R. 2813 Amendment Number: 1

Disposition: Good Motion to Report H.R. 2813 to the House with amendments and recommendation that the amendment be agreed to, and the bill as amended, do pass

Sponsor/Amendment: Good / SIPA_ANS

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (CKDLrZRPDQ)	X			Mr. SCOTT (VA) (RDQNLQJ)		X	
Mr. WILSON (SC)	X			Mr. GRIJALVA (AZ)		X	
Mr. THOMPSON (PA)	X			Mr. COURNTEY (CT)		X	
Mr. WALBERG (MI)	X			Mr. SABLAN (MP)			X
Mr. GROTHMAN (WI)	X			Ms. WILSON (FL)			X
Ms. STEFANIK (NY)	X			Ms. BONAMICI (OR)		X	
Mr. ALLEN (GA)	X			Mr. TAKANO (CA)		X	
Mr. BANKS (IN)	X			Ms. ADAMS (NC)		X	
Mr. COMER (KY)	X			Mr. DESAULNIER (CA)		X	
Mr. SMUCKER (PA)	X			Mr. NORCROSS (NJ)		X	
Mr. OWENS (UT)	X			Ms. JAYAPAL (WA)		X	
Mr. GOOD (VA)	X			Ms. WILD (PA)		X	
Mrs. MCCLAIN (MI)	X			Ms. MCBATH (GA)		X	
Mrs. MILLER (IL)	X			Mrs. HAYES (CT)		X	
Mrs. STEEL (CA)	X			Ms. OMAR (MN)		X	
Mr. ESTES (KS)	X			Ms. STEVENS (MI)		X	
Ms. LETLOW (LA)	X			Ms. LEGER FERNANDEZ (NM)		X	
Mr. KILEY (CA)	X			Ms. MANNING (NC)		X	
Mr. BEAN (FL)	X			Mr. MRVAN (IN)		X	
Mr. BURLISON (MO)	X			Mr. BOWMAN (NY)		X	
Mr. MORAN (TX)			X				
Mr. JAMES (MI)	X						
Ms. CHAVEZ-DEREMER (OR)	X						
Mr. WILLIAMS (NY)	X						
Ms. HOUCHIN (IN)	X						

TOTALS: Ayes: 24 Nos: 18 Not Voting: 3

Total: 45 / Quorum: / Report:

(25 R - 20 D)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.R. 2813 is to preserve and expand access to affordable, high-quality health care coverage for small employers by ensuring that employers may continue to use stop-loss insurance as an important tool in providing employees with self-insured health coverage.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2813 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING AND RELATED HEARINGS

In compliance with clause 3(c)(6) of rule XIII, the following hearing held during the 118th Congress was used to develop or consider H.R. 2813: On April 24, 2023, the HELP Subcommittee held a hearing entitled "Reducing Health Care Costs for Working Americans and Their Families."

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, a cost estimate was not made available to the Committee in time for the filing of this report. The Chairwoman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2813. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the committee adopts as its own the cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * * * *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

SUBTITLE B—REGULATORY PROVISIONS

* * * * * * *

PART 5—ADMINISTRATION AND ENFORCEMENT

* * * * * * *

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393–1 through 393–51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i)), qualified medical child support orders (within the meaning of section 609(a)(2)(A)), and the provisions of law referred to in section 609(a)(2)(B)(ii) to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action—

(A) with respect to which the State exercises its acquired rights under section 609(b)(3) with respect to a group health plan (as defined in section 607(1)), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see section 731.

(10) The provisions of this title (including part 7 relating to group health plans) shall preempt State laws insofar as they may now or hereafter prevent an employee benefit plan that is a group health plan from insuring against the risk of excess or unexpected health plan claims losses.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

(e)(1) Notwithstanding any other provision of this section, this title shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) For purposes of this subsection, the term "automatic contribution arrangement" means an arrangement—

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have

such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary under section 404(c)(5).

