



**ERIC**

# The ERISA Industry Committee

Washington Update Webinar  
May 9, 2016

# Participation Procedure

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- Procedure for audience participation
- Audience will be in a “listen-only” mode
- If you wish to ask a question or make a comment, please press \*6 on your telephone to “un-mute” your telephone.
- After speaking, please press \*6 again to re-enter “listen-only” mode.

# ERIC's Antitrust Policy

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As a reminder, all ERIC meetings and activities are to be conducted in full compliance with the ERIC Antitrust Policy. The antitrust laws prohibit competitors from agreeing on prices to be charged or otherwise taking steps that harm free and fair competition among them. While ERIC's primary mission and activities are entirely consistent with the antitrust laws, if you have any concerns about a particular topic or discussion, please raise it with ERIC staff.

# Washington Update Call Agenda

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- Welcoming Remarks
- Hill Briefing: James Brandell, *Dykema*
- Review of ERIC's Spring Committee and Membership Meetings
- Retirement Update
- Health Update
- Preview of ERIC's State Mandate Action Program
- Concluding Remarks & Questions



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# Retirement



# Legislative Activity

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- PBGC Premiums

- Bill Introduced on House side (H.R. 4955); Congressman Renacci (R-OH) is lead sponsor and Congressman Pocan (D-WI) lead House Democrat; 8 Co-Sponsors since Introduction
- Several Senate Meetings Held to Advance Introduction; Senator Enzi (R-WY) will most likely be lead sponsor

- Electronic Reporting

- The Receiving Electronic Statements to Improve Retiree Earnings Act (H.R. 2656)
- Congressman Jared Polis is lead sponsor (16 Co-Sponsors)
- Authorizes a document that is required or permitted to be given to a retirement plan participants to be given in electronic form if certain conditions are met

# Legislative Activity

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- Senator Hatch Corporate Integration Proposal
  - What is Corporate Integration?
    - Under Current System Corporate Earnings are Taxed Twice – at Corporate Level and Individual Level when Receiving Dividends
    - Proposal Ensure Taxed Once at Corporate Level. Corporation would Deduct for Dividends and Interest Paid to Individual – and would withhold 35% of Payments to Individual.
    - Includes Tax Exempt Entities, such as Pension Plans. Net Tax Increase
  - Expect Hearings on Topic in May/June
  - ERIC will Submit Comments and take Additional Actions

# Key Regulatory Concerns

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- DOL Fiduciary Rule Released
  - Plan Sponsors on Wait & See Status
  - Resolution of Disapproval Passed House
- EEOC EEO-1 Form Reporting Changes
  - Expect Hearing by House Education & Workforce
  - Rule still needs to go to OMB
- Overtime Rule was sent to OMB on March 15
  - Expect Final Rule Any Day
  - Full Implementation by Mid-Summer
  - Review 401(k) Plans to Determine Impact



# Key Regulatory Concerns

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- Frozen DB Plan Regulations
  - Provides Certain Relief for Mature Plans
  - ERIC Held FocusOn Call to Discuss Impact on Member Plans
  - Comments Submitted on April 28<sup>th</sup>
  - ERIC Requested to Testify at Hearing on May 19th
- Federal Contractor Paid Leave Rule
  - ERIC Submitted Comments on April 12th

# Multi-Employer Plan Update

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- How does Multi-Employer Plans Impact Single Employer Plans?
  - If Multi-Employer Plan Legislation Moves, Single Employer Legislation Could be Attached; and
  - If Multi-Employer System Fails, Could Negatively Impact Single Employer Plan System.
- What is New in the Multi-Employer Plan Arena?
  - IRS Released Final Regulations under the Kline-Miller Multi-Employer Pension Reform Act
  - Central States Application Update
    - Treasury Rejected Application on Friday, May 6<sup>th</sup>
    - Focus Shifts to Congress
  - Legislative Update
    - Congressional Staff Reviewing Options

# Why are Republicans in Congress Creating Taskforces?

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- One Word: Trump
  - Republican Conference can Point to Policy Positions Agreed Upon that Differ from Presidential Nominee
- What do we expect?
  - Wide Ranging Policy Positions from the following Topics: Healthcare; Constitutional Authority; Jobs and Economic Growth; National Security; and Poverty and Opportunity
  - Retirement has not been referenced in most documents/discussions
  - ERIC will Monitor and Promote the Voluntary Employer Retirement System

