



## STRENGTHENING ERISA UNIFORMITY

### BACKGROUND

The American Health Care Act (AHCA), as passed by the U.S. House of Representatives on May 4, 2017, allows states to submit waiver applications for more flexible implementation of certain individual market reforms, including age rating, the essential health benefits categories and health underwriting when a lapse of continuous coverage exceeds 63 days.

Additionally, and as discussed at several recent board meetings, the Affordable Care Act (ACA) created state innovation waivers. Council members have expressed concerns that state waivers could lead to a patchwork of regulations that make it very difficult (if not impossible) to offer and administer a uniform set of benefits to employees residing across the country. For these reasons, it is critical that Congress and the Trump Administration protect the federal uniformity standard established by ERISA – and not take any action that would intentionally or unintentionally erode ERISA preemption.

### TALKING POINTS

- Unless the state waiver process is properly and carefully administered (for example by only granting states flexibility with regard to the individual market in that state), state waivers could undermine the uniform design and administration of employer plans and could impose excessive costs on employers in those states where waivers are granted.
- There is a concern that states could enact employer mandates as a way to raise revenue or pay for Medicaid expansion. Language strengthening ERISA uniformity would help ensure states cannot impose any requirements or taxes on self-funded employer-sponsored health plans. Clearly, such state actions would erode ERISA preemption and the uniform scheme of regulating employer plans.
- At a minimum, legislation to repeal-and-replace the ACA that grants increased authority to state governments should “do no harm” to ERISA.