(3)(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

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PART 7—GROUP HEALTH PLAN REQUIREMENTS

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SUBPART C—GENERAL PROVISIONS

* * * * * * *

SEC. 733. DEFINITIONS.

(a) GROUP HEALTH PLAN.—For purposes of this part—

(1) IN GENERAL.—The term "group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care (as defined in paragraph (2) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. Such term shall not include any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).

(2) MEDICAL CARE.—The term "medical care" means amounts paid for—

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).

(b) DEFINITIONS RELATING TO HEALTH INSURANCE.—For purposes of this part—

(1) HEALTH INSURANCE COVERAGE.—The term "health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer. *Such term shall not include a stop-loss policy obtained by a self-insured group health plan or a plan sponsor of a group health plan that self-insures the health risks of its plan participants to reimburse the plan or sponsor for losses that the plan or sponsor incurs in providing health or medical benefits to such plan participants in excess of a predetermined level set forth in the stop-loss policy obtained by such plan or sponsor.*

(2) HEALTH INSURANCE ISSUER.—The term "health insurance issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2)). Such term does not include a group health plan.

(3) HEALTH MAINTENANCE ORGANIZATION.—The term "health maintenance organization" means—

(A) a federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a))),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(4) GROUP HEALTH INSURANCE COVERAGE.—The term "group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(c) EXCEPTED BENEFITS.—For purposes of this part, the term "excepted benefits" means benefits under one or more (or any combination thereof) of the following:

(1) BENEFITS NOT SUBJECT TO REQUIREMENTS.—

(A) Coverage only for accident, or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for on-site medical clinics.

(H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) BENEFITS NOT SUBJECT TO REQUIREMENTS IF OFFERED SEPARATELY.—

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Such other similar, limited benefits as are specified in regulations.

(3) BENEFITS NOT SUBJECT TO REQUIREMENTS IF OFFERED AS INDEPENDENT, NONCOORDINATED BENEFITS.—

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(4) BENEFITS NOT SUBJECT TO REQUIREMENTS IF OFFERED AS SEPARATE INSURANCE POLICY.—Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan.

(d) OTHER DEFINITIONS.—For purposes of this part—

(1) COBRA CONTINUATION PROVISION.—The term "COBRA continuation provision" means any of the following:

(A) Part 6 of this subtitle.

(B) Section 4980B of the Internal Revenue Code of 1986, other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines.

(C) Title XXII of the Public Health Service Act.

(2) HEALTH STATUS-RELATED FACTOR.—The term "health status-related factor" means any of the factors described in section 702(a)(1).

(3) NETWORK PLAN.—The term "network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(4) PLACED FOR ADOPTION.—The term "placement", or being "placed", for adoption, has the meaning given such term in section 609(c)(3)(B).

(5) FAMILY MEMBER.—The term "family member" means, with respect to an individual—

(A) a dependent (as such term is used for purposes of section 701(f)(2)) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(6) GENETIC INFORMATION.—

(A) IN GENERAL.—The term "genetic information" means, with respect to any individual, information about—

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(B) INCLUSION OF GENETIC SERVICES AND PARTICIPATION IN GENETIC RESEARCH.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(C) EXCLUSIONS.—The term "genetic information" shall not include information about the sex or age of any individual.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTIONS.—The term "genetic test" does not mean—

(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(8) GENETIC SERVICES.—The term "genetic services" means—

(A) a genetic test;

(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(C) genetic education.

(9) UNDERWRITING PURPOSES.—The term "underwriting purposes" means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

(B) the computation of premium or contribution amounts under the plan or coverage;

(C) the application of any pre-existing condition exclusion under the plan or coverage; and

(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

* * * * * * *

MINORITY VIEWS

INTRODUCTION

Congressional Democrats and the Biden and Obama Administrations have made historic progress to improve the affordability of health insurance and combating growth in the overall cost of providing care in the United States. This has made the system fairer for consumers and helped bring the uninsured rate down to 8 percent—the lowest level in history.[1] While more work needs to be done to achieve an affordable health care system, H.R. 2813, the *Self-Insurance Protection Act*, would be counterproductive to these efforts.