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# Health



# Employer Exclusion

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- Efforts to repeal the Affordable Care Act have not been successful
- House Speaker Paul Ryan intent on forging alternative to the ACA
  - Planned unveiling of “white paper” before Republican convention in July
  - Give Republicans something to run on regardless of pres. nominee
- In the crosshairs now: the employee exclusion from income for employer-provided health care
  - Few champions of employer-provided health care in either party
  - Trimming the exclusion would raise many of the same horrendous problems and complexities as the Cadillac tax
- Options include a broad cap, means-testing, phase-out, tiers, geographic variations, and more.

# House GOP Task Force

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- Who are the official members?

- Rep. Tom Price, Chairman, House Budget Committee
- Rep. John Kline, Chairman, House Education & Workforce Committee
- Rep. Fred Upton, Chairman, House Energy & Commerce Committee
- Rep. Kevin Brady, Chairman, House Ways and Means Committee

**But who is really calling the shots?**

- Who is advising the task force?

- Jim Capretta, American Enterprise Institute
- Joe Antos, American Enterprise Institute
- Grace-Marie Turner, Galen Institute
- Nina Owcharenko, Heritage Foundation

**So what can we surmise?**

# Republicans have a general recipe for “health reform”

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- Coverage
  - Block grant Medicaid
  - Medicare premium-support (or has this become too toxic?)
  - Broad-based insurance tax credits
  - High-risk pools
- Costs
  - Consumerism (HSAs, price transparency, etc.)
  - Competition (interstate purchasing)
- Quality: ???
- Pay-fors:
  - We have a lot more information about what they CAN'T use to offset

# And what about the Democrats, how wedded are they to existing provisions in the ACA?

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- Remember, House Democrats were dragged kicking and screaming to vote for ACA. They had their own bill but got jammed by the Senate!
- Notable wedges between ACA and House D caucus:
  - Their bill did not include a Cadillac tax. It was funded by income taxes on wealthy individuals. They oppose a “tax on benefits”
  - House Democrats were adamant about including a “public option” to compete with private insurers
  - House bill did not include IPAB (Medicare-cutting commission)
  - Subsidies to expand coverage to even more people
- Many Democrats consider ACA only the first step, and under the right circumstances would be open to making major changes.



# Why is Congress looking at the employer exclusion?

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- House W&M requests JCT report: Exclusion valued at \$323.3 billion in calendar year 2016 alone! Contrast: Entire ACA \$1.2b / 10 years
  - The largest “tax expenditure” out there
- House Republicans are looking at the exclusion as an offset
  - Need revenue to fund new tax credits
  - Eager to create “parity” between those with and w/o ESI
- Disruption of ERISA plans could affect up to 175 million Americans, far greater than the number of uninsured even before ACA
- Besides the very high dollar value (as a pay-for), many Republican health economists believe that having 3<sup>rd</sup> party payers in itself is the cause of America’s astronomical health costs.
- Meanwhile, as Congress thinks about tax reform or ACA replacement, the clock ticks on the Cadillac tax
  - Employers need to figure out how to avoid it or comply
  - Regulatory guidance on the Cadillac tax is not out

# Trending Issues – Prescription Drug Costs

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- CSRxP: Major employers, insurers, hospitals, consumers
- New list of policy proposals:
  - **Transparency:** Release details of drug unit prices, report on drug list prices, disclose drug R&D costs
  - **Competition:** Faster generics, FDA incentives for competition, increase post-market surveillance, strict scrutiny of “new” drug applications, require sale of risky branded drugs to generic manufacturers, promote biosimilars
  - **Value:** Increase funding for public/private research, require pharma to conduct comparative effectiveness research, expand value-based pricing in public programs
- Bold proposals that will be heard and seriously considered on Capitol Hill

