

January 12, 2024

House Education and the Workforce Health Subcommittee Hearing on Competition and Transparency

On Thursday (January 11), the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions held a hearing entitled, "Lowering Costs and Increasing Access to Health Care with Employer-Driven Innovation." During the hearing, lawmakers heard from a panel representing an employer, a voluntary employees' beneficiary association (VEBA), an economist, and an academic, on the innovative ways employers are working to reduce health care costs for their workers.

Several witnesses spoke about the benefits of direct contracting and the barriers employers, particularly small employers face, in pursuing value-based payment models. Lawmakers and witnesses also spoke about the impact of employer pooling and Association Health Plans (AHPs) on health care costs, with Republicans generally speaking favorably of such plan options and Democrats generally raising concerns about the impact on those outside of pools and raising the need for safeguards and guardrails around such policies.

- For more information: <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=409922>

Opening statements

Subcommittee Chair Bob Good (R-VA): In his opening statement, Chair Good said, "The cost of health care is one of the greatest challenges our country faces." He spoke critically of the Affordable Care Act's (ACAs) federal exchange subsidies and rising premiums. He said that employers in the US are innovating to lower premium costs, but they face regulatory hurdles to value-based payment models and other innovative ideas. He noted that these barriers are particularly burdensome for small and midsize employers. Further, he spoke about the obstacles employers face accessing cost and quality data. To address these problems, Chair Good said Congress could pursue policies to allow employers to join together into one direct contract with a provider, strengthen data sharing requirements, and clarify that ERISA self-funded plans can participate in innovative payment models. [Full statement.](#)

Subcommittee Ranking Member Mark DeSaulnier (D-CA): In his opening statement, Ranking Member DeSaulnier said he is interested in the work employers are doing, stating that "when employers save more, employees take home more." However, DeSaulnier said Congress should focus on policies that support all Americans. He spoke about the impact the ACA and the American Rescue Plan have had on reducing the uninsured rate and noted that the Inflation Reduction Act (IRA) extended premium tax credit enhancements, capped insulin costs for Medicare beneficiaries and enabled Medicare to negotiate prescription drug costs. He encouraged the committee to work in a bipartisan fashion to expand quality health coverage for everyone by strengthening the ACA and lowering prescription drug costs, such as through the Lower Drug Costs for American Families Act, and criticized Republican proposals to expand AHPs without adequate protections.

Witness Testimony

Michele Beehler, Senior Director of Health and Wellbeing, Schweitzer Engineering Laboratories (SEL). In her

testimony, Mrs. Beehler spoke about the importance of employer pricing and quality data ownership and transparency in controlling health care costs. She said that SEL owns two health clinics which provide high-quality, comprehensive primary care services to covered patients. Further, she said that the transparency provisions of the No Surprises Act and the hospital and insurer price transparency rules have enabled SEL to save nearly \$2 million in 2023. She asked the Subcommittee to build on those successes and further remove obstacles by supporting policies that simplify health care transactions and remove unnecessary middlemen, strengthen federal transparency rules, and increase group health plans' access to health data. [Full Testimony](#).

Laura Josh, General Manager, California Schools VEBA ("VEBA"). In her testimony, Ms. Josh said VEBA consistently beats national averages with annual premium increases around just 4-5%, while maintaining a 94% member satisfaction rating. Ms. Josh said VEBA has been able to achieve this by gaining access to valuable cost and quality data, ensuring a competitive market, leveraging VEBA's market power to negotiate lower costs, and working with the state to ease regulatory barriers to innovative programs like a new direct contracting pilot. However, Ms. Josh said barriers remain that prevent VEBA from innovating further and prevent other employers from pursuing innovative models. Therefore, she recommended Congress take the following actions: Remove barriers to employer participation in value-based programs; increase transparency into health care claims and encounter data, along with health care provider quality data; ease federal and state restrictions on pooling, with appropriate protections; and invest in the pipeline of mental health and health care professionals. [Full Testimony](#).

Andrea Ducas, Vice President, Health Policy, Center for American Progress. In her testimony, Ms. Ducas spoke about the ways the ACA has strengthened health coverage, such as by removing lifetime and annual coverage limits, enabling young adults to remain on their parents' coverage, and establishing a set of essential health benefits (EHBs). She noted that US employers are pursuing innovative strategies to lower health care costs for their workers, but added that it "is not sufficient or realistic to expect that employers can sustainably lower health care costs on their own." She said Congress has an opportunity to support employers struggling with high health care costs by passing policies that support system-wide transparency, address health care consolidation, and crack down on anticompetitive behavior. Further, she said Congress could build on the IRA by expanding policies to lower drug costs, like Medicare drug price negotiation with caps, for patients in the commercial market. [Full Testimony](#).

