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Supreme Court Thumps State-Imposed "All Payer Claims Database" Rules; Feds Increase Out-of-Pocket Maximums for 2017; IRS Warns of Foul Phish

Supreme Court Rules for Self-Insured ERISA Plans in Battle with "All Payer Claims Database"

Chalk one up for self-insured ERISA plans in the ongoing battle to avoid state regulation. The Antonin Scalia-less U.S. Supreme Court restored a bit of order to the ERISA "preemption of state law" universe on March 1, when it ruled 6-2 that ERISA preempts – that is, blocks – a state law requiring self-insured ERISA plans to supply the state with detailed reporting of health plan claims and claim payments.

At issue in the case, *Gobeille vs. Liberty Mutual Ins. Co.*, was a Vermont law requiring health plans, including self-insured plans and their third-party administrators (TPAs), to provide massive amounts of information to a state-maintained "all-payer claims database" related to health services supplied to Vermont residents. The Vermont law requires health insurers – which it defines to include self-insured plans and their third-party administrators – to report any "information relating to healthcare costs, prices, quality, utilization or resources," including health insurance and pharmacy claims, payments and enrollment data.

Liberty Mutual, the sponsor of a large self-insured ERISA plan covering 80,000 individuals across all 50 states, declined to supply the information demanded by Vermont, citing ERISA's rule preempting the application of state law to self-insured ERISA plans.

> ***Lockton comment:*** ERISA's preemption rule is broad, shielding self-insured ERISA plans from state laws that act immediately and exclusively upon ERISA plans, or that govern a central matter of plan administration or interfere with nationally uniform plan administration.

The Court, upholding a lower court's ruling, agreed with Liberty Mutual. ERISA preempts the state law, the Court concluded, because the state law goes too far in interfering with self-insured plans' reporting obligations that are already extensive and well-established at the federal level (e.g., Form 5500 and other reporting and disclosure obligations).

The Court observed that allowing laws like Vermont's to compel self-insured ERISA plans to report all manner of plan-related information to the states could lead to self-insured plans having to respond to a variety of inconsistent state laws, in addition to meeting their extant reporting obligations under ERISA. That sort of administrative burden, the Court concluded, is what Congress sought to avoid when it included a broad preemption rule in ERISA.

The fallout from the case will likely be dramatic and multi-pronged. Almost half the states have or are installing similar databases and reporting requirements. The Supreme Court's opinion could lead self-funded ERISA employers and TPAs in those states to refuse to submit requested data. That, in turn, could lead to something else: A federal regulation from the Labor Department, compelling self-insured employers to supply data requested by the states.

> ***Lockton comment:*** Justice Stephen Breyer, a Bill Clinton appointee, voted for preemption in the case, but noted in a separate concurring opinion that federal regulators, acting under ERISA, could help states achieve the results they want here. "I see no reason," Breyer wrote, "why the Secretary of Labor could not develop reporting requirements that satisfy the States' needs, including some State-specific requirements, as appropriate."
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> We wonder whether federal regulators are not already sharpening their pencils.

It'll be fascinating to watch how this tug of war between state all-payer databases and self-insured employers plays out. The results of this year's presidential election will no doubt influence the ultimate outcome.

Feds Announce Inflation-Adjusted Out-of-Pocket Expense Limits for 2017

The US Department of Health and Human Services (HHS) has announced the inflation-adjusted out-of-pocket (OOP) limits that will apply to non-grandfathered plans for plan years beginning in 2017. The OOP limit includes the plan's deductible and cost-sharing for benefits that are considered essential health benefits under the Affordable Care Act (ACA).

Out-of-Pocket Limits:

	2017	2016
Self-only coverage	$7,150	$6,850
Family coverage	$14,300	$13,700

Recall that, beginning this year, non-grandfathered plans must apply an embedded OOP limit for each individual enrolled in coverage other than self-only coverage. This requires that each enrollee have his or her own individual OOP limit on essential health benefits that is no higher than the maximum self-only OOP limit.

A plan would violate the ACA maximum OOP limit provision during its 2017 plan year unless it applied an OOP limit no higher than $7,150 to each individual enrolled as part of a family and, in addition, applied an overall OOP limit to the family no higher than $14,300.

IRS Warns of W-2 Fraud Scheme: Don't Bite the Phish Hook!

The Internal Revenue Service has issued an alert to payroll and human resources professionals to beware of an emerging phishing email scheme. The scheme involves a bogus email that purports to be from company executives and requests personal information on employees.

The scheme already has claimed several victims. According to the IRS, several payroll and human resources employees have been duped into replying to the bogus email and attaching files including payroll data, including Forms W-2 that contain Social Security numbers and other personally identifiable information.

The IRS has published more information on the scheme.

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