



**TAHP**  
The Texas Association of Health Plans

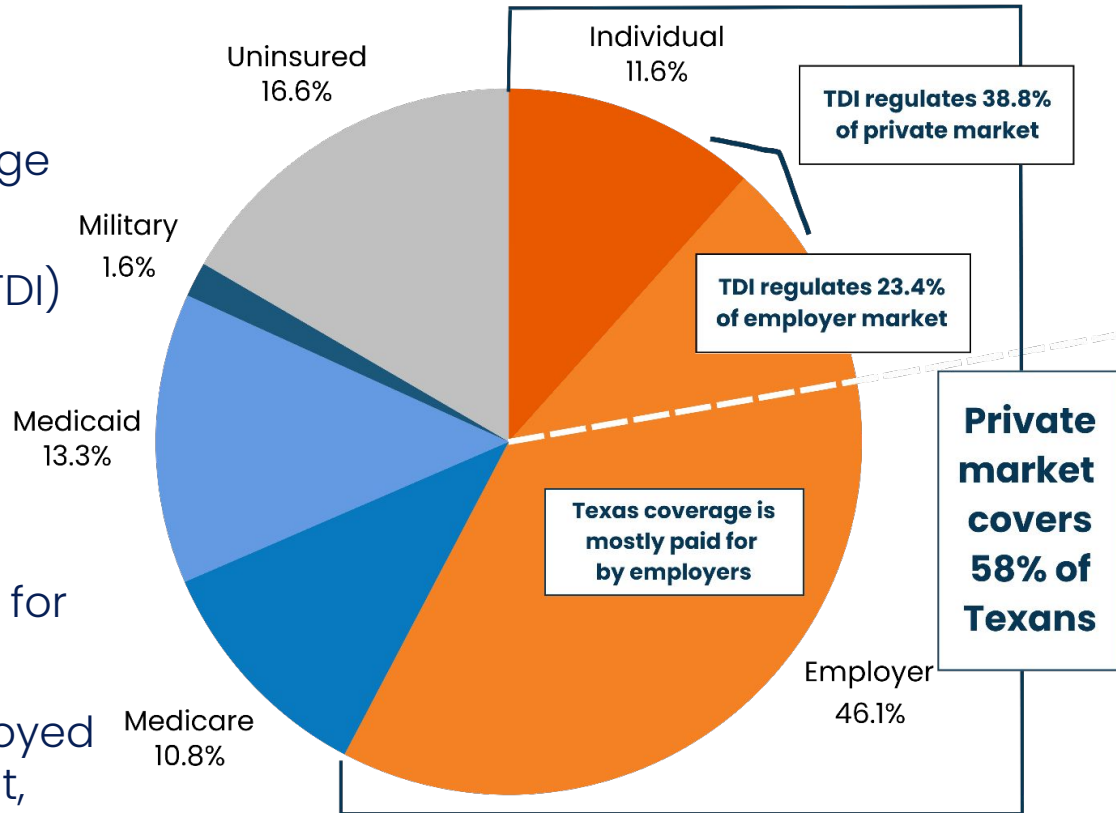
# Solutions to Address Health Care Mandates

101 Presentation – Fall 2024

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# Private Health Coverage Snapshot

- **80%** of private market coverage is employer-based
- **84%** of Texas workers have an employer that provides coverage
- **77%** of employer plans are self-funded (not regulated by TDI)
- **Individual market** coverage is increasingly popular as subsidies improve affordability
- **Uninsured Texans** cite employment as the top reason for not having health coverage
- **70%** of the uninsured are employed but less likely to have consistent, full-time jobs



# Excessive Mandates Hurt Employers & Families

## Employers Need Flexibility:

- Employers have unique needs and budgets, requiring diverse and innovative health care benefits.
- **Texas mandates block many cost-saving strategies**, enforcing a one-size-fits-all approach.
- This also forces employers to cover the same benefits (e.g., weight loss drugs, IVF services), even if they aren't necessary for their workforce.

## Costs are at a breaking point:

- Employer health plan costs are up 11% over the past two years.
- Employers can't keep absorbing these increases and are now passing more costs to employees.