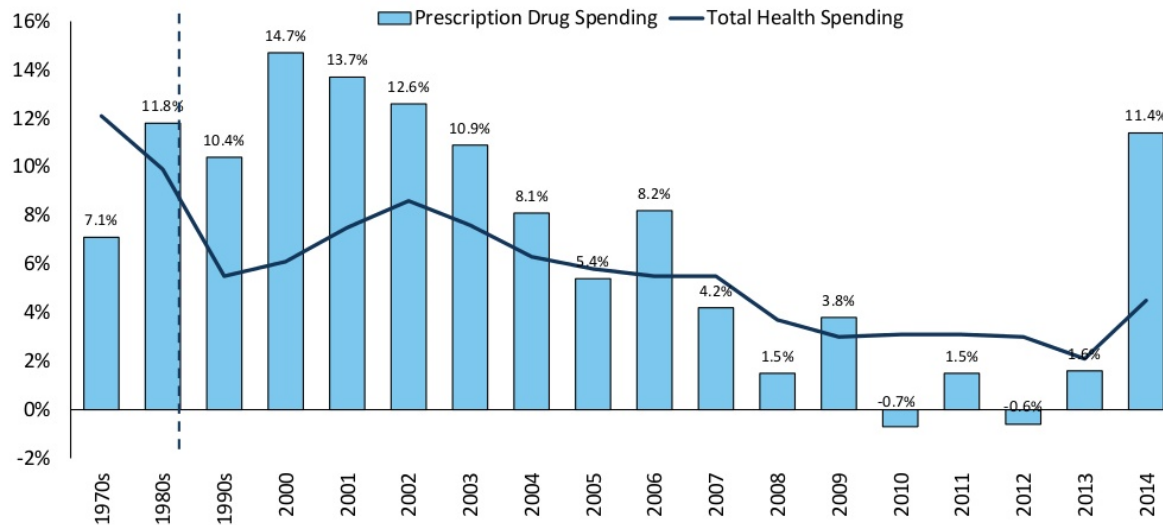


the campaign for  
**SUSTAINABLE  
Rx PRICING**

# Trending Issues – Prescription Drug Costs (cont.)

## After several years of modest growth, prescription drug spending rose sharply in 2014

Average annual growth rate of prescription drug spending per capita for 1970's – 1990's;  
Annual change in actual prescription drug spending per capita 2000 – 2014



Source: Kaiser Family Foundation analysis of National Health Expenditure (NHE) Historical (1960-2014) data from Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group (Accessed on December 7, 2015)



# Trending Issues – Prescription Drug Costs (cont.)

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- Recent CAP Briefing – CAP may be the most influential D think tank
- Rep. Doggett made some major proposals on behalf of House D task force:
  - Medicare Rx price negotiations
  - Administration use “march in” rights to issue more patents
  - Invest more in PCORI and CER
  - Require FDA to compare new drugs to other drugs, not placebos
- This is a group that is **listened to** by Administration and Congressional Democrats

# Wellness / *Flambeau*

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- EEOC final regulations on wellness coming soon
  - One on ADA, one on GINA
  - Same time: *Flambeau* case upholds use of ADA safe harbor; EEOC filed brief in 7<sup>th</sup> Circuit
- EEOC did not pull any punches in their brief. They asserted:
  - ADA's insurance safe harbor **does not apply to wellness programs**
  - Even if safe harbor did apply to some wellness programs, *Flambeau's* plan would still not be covered, because:
    - The mandatory HRA and biometrics were not used for underwriting, classifying risks, or administering risks;
    - The HRA and biometric test were not "terms" of the insurance plan because they were not mentioned in the summary plan description, was not included in their CBA, and the underlying insurance plan did not inform employees of the prerequisites; and
    - *Flambeau* used the safe harbor provision as "subterfuge" to evade ADA's prohibition on involuntary exams and disability-related inquiries.

# Update on Exchanges

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- Remember: Congress is also suing over ACA
- *U.S. House of Representatives v. Burwell*
  - Questions Administration's use of funds to pay for cost-sharing subsidies for lower-income plan participants in Exchanges
  - Court so far has found that case may be pursued, but not yet any decision on merits
    - Long way to go from this point to SCOTUS
  - Has potential to greatly upset functioning of Exchanges
- Not only would the loss of some of these subsidy funds be a major blow to the exchanges, but...
- The continued flight of insurers from exchanges could spell the death-knell for managed competition. UHG, now Humana?
- McKinsey: 2014, Insurers lost money in 41 states, made \$ in 9
- BCBS NC lost \$400 million in exchanges... UHG projects \$1 billion loss

