



Strengthen ERISA Preemption

The federal ERISA law (*Employee Retirement Income Security Act of 1974*) plays an essential role for multistate employers by enabling uniform health benefits and administration across state lines. A line of cases from the U.S. Supreme Court and recent litigation around regulation of Pharmacy Benefit Managers (PBMs) threatens to significantly undermine ERISA preemption. These court cases allow states to regulate health plan administration and contractors like PBMs and Third-Party Administrators (TPAs), which are essential to operating most multistate plans. The continuation of this trend would make it increasingly difficult to operate multistate health plans – the source of coverage for tens of millions of working Americans.

Solutions

The Partnership for Employer-Sponsored Coverage (P4ESC) believes ERISA to be a key foundation of employer provided health benefits. ERISA preemption and uniformity must be strengthened to ensure that quality health coverage remains available and affordable. P4ESC calls on Congress and the Biden Administration to strengthen full ERISA preemption, including health plan administration.

Background

ERISA was enacted in 1974 to encourage voluntary employee benefit plans (particularly health and retirement benefits) and to promote uniformity in these plans. ERISA preempts application of state laws that “relate to” these employer-sponsored plans. ERISA does not preempt the states from regulating health insurers or health insurance products. ERISA also does not preempt state laws of general applicability (e.g., taxes). ERISA applies to all employer-sponsored plans, whether self-insured or fully insured. In its almost 50-year history, ERISA has worked well and effectively to the benefit of employees and employers.

Multistate employers seek to build an equitable workplace culture by providing uniform and affordable benefits to their employees regardless of where they live. Employers also want to be able to administer these benefits in an efficient, consistent manner. Uniform design and administration of health benefits promotes substantial efficiencies, and significantly reduces health care costs for employees and plan sponsors.

Federal courts have taken an increasingly restrictive view of ERISA preemption of state regulation. The *Travelers*¹ case in 1995 held that a New York law regulating hospital billing rates to insurers was not preempted merely because of its “indirect economic influence” on the plan.

¹ New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995)

The *Rutledge*² case held that an Arkansas law regulating PBMs was not preempted for merely increasing plan costs or altering incentives. In the *Mulready*³ case in Oklahoma, the amicus brief of the U.S. Department of Labor incredibly suggests that the only path to preemption for health plan administration is when the plan itself performs the administrative service, such as administering pharmacy benefits. Such an approach – performing itself the functions of a PBM or TPA – is beyond the reach of most multistate employers.

ERISA uniformity is important to maintain common benefit coverage for employees in multiple states. But it is also important in finding economies of scale. This ability to lower plan costs but maintain high quality has and continues to be of critical importance.

Next Steps

P4ESC and other allied supporters of employer-sponsored coverage must take steps to educate Congress, the Administration, and the public about the vital role of ERISA in health coverage and why it must be protected and strengthened. The Department of Labor should be questioned and challenged on its view in *Mulready*. Congress should consider clarifications to ERISA to make clear that health plan administration is integral to group health plans and is protected by ERISA preemption.

² *Rutledge v. Pharmaceutical Care Management Association* (U.S. S.Ct. 2020)

³ *Pharmaceutical Care Management Association v. Mulready* (10th U.S. Circuit, 22-6074 2023)