

We urge Congress to uphold and strengthen the essential role that the Employee Retirement Income Security Act (ERISA) plays for multi-state employers who want to provide an equitable and robust workplace culture by providing uniform and affordable benefits to their employees regardless of where they live. Employer sponsored insurance provides the foundation of our health care payment system. Employers voluntarily provide more than 159 million workers, retirees, and their families with comprehensive health care benefits – and are only able to do so effectively because of the national framework provided for by the ERISA. Many businesses operate in more than one state – and some businesses operate in all 50 states. Businesses are able to offer uniform, tailored, valued health benefits to their employees because of ERISA’s preemption provisions that are and have been under threat.

On behalf of the business community, we are exceedingly concerned about states’ efforts to enact legislation that erode the ability of self-insured employers to offer uniform benefits nationwide under the authority of the ERISA’s pre-emptive provisions. We are equally troubled by the prospect of any federal legislation which would erode ERISA preemption to permit state legislation to apply to self-insured employer plans. Employers are in the best position to design benefits in the way that best meets the needs of employees and their families. Protecting ERISA preemption, and by extension the ability of multi-state employers to offer uniform benefits is key to maintaining the system of employer-provided benefits; this system and coverage is contingent on preserving nearly fifty years of ERISA preemption.

## Background

In enacting ERISA in 1974, Congress established preemption principles that are integral to the robust operation of self-insured employer-sponsored health plans.<sup>1</sup> Without ERISA, multi-state self-insured employer-sponsored plans would find it nearly impossible to operate, burdened under a maze of cumbersome and potentially conflicting state-based rules. Yet recent developments in the state legislatures and Washington, DC are raising concerns about ERISA’s continued ability to maintain uniform operating rules across multiple states.

Before ERISA, multi-state employers were subject to different state laws, which prevented the uniform design and administration of health care benefits, increased the cost of those benefits, and blunted the ability of large employers to improve the efficiency of the U.S. health system. To address these problems and to encourage

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<sup>1</sup> ERISA preemption does not apply to fully-insured employer health care plans.

employers to provide health care benefits,<sup>2</sup> Congress crafted ERISA to supersede or preempt any and all state laws as they relate to any employee benefit plan as defined under the law (subject to certain exceptions for insured health plans).<sup>3</sup>

In addition, ERISA prohibits states from regulating benefit plans as insurance in an effort to circumvent ERISA preemption.<sup>4</sup> These provisions in ERISA generally protect self-insured employer-sponsored health care plans from state laws that would otherwise mandate benefit requirements or impose administrative burdens, bind employers to particular plan designs, or preclude employers from implementing uniform plan administrative practices across states. As a result, ERISA preemption significantly reduces costs for self-insured health care plan sponsors, participants, and beneficiaries. ERISA's preemption provisions allow plan sponsors to seek lower-cost, nationwide pricing for health care services, allowing for uniformity of benefits design and equity across an employer's workforce.

ERISA preemption also enables employers to drive innovation in benefit and plan design, foster new health care cost controls, and improve the quality of care. These innovations have included consumer directed benefit designs, value-based payment reform, provider transparency initiatives, and disease management programs. Any weakening of ERISA preemption not only increases the cost and complexity of health benefits for employees and employers, but also frustrates further health care market innovation.

In enacting and implementing ERISA, Congress stated that one goal of the statute was to avoid "conflicting or inconsistent state and local regulation of employee benefit plans."<sup>5</sup> Congress established benefit plan regulation "as exclusively a federal concern."<sup>6</sup> The legislative history and judicial interpretation of ERISA's preemption provisions both support the importance of maintaining ERISA as a national framework that should not be overridden by state and local laws.

## Conclusion

Any federal or state legislative or regulatory erosion of the ERISA preemption protections, no matter how well intentioned, will set a dangerous precedent, increase

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<sup>2</sup> Tumber, Marea B. (2015) "The ACA's 2017 State Innovation Waiver: Is ERISA a Roadblock to Meaningful Healthcare Reform?," University of Massachusetts Law Review: Vol. 10: Iss. 2, Article 5.

<sup>3</sup> ERISA §514(a), 29 U.S.C. §1144(a)

<sup>4</sup> ERISA §514(b)(2)(B), 29 U.S.C. §1144(b)(2)(B).

<sup>5</sup> 120 Cong. Rec. 29933 (Aug. 22, 1974) (remarks of Sen. Williams)

<sup>6</sup> *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525, 101 S. Ct. 1895, 1907, 68 L. Ed. 2d 402 (1981) ("It is of no moment that New Jersey intrudes indirectly, through a workers' compensation law, rather than directly, through a statute called "pension regulation." ERISA makes clear that even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern.").

costs for employers and employees, and lead to reduced coverage for American families. Given these resulting challenges, administrative complexity, and additional cost, erosion of ERISA preemption could lead some employers to curtail or stop offering benefits. Employers depend on ERISA preemption to ensure that benefits can be offered uniformly and generously across the country, and administered efficiently. ERISA preemption also gives each employer the flexibility to design the terms of health plans to meet the changing needs of their unique workforce and to control spiraling health care costs.

To support and enhance the coverage of the future, ERISA must not be dismantled or destabilized today. We urge Congress to defend and protect the fifty-year precedent of ERISA and the robust benefits it allows employers to provide. Congress must look beyond short-sighted actions, oppose any federal efforts that erode ERISA preemption, and support opportunities that will strengthening preemption to ensure the foundation of American health coverage is strong for the next fifty years and beyond.

American Benefits Council  
American Rental Association  
Business Group on Health  
Business Roundtable  
Corporate Health Care Coalition  
The Council of Insurance Agents & Brokers  
The ERISA Industry Committee  
HR Policy Association  
National Alliance of Healthcare Purchaser Coalitions  
National Association of Benefits and Insurance Professionals  
National Association of Manufacturers  
National Association of Professional Employer Organizations  
National Association of Wholesaler-Distributors  
National Coalition on Benefits  
National Retail Federation  
Partnership for Employer-Sponsored Coverage  
Retail Industry Leaders Association  
Self-Insurance Institute of America, Inc.  
SHRM  
Society of Professional Benefit Administrators  
U.S. Chamber of Commerce  
Western Growers