THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

DILLON CLAIR
Director, State Advocacy

September 16, 2024

The Honorable Gavin Newsom
Governor
State of California
1021 O Street, Suite 9000
Sacramento, CA 95814
Submitted Electronically

Re: SB 966 – Request for Veto – Comments from The ERISA Industry Committee

Dear Governor Newsom,

I am writing on behalf of The ERISA Industry Committee ("ERIC") regarding SB 966, which will negatively impact the design and administration of self-insured employer health benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), threatening the health care benefits that these plans provide countless Californians.

SB 966 would broadly regulate the network practices of pharmacy benefit managers ("PBMs"). In doing so, the bill could subject ERISA self-insured plans to this regulation, despite the clear preemption afforded to them by federal law. **Because SB 966 does not provide an exemption or exclusion for ERISA self-insured plans from future enforcement of the legislation's provisions, ERIC respectfully urges you to oppose and veto SB 966.**

ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state and city across the country.

ERIC previously shared our ERISA preemption concerns with legislators, urging them to add an exemption amendment to SB 966 that would carve-out ERISA-governed employer plans and largely prevent future conflicts with federal law. Unfortunately, no such ERISA exemption language was included in SB 966 prior to enrollment. In fact, amendments that *were* made to the bill in the final weeks of session *did* provide such an exclusion for certain labor union plans governed by the federal Taft-Hartley Act. Instead of reducing the business community's ERISA preemption concerns, this specified exemption further implies that the expansive provisions of SB 966 would be applied to and enforced against self-insured ERISA plans in the future if enacted.

ERIC's previous legislative comments – attached with this letter to provide context – outline the ERISA preemption concerns raised by SB 966 and the immediate need for language clarifying applicability to ERISA plans. Specifically, these comments include:

- Large employers like ERIC member companies have long been at the forefront of innovating health care benefit design and administration trends.
- ERISA prohibits states from controlling the design and administration of self-insured employer plans established under this federal law.
- This prohibition has been upheld by recent court decisions, including *Rutledge v. PCMA*, 141 S.Ct. 474 (2020) and *PCMA v. Mulready*, No. 22-6074 (10th Cir. 2023).
- SB 966 features uncertain language that implies an open door for future application of the bill's provisions to self-insured ERISA plans.
- Provisions of SB 966 would needlessly restrict the ability of impacted plans to utilize flexible benefit designs and provide considerable cost-savings to plan beneficiaries.
- State attempts to control the design or administration of self-insured ERISA plans in this way are likely to be met with legal challenges on ERISA preemption grounds.

While ERIC recognizes the growing interest among state lawmakers in regulating the practices of PBMs, we remain dedicated to our mission of upholding ERISA preemption and protecting the invaluable employer-sponsored health care benefits that ERISA allows millions of Americans to enjoy. **Because SB 966 in its current form does not exclude future application to ERISA self-insured plans and would create an imminent conflict with federal law, ERIC respectfully urges you to oppose and veto this legislation.**

If you or members of your staff have any questions concerning our comments or the ERISA preemption concerns at hand, please contact us at (202) 789-1400 or dclair@eric.org.

Sincerely,

Dillon Clair

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Director, State Advocacy