Committee Democrats do not oppose the purchase of stop loss insurance to help plan sponsors mitigate their risk when they self-insure. However, stop loss, like any other insurance product, must be subject to reasonable oversight and consumer protections. Unfortunately, H.R. 2813 would prevent both the federal government and state regulators from performing necessary oversight and taking action to protect consumers and small businesses. Therefore, Committee Democrats oppose H.R. 2813.

REGULATORY FRAMEWORK OF SELF-INSURANCE

In general, a group health plan can be funded through two different mechanisms. The plan can either be: (1) self-insured, where the plan sponsor is responsible for the costs of health care claims incurred by plan participants and beneficiaries; or (2) fully insured, where the plan sponsor shifts the financial risk by purchasing coverage from an insurance company who is responsible for costs incurred under the plan.[2]

Many self-insured plans purchase additional insurance coverage known as "stop loss,"[3] in which an insurance carrier bears the financial responsibility for claims that are incurred above a certain threshold (known as the "attachment point").[4] Although states generally have authority to regulate insurers offering coverage in the group market (as well as the individual market), self-insured group health plans are generally exempt from state regulation due to the broad preemption provision of the *Employee Retirement Income Security Act* (ERISA).[5]

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[1] Aiden Lee et al., *National Uninsured Rate Reaches All-Time Low in Early 2022,* Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services (Aug. 2022), https://aspe.hhs.gov/sites/default/files/documents/15c1f9899b3f203887deba90e3005f5a/Uninsured-Q1-2022-Data-Point-HP-2022-23-08.pdf.

[2] Gary Claxon et. al., *2022 Employer Health Benefits Survey,* Kaiser Family Foundation at 163 (Oct. 27, 2022), https://files.kff.org/attachment/Report-Employer-Health-Benefits-2022-Annual-Survey.pdf.

[3] Both "stop loss" and "stop-loss" are used interchangeably.

[4] Claxon at al., *supra* note 2 at 160.

[5] 29 U.S.C. § 1144(a).

Federal law does not generally apply any substantive standards to stop loss insurance, as this market is traditionally within the purview of state insurance regulators. However, stop loss issuers may be subject to certain ERISA requirements as group health plan service providers.[6] In addition, ERISA, the *Public Health Service Act* (PHSA) and the *Internal Revenue Code* (IRC) provide authority to the Departments of Labor, Health and Human Services, and the Treasury, respectively, to interpret and enforce requirements applicable to group health plans and issuers offering health insurance coverage in connection with a group health plan.[7]

STOP LOSS AS A POTENTIAL WORKAROUND FROM ACA CONSUMER PROTECTIONS

While stop loss insurance, when used for its intended purpose, can provide appropriate financial protection for self-funded employers against large losses, experts have increasingly observed that it is often used as a tool to evade regulatory and statutory requirements. Specifically, there has been a marked growth in the number of so-called "level-funded" group health plans, in which plan sponsors—generally small employers—purchase stop loss coverage with extremely low attachment points that essentially insulate the sponsor from meaningful financial responsibility for claims.[8] This allows the plan to operate as a de facto fully insured plan, in which the plan sponsor is only responsible for making fixed payments to the insurer. However, because the plan is legally considered self-insured, ERISA preempts state laws that seek to regulate the plan, and certain requirements of the *Affordable Care Act* (ACA)[9] do not apply.[10] As a result, the plan is effectively exempt from key consumer protections, most notably the requirement to provide all ten Essential Health Benefits under the ACA.[11]

H.R. 2813 OBSTRUCTS FEDERAL OVERSIGHT OF HEALTH INSURANCE COVERAGE

In recognition that the federal government has authority to clarify that health insurance that masquerades as stop-loss is subject to relevant consumer protections,[12] Republicans have in the past proposed legislation to exempt stop loss from the definition of "health insurance coverage" under federal law.[13] Similarly, H.R. 2813 would amend federal law to exempt stop loss insurance from the definition of "health insurance coverage." This is unnecessary and would only serve to hinder potential efforts to protect consumers and small businesses.

