

SUPREME COURT HOLDS THAT ERISA PREEMPTS STATE HEALTH CARE SERVICES DISCLOSURE LAW

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Health Care Alert

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Preemption is not a foreign concept when dealing with the Employee Retirement Income Security Act of 1974 (ERISA). Preemption arguments frequently and increasingly arise, for example, in the context of claims by health care providers against insurance companies for reimbursement of benefits due under a patient's plan of insurance. In those cases, courts have held that such claims fall exclusively within the scope of and must be brought under ERISA, and not state law, citing Congress's intent to establish the regulation of employee welfare benefit plans as exclusively a federal concern.

In its March 1, 2016 opinion in *Gobeille v. Liberty Mutual Insurance Company*, 577 U.S. ____ (2016), the United States Supreme Court (the "Supreme Court") affirmed ERISA's preemptive scope, albeit in the context of the applicability of a Vermont statute requiring health care payors and providers to disclose information relating to health care services. Specifically, the Vermont statute requires health insurers (including self-insured plans and third-party administrators), health care providers, health care facilities, and governmental agencies to report any "information relating to health care costs, prices, quality, utilization, or resources required" by the state agency, including data relating to health insurance claims and enrollment. Vermont uses this information to compile an all-inclusive health care database, which the statute intends be a resource to monitor and review health care utilization, expenditures, and performance in the state.

Liberty Mutual Insurance Company ("Liberty Mutual") provides benefits to a small number of Vermonters pursuant to a self-funded and self-insured plan of insurance administered by Blue Cross Blue Shield of Massachusetts. Liberty Mutual filed suit to challenge the Vermont statute in response to a subpoena ordering the disclosure of information regarding its members in Vermont on grounds that the statute is preempted by ERISA.

The Supreme Court agreed that the Vermont statute was preempted by ERISA. According to the Supreme Court, Vermont's reporting regime both intrudes upon and interferes with ERISA's extensive and detailed reporting requirements — fundamental components of ERISA's regulation of plan administration — and threatens to subject plans to wasteful administrative costs and wide-ranging liability for violation of differing, or even parallel, regulations from multiple jurisdictions.

This decision is significant for the implications that it may have on efforts by the states to collect, monitor, and improve health care costs and quality transparency, specifically through the compilation and maintenance of information databases similar to that of Vermont. Approximately 20 states, for example, have passed disclosure statutes similar to that at issue in *Gobeille*, which may be impacted as a result of this decision. It remains to be

seen whether ERISA will also preempt these state statutes and whether, given ERISA's preemption clause, states will be able to draft their own disclosure statutes.

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