Health Law

Who Controls Health Cost Data?

Alfred Gobeille, Chair of the Green Mountain Care Board v. Liberty Mutual Insurance Company

By Lucy C. Hodder

“New Hampshire was the first state to use price transparency and market forces to foster competition and consumer choice in its health insurance markets through its comprehensive health claims database and website,” the State of New Hampshire claims in its amicus brief filed in Gobeille v. Liberty Mutual Insurance Company, which is pending before the United States Supreme Court.

These efforts to limit health cost growth “would be thwarted,” according to New Hampshire’s brief, were the Supreme Court to rule in favor of Liberty and affirm the 2nd Circuit’s decision that the Employee Retirement Income Security Act of 1974 (ERISA) preempts Vermont’s all-payer health claims data reporting law. Current and former solicitors general sparred over these issues during oral arguments in Gobeille on Dec. 2, 2015.

Vermont, like many states, currently maintains an “all-payer claims database” (APCD), an electronic system that aggregates paid health care claims data from public and private payers. States have developed APCDs in the face of increasing health costs to help policymakers identify and respond to cost and quality trends across all payer settings and begin to make sense of mysterious and confusing health care pricing.

Vermont gathers the utilization and spending data from insurers and third-party administrators (TPAs); however, Liberty alleges that ERISA preempts Vermont’s reporting mandates insofar as they require the submission of data by TPAs about claims paid under the terms of self-insured employer plans governed by ERISA. Consumer groups, provider organizations, researchers, and state insurance regulators have filed briefs supporting Vermont, claiming a decision for Liberty could have a far-reaching and negative impact on health reform and price transparency efforts in Vermont, New Hampshire and across the country.

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Understanding the unique legal needs of the health care industry.
nationwide, and Liberty claims in its re-
response brief that “Vermont’s reporting
requirements concern the core of what
ERISA plans do” and “interfere with na-
tionally uniform plan administration.”

ERISA establishes federal fiduciary
standards for private pension plans. Congress passed ERISA in 1974 after a wave of investigations reported post-war
generations of employees were enrolled in
underfunded pension plans. Industry, however,
was reluctant to agree to federal regulation unless free from state interfer-
ence. Thus, ERISA includes a very broad
“preemption” clause voiding all state laws
to the extent that they “relate to” employ-
er-sponsored benefit plans, whether they
do or explicitly or have a substantial fi-
cancial or administrative impact on bene-
fit plans. See Section 514, 29 USC section
1144(a). Although ERISA focuses on pen-
sion plans, self-funded employee health
benefit plans fall under ERISA’s jurisdic-
tion, leaving states with little say in how self-funded plans are administered.

Liberty lost its original challenge in
the district court, but the Second Circuit
reversed, and Vermont appealed to the
United States Supreme Court. Vermont
was joined by the United States in argu-
ing that its claims reporting requirement
“enables it to populate a database that is
already governed data aggregation pro-
grams and data submission is part of the
routine course of business for insurers and
third-party administrators, NAHDO
argues. Further, NAHDO states, Liberty’s
arguments fly in the face of “the long-
standing consensus position of employers
and business groups... that access to inde-
pendent sources of claims and eligibility
data is critical for health care reform.”

“States are uniquely positioned to im-
prove quality of care and to control costs
through the collection and publication of
claims data,” the United States argues
in its amicus brief. “If States are unable
to acquire such data from self-funded
ERISA healthcare plans, their databases
will be significantly less comprehensive
and thus not as useful in developing health
policy at both the state and national lev-
els.”

In one of the nu-
umerous amicus briefs
filed in support of
Vermont’s position,
the National Asso-
ciation of Health Data
Organizations (NAH-
DO) casts doubt on
Liberty’s argument that
APCD reporting
is “onerous.” Na-
tional and uniform standards under the
Health Insurance For-
tability and Account-
ability Act (HIPAA)
already govern data
aggregation programs
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If Liberty prevails, the impact on state
data collection efforts will be substantial. More than 60 percent of employees who
receive insurance through their employ-
ers are covered by self-funded insurance
plans, and that percentage is growing.
“Self-insured” means employers pay for
each health claim as it is incurred, instead
of paying a fixed pre-

So too, many of the justices struggled
about the states’ interests in promoting
health reform. However, Justices Samuel
Alito and Antonin Scalia questioned why
the Affordable Care Act amended ERISA
by requiring additional health care claims
reporting, but did not clarify whether state
APCDs were “saved” from preemption.

Justice Elena Kagan noted that there
is value to states being able to consider
their own health care needs, and “all the
data that’s being requested is data that
Blue Cross Blue Shield generates anyway.”

Justice Stephen Breyer asked whether
perhaps the US Department of Labor
could encourage ERISA plans to make such
submissions to the states. When Liberty’s
counsel suggested Vermont could simply
collect the data directly from the clinics
and providers, however, Justice Anthony
Kennedy argued back, noting it would
certainly be a lot easier to “ask” health in-
surers for the data than “15 doctors in one
town.” Dec. 2, 2015, US Supreme Court
Oral Argument Transcript.

The case will be decided by June
2016. The State of New Hampshire pleads
that in passing ERISA, “Congress cannot
have intended to eliminate state innova-
tions like using transparency and mar-
ket competition to control health costs.”

Health cost transparency is one of the
few tools remaining to states, New Hampshire
argued, “but these gains will be lost” if the
Supreme Court finds that Vermont’s law is preempted.

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The health care surrogacy decision-
making law has helped many providers,
families, and facilities to avoid the time-
consuming and expensive guardianship
process and to secure prompt and sound
decision-making in times of emergency or
the need for informed consent.

Although RSA 137:3-J:34-37 contains
some ambiguities that need to be fixed,
this surrogacy system beats the old sys-
tem under which providers were stuck in
limbo between running to court and incur-
ing thousands of dollars in legal fees, or
improperly relying on unauthorized family
members.

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