ERISA AND STATE HEALTH CARE ACCESS INITIATIVES: OPPORTUNITIES AND OBSTACLES

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A new Fund study examines the potential of states to expand health coverage incrementally should the federal government decide to reform the Employee Retirement Income Security Act (ERISA) of 1974, which regulates employee benefit programs such as job-based health plans.

According to ERISA and State Health Care Access Initiatives: Opportunities and Obstacles, ERISA contains a broad preemption clause that supercedes state laws that relate to private-sector, employer-sponsored plans. The clause allows ERISA to limit states’ attempts to expand health care access through workplace coverage. Clarifying ERISA, writes author Patricia A. Butler, J.D., Dr.P.H., would help states promote efforts to insure more people.

Court interpretations over the years of ERISA’s preemption clause have prevented states from requiring employers to offer workplace coverage or directly regulate private employer-sponsored health plans. Court rulings have also preempted state laws that would indirectly affect employer-sponsored plans, such as levying health care provider taxes that would lead to higher plan costs. Recent court opinions, however, give states more leeway. They can now tax health care providers to generate revenue to support health care for low-income people. And states now have greater flexibility to design “pay or play” programs that tax employers but provide a tax credit if they offer health coverage.

It is not easy to offer guidance to policymakers about the impact of ERISA preemption, the study says. Only the courts can interpret the preemption clause, and relatively few state health care laws have been tested in court. Further, the U.S. Supreme Court has not ruled on many ERISA cases relevant to state health policy. As a result, many areas of potential action remain uncertain or limited. Unless Congress acts, states will continue to be unsure what actions might relate to employer-sponsored health insurance and raise ERISA concerns, according to the study.

Some of these ambiguities could be resolved, Butler notes, by relatively uncontroversial ERISA amendments. For example, Congress could clarify ERISA so that it does not apply to state initiatives giving incentives to employers that offer coverage voluntarily. Congress could also take action to facilitate coordination among public programs and private employer-sponsored coverage. It could also adopt uniform federal standards for information reporting to states. Amending ERISA to authorize federal agencies to grant waivers from ERISA preemption for state health care coverage expansions or financing mechanisms is another option, the study concludes.

Facts and Figures

- A 1983 amendment to ERISA preemption provisions permitted Hawaii to implement an employer health insurance mandate that had been adopted shortly before ERISA was enacted.

- The Consolidated Budget Reconciliation Act of 1985 (COBRA) required ERISA plans to permit workers (and dependents) leaving the workplace to continue their group coverage for specific periods.

- While ERISA is administered by the U.S. Department of Labor, it does not apply to government-sponsored plans.