**Texas is one of the most heavily regulated health insurance markets, adding to the cost burden.** As a result, Texas employer pay more for health insurance and have less access to innovative coverage options

# What Is a Mandate and Why Should You Care?

## Mandates require Texas employers and families to:

- Pay for extra benefits & extra regulations above the Affordable Care Act
- Pay higher prices for medical services
- Accept more one-size-fits-all insurance coverage options

## Texas Lawmakers are Increasingly Filing and Passing New Mandates:

**88th Session (2023):** Over **110** mandates filed, **77** heard, and **16** became law.

**87th Session (2021):** Over **100** mandates filed, and **7** became law.

The House Insurance Committee sent 36 mandate bills to the Senate in the 88th and 30 in the 87th.

**What's worse?** The Legislature often exempts their own personal health coverage through ERS and other state-funded coverage because of the costs..

**3rd in the nation:** Texas has more mandates above the Affordable Care Act than almost any state

# Lawmakers lack info on the cost of mandates and regulations on Texas employers and families.

In Texas, lawmakers estimate the cost to their own coverage and other state paid plans (ERS & TRS) but never get the actual cost to businesses and families.



**An effective mandate fiscal note** will equip lawmakers with the data they need before voting.

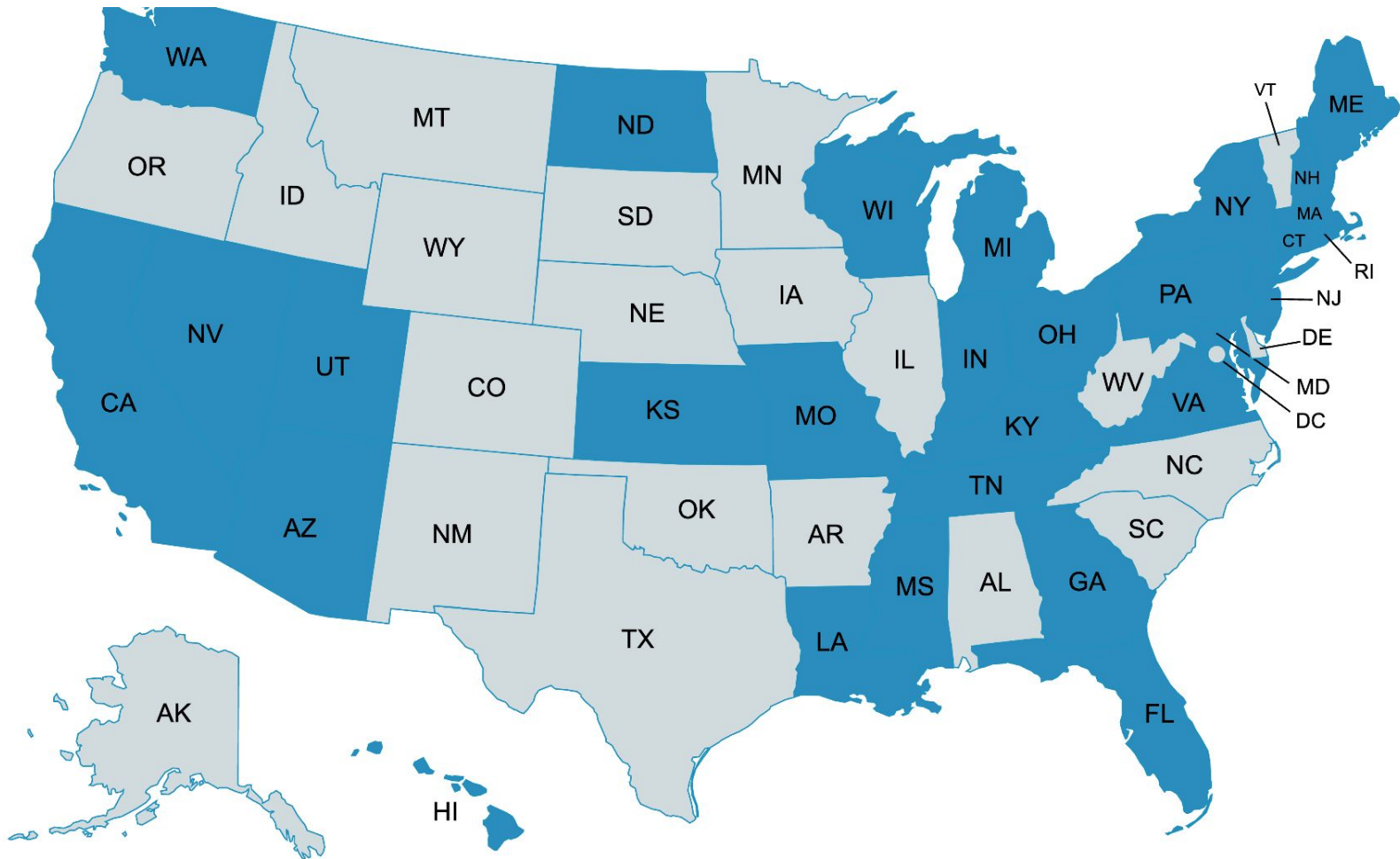


**Texas lawmakers should be fully informed** about the cost of health care mandates on employers before passage into law.



**Texas should never pass a mandate** if it increases the cost of coverage.

# At Least 29 States Review Mandates



# Solution #1: Create Better Mandate Transparency

At least **29** states have a process to understand the impact of health care coverage mandates before enacting new laws.

- ✓ **Provide lawmakers with cost impact** to employers and families.
- ✓ **Lean on the APCD** as a source of data for these thorough reviews. Texas already collects data from health insurers and other payers that can inform legislation.
- ✓ **Analyze legislative proposal requests year-round** so lawmakers can have proposals reviewed during the interim as well as during session.
- ✓ **Include data on the current availability** of coverage, public health benefits, and available medical evidence.
- ✓ **Publicly post reviews.**

# Example: California Health Benefits Review Program



**How they describe it:** “CHBRP is an impartial organization tasked with evaluating the medical effectiveness, cost impact, and public health impact of bills related to health insurance benefits. We provide analyses of proposed mandates and repeals to California's State Legislature, so that they have all of the scientific evidence required to make informed decisions.”



**How they fund it:** Funded by an annual assessment of health plans and insurers in California.







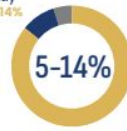

**How it works:** The CHBRP responds to requests from relevant Committee Chairs or leadership offices and must respond within 60 days. Public provided relevant information is accepted.



**Where it lives:** A team of analytic staff at the University of California works with a task force of faculty and researchers from several campuses of the University of California.