# Trending Issues – Employee Out-of-Pocket Costs

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- Cost-sharing
  - Employers pay 58% of total healthcare cost in 2015
    - Employee share rose from 40.6% in 2010 to 42.5% in 2015
  - Kaiser/HRET survey: since 2010, deductibles for all workers have risen 3 times as fast as premiums and 7 times as fast as wages
  - Will government attempt to regulate coinsurance, co-pays, and deductibles?
    - Impact on premiums???
- 2015 California – Law requires insurers to cover medically necessary Rx and caps OOP costs for Rx at \$250 for 30 day supply or \$500 if you have HDHP
- 2016 Washington State – Proposal to cap Rx copays at \$100 and limit Rx annual deductible to \$500
- 2012 Vermont – Caps Rx costs at \$1,000 for individual, \$2,000 family
- These are just examples... nearly a dozen states have passed something and proposals popping up everywhere.
- Focus on Rx OOP is only the beginning – as deductibles continue to rise, there will be tremendous pressure to “help” patients by capping OOP costs in other areas too.

# Impact of the November election: Presidential candidate health plans

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- Sen. Sanders: Medicare-for-All.
  - Employers would pay taxes to support, but otherwise uninvolved.
- Sec. Clinton: Double down on ACA, lower OOP caps, new refundable tax credits, improve transparency, fight consolidation.
  - Create a public option, many new mandates on employers.
- Mr. Trump: Expand HSAs, allow interstate purchasing, transparency.
  - Allow individuals to fully deduct health insurance premiums.
- Sen. Sanders and Sec. Clinton both have numerous proposals aimed at cracking down on the costs of prescription drugs.
  - Includes negotiations, re-importation, rebates, patent reform
- Mr. Trump has called for Medicare to negotiate the rate of prescription drugs, and supports re-importation.



# More on 2016 Presidential Politics – Is this even going to matter?

- Republican candidates say they will repeal the ACA. Is this realistic?
  - Can Republicans hold on to the Senate?
  - Can they achieve the critical 60-vote Senate filibuster-proof threshold?
  - If a Democrat wins the White House, can Republicans produce the 67 votes needed to overcome a presidential veto?
- Is any of this realistic?



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# ERIC's State Mandate Action Program™



# State Mandate Action Program™

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- The State Mandate Action Program™ can deliver real-time, actionable information about state and local activity on employee benefits
- Including: state legislation, state regulations, local ordinances
- Topics include:
  - Paid Sick Leave
  - Parental Leave
  - Assessments on plans to pay for vaccines and similar programs
  - State Retirement Plans
  - Biologics/Biosimilars
  - Domestic Partnerships
  - State Innovation Waivers
  - Telemedicine
  - Minimum Wage

# Two Key Parts of the State Mandate Action Program™

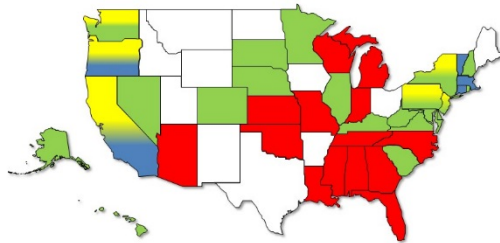
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- Existing laws and regulations
  - ERIC Staff are working to develop foundational resources so you can see what laws are currently on the books
- Emerging laws and regulations
  - Through our new State Mandate Action Program™ portal, you will have access to the latest updates on local ordinances, as well as state laws and regulations.
  - You will see the information in an interactive map or detailed report
  - ERIC staff will work with you to tailor the maps, reports, and other resources specifically to your interests

# Sample State Mandate Action Program™ Maps & Report

## ERIC's State Mandate Action Program™

### Current Laws & Regulations on Paid Sick Leave



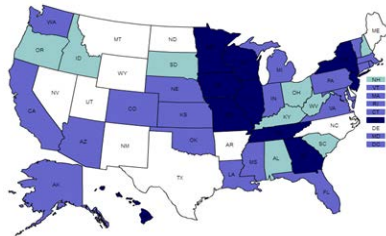
- PSL Required by Local Ordinance
- PSL Legislation Introduced in 2016 (Not Yet Passed)
- State Law Preempts Local PSL Ordinance
- PSL Required by State Law

