Implementation Considerations for Universal Coverage: ERISA

Informational Hearing: California Assembly Select Committee on Health Care Delivery Systems and Universal Coverage
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What is ERISA?

• The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that regulates private-sector pensions and other employee benefit programs, including job-based health coverage.

• ERISA is relevant to health policy because it preempts state laws that relate to employee plans.

• Federal preemption is a doctrine that asserts that when state law and federal law conflict, federal law displaces, or preempts, state law, due to the Supremacy Clause of the Constitution.
ACA Did Not Repeal ERISA

• But it did modify/amend ERISA in some very specific ways:
  – Rules relating to the prohibition of preexisting condition exclusions,
  – Rules prohibiting lifetime and annual dollar limits for essential health benefits,
  – Rules prohibiting rescissions, and required coverage of certain preventive services without cost sharing.
Private Sector: Difference Between a Fully Insured and Self-Insured Plan

• Self-funded ERISA plans are exempt entirely from state regulation and state law claims.
• This creates an incentive for employers to become self-insured: exempt from state regulation and benefit mandates.
What is Left to the States by ERISA?

• Tax and regulate traditional insurers performing traditional insurance functions.
• Regulate multiple employer welfare arrangements.
• Regulate hospital rates charged to insurers and others who pay health care bills, tax health care providers.
• Provide remedies for injuries when a health plan controls medical care delivery/traditional medmal cases.
What Can’t the States Do Under ERISA?

• Directly regulate private employer-sponsored health plans.
• Mandate that private employers offer or pay for insurance.
• Tax private employer-sponsored health plans themselves.
• Regulate self-insured private employee plan benefits or financial solvency.
Ambiguous State Authority to Regulate Health Insurance Under ERISA

• Regulation of stop-loss insurance.
• Independent external review/appeals programs.
• Employer pay-or-play health care programs.
• Regulation of third party administrators (TPAs) that administer self-insured plans.
What About State Specific Health Care Reform?

- ERISA may prohibit an employer mandate (because it “relates to” employer-sponsored plans).
- An individual mandate is most likely to avoid challenge if it makes no reference to employer-sponsored health plans.
- Even taxes can raise ERISA preemption problems if state law conditions tax advantages or disadvantages on plan design features.
Golden Gate Restaurant Assoc.  
(9th Cir. 2008)

- SF’s “pay or play” ordinance was upheld because it was not itself an ERISA plan.
- Because the City and County of SF had offered an alternative that was not available in *Fiedler*.
- No cert., ACA passed
  - Might be where the story continues.
Gobeille v. Liberty Mutual (U.S. 2016)

- ERISA pre-empts a Vermont law that requires certain entities, including health insurers, to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database.