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update

Compliance News for Plan Sponsors

May 23, 2016

U.S. Supreme Court Decision in Case Concerning State Regulation of Self-Insured, ERISA-Governed Group Health Plans

The Employee Retirement Income Security Act of 1974 (ERISA) supersedes state laws that relate to employer-sponsored group health plans. This is referred to as "ERISA preemption." The U.S. Supreme Court recently held in a 6–2 decision that ERISA preempts Vermont's statute requiring health plans to provide data concerning medical claims. The case, *Gobeille v. Liberty Mutual Insurance Company*,[1] may signal a revision in the Court's preemption analysis for ERISA-governed plans.[2]

The Decision

Liberty Mutual, which maintains a self-insured plan administered by Blue Cross Blue Shield of Massachusetts, had challenged a request made under Vermont's law. Vermont is one of 18 states that have an All-Payer Claims Database (APCD), which collects reports containing claims data and other information. All health plans, including self-insured plans, are required to report to the all-payer claims database under the Vermont law.

For the Court's majority, Justice Anthony Kennedy wrote, "reporting, disclosure and recordkeeping are central to, and an essential part" of ERISA, meaning that it prevails over the state's efforts to legislate on the same issue. Justice Kennedy was clear that the reporting requirement imposed by the state database law is too burdensome.

The *Gobeille* holding does not apply to insurance companies, which are subject to state regulation, or to sponsors of governmental health plans, which are not subject to ERISA.

Immediate Implications for Plan Sponsors

The decision holding that ERISA preempts this type of state database potentially affects 17 other states[3] that have similar laws. Plan sponsors of self-insured

Health Compliance News Highlights:

- The Court held that self-insured ERISA plans cannot be required to report to Vermont's All-Payer Claims Database.
- State regulations that affect self-insured ERISA plans are likely to be reexamined.

[1] The March 1, 2016 decision, 577 U.S. ___ (2016) for which the full citation has not yet been determined, is on the U.S. Supreme Court's website.

[2] Recent preemption decisions, such as *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.* (1995), have resulted in state laws being upheld; particularly if they are broadly applicable, despite increasing the regulatory burdens on ERISA-governed plans.

[3] Colorado, Kansas, Minnesota, Tennessee, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, Utah and Vermont have mandatory APCDs, while Virginia, Washington and Wisconsin have voluntary efforts. Connecticut, Nebraska, New York, Virginia and West Virginia have been implementing mandatory APCDs.

ERISA plans in Vermont and other states with All-Payer Claims Databases should discuss the reporting obligations with their plan administrator and legal counsel and determine whether any changes are appropriate. For example, plan sponsors should review whether they wish to continue to comply with a state APCD program on a voluntary basis. Some administrators have requested that plan sponsors determine whether to continue to send the data or to opt out of the process.

Plan sponsors that wish to continue to comply should review whether compliance is permissible under the Health Insurance Portability and Accountability Act (HIPAA) privacy rules. There could be privacy and security considerations under the HIPAA rules because the data transfer is a disclosure of protected health information. Previously, the disclosure was permitted because it was "required by law." However, because the law is preempted in Vermont, and potentially other states, the "required-by-law" exception is not applicable. Plan sponsors should review with legal counsel whether other HIPAA provisions, such as disclosure for public health oversight, would permit the disclosure.

Longer-Term Implications

Moving forward, the Court's decision may have implications beyond the All-Payer Claims Databases. Specifically, the holding may affect state regulation of ERISA-governed health plans, particularly with respect to state taxation of health claims or other fees mandated by states on self-funded health plans. On March 7, 2016, shortly after the *Gobeille* decision was issued, the Supreme Court asked the Sixth Circuit Court of Appeals to reconsider its decision in *Self-Insurance Institute of America v. Snyder.* In that case, the Sixth Circuit had held that the Michigan Health Insurance Claims Assessment Act, which imposes a 1 percent tax on health claims paid by plans, including self-insured plans, was not preempted. The Sixth Circuit will now review the Michigan law in light of the *Gobeille* preemption decision.

State regulations that affect self-insured ERISA plans are likely to continue to be reexamined in light of the *Gobeille* analysis. Plan sponsors, particularly those that have been responsible for payments under the Michigan law, should monitor future judicial developments in this area.

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Questions?

For more information about how these new rules may affect your plan, please contact your Sibson consultant or the Sibson office nearest you.