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High Court Halts State's Effort to Collect Health Data from Self-Funded ERISA Plans

The Supreme Court recently struck down Vermont's all-payer claims database law, as applied to self-funded ERISA plans. Recognizing reporting requirements as a key feature of ERISA, the Court concluded that Vermont interfered with nationwide ERISA plan administration by mandating that plans submit certain claims and enrollment information. The Court suggested, however, that DOL may have authority to require ERISA plans to report this type of information to states. In the meantime, plan sponsors should consult with legal counsel to identify any next steps on data previously submitted to the Vermont database, and review administrative services agreements to assess the need for contractual changes.

Background

ERISA Section 514(a) provides that the statute preempts, or supersedes, state laws that "relate to any employee benefit plan." Additionally, courts have held that ERISA trumps any state or local laws that conflict with its substantive provisions. So, with some important exceptions — most notably the "insurance savings clause" that protects state laws that regulate insurance, banking or securities from ERISA's preemption provision — ERISA's reach is sweeping when it comes to state laws that regulate employer-sponsored benefit plans.

The Vermont legislature established the Vermont Health Care Uniform Reporting and Evaluation System, a database of information on health care utilization, costs and resources. The state required "health insurers" — defined to include self-funded ERISA plans — along with other entities such as third party administrators (TPAs) to submit certain data, including information about claims and enrollment for Vermont residents and people treated in Vermont. The law imposed fines for noncompliance with these requirements. Several other states have enacted similar database systems, which are known generally as "all-payer claims databases." The data collected is used to analyze health care access, spending, utilization and quality in efforts to manage and lower health care costs, evaluate the relative utility of different treatments, and detect discrimination in the provision of health care.

Liberty Mutual Insurance Company (Liberty Mutual) sponsors a self-funded ERISA plan (Plan) with Blue Cross Blue Shield of Massachusetts (Blue Cross) as a TPA. The Vermont law required Blue Cross to submit claims and enrollment data for its Vermont members, including Plan members in Vermont — but Liberty Mutual instructed Blue Cross not to comply.

Liberty Mutual asked the court to determine that the Vermont law impermissibly interferes with uniformity of plan administration and, therefore, is preempted by ERISA. The trial upheld the Vermont law, as it determined that it affected ERISA plans only in an indirect manner. However, upon review, the Second Circuit Court of Appeals, persuaded by Liberty Mutual' s arguments, held that the law is preempted by ERISA as it impermissibly burdens ERISA plans. Vermont appealed that decision to the Supreme Court.

State Reporting Law Interferes with ERISA's Reporting Regime

On March 1, 2016 in *Gobeille v. Liberty Mutual Insurance Company*, the Supreme Court ruled 6-2 that ERISA preempts the Vermont law. The justices issued four separate opinions in this case, illustrating some key differences in their views on the issues involved.

In writing the majority opinion and striking down the Vermont law as applied to self-funded ERISA plans, Justice Anthony Kennedy recognized that, by requiring plans to report detailed information on claims and plan members, the state law addresses an integral component of, and interferes with, nationwide uniformity of plan administration. The Court, emphasizing the importance of ERISA's extensive reporting, disclosure and recordkeeping requirements, noted that plans must report on disbursements, including paid claims. Importantly, Justice Kennedy viewed the state law as one that, by setting forth different reporting, disclosure and recordkeeping mandates, could create unnecessary administrative costs and expose ERISA plans to "wide-ranging" liability.

In concluding that the Vermont law impermissibly regulates a central aspect of ERISA plan administration, the Court refused to consider the specific economic costs attributable to the law. Likewise, it dismissed the idea that the preemption analysis should take into account any differing objectives as between ERISA and the Vermont law. The Court also determined that because reporting is an essential ERISA feature, ERISA supplants state reporting laws that address public health issues — traditionally, an area of state (rather than federal) power.

Additionally, the Court noted — without saying anything more — that DOL "may be authorized" to require ERISA plans to report data to state all-payer claims databases. Picking up on this suggestion, Justice Stephen Breyer wrote a concurring opinion expressing his view that, although ERISA preempts the Vermont law, states could collaborate with DOL to obtain health care data from ERISA plans. According to Justice Breyer, the DOL could delegate to a state the authority and responsibly to obtain health care data from all payers, including self-insured plans.

Justice Clarence Thomas wrote a separate concurrence. Although he agreed with the majority that ERISA preempts the Vermont law, he questioned if ERISA's preemption provision is valid use of congressional power under the U.S. Constitution. "Just because Congress can regulate some aspects of ERISA plans pursuant to the Commerce Clause," Justice Thomas emphasized, "does not mean that Congress can exempt ERISA plans from state regulations that have nothing to do with interstate commerce."

Finally, Justices Ruth Bader Ginsburg and Sonia Sotomayor, the dissenters, said that ERISA's preemption provision should be read more narrowly to uphold the Vermont law. In their view, reporting and disclosure requirements are "ancillary to the areas ERISA governs," and, given ERISA plans' efficient electronic data storage, formatting and submissions systems, the Vermont law imposes only modest burdens.

(Mostly) Good News for Plan Sponsors

Plan sponsors operating in multiple jurisdictions will welcome the Court's ruling in favor of ERISA preemption. It relieves them of the compliance costs and administrative burdens associated with the Vermont all-payer claims database. Moreover, the Court's ruling suggests that ERISA would preempt all-payer claims databases in other jurisdictions.

> **Comment.** To date, there are over a dozen all-payer claims databases nationwide in various stages of implementation. States might modify those laws — perhaps to exclude self-insured plans from coverage or to make their provisions voluntary for self-insured plans — in anticipation of a legal challenge following the *Gobeille* decision.

The Court's conclusion that reporting requirements are a central component of ERISA also hints that it would strike down other types of state reporting requirements as applied to self-funded ERISA plans — for example, state laws imposing reporting requirements on private employers in connection with state-based retirement programs. (See our March 7, 2016 *Legislate*).

Nevertheless, the Court's view — bolstered by Justice Breyer's concurrence — that DOL could require ERISA plans to report data to all-payer claims databases may ultimately undermine its *Gobeille* ruling. It remains to be seen if states and the DOL latch on to this approach. If they do, plan sponsors could find themselves subject to the same patchwork of conflicting state laws that the Court sought to avoid in *Gobeille*.

On March 7, 2016, in light of the *Gobeille* ruling, the Supreme Court **directed** the Sixth Circuit Court of Appeals to reconsider its 2014 **decision** upholding Michigan's Insurance Claims Assessment Act — a law that imposes a one percent tax on medical claims paid within Michigan on behalf of Michigan residents. Although the purposes and objectives of the Michigan law are different from those of the Vermont law the Court reviewed in *Gobeille*, the Michigan law requires ERISA plans to maintain records of paid claims and submit quarterly returns to the state.

In Closing

Plan sponsors that were subject to the Vermont law should consult with legal counsel to identify any next steps to take on the data they previously submitted to the state database. They should also review administrative services agreements to determine if any contractual changes are needed in light of the Supreme Court's ruling.

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