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[6] 29 U.S.C. § § 1106, 1108(b)(2).

[7] Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104–91 § 104.

[8] Claxton et al., *supra* note 2 at 156. *See also* Christen Linke Young, *Taking a Broader View of "Junk Insurance,"* Brookings Institution at 16–17 (July 6, 2020), https://www.brookings.edu/wp-content/uploads/2020/07/Broader-View_July_2020.pdf.

[9] Pub. L. No. 111–148 (2010).

[10] Young, *supra* note 8 at 16, https://www.brookings.edu/wp-content/uploads/2020/07/Broader-View_July_2020.pdf.

[11] *Id.*

[12] *See* Departments of Labor, Health and Human Services, and the Treasury, *Request for Information Regarding Stop Loss Insurance*, 77 Fed. Reg. 25788 (May 1, 2012), https://www.govinfo.gov/content/pkg/FR-2012-05-01/pdf/2012-10441.pdf.

[13] H.R. 1304, *Self-Insurance Protection Act* (115th Congress).

It is well established that traditional stop loss insurance policies that insulate employers from catastrophic risk are not health insurance coverage, and there is no indication that the federal government plans to regulate stop loss. Therefore, H.R. 2813 would have little immediate impact on federal oversight of this sector. However, as noted above, the proliferation of level-funded plans using stop loss as a workaround from consumer protections may necessitate future action. Indeed, experts have expressed concern about the inadequacy of the current federal regulatory framework and argue that it would be appropriate to clarify that stop loss functioning as de facto health insurance is subject to rules that apply to other forms of health insurance coverage.[14] However, by redefining health insurance coverage to explicitly exclude stop loss, H.R. 2813 seeks to prevent such action in the future.

H.R. 2813 Undermines Well-Established State Authority Over Stop Loss

In addition, H.R. 2813 takes the extraordinary step of amending ERISA's preemption provision to specifically restrict states that wish to regulate stop loss insurance to protect consumers and small businesses. The bill provides that all requirements of title I of ERISA "shall preempt State laws insofar as they may now or hereafter prevent an employee benefit plan that is a group health plan from insuring against the risk of excess or unexpected health plan claims losses."[15] This undoes decades of jurisprudence that has long recognized the states' role in regulating the sale of insurance[16] and goes beyond previous legislative efforts by Committee Republicans to prevent regulation of stop loss.

H.R. 2813 would call into question numerous existing state laws and would impede other states from taking future actions to protect consumers and businesses. For example, Connecticut law requires that stop loss policies be filed with and approved by the insurance commissioner,[17] who has issued strong substantive standards to ensure that attachment points are set at reasonable levels.[18] In addition, some states, including Delaware, New York, and Oregon, have prohibited the sale of stop loss to small employers with fewer than a certain threshold number of employees.[19] In at least four states, legislation has been enacted that is similar to the model law endorsed by the National Association of Insurance Commissioners, which provides standards regarding attachment points and prevents stop loss from directly paying health claims.[20]

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[14] Young, *supra* note 8 at 33–4. See also, Mark Hall, *Regulating Stop-Loss Coverage May Be Needed To Deter Self-Insuring Small Employers From Undermining Market Reforms,* Health Affairs (Feb. 2012), https://www.healthaffairs.org/doi/10.1377/hlthaff.2011.1017.

[15] H.R. 2813, *Self-Insurance Protection Act* (118th Congress), § 4.

[16] *See* Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985).

[17] C.G.S. § 38a–8b.

[18] State of Connecticut Insurance Department, Bulletin HC–126 (May 6, 2019), https://portal.ct.gov/-/media/CID/1_Bulletins/Bulletin-HC–126.pdf.

[19] Alex Reger & Kristen Miller, *State Regulation of Stop Loss Insurance,* Office of Legislative Research (Sept. 27, 2019), https://www.cga.ct.gov/2019/rpt/pdf/2019-R00193.pdf.

