

Managed Care Liability-An Update On ERISA Case Law

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Since the publication of *Piercing the Armor: Approaches to Managed Care Liability* in March of 1999, courts have continued to confront the issue of when ERISA preempts the right of injured patients to sue managed care plans. The following review of cases subsequent to publication of the original paper reveals an increasing willingness of courts to view the managed care plan as more of a health care provider and to construe a plaintiff's claim as a quality of care issue and not as the denial of an employment benefit.

In the upcoming months, a defining moment in the judicial charting of managed care liability may transpire when the Supreme Court of the United States hands down its ruling in *Pegram v. Herdrich*, No. 98-1949. *Pegram* concerns whether a health maintenance organization and its physicians breach a fiduciary duty under ERISA by implementing a managed-care program in which the HMO and its physicians receive financial incentives to deny care to the HMO's enrollees. This case, set for argument on February 23, 2000, could give insight into how the Supreme Court views efforts to impose tort liability on the various actors in the managed care scheme.

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Cases holding ERISA does not preempt a plaintiff's claim.

McDonald v. Daminan, 56 F. Supp.2d 574 (E.D. Pa. 1999). Allegations that participating physicians and facilities of managed care plan failed to diagnose, refer and treat a malignant lesion and as a consequence managed care plan should be liable under negligence agency principles is not subject to § 502 preemption.

DeLucia v. St. Lukes Hospital, 1999 WL 387211 (E.D. Pa. 1999). Allegations that insurer's disincentive policy had the effect of discouraging doctors providing complete and proper care under the circumstances related to the quality of care and was not deemed to relate quantum of plan benefits. Thus, the claim was not preempted under § 502. The court distinguished *Lancaster v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 958 F.Supp. 1137 (E.D. Va. 1997). "[T]he court held that plaintiff's direct negligence claim against the HMO was completely preempted by ERISA. In so holding, the court characterized plaintiff's complaint as alleging that

plaintiff 'purposefully established and implemented an administrative policy that had the effect of inducing [the treating physicians] to deny benefits to[plaintiff], thereby causing her injuries.'" *Lancaster*, 958 F.Supp. at 1146 (emphasis added). As discussed above, here, unlike in *Lancaster*, plaintiffs have nowhere alleged that a breathing monitor was a benefit due under the plan. Rather than alleging that the disincentive policy "had the effect of denying benefits," *Lancaster*, at 1147, plaintiffs' complaint alleges that Aetna's disincentive policy had the effect of discouraging doctors from "provid[ing] complete and proper care under the circumstances of this case." Cmplt. at ¶ 158(v) and ¶ 204(u). This allegation, rather than addressing the denial of a plan benefit, is more properly read as challenging the quality of medical care provided."

Crum v. Health Alliance-Midwest, Inc., 47 F. Supp.2d 1013 (C.D. Ill. 1999). A nurse employed by managed care plan instructs 42 year old male with chest pain and family history of cardiac disease not to go to emergency room. After heeding the instructions for awhile, the insured decided to go to the emergency room but died from a myocardial infarction en route. The court holds there is no § 502 complete preemption because the wrongful death claim is based upon the quality of care provided and not an erroneous denial of benefits. The court also opined the claim would not be preempted under § 514 because a claim based upon negligent provision of services only has a tenuous, remote or peripheral connection with ERISA covered plans.

Prudential Ins. Co. of America v. Doe, 46 F. Supp.2d 25 (E.D. Mo. 1999). Insured and her parents alleged state law tort claims of invasion of privacy, infliction of emotional distress and defamation and violation of state confidentiality law. Health insurer's contention the claims were preempted by ERISA was rebuffed by the court. The factors relied upon by the court were: state law's application would negate no plan provision, the claims would not affect relations between the primary ERISA entities or the structure of the Plan, the claims would not impact on administration of ERISA plans since Prudential would not be liable for exercise of its legal rights but for torts committed by it, any economic impact would not be the result of administering the Plan and the claims represented a traditional exercise of state power.

Hinterlong v. Baldwin, 720 N.E.2d 315 (Ill. App. 2d Dist. 1999). An independent practice association model HMO offered financial incentives to participating physicians in the form of global capitation to reduce hospitalizations and referrals to specialists. The plaintiff contended these incentives caused the treating physicians to make poor medical decisions resulting in the death of plaintiff's deceased. The court held this claim was a medical malpractice action and therefore a state law of general applicability. It was not a claim based upon wrongful administration or for

withholding of promised plan benefits. The claim was therefore not preempted by § 514.

Cases holding ERISA preempts a plaintiff's claim.

Huss, Adm'x v. Green Springs Health Services, Inc., 1999 WL 225885 (E.D. Pa. 1999). Mother of deceased called ERISA qualified managed care plan several times seeking psychiatric care for her son. She was erroneously told family was not enrolled in the plan. Son committed suicide. Court held the complaint alleged an inadequate administration of plan and not inadequate services. Because this claim went to quantity, not quality, of benefits, the claim of state law tort liability was completely preempted by § 502 of ERISA.

Pryzbowski v. U.S. Healthcare, Inc., 64 F.Supp.2d 361 (D. N.J. 1999). Claim that managed care plan's delay in approving referral for treatment "relates to" ERISA plan and is therefore preempted by § 514.

ERISA and breach of fiduciary duty.

Ehlmann v. Kaiser Foundation Health Plan of Texas, 2000 WL 359 (5th Cir. Jan. 4, 2000). Court holds failure to disclose physician compensation arrangements is not a breach of fiduciary duty under ERISA. *Shea v. Esensten*, 107 F.3d 625 (8th Cir. 1997), cert. denied, 522 U.S. 914 (1997) holding to the contrary distinguished because in *Shea*, unlike in *Ehlmann*, no disclosure was made after the plaintiff had made a specific inquiry to obtain the sought after information.

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