Dynamic Chiropractic

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The U.S. Supreme Court May Solve Chiropractic's ERISA Problems

AT NO COST TO THE PROFESSION

Dynamic Chiropractic Staff

Imagine the insane cost of waging an ERISA battle through the U.S. Congress and Senate. The insurance companies, the AMA, the U.S. Chamber of Commerce, big business, etc. -- all the players with humongous political and legal funding and the best lobbyists big money can buy. Fortunately, this nightmare may not be necessary!

On February 20, 1990, the U.S. Supreme Court agreed to hear the case of FMC v. Holliday from the U.S. Court of Appeals for the Third Circuit. This case involves ERISA preemption of state laws as they may apply to self-insured benefit plans. The Court of Appeals ruled that ERISA did NOT preempt the application of a Pennsylvania anti-subrogation insurance statute to self-insured plans. The Court ruled that the statute represented a valid insurance regulation and is not invalidated under the ERISA "deemer clause" since it does not conflict with any substantive provision of ERISA.

This ruling draws an important distinction for chiropractic freedom of choice laws. Under the 1985 decision of the U.S. Supreme Court (a significantly more "federally-minded" Supreme Court at that time) in the Metropolitan Life v. Massachusetts case, the state insurance laws had been considered not applicable to self-funded insurance plans. The FMC v. Holliday decision states in effect, that the U.S. Supreme Court decision had previously been overly broad and had failed to consider the relevant congressional history of ERISA. The mere fact that the current Supreme Court is interested in hearing this case bring new hope to the chiropractic profession.

The Circuit Court maintains that state insurance law may be preempted in those areas in which ERISA contains substantive provisions, BUT state law is NOT preempted in those areas where ERISA is silent. Chiropractic insurance equality is an area of state insurance regulation on which ERISA is arguably silent. There are no substantive ERISA provisions and under the FMC approach chiropractic insurance equality should NOT be preempted.

A decision by the U.S. Supreme Court should be forthcoming in the next nine months. A decision upholding FMC v. Holliday would reestablish the authority of each state to regulate self-insured plans in those areas ERISA does not address. This decision could save the chiropractic profession hundreds of thousands of dollars and wasted political muscle.

The ACA board of governors has authorized George McAndrews, Esq., ACA general counsel, to file an amicus brief with the Supreme Court for their deliberations. Until this decision is handed down, all efforts to seek legislative ERISA relief will be useless. This is due to the fact that congress won't address issues that are already being addressed by the Supreme Court.

In fact, an effort to introduce an ERISA reform bill into congress at this time (especially during an

election year) would only threaten the positive outcome that we all hope for from the Supreme Court. Again, at very little cost to the profession.

If the U.S. Supreme Court decides positively on the ERISA issue, the state associations can begin working with the ICA and the ACA to make the necessary changes in each state.

Sometimes, miracles do happen!

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