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ERISA Preemption and Managed Care Organizations

by Louis G. Lana

The Employee Retirement Income Security Act (ERISA) of 1974 has had a large impact on the design and administration of self-funded employee benefit plans. Managed care organizations (MCOs) that market their products to these plans are directly affected by this legislation. And no provision has been the object of more legal scrutiny than the ERISA preemption clause.

ERISA Preemption

The ERISA preemption clause states simply (or maybe not so simply) that ERISA bars, or "preempts," any and all state laws that relate to any employee benefit plan subject to ERISA. In recent years, there have been a number of court cases that have called into question the breadth of scope of that preemption. I will focus on three cases in particular: *Corcoran vs. United HealthCare, Inc.*, *Pegram vs. Herdrich*, and *Kearney vs. U.S. Healthcare, Inc.* These three cases illustrate the different areas where the ERISA preemption clause has been utilized as a defense.

Corcoran vs. United HealthCare, Inc.

This case, decided in 1992, concerned utilization review decisions by MCOs. Florence Corcoran, an employee of South Central Bell Telephone Company, became pregnant in 1989. As Mrs. Corcoran neared her delivery date, her obstetrician, Dr. Jason Collins, recommended hospitalization to monitor the fetus. United HealthCare, which provided utilization review services for the plan, denied the hospitalization and instead authorized 10 hours per day of home nursing care. During a time when no nurse was on duty, the fetus went into distress and died.

Mrs. Corcoran and her husband sued United in Louisiana State court, alleging wrongful death as a result of negligence and medical malpractice. United argued that the claim was relating to an ERISA plan, and thus fell under the broad scope of the preemption clause. The district court agreed with United. The Corcorans filed an appeal, and the case was moved to the U.S. Court of Appeals for the Fifth Circuit.

The Court of Appeals ruled in favor of United, agreeing with its claim that under the utilization review arrangement, United makes benefit determinations, not medical decisions. Since the decision by United to reject Mrs. Corcoran's hospital stay was inseparable from its benefit determinations under the plan, the claim by the Corcorans was preempted by ERISA. This case has been used as precedent for other ERISA claims arising from utilization review decisions.

Pegram vs. Herdrich

In this case, Cynthia Herdrich sued her health plan under Illinois law for state-law fraud. When an inflamed mass was discovered in Herdrich's abdomen, her physician, Dr. Lori Pegram, did not order an ultrasound examination at a local hospital but instead decided that Herdrich should wait eight days for an ultrasound, at a hospital staffed by Pegram's HMO, the Carle Health Insurance Management Co, Inc. During the delay, Herdrich's appendix ruptured, causing peritonitis.

The district court rejected Herdrich's claim under ERISA, but an appellate court reinstated it, holding that Carle HMO was acting as a fiduciary when Dr. Pegram made her decision to delay treatment. The Supreme Court agreed to take the case last fall.

The Supreme Court reversed the appellate court's decision, stating that Congress did not intend HMOs to act as fiduciaries with regards to "mixed" eligibility decisions, that is, decisions taking into account eligibility and treatment. However, the ruling left open the possibility that since such "mixed" decisions fall outside ERISA's preemptive scope, the health plan could be sued again under state law. Therefore, what appeared to be a victory for MCOs could result in a narrowing of the broad parameters of the ERISA preemption clause.

Kearney vs. U.S. Healthcare, Inc.

Kevin Kearney, an employee of Scott Paper Company, had health coverage under his employer's plan with U.S. Healthcare. Mr. Kearney's primary care physician under the plan was Dr. Michael Stupin. In March of 1990, Mr. Kearney twice saw Dr.

Stupin, at which times Dr. Stupin failed to diagnose his patient's condition or refer him to a specialist or hospital. Mr. Kearney died on March 22, 1990, of thrombotic thrombocytopenic purpura.

The estate of Kevin Kearney sued U.S. Healthcare in Pennsylvania district court on the grounds of misrepresenting Dr. Stupin's competence, breaching its promise to supply specialized care, and negligence in selecting the physician. The estate also claimed U.S. Healthcare was vicariously liable for the malpractice of Dr. Stupin. U.S. Healthcare maintained that Kearney's claims were preempted by ERISA.

The court ruled that claims of misrepresentation, breach of contract, and negligence "relate(s) to the manner in which benefits are administered and provided" by the plan and are thus preempted by ERISA. However, U.S. Healthcare was found to be vicariously liable for the malpractice of Dr. Stupin.

Conclusion

It can be argued that when Congress enacted ERISA, it could not have foreseen the current complexity of the managed health care system in the United States. The broad scope of the preemption clause has made it difficult, but not impossible, for members of ERISA plans to sue MCOs for medical malpractice. The recent failure of the Senate to pass the House version of the patients' bill of rights legislation, which would have given consumers the right to sue their health plan in the case of injury or death resulting from delayed or withheld care, is reflective of this difficulty.

There are numerous other cases where the ERISA preemption clause has been invoked by managed care organizations as a defense in state lawsuits. The Health Administration Responsibility Project Web site, www.harp.org, while somewhat biased against MCOs, provides a comprehensive source of information regarding the legal issues involving health plans, with special attention paid to ERISA.

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