

ERISA Does Not Preempt Kentucky Any-Willing-Provider Law, Federal Appeals Court Rules

Editorial Staff

A Kentucky law that effectively helps chiropractors and other providers secure a place in employer-based health plans has survived a major court challenge. The U.S. Court of Appeals for the Sixth Circuit ruled Sept. 7 that Kentucky's any-willing-provider statute applies to employee health plans organized under terms of the federal Employee Retirement Income Security Act (ERISA). The "any-willing-provider" (AWP) statute stipulates "health care benefits plan shall not discriminate against any provider who is located within the geographic coverage area of the health benefit plan and is willing to meet the terms and conditions for participation established by the health benefit plan."

Many major employers offer health insurance programs under the ERISA act. Enacted to curb financial mismanagement (which left some employ benefit programs bankrupt) ERISA sets down regulations for the organizing of large employee retirement and health benefit programs.

Because ERISA is a federal statute and federal law generally supersedes state law, some plan administrators contend employee health programs authorized under the federal law are not subject to any state regulation.

However, the appellate court ruled that the Kentucky any-willing-provider statute is an insurance regulation. Insurance regulations fall under a "saving clause" in the ERISA legislation, the court indicated. In its two-to-one decision, the appellate court ruled that because the any-willing-provider statute is fundamentally an insurance regulation statute it falls under a "saving clause" in ERISA.

AWP laws "directly impact the insurer-insured relationship because they affect restrictions on the network of providers available for treatment under the plan," Judge John Holschuh wrote in the decision.

"The ability of an insured to select a physician is an integral part of the policy relationship between the insurer and the insured," the decision notes. The two-to-one decision came as the result of a suit filed by the Kentucky Association of Health Plans and seven individual health maintenance organizations against George Nichols III, the commissioner of the Kentucky Department of Insurance. The AWP statute was enacted as part of the Kentucky Health Care Reform Act in 1994.

Twenty-four states have enacted AWP laws, but only those in Idaho, Indiana, Kentucky, Virginia and Wyoming cover a number of health care professions. The other 19 are limited, generally covering only pharmacy. The Kentucky case represents the fourth time a federal appellate court has ruled on the issue of whether ERISA supersedes state any willing provider laws.

The decisions now are evenly split. In 1993, the U.S. Court of Appeals for the Fourth Circuit (covering the Carolinas, Maryland and West Virginia) ruled ERISA did not supersede any willing provider laws.

However, in separate rulings over the past three years, the U.S. Court of Appeals for the Fifth Circuit ruled ERISA took precedence over any willing provider laws enacted by Arkansas and

Louisiana.

The U.S. Supreme Court has so far refused to consider any of the appellate court rulings regarding AWP laws. The Kentucky insurers are now considering whether to appeal to the U.S. Supreme Court.

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