[20] *Id.*

H.R. 2813's Preemption Provision Could Further Hinder State Solvency and Consumer Protection Standards

In addition to preempting states' authority to enact specific restrictions on the content of stop loss policies, H.R. 2813 may even restrict states from applying other protections that govern insurance carriers generally—including solvency requirements that prevent underfunding, mismanagement, and fraud. Under current law, ERISA already broadly exempts self-insured plans from state law and H.R. 2813's preemption provision could further hinder states that wish to apply solvency standards on stop loss sold in connection with the plan. This could leave states with no clear authority to regulate the solvency of either the underlying group health plan or the stop loss policy, placing both workers and employers at risk of financial harm. It could also leave individuals harmed by insolvencies with little recourse for unpaid medical claims.

History has shown the very real risks this presents for consumers. The historically lax regulation of multiple employer welfare arrangements (MEWAs) under state solvency and consumer protection standards has led to numerous high-profile insolvencies, including numerous instances in which MEWAs left individuals, employers, and health care providers with tens of millions in unpaid medical claims.[21] As the National Association of Insurance Commissioners put it in 1982 when state authority to regulate MEWAs was similarly undermined by preemption:

> There is one common theme, however, and that is the inability of the State regulators to adequately monitor and regulate the activities of [self-funded MEWAs] that purport to be welfare benefit programs in order to insure solvency and proper claims practices. . . . Simply put, we feel that with respect to the solvency of these employee welfare benefit plans, no one is in charge: Not the Labor Department, not the IRS, and by Federal law, not the State insurance commissioners.[22]

H.R. 2813's erosion of state authority—when paired with the bill's similar restriction on federal authority—is particularly alarming to consumer and patient advocates. A group of over two dozen consumer and patient advocacy organizations, including the American Cancer Society Cancer Action Network, the American Heart Association, and the Leukemia & Lymphoma Society, expressed grave concerns with H.R. 2813's preemption of state law, warning the Committee that "[r]emoving states" ability to regulate stop-loss coverage would lead to less oversight of these plans, which would increase the likelihood of misleading marketing and other fraudulent practices that would prove harmful to employers purchasing stop-loss coverage as well as their employees."[23]

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[21] Mila Kofman, et al., MEWAs: *The Threat of Plan Insolvency and Other Challenges*, Commonwealth Fund (March 2004), https://www.commonwealthfund.org/sites/default/files/documents/_media_files_publications_issue_brief_2004_mar_mewas_the_threat_of_plan_insolvency_and_other_challenges_kofman_mewas_pdf.pdf.

[22] *Oversight Investigation of Certain Multiple Employer Health Insurance Trusts (METs), Evading State and Federal Regulation: Hearing Before the Subcomm. on Lab.-Mgmt. Rel. of the H. Comm. on Educ. & Lab.*, 97th Cong. 51 (1982) (Testimony of Beth Kravetz, Federal Affairs Counsel, National Association of Insurance Commissioners).

[23] *Patient community concerns about the detrimental impact of policies included in HR 2868, the Association Health Plans Act; HR 824, the Telehealth Benefit Expansion for Workers Act; and HR 2813, the Self-Insurance Protection Act*, Letter to Chair Virginia Foxx and Ranking Member

H.R 2813 Poses Additional Risks to Consumers and Small Businesses

While employers might view level-funding as a way to avoid the financial risk of self-insuring while achieving potential savings, these arrangements nonetheless pose serious risks to employers and to workers. Families USA, a nonprofit, nonpartisan consumer health advocacy and policy organization, points out that "some small employers may not fully understand the risks of 'level-funded' plans" and that stop loss is exempt from protections that apply to health insurance coverage.[24] The Massachusetts' Division of Insurance has publicly advised that small employers should "take extreme caution when considering self-funded health plans" and "urges such employers to consider the financial consequences of a year with higher than projected health claims."[25] For example, an insurer may offer a low rate to a small business for stop loss that makes level-funding attractive initially, but following a year in which claims are unexpectedly high may immediately raise premiums to an unaffordable level. Because it is not health insurance coverage, stop loss is exempt from provisions that could mitigate such harms—such as the ACA's requirement of annual rate review of unreasonable premium increases.[26] By further tying the hands of state and federal regulators that seek to protect consumers and employers from these arrangements, H.R. 2813 would exacerbate these risks.

