



ERIC Policy Wins for 2023

- **Defending ERISA Preemption.** ERIC strongly believes that adopting or expressing any intention to allow otherwise preempted state policies to apply directly or indirectly to self-funded plans, or worse, to create an express carve-out or “non-preemption,” would be catastrophic. ERIC has been on record protecting self-funded employers, especially in conversations on pharmacy benefit manager transparency and reform and federal paid leave legislation. *This includes successfully removing non-preemption language, and preventing additional non-preemption language from being included in major legislation that passed the Senate Health, Education, Labor, and Pensions Committee.*

Health Policy

- **Health Care Transparency and Pharmacy Benefit Manager (PBM) Reform Legislation Advancing.** ERIC changed the narrative for the need for change in this area, working with Congress over four years ago to begin this legislative reform. The need for transparency across health care stakeholders, including PBMs, as well as PBM accountability reforms is now one of the top health care legislative agenda items for Congress. ERIC continues to be a primary driver of these policies and a resource to Congress as it works to enact legislation, possibly as soon as January or February. *ERIC played a major role in developing the key piece of legislation in this area – S. 1339, the Pharmacy Benefit Manager Reform Act – and successfully shepherded the bill through passage on the committee level nearly unanimously.*
- **Health Savings Accounts (HSA) Legislative Package Passed by House Ways and Means Committee.** ERIC provided extensive education to the House Ways and Means Majority Chairman, pressing the committee to take up and advance legislation to improve high-deductible health plans (HDHPs) and HSAs this year. This included laying the groundwork for a legislative hearing and building support in Congress and among stakeholders. *ERIC’s efforts led to committee passage of HDHP/HSA measures driven by ERIC.*
- **Combating End-Stage Renal Disease (ESRD) providers' false narrative on employer coverage.** ERIC continues to be a leading voice against efforts to further extend Medicare Secondary Payor requirements for ESRD patients. ESRD providers have expended significant resources attempting to shift costs to employers in this space and lost traction on reintroduction of legislation. *ERIC’s lobbying in opposition to these ESRD policies has been so fierce that the leading congressional champions of the dialysis industry have declined to engage in the bill's introduction.*
- **Leadership on Electronic Delivery for Health Plan Disclosures.** ERIC founded and leads a diverse coalition of stakeholders, including employers, service providers, consumer groups, unions, environmental groups, and others, focused on implementing e-delivery of all ERISA-required disclosures. *ERIC and the coalition have been regularly meeting with the Tri-Departments and congressional staff to advocate for this regulatory flexibility that will continue in 2024.*

- **Advancing Telehealth Legislation Through Committees.** ERIC successfully lobbied to introduce and pass the *Telehealth Expansion Act* (H.R. 1843), which allows 1st-dollar coverage of telehealth in a HDHP, and the *Telehealth Expansion for Workers Act* (H.R. 824), which allows standalone telehealth benefits for workers not enrolled in an employer’s primary health benefit. *Both pieces of legislation passed their assigned House committees, and ERIC believes they will be acted on before the end of 2024.*
- **Streamlining RxDC Reporting.** The Tri-Departments and the Office of Personnel Management accepted recommendations by ERIC in their updated Prescription Drug Data Collection (RxDC) instructions and resources, clarifying that multiple vendors can submit the same data file on behalf of the same plan, issuer, or carrier, and that reporting entities may create multiple submissions in HIOS for the same reference year. *This will lead to reduced costs and labor for plan sponsors and their vendors.*
- **Department of Labor’s (DOL) ERISA Advisory Council Cybersecurity Recommendations.** The DOL’s Advisory Council on Employee Welfare and Pension Benefit Plans (DOL ERISA Advisory Council) developed two reports on “*Cybersecurity Issues Affecting Health Benefit Plans*” and “*Cyber Insurance and Employee Benefit Plans*” that included ERIC recommendations from our statement offered in July 2022. *ERIC recommendations encouraged the DOL to rely on the health care and technology industries to continue to evolve and update best practices in real time, rather than setting an overly-prescriptive government standard.*
- **Advocating for Gag Clause Attestations FAQs.** Working with member companies who badly needed more guidance, ERIC successfully lobbied the Department of Labor to issue frequently asked questions (FAQs) on the Consolidated Appropriations Act of 2021’s gag clause ban. Initially, DOL previously stated that there would be no additional guidance, and plan sponsors will be required to attest to compliance this year. *ERIC’s advocacy on this issue will offer relief for members as they come into compliance this year.*
- **Advocating for Mental Health Parity Comment Extension.** ERIC successfully lobbied the Tri-Departments to extend the comment period for the Mental Health Parity and Addiction Equity Act Proposed Rule. The comment period was extended by 15 days allowing for ERIC and other stakeholders to develop meaningful comments for the Tri-Departments. ERIC’s comments have been often cited as the strongest submitted by employers and called for major revisions to the Proposed Rule. *ERIC plans to launch a campaign demanding changes to the Proposed Rule in 2024.*

