Michigan: Federal law may pre-empt Health Insurance Claims Assessment Act after all

David M. Kall | Wednesday, March 23, 2016

In June of 2011, Governor Snyder signed the Health Insurance Claims Assessment Act (Act), which imposed a one percent assessment on health-related services performed in Michigan and paid by employer sponsored health plans and other third-party carriers. The law went into effect on January 1, 2012. The proceeds of the assessment were to be used to finance Michigan's portion of Medicaid program expenditures in response to concerns that the previous funding mechanism was invalid, jeopardizing federal reimbursements for Medicaid expenditures.

The Self-Insurance Institute of America, Inc. sued Michigan in federal court, arguing that the Employee Retirement Income Security Act of 1974 (ERISA) preempts the Act, which, accordingly, makes the Act unenforceable.

Additionally, because ERISA was created to provide a uniform regulatory regime over employee benefits plans, the plaintiff argued that it would be adversely affected by the administrative burdens associated with the Act.

In support of its claims, the plaintiff referred to language in the ERISA statute providing that it "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. The United States Supreme Court has already determined that a state law will "relate to" an ERISA plan if it makes reference to or has a connection with the plan, where the state law singles out ERISA plans, by express reference, for special treatment. In general, the United States Supreme

Court explained that it is the singling out of ERISA plans that caused the issue to fall within the preemption doctrine in that case. The federal district court explained that the Act does not act only on ERISA plans or single them out for different treatment, but instead treats them the same as other similar entities. The federal district court upheld the Act, because, among other reasons, it **concluded** that the Act does not "refer to" an ERISA plan within the meaning of the preemption doctrine and does not have an impermissible connection with ERISA.

The appeals

Self-Insurance Institute of America, Inc. appealed the federal court's decision to the Sixth Circuit. That court, lamenting its duty to "navigate the quagmire that is preemption," **affirmed**.

Self-Insurance Institute of America, Inc. appealed that decision as well, so the **case** landed on the United States Supreme Court's docket in the fall of 2014. However, also before the high court was a related lawsuit, ***Gobeille v. Liberty Mut. Ins. Co.***, which the Court recently decided, on March 1, 2016. In light of that decision, the Supreme Court dismissed Self-Insurance Institute of America, Inc.'s case and remanded for further consideration.

Gobeille v. Liberty Mut. Ins. Co.

Gobeille centered on a Vermont law that required healthcare providers and healthcare payers to provide claims data and related information to the state's healthcare database. The law applied to all public and private entities that pay for healthcare services, including insurers, government programs, and third-party administrators, and Vermont used the database to inform healthcare policy. The Second Circuit decided that ERISA preempted that law.

The United States Supreme Court agreed with the Second Circuit, largely because the Vermont law "governs, or interferes with the uniformity of, plan administration," and thus had an impermissible connection with ERISA plans. Referring to the Vermont law's reporting, disclosure and record-keeping mandates, the Court reasoned that "[p]re-emption is necessary in order to prevent multiple jurisdictions from imposing differing, or even parallel, regulations, creating wasteful administrative costs and threatening to subject plans to wide-ranging liability."

Implications

Although the Vermont law imposed different kinds of requirements on third-party carriers relative to Michigan's Act, it is true that the opinion "offers only the most cursory analysis of the preemption question in dispute," as **SCOTUSBlog** pointed out. The "barely even allude[d] to" backdrop of the case involves the Affordable Care Act, and the associated healthcare databases that states use to help contain healthcare costs.

The crux of the *Gobeille* decision is that the reporting requirements the Vermont law established are inconsistent with the ERISA regulatory scheme:

> "The fact that reporting is a principal and essential feature of ERISA demonstrates that Congress intended to pre-empt state reporting laws like Vermont's, including those that operate with the purpose of furthering public health."

Whether the Sixth Circuit will hold that Michigan's Health Insurance Claims Assessment Act is similarly at odds with ERISA remains to be seen.

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