Christopher Whaley, Health Economist, RAND Corporation. In his testimony, Dr. Whaley said that "many US employers face challenges in purchasing affordable health care coverage that provides real value for their workers, as more often than not they are having to make decisions while blind to prices for services in the marketplace." He added, "The combination of a lack of price transparency and health care consolidation has made fulfilling their fiduciary obligations challenging for even the most engaged employers and purchasers." He noted that a handful of employers are able to use innovative benefits to reduce spending and improve access to high-quality care, but said many employers lack access to the claims and quality data that are needed to achieve those outcomes. He urged Congress to pass federal policy that strengthens self-funded employers' access to plan claims data and improves compliance and usability of insurer and hospital price transparency rules. [Full Testimony](#).

Q&A

Subcommittee Chair Good (R-VA) asked how pooling could bring more competition and lower costs in the commercial market and what barriers need to be lifted to facilitate pooling. Ms. Josh said there has been increased consolidation among health care providers and insurers, but that purchasers remain fragmented. She explained that employers can better negotiate lower prices with health care providers when they pool together the purchasing power of employers. In regard to barriers, Ms. Josh said there are regulatory restrictions on the type of employer who can participate in a VEBA, which has prevented some small employers from being able to

join. She asked Congress to create a clear definition of the ERISA pre-emption for a purchasing group. When Chair Good asked how the uptake of innovative models like direct contracting increase competition, Dr. Whaley said the models can enable more providers to remain independent and promote competition. In response to a question on employer data access, Ms. Wheeler said it took SEL 18 months to get their claims data, but once obtained they were able to use it to identify trends and gaps in their plans and to contract directly with providers and ensure members receive the best quality care.

Ranking Member DeSauliner (D-CA) asked about the balance between quality assurance and cost. Ms. Ducas said establishing an all-payer claims database would enable everyone to see claims data, and making permanent enhanced premium tax credits- would ensure more Americans can access low-cost exchange plans. She also said Congress should build on the IRA by extending those powerful tools to the commercial market. He asked Ms. Josh how VEBA navigates high costs for patients while ensuring care remains accessible. Ms. Josh said VEBA firmly believes coverage must be affordable in order for care to be accessible. She noted that California has an Office of the Patient Advocate, an independent quality monitoring tool that provides valuable data and enabled VEBA to create a high-value performance network, encouraging action to ensure access to that type of quality information more broadly. Dr. Whaley said there are areas where we overspend in health care and underspend in health care, noting that areas like primary care and mental health see underinvestment.

Rep. Tim Walberg (R-MN) spoke about the Biden administration's proposed rule to scale back AHPs and asked how expanding AHPs would help reduce overall health care spending among employers. Ms. Josh said the concept of increased market power and pooled purchasing is incredibly powerful in helping employers achieve higher quality and lower cost care when done with appropriate guardrails and protections. She said pooling enables smaller companies to offer enhanced benefits such as mental health that would be unavailable outside of the pool. Ms. Josh said VEBA's view on health care is if it is unaffordable for a family to use it, the health care coverage itself is useless. When asked about barriers employers face to pooled purchasing, Dr. Whaley said access to data is the primary hurdle and recommended Congress codify federal transparency rules and ensure posted data can be widely used.

Rep. Susan Wild (D-PA) said she is concerned about items that are not covered under employer-sponsored plans and asked about some of the basic preventive services that may not be covered under those plans. Ms. Ducas said the ACA requires the coverage of essential health benefits and added that some states have passed more comprehensive coverage requirements. But she said some self-insured ERISA plans are not subject to those enhanced requirements and that coverage can vary greatly by plan and state. Rep. Wild also asked about challenges plans face in accessing data from third-party administrators and pharmacy benefit managers (PBMs). Dr. Whaley said employers often do not have access to their own claims data and this prevents employers from auditing their plans.

Rep. Donald Norcross (D-NJ) spoke about the importance of mental health parity and access to substance use disorder services. He spoke about the importance of enforcing mental health parity rules and his support for the Parity Enforcement Act (HR 3752), which would enable the Department of Labor to investigate instances of mental health parity noncompliance and levy penalties proactively. Ms. Ducas said gaps in coverage, particularly for mental health services, can be difficult for patients to navigate. She said there are many contributing factors including mental health providers lacking the incentive to contract with insurers because they are paid less when in-network. She said that having stronger parity laws is critical so the onus is not on the employee or consumers to access services. Dr. Whaley said mental health and addiction services and primary represent areas that are underinvested in health care.

Rep. Lori Chavez-DeRemer (R-OR) spoke about the importance of small employers having access to data from third-party administrators (TPAs). She spoke about the bipartisan Health DATA Act, which the House passed as

part of the Lower Costs More Transparency Act, to strengthen the ability of plan sponsors to access data from TPAs. Rep. Chavez-Deremer asked Ms. Josh how the bill would help employers reduce drug costs, who replied that transparency is a critical issue that has enabled VEBA to better understand costs and pair it with quality data from California's Office of the Patient Advocate to help members select the highest value provider. She said VEBA was able to use that data to create a tiered network that had lower patient costs and premiums for the highest quality providers and saved participating employers more than \$50 million in their first year while providing patients with better quality care. When asked what other policies Congress should consider to promote transparency, Ms. Ducas said any policy that gives employers access to their data will benefit both employers and their workers.