Retirement and Paid Leave Policy

- **SECURE 2.0 Roth-Catch Up Relief.** Through ERIC’s advocacy, the Internal Revenue Service (IRS) announced a two-year administrative transition period for SECURE 2.0’s provisions requiring certain employees to make catch-up contributions on a Roth basis. *This delay will permit plan sponsors to work with service providers and regulators to implement the provisions.*

- **Congressional Oversight of the Department of Labor’s Employee Benefits Security Administration.** ERIC brought to the attention of policymakers how investigations and enforcement actions launched by the Employee Benefit Security Administration (EBSA) sometimes lack clear focus and reasonable time frames. *Supported by our continued and persistent advocacy, Chairwoman Foxx (R-NC) of the House Committee on Education and the Workforce and Congressman Bob Good (R-VA) of the Health, Employment, Labor, and Pensions Subcommittee initiated an aggressive investigation into DOL’s enforcement activities. Further, key House and Senate authorizing and appropriations leaders are supporting ERIC’s position that EBSA should not receive funding increases without reform in this area.*
- **SECURE 2.0 Technical Corrections.** ERIC successfully advocated for provisions in the bipartisan SECURE 2.0 technical corrections draft legislation addressing catch-up contributions and Section 420 transfers, among other provisions. *That draft legislation, which included ERIC priorities, was released in early December, is expected to be considered in the 118th Congress.*
- **Shaped the Priority Guidance Plan.** ERIC recommended the following be included on the 2023-2024 IRS Priority Guidance Plan: guidance on missing participants, including guidance on uncashed checks; guidance implementing SECURE 2.0; guidance on student loan payments and qualified retirement plans and §403(b) plans; and guidance on contributions to and benefits from paid family and medical leave programs. *ERIC’s advocacy was successful, and the IRS included each of these guidance proposals in their Plan.*
- **Self-correction.** ERIC successfully lobbied for the IRS to permit plans to use self-correction provisions contained in SECURE 2.0 on an interim basis.
- **Leadership for Paid Leave Uniformity.** ERIC is a leader in a coalition of trade associations and companies that has worked closely with a bipartisan working group of the U.S. House of Representatives on national paid leave. *The coalition has successfully impressed on federal legislators the need for uniformity in paid leave standards, which we expect to be reflected in forthcoming bipartisan principles.*
- **Remote Witnessing.** ERIC successfully lobbied for an IRS Proposal to permit certain retirement plan elections to be made remotely, providing relief from requirements that those elections be made in the physical presence of a notary or plan administrator.

State Policy

- **Defeated New York PBM Regulations.** ERIC worked with allies and state stakeholders to submit public comments to the New York Department of Financial Services addressing proposed regulations attempting to control the network practices of pharmacy benefit managers (PBMs) throughout the state, as well as the design and administration of the self-insured employer plans that they administer. ERIC’s comments focused on arguments that the proposed rules, as well as the 2021 state statute they aimed to implement, overstep state authority to regulate PBMs. *The department ultimately withdrew the proposed rules, recognizing the widespread concern and opposition that stakeholders raised, and are expected to reconsider their approach in a future regulatory development effort.*

