Health Information & the Law
HealthInfoLaw.org
Fast Facts
February 2014

ERISA and State Reporting Laws

The Employee Retirement Income Security Act of 1974 (ERISA)[1] is a federal law that governs employee benefit plans, including most employer-sponsored health insurance plans. All plans governed by the law must comply with various requirements, including reporting and disclosure requirements. ERISA preempts state laws that "relate to" employee benefit plans, which means that even if a state law or regulation establishes requirements for an employee benefit plan, the plan only has to follow federal requirements under ERISA and its regulations.

Some states have laws requiring health benefit plans to report information about quality and cost. Recent litigation has raised the question whether these state laws are preempted by ERISA as they apply to health insurance plans that are covered by ERISA. In Vermont, a 2008 regulation implemented the Vermont Healthcare Claims Uniform Reporting and Evaluation System, requiring health insurers to "regularly submit medical claims data, pharmacy claims data, member eligibility data, provider data, and other information relating to health care provided to Vermont residents and health care provided by Vermont health care providers and facilities…."[2] An insurer subject to the reporting regulation, Liberty Mutual Insurance Company, filed a lawsuit against the state of Vermont, arguing that the law was preempted by ERISA as it applied to employee health benefit plans.

In interpreting ERISA over the years, courts have recognized that regulation of health and safety are traditionally state matters and therefore, there is a presumption against preempting state health care laws and regulations. The key question is whether the state law relates or refers to ERISA plans, in which case it would be preempted. State laws that would interfere with core ERISA functions (by, for example, mandating employee benefit structures, eligibility for benefits, employee benefit administration, or providing alternative enforcement mechanisms for securing benefits) would be preempted.

In 2012, the federal trial court ruled in *Liberty Mutual Insurance v. Donegan* that Vermont's law was not preempted because it did not apply only to ERISA plans, did not require any particular health plan selection, benefit structure, or enforcement mechanism, and did not interfere with the operation of an ERISA plan. Recently, on February 4, 2014, the U.S. Court of Appeals for the Second Circuit reversed that decision, finding that the Vermont law was preempted. The Court of Appeals ruled that ERISA was intended to create a uniform federal standard by broadly preempting state laws "in the areas of record-keeping, reporting, and disclosure." It held that the Vermont law has a "connection with" ERISA plans and ERISA preempts state laws dealing with the subject matters covered by ERISA (including reporting and disclosure), not just laws that address plan administration or enforcement. One of the three judges hearing the appeal disagreed, arguing that the reporting required by ERISA is entirely different and distinct from the reporting required by Vermont and that such a statute of general applicability, which doesn't affect plan benefits or how beneficiaries receive them, should not be preempted by ERISA.

[1] 29 U.S.C. §1132(a).
[2] Regulation H-2008-1, 21-040-021 Vt. Code R. §4(D).

The implications of the Second Circuit's decision are most immediate for Vermont, since its statute has been invalidated as it applies to most employer-sponsored insurance plans. The Second Circuit includes Connecticut, New York, and Vermont, so the *Liberty Mutual* decision would be applied to state reporting laws in those states that relate to employee benefit plans as well. Other courts may interpret ERISA differently as it applies to other state laws. It is possible the decision will be reheard by the full Court of Appeals or appealed to the U.S. Supreme Court, but it is unlikely the Supreme Court will take the case unless another Circuit rules differently on the central question.

For more information on state and federal laws related to Quality Measurement & Reporting, click here.
*Follow us on Twitter at **@HealthInfoLaw***