

August 5, 2022

Dear Chairman Harless and Members of the House Select Committee on Health Care Reform,

Thank you for inviting the Texas Association of Business (TAB) to speak on this important issue, we hope to continue to work with the Committee on strategies to implement beneficial reforms in our health care system. The business community is a key stakeholder in the health care cost discussion since nearly half of all Texans receive their health insurance through employer sponsored health benefits. This makes the business community the largest payor in our health care system.

My testimony today will provide an overview of these options, as well as concerns and recommendations on how to improve the health care system.

Overview of Employer Sponsored Health Benefits

Employers seeking to purchase health coverage for their employees generally have two options:

- a state regulated health plan; or
- an Employee Retirement Income Security Act of 1974 (ERISA) regulated health plan

While most employers offer some type of health benefit to their employees, the likelihood of offering benefits increases with the size of the employer. Only 31% of employers with less than 50 workers offer health benefits, while virtually all employers with over 50 workers offer health coverage to some of their workers.¹ Since most workers work for larger employers, an overwhelming majority have access to some type of employer sponsored health benefit. In 2021, 91% of workers were employed by an employer who offers health benefits to their employees.²

Historically, there has been a stark contrast between large and small employers when it comes to offering their employees health benefits. Unfortunately, this trend has only grown over the years. In 2000, 47% of small employers offered benefits to their employees, compared to only 31% of small employers in 2021.³ A staggering 16% decrease over the past 20 years. Meanwhile, larger employers have held steady over the same time, with 96.8% of large employers offering benefits in 2000 versus 96.7% in 2021.⁴

While there is a noticeable difference between large and small employers who offer health benefits to their employees, there is also a clear difference between the type of funding mechanism employers utilize. Employers can generally use two types of funding mechanisms:

- a fully insured health plan; or
- a self-funded health plan

A fully insured health plan allows the employer to offer health benefits to their employees without inheriting the financial risk of unfavorable health outcomes. For example, if one of the employees has a \$300,000 medical bill - the employer with a fully insured health plan would not be liable for payment. The health insurance company inherits the financial risks associated with the fully insured health plans they sell. Generally speaking, a fully insured health plan is preferred by smaller employers. In 2021, 58% of employers with less than 49 workers offered fully insured health plan.⁵

While fully insured health plans must provide the federally required “essential health benefits”, they are also subject to more stringent state regulations and laws. These state-imposed mandates in excess of federal law require certain benefits or services to be covered by the health plan. State regulations can also mandate certain contractual standards between the health plan and their providers or enrollees. Historically, TAB has advocated against state-imposed mandates since they reduce flexibility for the market participants and hinder the innovation of new insurance products, which then drive up the cost of insurance for employers and their employees.

Some employers choose to pay for the health care benefits they offer their employees with their own funds instead of purchasing health insurance for them. This is called a self-funded health plan. Federal law (the Employee Retirement Income Security Act of 1974, or ERISA) exempts self-funded health plans from most state insurance laws and regulations. In 2021, 64% of all employees with employer sponsored health plans were in a self-funded plan.⁶

Larger employers are much more likely to have a self-funded health plan. Last year, only 16% of employers with less than 49 employees had a self-funded health plan, while 86% of employers with over 1,000 employees used a self-funded health plan.⁷ These stark differences in the decisions made by small and large employers highlight the need for the Committee to use different approaches for potential solutions to employer sponsored health coverage.

TAB Recommended Solutions

Smaller employers, who generally purchase fully funded health plans from the state regulated market, need more options in the marketplace. The increasing cost of insurance has forced many of the small employers out of the market for employer based health insurance and into offering less valuable benefits in terms of tax purposes. Many employers have decided to offer additional salary or “non-insurance” health coverage in lieu of traditional employer sponsored health benefits. These alternatives are not tax deductible for the employer therefore they provide a less valuable benefit to their employee.

The 87th Legislature recognized the need for Texans to have more options to purchase health coverage. As part of the Texas House’s “*Healthy Families, Healthy Texas*” coalition of bills,

House Bill 3752 by Chairman Frank and House Bill 3924 by Chairman Oliverson both “...would expand free-market offerings for competitive health coverage for small employers, people who are not eligible for Medicaid or those who do not have access to employer-based plans.” according to an op-ed by House Speaker Dade Phelan.⁸

These two bills created two new health coverage products in the marketplace, products that are exempt from conventional insurance laws. The bill analysis for HB 3924 provides an explanation for such provisions: “Exempting these plans from the definition of insurance allows for advanced coverage options that are not subjected to conventional insurance laws and regulations, including stringent provisions of state and federal law that drive up coverage costs.”⁹ Included in the exempted regulations for these two products are the mandates created by the legislature.

TAB recommends that the Legislature build on these efforts from last session and allow traditional health insurance companies to offer health plans with no additional state mandates. TAB successfully advocated for this type of legislation 20 years ago when then Senator Tommy Williams passed SB 541 into law during the 78th Legislative session – creating the “Consumer Choice of Benefits Health Plan” (CCP). Unfortunately, over the past 20 years additional mandates have been applied to these health plans and has impacted their usefulness in the marketplace. TAB recommends the Legislature remove the mandates imposed on the CCPs to restore them to their original intent – an additional option for small businesses when seeking an employer-based health plan.

Larger employers, who generally purchase self-funded health plans, are currently not subject to most state-imposed mandates. However, a recent U.S. Supreme Court (SCOTUS) decision opened the door for potential state-imposed mandates that could drive up the cost for larger employers and their employees. In *Rutledge v PCMA*, the SCOTUS ruled that the legislature could impose mandates so long as it “*merely affects costs*”.¹⁰ TAB strongly opposes any mandates on ERISA regulated health plans especially in an inflationary environment for the business community.

More broadly, as the Committee reviews improvements to the health care system, TAB recommends that the legislature extend the coverage for Medicaid from 6 months to 12 months postpartum. Numerous studies have shown the importance of this coverage to ensure the health of the mother and the newborn children.

Lastly, TAB recommends that the legislature continue to support our system of intellectual property and patents. This system effectively balances the need for innovation and affordability. The competition driving our system has led to the most cutting edge, life-saving medicine in the world.

TAB strives to continue to make Texas the number one place to do business and is committed to help businesses of all sizes offer their employees’ health benefits. We want to continue to work with you to understand the impact of potential legislation on the business community.

We thank you for the opportunity to testify today and would be happy to answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Jensen". The signature is stylized with a large, circular flourish at the beginning.

President & CEO
Texas Association of Business

¹Agency for Healthcare Research and Quality, *Medical Expenditure Panel Survey (MEPS) Insurance Component (IC)*, <https://datatools.ahrq.gov/meps-ic>

²Kaiser Family Foundation, *Employer Health Benefits: 2021 Annual Survey*, at 11, <https://files.kff.org/attachment/Report-Employer-Health-Benefits-2021-Annual-Survey.pdf>

³*Medical Expenditure Panel Survey (MEPS) Insurance Component (IC)*,

⁴*Id.*

⁵ *Employer Health Benefits: 2021 Annual Survey*, at 156.

⁶ *Id.* at 151.

⁷ *Id.* at 152.

⁸ Phelan, Dallas Morning News, *Speaker Phelan: This set of bills will stabilize Texas' health care safety net*, April 8, 2021; <https://www.dallasnews.com/opinion/commentary/2021/04/08/speaker-phelan-texas-can-stabilize-its-health-care-safety-net/>

⁹ *Bill Analysis*

¹⁰ *Rutledge v. Pharmaceutical Care Management Association*, at 5.