



## Weekly Checkup

# Why ERISA Is Worth Protecting

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Next week, the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions will hold a **hearing on employer-sponsored insurance (ESI) governed by the Employee Retirement Income Security Act (ERISA) of 1974**. The majority of Americans, approximately **153 million nonelderly adults**, received health insurance through ESI, with **65 percent of workers** (approximately 100 million) receiving coverage governed by ERISA in 2021. Yet ERISA, which is vital to the sustainability of ESI health plans, has faced serious threats from states and other **legal challenges** that seek to undermine the law's greatest benefit: protecting employers who want to offer these health plans to their employees. **Let's explore how ERISA works, why it's under assault, and what Congress can do to protect this critical law.**

*Background:* As mentioned earlier, **ERISA's great contribution to the U.S. health care system is its protection of the ESI plans it governs. It accomplishes this task by – as part of its preemption clause – preventing states from requiring large and multistate employers to follow individual state regulations or benefit mandates that may be duplicative or conflicting.** This, in turn, provides a single, uniform framework to employers, rather than a patchwork of state laws.

*ERISA Under Attack:* Not everyone is thrilled that ERISA preempts state law from regulating ESI plans. In 2019, the **National Council of Insurance Legislators** passed a resolution to amend ERISA as the law, they claim, “has morphed into a pre-emption cudgel that stifles policy innovation at the state level.” **Following several legal cases, most notably after a 2020 Supreme Court ruling (*Rutledge v. Pharmaceutical Care Management Association*) many lawmakers, insurance commissioners, and attorneys general began chipping away at ERISA's preemption, having interpreted these rulings as legal permission to take legislative and regulatory action against ERISA-governed ESI plans.** In response to the House Committee on Education and the Workforce Request for Information on ERISA, the **National Association of Insurance Commissioners** offered its own take on the law, arguing that preemption “raises a key concern of state regulators—federal interference in the ability of states to lower health care costs.” In fact, **ERISA's preemption of state regulatory changes to ESI plans is key to keeping these plans' costs low, and protects from following a multitude of different and sometimes conflicting state regulatory codes, which would most likely increase the overall costs of administering those plans.**

Most recently, 39 state attorneys general **submitted** a letter to Congress arguing that state efforts to regulate pharmacy benefit managers (PBMs) was, in essence, hampered by ERISA preemption. **State policymakers have long perceived ERISA preemption as an inconvenient barrier, but after *Rutledge*, they can now disregard some of the law's preemption power when enacting new regulations or requirements.**

*This Is a Problem:* **When states such as Florida enact laws that violate ERISA preemption, employers, health plans, and other third-party administrators must comply, regardless of additional costs or duplication of regulatory requirements.** Employers are then forced to manage health benefits that are uneven and confusing, and must ultimately divert resources from general employee benefit funds. Regardless of the legal standing of ERISA preemption – and subsequent case law – employers are forced to comply with

patchwork state laws unless they are able to take expensive and [lengthy legal action](#) themselves.

**Opponents of ERISA's preemption clause now view the law as weak – and to be sure, there is long-standing ambiguity in the statute that Congress can and should clarify – and as a result, employers will struggle to manage increased administrative and compliance costs, ultimately reducing their ability to offer employee benefits – and eventually, any meaningful health care benefits at all. Perhaps the [greatest risk to private insurance](#) is not [increasing premiums](#), [medical debt](#), or pie-in-the-sky single payer reforms but the slow erosion of ERISA preemption at the state level. ERISA is the bedrock of the U.S. multipayer health insurance system. **Congress should clarify the boundaries of ERISA preemption to protect employers and allow them the flexibility to offer the best benefits to their employees.****