# Fiscal Note Example: GLP-1 Weight Loss Mandate

Bill Summary	Context	
<p>SB 839 would require comprehensive coverage for obesity treatments, including:</p> <ul style="list-style-type: none"> <li>Bariatric surgery</li> <li>IBT</li> <li>Prescription drugs approved by the FDA with an indication for chronic weight management, including glucagon-like peptide 1 (GLP-1) receptor agonists and non-GLP-1 drugs. Coverage criteria could not be more restrictive than the FDA-approved indications.</li> </ul> <p>SB 839 would also require that cost sharing for obesity treatments not be different or separate from treatments for other illnesses, conditions, or disorders.</p>	<p>Obesity is a chronic health condition characterized by an increase in the size and amount of fat cells in the body. Individuals with a BMI of 25 or higher are categorized as overweight and those with a BMI of 30 or higher are categorized as obese.</p> 	<p>Causes of obesity are multifaceted and can include: lifestyle habits, environment, socioeconomic factors, and individual characteristics such as genetics and metabolism.</p>  <p>There are many health consequences of obesity such as an increased risk of heart disease, diabetes, and certain cancers, as well as reduced life expectancy. Nearly 3 million Californians with obesity and a half million overweight Californians with comorbidities are enrolled in health insurance that would be subject to SB 839.</p>
<p><b>Insurance Subject to the Mandate</b></p> <p>SB 839 would apply to the health insurance of approximately 14 million enrollees (36% of all Californians)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Medi-Cal</li> <li><input checked="" type="checkbox"/> CDI and DMHC Regulated (Commercial &amp; CalPERS)</li> <li><input type="checkbox"/> Federally Regulated</li> </ul> <p>Body Mass Index (BMI), California Health Benefits Review Program (CHBRP), California Department of Insurance (CDI), California Department of Managed Health Care (DMHC), Food and Drug Administration (FDA), Glucagon-like peptide-1 (GLP-1), intensive behavioral therapy (IBT), Senate Bill (SB)</p>	<p><b>Benefit Coverage and Expenditures</b></p> <p>At baseline, among enrollees with health insurance that would be subject to the mandate, coverage fully compliant with the mandate varies:</p> <ul style="list-style-type: none"> <li>99% for bariatric surgery and IBT;</li> <li>10.1% for GLP-1s;</li> <li>32.5% for non-GLP-1s.</li> </ul> <p>Postmandate, all would have fully compliant coverage.</p>  <p>Total net annual expenditures increase by \$1.27 billion or 0.9% for enrollees with plans and policies regulated by DMHC and CDI.</p> <p>Because premium changes would exceed 1% for several market segments, 10,000 enrollees would become uninsured.</p> 	
	<p><b>Public Health Impacts</b></p> <p>Postmandate, 149,000 enrollees would use either GLP-1s (a 90% increase) or non-GLP-1s (a 58% increase). Enrollees who used consistently would see a 5-14% decrease in body weight.</p> 	<p><b>Long-Term Impacts</b></p> <p>Continued use of the prescription drugs with an FDA indication for weight management could lead to:</p> <ul style="list-style-type: none"> <li>Reduction in the prevalence of obesity and obesity-related chronic disease</li> <li>Reduction in downstream effects such as impacts on premature death</li> </ul> <p>It is unclear if long-term use is associated with severe or persistent harms.</p> 

- SB 839 would require comprehensive coverage for obesity treatments including glucagon-like peptide 1 (GLP-1) receptor agonists.
- Because premium changes would exceed 1% for several market segments, **10,000 enrollees would become uninsured.**
- Postmandate, 149,000 enrollees would use either GLP-1s (a 90% increase) or non-GLP-1s (a 68% increase). Enrollees who used consistently would see a **5-14% decrease in body weight.**
- **Total net annual expenditures increase by \$1.27 billion.**

# Solution #2: Texas Employers Need Relief from Rising Costs—A Moratorium on Health Care Mandates

- **Breaking Point:** Health care costs are squeezing employers' budgets. Mercer estimates a 5.8% increase in health spending in 2025, following a 5.4% increase in 2024—a total **11% jump in just two years.**
- **Strain on Small Businesses:** Three-quarters of small businesses say their employees would rather have pay raises than health benefits.
- **Passing Costs to Workers:** 70% of businesses say even a 4% premium hike would lead to higher costs for employees.
- **Impact on Wages:** Workers have lost 5% in wages due to rising premiums, on top of higher out-of-pocket expenses.
- **Bottom Line:** Rising health care costs are hitting Texans' pocketbooks hard.
- **A moratorium on mandates** can help control costs and ease the financial burden on both businesses and employees.

## Solution #2: Moratorium on Mandates the Legislature Rejects for ERS & TRS

- Legislators should at least not pass mandates if they exempt their own state insurance plans.
- If a mandate is too costly for ERS and TRS, it's also too costly for private employers.

**Example:** [HB 1919](#) (87th) mandated limits on steering to lower cost mail order.

- By exempting ERS and TRS, legislature saved TRS \$70 million, while Texas businesses faced \$350 million in first-year costs.
- Mandate was [vetoed in California](#) saying it would hurt cost control efforts.

### **Other recent employer mandates where lawmakers exempted ERS and TRS.**

- [HB 3359](#) (88th) extensive network adequacy mandates beyond the ACA.
- [HB 1647](#) (88th) limits on using lower cost specialty pharmacies
- [HB 1649](#) (88th) coverage for fertility preservation services

**Additionally, Medicaid is almost always exempted.**

# Solution #3: Give Employers More Flexibility & Options

- **Limits on Flexibility Hurt Employers:** Texas mandates block market-driven solutions that could lower health care costs, leaving employers with outdated regulations that don't meet current needs.
- **Employers Want More Freedom:** 77% of Texas employers want the ability to offer innovative benefits, but state regulations force many to choose self-funded plans to avoid restrictions.

