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HOUSE JOINT RESOLUTION NO. 49

Offered January 8, 2020

Prefiled January 5, 2020

Memorializing the Congress of the United States to amend ERISA to support state actions to expand access to health care.

Patron—Samirah

Referred to Committee on Rules

WHEREAS, the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., was signed into law with the intent of establishing uniform federal standards to protect private employee pension plans from fraud and mismanagement; and

WHEREAS, in the years since its enactment, ERISA has come to apply to most types of private employee benefit plans, including health insurance; and

WHEREAS, the Supreme Court of the United States has held that ERISA preempts any and all state laws that relate to employee benefit plans but does not preempt state laws that regulate insurance, and that self-insured employee benefit plans are not considered insurance under ERISA, with the result that ERISA preempts any and all state laws that relate to an employee benefit plan provided by a self-insured employer; and

WHEREAS, although federal law typically preempts conflicting state law in cases where compliance with state law would make compliance with the federal law impossible, ERISA goes further, broadly preempting any and all state laws that relate to a self-insured employee benefit plan, regardless of whether such laws conflict with existing federal laws; and

WHEREAS, broad interpretations of courts concerning whether a state law relates to a self-insured employee benefit plan has essentially put such plans beyond the reach of most state health regulations, including those that seek to mandate health benefits, increase health insurance coverage, control health care costs, and gather information about health care prices and quality; and

WHEREAS, more than 60 percent of all workers with private, employer-based health insurance are in self-funded employee benefit plans; and

WHEREAS, many states are pursuing health care financing reforms up to and including the establishment of a universal health care plan open to all residents of a state, including those who are currently enrolled in private, employer-based health insurance; and

WHEREAS, states have wide latitude to levy taxes and regulate health care in general; and

WHEREAS, federal appellate courts have split over the extent to which ERISA limits states' use of financial incentives to affect employers' health benefit decisions, generating uncertainty that hampers state efforts to finance a universal health care plan open to all residents; and

WHEREAS, ERISA has grown far beyond its original intent of establishing uniform federal standards to protect private employee pension plans from fraud and mismanagement and has transformed into a critical barrier for states seeking to enact meaningful health care reforms; and

WHEREAS, in order to ensure that states continue serving their role as sources of health care innovation in the most meaningful way, federal action is needed to amend ERISA; and

WHEREAS, ERISA, unlike most federal health care statutes such as Medicaid, Medicare, and the Affordable Care Act, does not contain waiver provisions that enable states to pursue policy experiments consistent with the states' role as "laboratories of democracy," and

WHEREAS, statutory waivers can provide states flexibility to work within a federal statutory scheme and mitigate unintended consequences of federal laws; and

WHEREAS, amending ERISA to add a statutory waiver provision that would allow states to apply to the U.S. Department of Labor, which could coordinate with the Departments of Treasury and Health and Human Services, for approval to deviate from certain ERISA preemption provisions in order to pursue certain health care reforms would simultaneously preserve ERISA's preemption baseline and encourage supervised state experimentation with health care reform efforts in a proven successful state regulatory scheme; and

WHEREAS, such a waiver process would not only restore autonomy of the states and the ability to experiment with policy solutions to benefit their citizens, but also shift some of the authority over state health care reform efforts from courts to agencies, thereby relying on the substantive expertise of agencies rather than the preemption precedents of courts; and

WHEREAS, the House of Delegates recognizes that states can and do enact meaningful health care reforms, but such reforms would be much more meaningful if applicable to all of a state's privately

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59 insured citizens; now, therefore, be it

60 RESOLVED by the House of Delegates, the Senate concurring, That the Congress of the United
61 States be urged to amend ERISA to support state actions to expand access to health care. The Congress
62 of the United States, and the members of the Virginia Congressional Delegation specifically, are urged
63 to take action and pass legislation to amend ERISA to clarify that state efforts to establish a universal
64 health care plan open to all state residents would not be preempted and add a waiver provision enabling
65 states to include self-insured single state employers in a wide range of health care reforms, such as the
66 State-Based Universal Health Care Act introduced by Representative Ro Khanna (CA-17), a landmark
67 step toward empowering states to expand health coverage to every resident; and, be it

68 RESOLVED FURTHER, That the Clerk of the House of Delegates transmit copies of this resolution
69 to the Speaker of the United States House of Representatives, the President of the United States Senate,
70 and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of
71 the General Assembly of Virginia in this matter.