Providers Beware: In ERISA Land, a Right May Not Have a Remedy

By: Julie Simer

A recent U.S. Supreme Court decision reminds us that straying into the land of the Employee Retirement Income Security Act of 1974 ("ERISA")[1] can be hazardous for an unwary state or health care provider. When ERISA preempts a state law, a plaintiff's right to obtain a recovery from a self-insured health plan may be severely limited.

ERISA applies to all employer-sponsored health plans, with the exception of governmental and some church plans. An understanding of ERISA is important at the very beginning of contract negotiation. Provider agreements often import terms and definitions from ERISA plans, particularly with respect to the definition of "medical necessity." Therefore, every ERISA decision is important for health care providers, particularly one from the U.S. Supreme Court ("Court").

The Court's recent decision in *Gobeille v. Liberty Mutual Insurance Company*,[2] demonstrates that a state's good intentions may lead it into ERISA preemption. Successful population health management requires a keen evaluation of data to identify ways to contain costs, improve quality, and increase patient satisfaction. States, such as Vermont, create databases to store health data for analytic purposes. Vermont met resistance, however, when it extended claims data reporting requirements to self-insured health plans covered by ERISA.

Vermont's law requires health care insurers, providers, and facilities, as well as governmental agencies, to report certain information on health insurance claims and enrollment of members, subscribers, and policyholders to a state agency.[3] Under the law, the definition of "health insurer" includes a self-insured health benefit plan.[4] The collected data is added to a database, which is intended to be "a resource for insurers, employers, providers, purchasers of health care, and [s]tate agencies to continuously review health care utilization, expenditures, and performance in Vermont."[5]

Liberty Mutual Insurance Company ("Liberty Mutual") provides health insurance through its self-insured health plan ("Plan") to over 80,000 of its employees, their families, and former employees in all 50 states. The Plan did not cover enough people in Vermont to be required to report, however. On the other hand, Blue Cross Blue Shield of Massachusetts, Inc. ("BCBS"), its third-party administrator, is a mandatory reporter. Pursuant to the indemnity clause in the contract between Liberty Mutual and BCBS, Liberty Mutual would ultimately bear the financial burden of failing to comply. Although there may have been many reasons why Liberty Mutual wanted to protect its proprietary data, at least one reason was a concern that reporting would require it to violate its fiduciary duties to plan participants under ERISA.

Liberty Mutual's suit in the district court requested a declaration that ERISA preempts the Vermont law, as it applied to the Plan. It also requested an injunction to prevent Vermont from trying to acquire data about the Plan or its members. The district court decided in favor of the state, but the Court of Appeals for the Second Circuit reversed. The U.S. Supreme Court ("Court") granted certiorari to decide the issue.

The Court noted that ERISA preempts "any and all [s]tate laws insofar as they may now or hereafter relate to any employee benefit plan…."[6] Under the Court's interpretation, ERISA can preempt a state law in two ways: (1) a "reference to" an ERISA plan, or (2) an impermissible "connection with" an ERISA plan.

The purpose of ERISA, according to the Court, is to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures. The Court pointed out that ERISA includes extensive reporting, disclosure, and recordkeeping requirements, and these are fundamental components of ERISA's regulation of plan administration. The Court noted that Congress intended ERISA to provide a single uniform national scheme for the administration of ERISA plans without interference from laws of the several states, even when those laws impose parallel requirements. Because the statute included reporting requirements that interfered with an ERISA core function, ERISA preempted the state law with respect to the Plan. The Court added that the "analysis may be different when applied to a state law, such as a tax on hospitals, the enforcement of which necessitates incidental reporting by ERISA plans."

[1] 29 U.S.C. §1001 *et seq*.
[2] *Gobeille v. Liberty Mutual Ins. Co*, 2016 U.S. LEXIS 1612 (March 1, 2016).
[3] Vt. Stat. Ann., Tit. 18, §9410(h)(1)(B).
[4] Vt. Stat. Ann., Tit. 18, §9402(8); §9410(j)(1).
[5] Vt. Stat. Ann., Tit. 18, §9410(h)(3)(B).
[6] 29 U. S. C. §1144(a).

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ERISA preemption may prevent a provider from pursuing a state law cause of action, such as for failing to abide by state timeliness requirements. The Eleventh Circuit held that ERISA preempts a Georgia "prompt-pay" statute when applied to self-insured health plans.[7] Therefore, health care providers need to make sure that members of their team are thoroughly familiar with ERISA before they negotiate any type of agreement with a self-insured health plan. Otherwise, a provider looking for a remedy against a self-insured health plan, may inadvertently stumble into the land of ERISA preemption.

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[7] *Am.'s Health Ins. Plans v. Hudgens*, 742 F.3d 1319, 1325 (11th Cir. 2014).

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