## Market-Driven Solutions Can Lower Costs:

### 1. Allow Shopping Incentives:

- Let insurers reward patients with lower out-of-pocket costs for choosing high-value, low-cost providers.
- Remove barriers to sharing quality and cost information.

### 2. Enable Value-Based Care:

- Support direct and advanced primary care models that reward outcomes, not volume.
- Allow PPO and EPO plans to use value-based care, not just HMOs.

# Solution #3: Employers Want More Flexibility & Options

## Transparency is Allowing Employers to Steer Patients to Affordability & Quality:

- **48%** using or considering programs to steer patients to high quality care.
- **43%** exploring or using high-performance networks to lower costs
- **31%** of large employers (5,000+ workers) utilize tiered networks; 14% overall.
- **75%** of employers with tiered networks prioritize quality and efficiency metrics.
- **44%** are adopting or evaluating strategies to steer towards advanced primary care.

## Employers are Seeking Alternatives that Have Flexibility and Choice:

- Employer are leaving insurance market to ERISA self-funded alternatives, so they can adopt more innovative coverage options and have fewer high-cost mandates.
- **18% of small employers** now opt for self-funded plans, an 80% increase since 2003.

## Solution #4: Reject Attempts to Restrict Employers Even More – Efforts to Apply Mandates to ERISA Plans

- **Protect ERISA Employer Flexibility:** Employers are leading with innovation and Texas should reject attempts to regulate self-funded ERISA employers.
- **ERISA Mandate Threat:** Increasing efforts aim to impose costly mandates on employer self and level-funded coverage, despite ERISA preemption.
- **Costly Texas ERISA Threat:** Last session's SB 1137/HB 2021 aimed to impose expensive state pharmacy mandates on self-funded ERISA plans, restricting cost-saving options and adding \$464M in first-year costs and \$5.4B over 10 years.
- **Texas Employers Successfully Advocated Against ERISA Mandates:** Employers and Chambers of Commerce advocated against these mandates, and the Legislature rejected ERISA proposals.
- **New Effort to Create Employer Mandates:** New [AG Opinion](#) request to determine if the mandates proposed last session (SB 1137) should already be imposed on employers that are self-funding coverage.

To: Chairman and Members  
Texas Senate Health & Human Services Committee  
Subject: SB 1137

SB 1137 applies state-specific mandates to prescription drugs and devices that are currently covered under federal Employee Retirement Income Security Act of 1974 (ERISA) health insurance plans. As large employers and associations representing Texas' largest employers, we have serious concerns about any measure that erodes ERISA's protections and therefore respectfully oppose SB 1137.

The core purpose of ERISA is to create uniformity and continuity for employers managing benefits across multiple state lines. In the absence of ERISA, employers would be faced with either providing inequitable benefits or significantly reducing benefits due to the cost of complying with a patchwork system. Preservation of ERISA is paramount to our ability to provide uniform health insurance coverage to our employees, no matter where they live.

SB 1137 disrupts Texas business, leading to myriad unintended consequences, including:

- inequitable benefits to Texas employees, possibly including decreased benefits and higher premiums, deductibles, and out-of-pocket costs;
- increased complexity and administrative costs of compliance with a patchwork system;
- litigation costs; and
- making Texas less attractive as a place to do business for multi-state employers.

SB 1137 is a direct attempt to apply state law to self-insured ERISA plans and the benefits employers can offer to their employees. While the U.S. Supreme Court ruling in *Rutledge v. Pharmaceutical Care Management Association*, 141 S. Ct. 474 (2020) did address price setting under ERISA plans, the Court specifically stated that state legislation is pre-empted when it interferes with plan design and administration. **SB 1137 goes beyond price setting and interferes with plan design and administration by imposing administrative requirements and mandating that self-funded ERISA plans provide specific benefits.**

As always, we stand ready and willing to work with the Legislature to develop strong public policy that furthers the goals of a strong Texas economy, including protecting policies that improve access to affordable healthcare for Texas employees. We ask that you stand with the business community and preserve ERISA's protections.



