

United States Senate
WASHINGTON, DC 20510

September 25, 2024

The Honorable Lisa M. Gomez
Assistant Secretary for Employee Benefits Security
Employee Benefits and Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington D.C. 20210

Dear Assistant Secretary Gomez:

We write to express our concerns regarding coverage for lactation services by group health plans and health insurance issuers covered under the Employee Retirement Income Security Act (ERISA). We respectfully request that the Department of Labor's (DOL) Employee Benefits and Security Administration (EBSA) utilize its existing authority to issue strong, recommended guidance for the legally required coverage of in-person lactation support, supplies and counseling from trained providers for pregnant and nursing parents across the country, as outlined in the Patient Protection and Affordable Care Act (ACA).

On November 18, 2022, Senator Duckworth wrote to the EBSA to voice concerns that insurers were failing to comply with the ACA's requirements. In response to that correspondence, on December 22, 2022, the EBSA stated they, "share your concern about consumer-reported denials of coverage for lactation care by group health plans and health insurance issuers," and noted that the EBSA, "work[s] diligently to ensure that coverage of breastfeeding services and supplies is available as required by the ACA and its implementing regulations, and we take the enforcement of these requirements very seriously."

As you know, the ACA mandated that all non-grandfathered, fully insured and self-insured plans in individual, small group and large group markets are required to cover certain preventive health services without cost-sharing for enrollees. These preventive health services include lactation support, supplies and counseling from trained providers.

Despite this mandate, many plans fail to cover and provide adequate access to lactation care. Our constituents have experienced several barriers to accessing quality lactation care imposed by their health plans or insurers that violate the ERISA and ACA, including:

- **Inadequate Provider Networks:** Some plans do not have enough in-network lactation care providers to cover the needs of enrollees, demonstrating an unwillingness to provide adequate access to such care, as mandated by the ACA;
- **Failure to Cover Out-of-Network Provider Services:** Some plans require cost-sharing or do not pay for claims from out-of-network lactation care providers, despite their own network's inadequate coverage. This is in direct conflict with applicable regulations that

require plans to cover items or services rendered by an out-of-network provider when the plan does not have an in-network provider that can furnish the item or service;

- **Lack of In-Person Service Coverage:** Though lactation care can be provided in person or via telemedicine, there are distinct advantages that come with each type of visit and therefore should be covered equally. From our understanding, some plan's in-network lactation care providers primarily offer services via telemedicine and do not cover in-person visits in a similar manner. Given their small number of in-network providers, inability to offer adequate in-person services and refusal to pay claims from out-of-network providers who offer in-person services, these plans have effectively created a *de facto* telemedicine-only network for lactation care. While plans may engage in "reasonable medical management" of lactation care under the ACA, *de facto* prohibitions on the modality used to provide care are contrary to the law. In a 2015 guidance document, DOL addressed a similar situation, finding that plans limiting coverage of lactation care to services provided during an inpatient hospital admission did not constitute "reasonable medical management." Similarly, limiting the availability of in-person lactation care by creating a telemedicine-only network is equally problematic under the ACA.

Plans have also imposed referral requirements and have failed to create directories of in-network providers, which also curtail the ACA's mandate and inhibit access to crucial preventive care for new and expecting mothers and their babies.

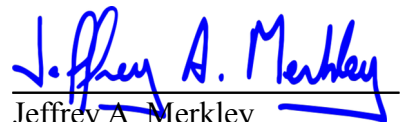
As such, we respectfully request that the EBSA utilize its oversight powers to engage with plans about the concerns described above, including potential violations of the ERISA. We also request that the EBSA provide further sub-regulatory guidance to clarify that plans must demonstrate sufficient coverage for all lactation care modalities, including in-person lactation care. Such guidance should provide information on how plans should form and demonstrate a sufficient network of lactation care providers, and, in the absence of a sufficient network, reimburse out-of-network claims.

Ensuring that new mothers and the more than 10,000 babies born each day in the United States receive critical preventive care, including comprehensive lactation care, is one of our top priorities. With our joint commitment to the health and well-being of new mothers and babies in mind, we look forward to your response.

Sincerely,



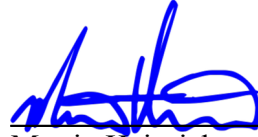
Tammy Duckworth
United States Senator



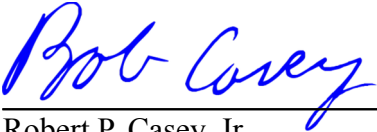
Jeffrey A. Merkley
United States Senator



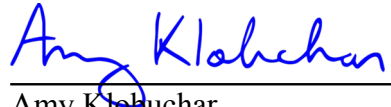
Cory A. Booker
United States Senator



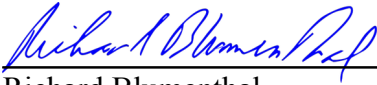
Martin Heinrich
United States Senator



Robert P. Casey, Jr.
United States Senator



Amy Klobuchar
United States Senator



Richard Blumenthal
United States Senator



Chris Van Hollen
United States Senator