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**From Clinic-to-Courtroom – Legislation and Litigation Limiting Prescription Drug Practices**

ERISA Preemption of State Pharmacy Laws in Retrospect: Where We Are, How We Got Here, and Where We Are Going

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| **Origins and Legislative intent** | | |
| ERISA’s preemption provision is “one of the broadest preemption clauses ever enacted by Congress.” *PM Group Life Ins. v. Western Growers Assur. Trust*, 953 F.2d 543, 545 (9th Cir. 1992) (quoting *Evans v. Safeco Life Ins*. Co., 916 F.2d 1437, 1439 (9th Cir. 1990)). ERISA makes the regulation of employee benefit plans principally a matter of Federal concern by preempting, or rendering inoperative, state laws that “relate to” employee benefit plans. | | |
| **The Statute** | | |
| The applicable rule from ERISA Section 514(a) reads in relevant part:  [T]he provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan… | | |
| **The Evolving Case Law** | | |
| The contours of ERISA preemption have expanded and contracted over time, but within a narrow band. The earlier cases read the provision expansively, latter cases less so. Since 1995, with the Supreme Court’s decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) and two subsequent cases (sometimes collectively referred to as the “Travelers Trilogy”), the categories of state laws that are preempted are those that: | | |
| 1. Mandate employee benefit structures or their administration | 1. Mandate employee benefit structures or their administration | 1. Provide alternative enforcement mechanisms to ERISA's civil enforcement provision |
| **The Lead-up to and Future Consequences of *Rutledge*** | | |
| ***Gobeille v. Liberty Mutual Ins. Co.*, 136 S.Ct. 936 (2016)** | ***Rutledge v. Pharmaceutical Care Management Association*, 41 S. Ct. 474 (2020)** | ***Post Rutledge: Emerging challenges*** |
| The Supreme Court invalidated a Vermont law that required all group health plans (self-funded plans included) to report comprehensive medical claims data. According to the Court, the law had an impermissible effect on plan administration. Importantly, the case affirmed the post-travels ERISA preemption standards. | The Supreme Court upheld an Arkansas law governing pharmacy benefits, which it charactered as “merely a form of cost regulation.” | States have read *Rutledge* broadly to furnish license to freely regulate in the pharmacy space. |
| **The Current Limits of ERISA Preemption of State Pharmacy Law** | | |
| * *Rutledge* acknowledges and respects ERISA’s concern for uniformity respective plan structure, benefit choices, and beneficiary status, which are “central matter[s] of plan administration.” But it’s core holding is that not every state law that affects an ERISA plan has an impermissible connection with and ERISA plan. This is, according to the Court is “especially so when a law merely affects costs.” This holding is on fours with *Travelers*. * There is, however, a troubling aspect of *Rutledge* that bears watching: to what extend can a state regulate a plan’s intermediaries? *Rutledge* held that state regulation of an intermediary contracted by a health plan does not “directly regulate health benefit plans at all.” This logic, taken to its extreme, would appear to apply to many types of entities that health plans hire to perform administrative functions, including PBMs, third-party administrators, consultants, and other service providers. | | |