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From the Editor

ERISA Preempts Vermont All-Payer Health Claims Data Collection Law: It's Up to the DOL to Regulate Reporting and Disclosure

Sensibly and predictably, the US Supreme Court ruled that a self-insured ERISA health plan cannot be compelled by a state to provide claims data. In *Gobeille v. Liberty Mutual Ins. Co.*, the Court held that Vermont's so-called "all-payer" data collection law was preempted by ERISA because it impermissibly tampered with ERISA's reporting and disclosure regime. The six-person majority opinion written by Justice Kennedy (Ginsburg and Sotomayor dissenting) found that data collection from ERISA plans was the exclusive province of the federal government and rejected the arguments from an unusually diverse group, including a number of state governments, the American Medical Association, unions, and the Department of Labor itself, that ERISA allows both the states and the feds to gather plan information.

Seventeen states and the District of Columbia had wanted to establish all-payer healthcare databases by collecting claims information on the medical and pharmacy services provided within their respective borders. The resulting database was expected to assist government, patients, providers, and researchers in improving care, lowering costs, and providing a clearer picture of local health care. The Vermont statute in question set up a state agency to register and collect claims data from in-state healthcare providers, third-party administrators (TPAs) and insurance companies, and those servicing Vermonters outside the Green Mountain State. Entities with fewer

than 200 covered members were exempt. Noncompliance with the Vermont law could lead to fines up to $200 per day and suspension from operating within the state.

The Vermont all-payer statute was challenged by Liberty Mutual, as administrator and fiduciary of its 80,000-member, self-insured employee health plan, and Blue Cross Blue Shield of Massachusetts, its TPA. Ironically, the Liberty Mutual plan covered fewer than 200 Vermonters but still was required to comply with the law because Blue Cross was well over that threshold. Liberty Mutual was concerned that disclosing the claims data could violate its duty to protect its members' privacy, directed Blue Cross not to comply, and then sought declaratory relief in the district court that ERISA preempts the Vermont law. (Presumably, besides possible contradictions between federal and state privacy and disclosure rules, Liberty Mutual and the trade groups and business organizations filing *amicus* briefs in support were concerned about the costs and headaches of nationwide health plans with complying with a multitude of state disclosure laws.) The district court sided with Vermont but the US Court of Appeals for the Second Circuit overruled and the Supreme Court confirmed.

ERISA Section 514, of course, preempts "all State laws as they may now or hereafter relate to any employee benefit plan," except state insurance, banking, and securities regulations. Liberty Mutual's health plan was self-insured and outside of Vermont's insurance laws, so the primary question before the Court was whether the Vermont statute improperly related to an ERISA plan. Justice Kennedy began the majority opinion with a scamper through the well-worn path of ERISA preemption—because everything is "related" to everything else, ERISA's use of that term must be narrowly construed; Congress intended to protect plans and plan administrators from "interference with the uniformity of . . . administration" and financial burdens of compliance; and preemption should keep the states from regulating "a central aspect of plan administration." Then, perhaps breaking a bit of new ground, the Court described ERISA's reporting, disclosure, and recordkeeping rules as a "central" and "essential part" of ERISA. Interestingly, the Court never questioned whether the data bank Vermont wished to build was sensible or would help the state and its citizens. In fact, the majority seemed to think it *was* a good idea, at least in the abstract. However, the Court's approach was succinctly stated in oral argument when Justice Breyer suggested that the US Department of Labor (DOL) should develop its own national data bank that it could impose on all providers. No inconsistent rules, no preemption, problem solved! (Or maybe not, given the federal government's track record in regulating information gathering in a sensible manner. If you've watched your doctor lately click

away at a laptop instead of focusing on the actual patient, you may know what I mean.)

Gobeille was predictable given the intrusion of these all-payer database laws into the very heart of the ERISA reporting rules. Whether good for society or not, the case holds that databases and other recordkeeping rules are for the US Secretary of Labor alone to devise.

What's actually more interesting is what *Gobeille* does *not* stand for. On the pension side of ERISA, the case will not impinge on states' efforts to correct the glaring lack of a national retirement policy to encourage individual savings. To fill in the gap, California, Oregon, and Illinois, among others, are developing state-enabled voluntary payroll deduction IRA savings programs. Such efforts should not be affected by *Gobeille*. Under the DOL's proposed safe harbor regulations, these state "secure choice" programs will not be considered ERISA-regulated plans and are thus outside of its preemption rules. Once the DOL determines that a program is not covered by ERISA, the states can carve their own paths.

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