Rep. Joe Courtney (D-CT) spoke favorably about the latest ACA exchange marketplace enrollment period. He asked Ms. Ducas about the impact of the Lowering Drug Costs for Families Act (HR 4895), which would extend the IRA's inflation rebate penalties to the commercial market. Ms. Ducas said the prescription drug price negotiation and inflation rebates are tremendous savings generators for Medicare and spoke favorably of extending those to the commercial market. Rep. Courtney also asked Ms. Josh whether an appropriate guardrail for AHPs would be ensuring they must adhere to EHBs. Ms. Josh said that when VEBA worked with the California Legislature on legislation to enable the direct contracting pilot the bill included a provision codifying the EHBs that would be offered under those direct contracts to ensure high quality. Rep. Courtney stressed the potential for bipartisan movement on AHPs, but said it is essential that they comply with EHBs and have appropriate safeguards and guardrails.

Rep. Bobby Scott (D-VA) spoke critically of AHPs saying they allow one group to offer lower costs while everyone else pays a higher rate. Ms. Ducas said she is not aware of evidence suggesting that one group's negotiations can negatively impact others but cited an actuarial analysis that projected the Trump administration's AHP rule would have pulled healthy adults out of the exchange market, raising prices for those remaining. Rep. Scott also raised concerns about plans that operate outside of the ACA's protections, suggesting it could result in plans dropping more costly services like maternity care and obstetrics.

Rep. Eric Burlison (R-MO) asked about geographic barriers to expanding direct contracting arrangements, specifically asking about licensing restrictions for providers. Mrs. Beehler said SEL has many solutions in place to ease those barriers but noted that provider reciprocity remains a big issue, particularly coming out of the pandemic. Rep. Burlison said larger employers have saved health care dollars through direct contracts and kept premiums stable and asked about barriers employers could face to such arrangements. Dr. Whaley said increased transparency into health care costs and prices. Rep. Burlison indicated the problem is not transparency but a lack of competition that enables prices to remain hidden. He said, "If you provide more choice, transparency will follow," as opposed to legislating transparency. When asked about the supply side, Dr. Whaley said states without certificate of need laws have more access and more choice.

Rep. Kathy Manning (D-NC) spoke favorably about the IRA and praised the Committee for advancing the Health DATA Act, which she said would build on the IRA's successes. When asked how SEL has been able to use health data to lower costs and improve quality, Mrs. Beehler said they have leveraged data to lower pharmacy costs and gained better access to data by bringing health clinics in house and direct contracting with providers in their communities. Rep. Manning said the committee should look beyond PBMs to lower drug costs, including drug manufacturers, and asked Ms. Ducas how peer countries are able to reign in drug prices beyond price negotiation with manufacturers. Ms. Ducas said price negotiations and price caps are the main levers used in other countries. When asked why employers agree to anticompetitive contract terms, Ms. Ducas said employers typically lack the market power to push back.

Rep. Jahana Hayes (D-CT) spoke about the disparity in health care prices for Medicare, Medicaid, and the commercial market. She asked Ms. Ducas why it is so hard for employers to lower the prices they must pay. Ms.

Ducas said a large factor is lacking market power. When asked what the committee can do to lower health care costs for commercially insured patients, Ms. Ducas said leveling the playing field between purchasers and providers. She noted there is heavy consolidation in the provider and insurance market, saying one solution would be to reduce incentives for consolidation and reducing prescription drug prices. Rep. Hayes said there is a role for Congress to help lower drug costs and not leave employers to navigate it alone. When asked about the ACA's most important consumer protections, Ms. Ducas said removing annual and lifetime limits on coverage, enabling dependents to stay on their parents' plan until age 26, and requiring EHBs.

Chairman Foxx asked how the House-passed Lower Costs More Transparency Act would benefit employers engaging in innovative payment models. Dr. Whaley said to date it's been the frontier employers who can get access to their own data and said that expanding employer access to claims data would enable more employers to participate in these types of innovations. When asked about the regulatory challenges VEBA faced implementing its direct contracting pilot program, Ms. Josh said they faced regulatory barriers in California and had to work with the state legislature to enable VEBA to use capitation - a type of risk-based payment - in direct contracts. She said that it has been a five year journey and VEBA has successfully enrolled patients as of January 1 but for others to access it, even in California, they would need additional action and clarifications on being able to use those direct contracts more broadly. Chairman Foxx also asked Mrs. Beehler about the challenges SEL faced obtaining claims data and navigating the complexity of the health care system. Mrs. Beehler said their journey accessing claims data began years ago with the passing of the No Surprises Act, but noted that it took 18 months of direct discussions with their TPA to gain access to claims data, adding that it shouldn't be the norm.

If you have questions, please contact [Heather Meade](#) or [Heather Bell](#).

Washington Council Ernst & Young

Washington Council Ernst & Young (WCEY) is a group within Ernst & Young LLP that combines the power of a leading professional services organization with on-the-ground knowledge, personal relationships and attention to detail of a boutique policy firm. We provide our clients with timely, relevant Washington insight and legislative advisory services customized to their needs. To learn more, contact wcey@ey.com.