



UNIVERSITY OF MISSOURI-KANSAS CITY

Implementation Considerations for Universal Coverage: ERISA

Informational Hearing: California Assembly Select
Committee on Health Care Delivery Systems and
Universal Coverage

February 5, 2018

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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

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 medical 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.