



Responses to Claims that ERISA Preemption Waivers Are Needed for State Health Reform

Claim: ERISA is an obstacle to state health reform, preventing states from pursuing their roles as laboratories of experimentation.

Response: States have significant resources and authority to adopt innovative programs to expand coverage, including providing tax credits for offering coverage, permitting small employers to join purchasing pools with state programs, developing insurance options for small employers, permitting insurers to offer limited benefits policies for small employer groups, and creating state reinsurance programs, all without running afoul of ERISA.

Claim: ERISA unfairly exempts employers from contributing to state health programs for the uninsured, yet their employees can take advantage of these programs when they don't have coverage. Everyone should bear the cost.

Response: Employers pay for these programs to the extent that they are funded through broad based taxes or other assessments.

Claim: State voluntary measures are unlikely to substantially reduce the number of uninsured. Voluntary employer incentives for coverage have not reversed the decline in employer-sponsored health coverage so state mandates are necessary.

Response: Without ERISA preemption, the decline in employer-sponsored coverage would be greater as employers would no longer benefit from lower plan administration and compliance costs in addition to higher health care costs. ERISA continues to be a key part of the solution because it makes coverage more affordable for employers. States should join with employers and other purchasers in efforts to improve the quality and efficiency of health care so that more people and employers can afford coverage.

Claim: ERISA hampers efficient administration of state health programs because states cannot require employers to report information about workplace coverage or program eligibility.

Response: States can obtain this information in other ways including through program participants and income tax filings.

Claim: Employers are subject to many interstate differences in other areas like taxes and workplace protections. Why are uniform national standards so important in health benefits?

Response: ERISA has enabled employers to innovate in health plan design for cost control and quality improvement across all of their employee plans regardless of where employees work or reside. ERISA also enables employers to tailor health plans to the specific health and workplace needs of their employees rather than to state requirements.

Claim: Congress drafted and passed ERISA with little consideration of state regulation of employer-sponsored health plans.

Response: In drafting ERISA, Congressional leaders, including Sen. Jacob Javits, the foremost architect of ERISA, did consider state laws and proposals to tax and regulate these plans and decided upon broad preemption of state laws that might interfere with multistate benefit contracts. The conferees wrestled with the issue of preemption as several pressing state efforts that would be adversely affected by preemption were underway during consideration of the law (e.g., Hawaii's health care law and a California proposal).

Claim: Congress could not have taken into account the full impact of ERISA preemption because there were few self-funded plans and few lives covered by self-funded plans when ERISA was enacted.

Response: While only 4% of health benefits were paid under self-funded plans in 1974, those that did exist were very large, multi-state employers who backed ERISA preemption as did labor union representatives because they feared that state mandates would interfere with national contracts and union bargaining power.

Claim: Health reforms like Massachusetts' have only incidental, insignificant effects upon ERISA plans.

Response: In fact, the Massachusetts law, while a worthwhile endeavor, includes provisions that may contravene ERISA's purpose because they relate to benefit plan activities of employers, including the following: it requires a minimum employer contribution; mandates the provision of a group health plan or the payment of a contribution and a surcharge; and imposes administrative and reporting requirements on plans, which are likely to require multistate employers to set up a separate plan administration for Massachusetts.