

March 21, 2023

Chair Tom Oliverson
House Insurance Committee
Texas House of Representatives
Room E2.150
Austin, Texas 78768
Submitted Electronically

RE: ERIC Written Testimony in Opposition to Texas House Bill 2021 – Expanded State Control of Pharmacy Benefit Manager Networks and Self-Funded Benefit Plan Design and Administration

Dear Chair Oliverson and members of the House Insurance Committee:

The ERISA Industry Committee (“ERIC”) appreciates the opportunity to comment on the proposed legislation contained in HB 2021 being considered by the Texas House Insurance Committee (“Committee”) during today’s hearing. **ERIC urges the Committee to consider the serious negative impact that this legislation would have on health care costs across Texas and vote “no” on HB 2021.**

ERIC is a national nonprofit organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor and lawfully operate benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA), which provides protection from a patchwork of different and conflicting state and local laws, in addition to federal law.

As plan sponsors, our member companies strive to provide the best health care benefits possible to the employees, retirees, and families covered by their plans, as well as ensure that this care is available at an affordable cost. Along this line, ERIC advocates for policies that facilitate this goal and ultimately benefit the millions of employees that participate in self-insured, large-employer plans.

Large employers have long been the at the forefront of innovating health care benefit design and administration. By combining nationwide workforces into uniform benefit plans, employers are able to negotiate from a position of strength and secure valuable health care coverage at reduced rates, all to the benefit of plan participants. Use of this cost-saving advantage was the precise intention behind ERISA’s creation by Congress, which provides a single set of standards for multistate employers to design and administer uniform health care and

retirement benefits to their nationwide employees, regardless of where they live or work. Since ERISA's enactment, employers have done just that, securing truly effective and efficient health care coverage enjoyed today by millions of Americans.

Unfortunately, a series of state laws enacted and proposed in recent years have begun to erode the critical benefit plan protections established by federal ERISA law and endanger the valuable benefits that self-insured, large-employer plans have long provided. Many state legislators are frustrated with the federal government's failure to adequately regulate pharmacy benefit managers (PBMs), and are attempting to take action to save independent and community pharmacies, and lower drug costs. However, many of these state proposals clearly violate and are preempted by federal ERISA law because of their infringement on the national uniformity of self-insured plans.

While ERIC understands the importance of competition between pharmacies and the desire to improve areas of health care coverage, HB 2021 would go far beyond similar state PBM policies, attempting to directly control the design and administration of self-funded ERISA plans, and would further increase the health care costs that Texans already face.

First, and foremost, HB 2021 is drafted to specifically apply its provisions not only to PBMs but to any self-funded health care benefit plan that is served or administered by a PBM. This means that many of the bill's provisions, such as broad application of burdensome state insurance code coverage requirements to plans' drug formularies, would also fall on nationwide employer plans governed by federal ERISA standards. This reality would not only be an impermissible state overreach, but would work against the uniform ERISA protections that make effective and efficient health care coverage possible at scale for large employers.

Second, HB 2021 would mandate certain cost-sharing designs available to benefit plans. This goes far beyond those state laws permitted under the Supreme Court's *Rutledge* case, and would allow state legislators to require national self-insured plans to have different co-pays, coinsurance, deductibles, and other structures than the rest of the country. We are confident that this overreach violates federal law.

Third, HB 2021 would broadly require health plans to provide a long list of notice and disclosure requirements related to the specific structure of their formulary, whether or not the formulary is designed or administered internally or by a third party. This information includes the prescription drugs covered under the plan, an overview of the formulary, a statement regarding how the formulary is established, a timetable of how often it is reviewed, and who the participant can contact to identify if a drug is included in the formulary. States may not create or impose reporting, disclosure, notice, or publication requirements on ERISA plans – see the Supreme Court's *Gobeille* case.


On the whole, HB 2021 would have a broad negative impact on the design and administration of health care plans while overreaching into the control of self-funded plans that

ought to be governed solely by federal ERISA law. If adopted, the bill would erode the ability of large-employer plans to effectively operate national, uniform benefit plans, and would lead to increased health care costs across the state Texas.

On behalf of our large member companies, ERIC therefore strongly opposes HB 2021. If this bill becomes law, ERIC would consider filing suit to preempt the law under ERISA.

If you have any questions concerning our comments in opposition or would like to discuss ways in which health care access and affordability can be improved for workers across Texas, please contact us at (202) 789-1400 or jgelfand@eric.org.

Sincerely,



James Gelfand
President