



**The ERISA Industry Committee**

**LBGH**

LOUISIANA BUSINESS GROUP ON HEALTH

May 1, 2019

Louisiana Senate  
900 North Third Street  
P.O. Box 94183  
Baton Rouge, LA 70804

Re: Louisiana Senate Bill 41

Dear Members of the Louisiana Senate:

On behalf of The ERISA Industry Committee (ERIC) and the Louisiana Business Group on Health (LBGH), we write to share concerns that Louisiana SB 41, relating to the regulation of pharmacy benefit managers (PBMs), would likely be preempted by federal law and struck down in federal court.

44% of Louisiana residents receive health care from their employer. Our groups represent employers that provide health coverage to their workers and families, and we support policies designed to improve quality, lower costs, and enable employers to continue to offer this valuable benefit.

We applaud efforts to address health care costs but caution that states are limited in what they can regulate because of longstanding federal law, which directs employers providing self-insured health coverage to their employees across the country to follow federal law in lieu of 50 differing and conflicting state laws. States can regulate the *business of insurance* and the *practice of medicine* but cannot extend these powers to self-insured plans. SB 41 attempts to regulate, connect with, or relate to self-insured employee benefits plans, both directly and through the plans' vendors and business partners.

The Employee Retirement Income Security Act of 1974, as amended, (ERISA) regulates self-funded employer-sponsored group health plans at the federal level. In short, ERISA prevents states from regulating self-funded employer plans by expressly preempting any state legal or regulatory activity that "relates to" these plans.<sup>1</sup> The U.S. Supreme Court has interpreted this "preemption" provision very broadly, holding that a state law<sup>2</sup> "relates to" an ERISA benefit plan if it makes "reference to" or has a "connection with" employee benefit plans.<sup>3</sup> Self-insured plan sponsors value ERISA because it allows for uniform administration of employee benefits, no matter where in the U.S. their employees, their families, or their retirees live, work, or receive medical care.

While we recognize and respect the stated purpose of SB 41 to protect the public, if passed SB 41 would undermine ERISA and the national uniformity it guarantees for self-insured plan sponsors, guarantees which are critical to a functional health care market.

As advocates for large employers and the employee benefits they provide to tens of millions of Americans, we welcome the opportunity to work with you to advance health care without undermining the ability of employers to follow federal law. Please contact Adam Greathouse at [agreathouse@eric.org](mailto:agreathouse@eric.org) or (202) 789-1400, and Cheryl Tolbert at [cheryltolbert@lbgh.org](mailto:cheryltolbert@lbgh.org) or (225) 291-0085 with any questions or for more information.

Sincerely,

The ERISA Industry Committee (ERIC)  
Louisiana Business Group on Health

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<sup>1</sup> ERISA § 514(a).

<sup>2</sup> "State laws" include "all laws, decisions, rules, regulations, or other State actions having the effect of law, of any State." ERISA § 514(c)(1).

<sup>3</sup> See *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983); *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316 (1997); *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).