TAHP
The Texas Association of Health Plans

Texas Association of Health Plans
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Dear Chairman Oliverson and members of the House Insurance Committee,

As the state's trade organization representing health care coverage in Texas, we are concerned about the financial implications Texas businesses and families would face as a result of interference in the self-funded, employer-provided health benefits market. **We oppose HB 2021 and the attempt to impose costly mandates on employer provided health benefits.**

Federal law limits the application of state and local mandated requirements on self-funded employer plans through the Employee Retirement Income Security Act of 1974 (ERISA). ERISA is designed so that health benefits offered through large employers around the country only have to comply with a single set of benefit and contract mandates created federally. Multi-state corporations particularly need this regulatory simplification because it allows them to create health benefit plans for employees working in multiple states.

Employer-provided health coverage is eligible for ERISA preemption when an employer chooses to assume the risk for their own health claims instead of purchasing insurance. In these arrangements, employers typically utilize a third party administrator to access a network of providers and to administer the claims process, but the company is the insurer. While employees may see the name of an insurance company on their insurance card, it is their employer assuming the risk and paying for their health care claims.

ERISA qualified plans are exempt from local and state jurisdictions imposing costly regulations, mandates, and preferences on employers who offer such plans. However, these plans still must meet the requirements imposed nationally by Congress and federal agencies. **This legislation seeks to pierce ERISA preemption and impose costly state mandates on drug benefit coverage.**

One example of the costly mandates that HB 2021 would impose on large employer health plans is the state's one-year formulary freeze. A mandate like this only exists in two other states and routinely adds unnecessary costs to health benefit coverage. The world's best selling drug Humira offers an example of the impacts of this mandate. Just this year, after 21 years of exclusivity, Humira now has a biosimilar (generic) competitor. Immediately large employer health plan arrangements could make changes to drug coverage to reflect this new, lower-cost

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option. However, under the state's one-year formulary freeze law, all state-regulated health insurers must wait until the next benefit year to make these changes. This mandate delays cost savings and protects expensive drugs from competition from lower cost alternatives. Under HB 2021, that mandate and numerous others, would be imposed on coverage provided by the largest employers in Texas.

This simplicity and flexibility in designing employee health benefits that are fully funded by employers encourages large companies to offer health benefits. The impact is substantial: large employers almost all offer health benefits to employees, compared to less than 50% of Texas small businesses, who are typically too small to absorb the risk of self-insuring. Roughly two-thirds of Texas employers that offer coverage choose to offer these health benefits through a self-funded arrangement, and employees consistently report that health care benefits are among the top reasons they choose to accept a job.

However, many small businesses will feel the burden of this mandate as well. Today 1 in 5 businesses with under 200 employees save money and avoid government mandates through self-funding, up 54% over two decades. But HB 2021 attempts to claw those employers back into state mandates. More and more employers are choosing self-funded options for employee health coverage because it offers the flexibility to create affordable and innovative benefits. Today nearly two-thirds of employers use a self-funded arrangement, up from just 44% in 1999.

The attractive simplicity, flexibility, and consistency of ERISA plans is under attack around the country. The *Rutledge v. PCMA* Supreme Court case is just one example of this threat that large employers face. Some incorrectly argue that the recent Supreme Court decision in *Rutledge v. PCMA* broadly creates the ability for states to broadly impose new mandates on our state's large employers. In *Rutledge*, the Supreme Court ruled that the state of Arkansas could impose state pharmacy mandate provisions on large employer plans because the mandates amounted to government price regulation, as opposed to benefit design. **The Supreme Court's opinion cast a warning about these types of mandates as the justices wrote: "...ERISA plans may pay more for prescription-drug benefits in Arkansas than in, say, Arizona."**[1]

We encourage Texas lawmakers to ask the question: Even if the state could impose government price setting regulations that would make prescription drugs more expensive in Texas than other states, why would it choose to do so?

[1] *Rutledge v. Pharm. Care Mgmt.*, 141 S.Ct. 474, 481 (2020).

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Regardless of any perceived flexibility for the state to impose price regulation or benefit mandates on employer-sponsored health plans, the Legislature must consider the impact. Without large employers shouldering the burden of the majority of insured Texans, the state's health care system would face an uninsured tragedy that pales in comparison to our current coverage gaps. These employers need flexibility to design benefits that direct employees to the highest value care options for medical and pharmaceutical needs. The Legislature should not drive up costs for these benefits for employers, as many employers will simply forgo offering benefits altogether.

The Texas Association of Health Plans encourages state lawmakers to consider the added cost of benefit and contract mandates, which will be paid for by employers and Texas families. As a note of caution, from 2021 to 2022, premiums for individuals purchasing coverage on the federal marketplace were flat nationally but increased in Texas an astounding 13 percent—even as Texas saw a substantial increase in insurer competition.[2,3] This increase is a direct result of state imposed mandates passed by the Legislature that were then priced into insurance premiums.

These premium increases should be seen as a warning to lawmakers considering the potential impacts of applying state price setting requirements to large, self-funded and employer-based coverage that has thus far been exempt from overregulation by the Texas Legislature. If our aim is to increase affordability of health care coverage, government interference in the self-funded market is contrary to that goal.

Sincerely,

Jamie Dudensing

Jamie Dudensing, CEO
Texas Association of Health Plans

[2] Data Analyzed from Public Use Files available via the Centers for Medicare & Medicaid Services website.
[3] https://www.healthinsurance.org/health-insurance-marketplaces/texas/