# Texas Employers Pushed back Against ERISA Mandates

## SB 1137 & HB 2021 would have created several new mandates on self-funded and level-funded health plans including

- Mail order pharmacy prohibitions.
- Specialty pharmacy prohibitions.
- In-house pharmacy prohibitions.

# Texas Employers Stand Up Against ERISA Preemption Mandates Ahead of the 89th Session

October 31, 2024

As representatives of the Texas business community, we are writing on behalf of employers who rely on the Employee Retirement Income Security Act (ERISA) to provide high-quality health benefits to millions of Texans. We urge you to protect this vital law, which has safeguarded both employees and employers for nearly 50 years.

When ERISA was passed by Congress in 1974, it preempted states from passing laws affecting the administration or design of employer health plans. This important preemption has remained intact for 50 years, providing a consistent regulatory framework that allows employers to operate confidently across state lines, minimizing the administrative burdens that would otherwise come with a patchwork of state-level regulations.

- **ERISA protects the state of Texas and taxpayers** by encouraging private employers to offer benefit plans for their employees rather than relying on public resources.
- **ERISA protects employees** by establishing consistent guidelines for retirement and health plans offered by multi-state private employers.
- **ERISA protects employers** by supporting a uniform benefit program for all employees and by avoiding complications of a patchwork system between states.

In Texas, nearly 15 million people rely on employer-provided health insurance, and more than half of that population is covered under ERISA-regulated self-funded health plans. These plans are the backbone of our state's health care coverage. ERISA's uniformity is essential to Texas' economic success, enabling businesses to offer competitive benefits and maintain operational efficiency without the complexities of varying state mandates. For small and medium-sized businesses in particular, ERISA's protections are crucial for providing affordable and consistent benefits across their workforce.

Unfortunately, recent legislative efforts have sought to circumvent ERISA's protections by imposing state-level healthcare mandates on employers. These efforts risk significantly increasing healthcare costs for Texas employers and their employees. Allowing expensive state mandates to interfere with ERISA protections would create a patchwork of conflicting rules, making it harder for businesses to offer consistent, affordable health benefits and weakening Texas' ability to attract and retain businesses.

It's also important to note that last session, efforts to pierce ERISA by extending state healthcare mandates to ERISA-regulated plans received little support. Key proposals, such as HB 2021, did not even receive a committee vote. This lack of action demonstrates the Legislature's recognition of the crucial role these protections play in allowing businesses to offer consistent, affordable benefits to employees.

This session, preserving ERISA will again be a top priority for the Texas business community. Rising healthcare costs only further emphasize the need to maintain ERISA's uniform standards, which have helped businesses manage expenses and remain competitive in national and global markets. Additional state mandates would not only increase compliance costs but could also discourage businesses from expanding their operations in Texas, jeopardizing the economic growth that has made Texas a leader in innovation and investment.

We respectfully ask that you stand with the business community to protect this landmark law. By doing so, we can safeguard the long-term success of Texas businesses, support the health and well-being of our workforce, and ensure that Texas remains a leading destination for innovation, investment, and job creation.

Thank you for your attention to this critical issue. The Texas business community stands ready to collaborate on solutions that ensure a strong future for both businesses and workers.



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# Solutions to Address the Rise in Mandates

- #1 Private Market Mandate Costs Should be Transparent:** A majority of states estimate the cost of mandates before hearing and passing bills so lawmakers know the actual impact on businesses and families (mandate fiscal note).
- #2 Mandate Moratorium:** The legislature has steadily passed costly health care mandates on employers. It's time for a break. Next session, we need a complete moratorium on new employer health care mandates.
- #3 No Special Exemptions:** Texas lawmakers shouldn't pass mandates that don't apply to their own personal health insurance and state health plans (ERS & TRS).
- #4 Review Existing Limitations that Prevent Employer Flexibility:** Employers want more flexibility to offer innovative benefits that reward high value care and encourage patients to be smart shoppers.
- #5 Protect ERISA Employer Flexibility:** Employers are leading with innovation and Texas should reject attempts to regulate self-funded and level-funded ERISA employers.