Finally, as with proposals to expand association health plans, H.R. 2813 threatens the broader insurance market. The ACA ensured a level playing field in the small group market by requiring insurers to use a single risk pool and comply with consumer protections such as coverage of Essential Health Benefits. However, because self-insured plans are not subject to these requirements, increasing incentives for sponsors to level-fund their plans risks segmenting the insurance market and—when healthier groups leave the single risk pool—disadvantages those left behind. As Families USA notes, "level-funded plans not only pose risks to those families who rely on them for insurance, they can negatively impact families that access insurance in the traditional insurance markets by eroding risk pools."[27] The Center on Budget and Policy Priorities similarly warns that the legislation would "segment insurance markets."[28] When market segmentation occurs, older, sicker groups suffer, and health coverage becomes less affordable and potentially

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Bobby Scott, H. Comm. on Educ. & the Workforce, Full Committee Markup (June 6, 2023) (*on file with author*).

[24] Families USA, Statement for the Record, H. Comm. on Educ. & the Workforce, Full Committee Markup (June 6, 2023) (on file with author).

[25] Massachusetts Division of Insurance, *Consumer Alert: Beware of the Risks in Self-Funded Health Plans*, accessed June 9, 2023, https://www.mass.gov/service-details/consumer-alert-beware-of-the-risks-in-self-funded-health-plans.

[26] 42 U.S.C. § 300gg–94.

[27] *Id.*

[28] Sarah Lueck, *House Health Proposals Would Undermine Consumer Protections and Expand High-Income Tax Benefits*, Center on Budget and Policy Priorities (June 5, 2023), https://www.cbpp.org/blog/house-health-proposals-would-undermine-consumer-protections-and-expand-high-income-tax.

out of reach.[29] As a result, H.R. 2813 threatens to raise costs throughout the broader health insurance market and could make it more difficult for certain groups to access affordable coverage.

DEMOCRATIC AMENDMENT OFFERED DURING MARKUP OF H.R. 2813

Committee Democrats put forward an amendment to improve the bill. The amendment would have mitigated the harm posed by the legislation by preserving the ability of states to regulate stop loss insurance and act in the best interests of their residents. Committee Republicans unanimously rejected the amendment.

Amendment	Offered By	Description	Action Taken
#2	Mr. Courtney	Strike section 4 of the bill that prohibits states from regulating stop loss.	Defeated

CONCLUSION

Committee Democrats are concerned about H.R. 2813, the *Self-Insurance Protection Act*, and the risks it poses to small employers and workers. Committee Democrats are committed to reducing health care costs and protecting access to comprehensive health coverage. For the reasons stated above, Committee Democrats unanimously opposed H.R. 2813 when the Committee on Education and the Workforce considered it on June 6, 2023. We urge the House of Representatives to do the same.

ROBERT C. "BOBBY" SCOTT,
Ranking Member.
JOE COURTNEY.
MARK TAKANO.
MARK DESAULNIER.
PRAMILA JAYAPAL.
LUCY MCBATH.
TERESA LEGER FERNANDEZ.
FRANK J. MRVAN.
RAÚL M. GRIJALVA.
GREGORIO KILILI CAMACHO SABLAN.
SUZANNE BONAMICI.
ALMA S. ADAMS.
SUSAN WILD.
JAHANA HAYES.
HALEY M. STEVENS
JAMAAL BOWMAN.

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[29] *See, e.g.*, American Academy of Actuaries, *Drivers of 2020 Health Insurance Premium Changes* (June 2019), https://www.actuary.org/sites/default/files/2019-06/PremiumDrivers2020.pdf.