- **Defeated PBM bills in North Carolina and Texas.** ERIC worked to oppose and overcome legislation in North Carolina and Texas aimed at expanding state authority over PBM network practices, as well as the self-insured employer plans that they administer. These were key wins in our broader effort to slow the momentum of state PBM proposals and defeat the wave of policies that threaten ERISA preemption nationwide. *Lawmakers in both states ultimately recognized the threat that the bills posed to have on ERISA preemption and prescription drug costs within their jurisdictions.*
- **Removed employer plan reporting requirements from New Jersey PBM bill.** ERIC was able to work with state allies to push for removal of provisions within a New Jersey bill that would have explicitly placed burdensome and duplicative recordkeeping requirements directly on self-insured plan sponsors. ERIC argued that because ERISA prohibits states from placing mandates on group health plans, this provision would have created a direct conflict with federal law. *The law as enacted included this change requested by ERIC, but still poses broader ERISA preemption concerns for self-insured plans.*
- **Supported successful legislation improving telehealth access in Idaho.** ERIC urged Idaho lawmakers to approve legislation allowing health care providers to use synchronous or asynchronous modalities to establish a relationship with a patient so long as the applicable standard of care can be met. *The bill was signed into law, removing arbitrary barriers to telehealth services for patients across the state and following ERIC’s telehealth policy principles more closely.*
- **Expanded access to biosimilar products in Arkansas.** ERIC strongly supported a legislative effort in Arkansas to include coverage of biosimilar medical products under step therapy protocols across the state. *As enacted, the law now better recognizes the safety and efficacy of substituting a biosimilar for its reference product, as well as the cost-saving potential that biosimilar products offer to patients and plans.*
- **Drove improvements to Minnesota’s paid family and medical leave program legislation.** ERIC worked to represent the unique concerns of large, multistate employers in the state paid leave space, shaping Minnesota’s paid family and medical leave legislation, which this year established the fourteenth state insurance program of its kind. *ERIC and our allies were successful in mitigating some of the bill’s more expansive provisions that would have had a negative impact on employer benefits administration, including total duration of leave, interaction between different “buckets” of leave, and the definition of family member.*

ERIC Legal Center Wins for 2023

- **PCMA v. Mulready.** The US Court of Appeals for the Tenth Circuit issued its opinion holding that ERISA and Medicare Part D preempt each of the challenged provisions of Oklahoma’s PBM law and reaffirming that state restrictions on a plan’s design or administration are prohibited, even in light of *Rutledge*. An ERIC-led coalition filed an amicus brief supporting PCMA’s legal challenge at the Tenth Circuit, outlining the serious impact that these laws would have on self-insured plans nationwide, as well as ERISA preemption as a whole, if left unchecked. *This is the first of these state PBM law challenges to be decided at the circuit court level, setting an early and advantageous precedent that we intend to replicate in other jurisdictions pursuing similar policies.*

- **401(k) Target Date Mutual Fund Cases.** ERIC continued its ongoing campaign to defeat lawsuits targeting 401(k) plan sponsors that offered a particular suite of target-date mutual funds (TDFs) by filing coalition amicus briefs in ten of these cookie-cutter lawsuits. *Seven of the cases have been dismissed over the last year with more expected in coming months.* To date, motions to dismiss have been granted in:
 - *Michael Tullgren v. Booz Allen Hamilton*
 - *Andre Hall, et al. v. Capital One Financial Corp.*
 - *Justin Beldock, et al. v. Microsoft*
 - *Robert Bracalente, et al. v. Cisco Systems, Inc.*
 - *Lynetta Lockett v. Wintrust Financial*
 - *Alfretta Antoine, et al. v. Marsh & McLennan*
 - *Jermaine Anderson v. Advance Publications*

- **Matney v. Barrick Gold of North America.** ERIC joined a coalition amicus brief before the Tenth Circuit, expanding our fight to defend employer plan sponsors from the surge of ERISA class-action complaints designed to extract costly and unjustified settlements from plans. *The U.S. Court of Appeals for the Tenth Circuit rejected claims that certain funds in the Barrick 401(k) plan were offered in needlessly expensive share classes, instead following the arguments laid out by the amicus brief.*