

New York Health Act FAQ

The “ERISA Problem”

Q: The federal Employee Retirement Income Security Act (ERISA) was passed in 1974 to provide security and uniformity across the nation for pension, health, and other benefits provided by employers. ERISA declares that the federal government has priority in governing such plans, and states cannot establish laws or programs that regulate or otherwise impact such plans. Does the New York Health Act violate the provisions of ERISA?

A: The New York Health Act (NYHA) does not regulate employer-provided health benefits, nor does it direct employers to provide, or not provide, any particular benefits. All employers must pay the state-wide taxes that fund and make possible the NY Health program, but employers are free to maintain, limit, or eliminate their existing programs.

Insurers that provide coverage for employer-based health insurance plans are regulated by state insurance laws and regulations. However, what plans are offered by employers, and the extent of coverage they offer, cannot be regulated by states. That is, federal preemption governs in that case. (Note: Plans offered by employers that self-insure and take on risk themselves are not considered insurance plans and are not subject to state regulation of any kind. They may bypass state health care laws, regulations, and certain direct taxes.)

The federal ERISA law can potentially preempt any state rule such as NYHA that “impacts” such plans in any way. This would have a significant effect on the new program, since currently, millions of workers in New York State get their health insurance benefits through employer-provided plans.

NY Health will be better than any plan provided by an employer. Such plans usually require significant cost-sharing, that is, they have large deductibles and co-pays. They also typically have limited networks and benefits that are less comprehensive than those of NY Health. