



March 4, 2025

To: Chair Kolkhorst and Members of the Senate Health & Human Services Committee

Subject: Opposition to SB 1122

On behalf of the Texas Civil Justice League and its membership, we appreciate this opportunity to express our opposition to SB 1122.

First and foremost, passage of SB 1122 could cost Texas employers hundreds of millions of dollars in higher health care costs. It could also impair the ability of employers and business owners to obtain affordable health care coverage for their employees. While this bill has been portrayed as targeting pharmacy benefit managers, it actually has very little effect on them. PBMs don't design employer-sponsored health insurance plans and don't pay for them. Employers do, and ERISA allows them to design uniform plans to cover their employees wherever they are located. If the Legislature takes action to pierce ERISA pre-emption and make those plans more expensive, fewer businesses will be able to provide coverage for their employees. No one wants that outcome.

Second, there is a practical reason for holding off action on SB 1122 at this time. In August 2023, the U.S. Tenth Circuit Court of Appeals ruled that ERISA pre-empted an Oklahoma statute substantially similar to SB 1122. See *Pharmaceutical Care Management Association v. Glen Mulready, in his official capacity as Insurance Commissioner of Oklahoma; Oklahoma Insurance Department* (No. 22-6074; filed August 15, 2023). This case is now on writ of certiorari to the United States Supreme Court. See *Glen Mulready, In His Official Capacity as Insurance Commissioner of Oklahoma, et al. v. Pharmaceutical Care Management Association* (No. 23-1213; docketed May 15, 2024). The case has been briefed and was distributed for Conference on September 30 of last year. In October the Court invited the Solicitor General of the United States to file a brief expressing the position of the United States. Of course, we do not know what the Court will do or when it will do it. What we do know is that it makes sense to see what SCOTUS has to say about the Oklahoma statute before we try to pass a nearly identical statute over the universal opposition of the Texas business community.

In our view, it would be in everyone's interest to defer the policy debate on SB 1122 until we have the final word over whether or not it has pre-emptive effect the 10<sup>th</sup> Circuit determined that it did. We are aware that the State of Texas, both as an *amicus* before the 10<sup>th</sup> Circuit and in a recent Attorney General opinion, has opined that ERISA does not pre-empt the existing statute (Chapter 1369, Insurance Code) nor would it pre-empt SB 1122. We filed a brief with the Attorney General contesting that interpretation. In any event, SCOTUS will, probably fairly soon, tell us who was right and who was wrong. In the interest of efficiency and conservation of legislative effort when so many other pressing issues demand your attention, we would urge you to take no action on SB 1122, and, if you feel that you must take action, vote no.

Thank you all for your continuing service to our state and to preserving Texas' standing as the best state in the nation for business.