

August 19, 2021

The Honorable Lorena Gonzalez
Chair
Assembly Appropriations Committee
Capitol Office, Room 2114
P.O. Box 942849,
Sacramento, CA 94249

Re: Large Employers Oppose SB 524 Language That Runs Counter to ERISA Law

Dear Chair Gonzalez,

On behalf of The ERISA Industry Committee (ERIC), thank you for accepting comments from interested stakeholders as the Committee considers SB 524. ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. We speak in one voice for our member companies on their benefit and compensation interests, including most all with employees and retirees in California. ERIC member companies' health benefits are governed exclusively at the federal level by the Employee Retirement Income Security Act (ERISA). Consequently, we are very concerned about state laws that have an impermissible connection with ERISA plans and, therefore, violate ERISA preemption.

Today, we write to you in strong opposition to SB 524 and urge the Committee to vote against the bill.

ERIC and our member companies have serious concerns about the implications of SB 524 on large employers. We believe language in SB 524 runs afoul of the federal ERISA law. Specifically, Section 2 (4450) mandates that “*a self-insured employer plan or the agent of a self-insured employer plan shall not engage in patient steering*”. ERISA preempts any state law “insofar as they may now or hereafter relate to any employee benefit plan”. Should SB 524 pass in its current form, it will affect all self-insured plans – including plans administered by labor unions and will significantly alter how employers design their benefit plans. Ultimately, SB 524 will eliminate an important tool self-insured plans use to negotiate lower drug costs for their employees.

Although a state can regulate the relationship between a pharmacy and a Pharmacy Benefit Manager (PBM) under the recent U.S. Supreme Court decision in *Rutledge v. PCMA*, a state does not have the ability to dictate the terms of an ERISA plan. As such, states cannot regulate the use of preferred pharmacy networks, steerage within a plan, cost-sharing differentials, or any other aspects of plan design. ***The Rutledge decision does not permit a state to control self-insured plans in the manner SB 524 prescribes.***

Thank you for accepting our input on SB 524. **ERIC strongly urges Committee members to oppose SB 524, and we recommend that this legislation be withdrawn from consideration.** If you have any questions concerning our written testimony or can be of further assistance, please contact me at sbelmont@eric.org or 202-627-1914.

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