#### Legislative Report

Number of Bills: 308

High: >8    Med    Low: <3

Click State for Report



AK 3	AL 1	AZ 6	CA 7	CO 3	CT 3	DC 5	FL 3	GA 9	GU 1
HI 25	IA 13	ID 1	IL 20	IN 6	KS 3	KY 2	LA 5	MA 5	MD 8
ME 8	MN 14	MO 10	MS 4	NE 6	NH 1	ND 13	NY 33	OH 2	OK 5
OR 2	PA 7	RI 7	RI 7	SC 2	SD 1	TN 10	US 14	VA 5	VI 2
VT 8	WA 8	WI 10	WV 2						

## California AB 3

Session: 2015 Spec Session 2 (6/19/2015 thru 3/10/2016 Adjourned)

Intro Date: 7/16/2015

**Passed Committee**                      **Passed Chamber**  
**House:**                                         
**Senate:**                                      

**Vetoed**   
**Died/Killed**

**Sponsor:** Assemblyman Kansen Chu (D)

**Other Links:** [PDF Version](#)  
[State Record](#)

**Subject:** Leave

**Summary:** Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law requires the department to enter into contracts with private nonprofit corporations to operate regional centers that provide community services and support for consumers and their families, including, but not limited to, residential placement. Existing law sets forth the department's and the regional center's authority to negotiate and set provider rates, and sets forth certain limitations. Existing law authorizes prescribed provider rate increases and prohibits others. Existing law, commencing July 1, 2014, increases the state minimum wage to no less than \$9 per hour, and commencing January ... (Please see bill detail)

**History:**  Mar. 15, 2016 Died at Desk.  
July 17, 2015 From printer.  
July 16, 2015 Read first time. To print.

## California AB 11

Session: 2015-2016 (1/5/2015 thru 11/30/2016 In Session)

Intro Date: 12/1/2014

**Passed Committee**                      **Passed Chamber**  
**House:**                                         
**Senate:**                                      

**Vetoed**   
**Died/Killed**

**Sponsor:** Assemblywoman Lorena Gonzalez (D)

**Other Links:** [Version Compare](#)  
[PDF Version](#)  
[State Record](#)

**Subject:** Domestic Partnership/Civil Unions/Same Sex Marriage; Leave

**Summary:** AB 11 revises the definition of an employee under the Healthy Workplaces, Healthy Families Act of 2014 to, as of July 1, 2016, include providers of in-home support services.



# Questions about the State Mandate Action Program™?

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- Contact Allie Wils at [awils@eric.org](mailto:awils@eric.org) or 202-627-1925
- Schedule a one-on-one webinar for your team, customized to the issues important to you
- Attend one of the three upcoming 30-minute webinars to provide a high-level overview of the program
  - Thursday, May 12, 3:00 – 3:30 p.m. EDT
  - Wednesday, June 1, 2:00 – 2:30 p.m. EDT
  - Wednesday, June 8, 3:00 – 3:30 p.m. EDT

# Upcoming ERIC Calls & Webinars

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- **Tuesday, May 17, 2:00 – 3:30 p.m. EDT**  
FocusOn Call on Health Provider Consolidation and Attestation Agreements
- **Thursday, May 19, 4:00 – 5:00 p.m. EDT**  
Third Thursday Call of the ERIC Health Policy Committee
- **Wednesday, May 25, 2:30 – 3:30 p.m. EDT**  
FocusOn Call on Health Innovation: Employers and Accountable Care Organizations
- **Monday, June 6, 11:00 a.m. – 12:00 p.m. EDT**  
Washington Update Webinar
- **Thursday, June 16, 4:00 – 5:00 p.m. EDT**  
Third Thursday Call of the ERIC Health Policy Committee
- **Tuesday, June 21, 2:00 -3:00 p.m. EDT**  
FocusOn Call on Prevention: Identifying and Mitigating Employee Kidney Disease Risks



# To Receive ERIC Updates

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- If you were forwarded this email but would like to receive our communications directly, please email **memberservices@eric.org** with your contact information and company name.
- You can sign up for other ERIC materials and events at **www.eric.org**. If you are new to ERIC simply click on “Register New User” in the upper-right hand corner.



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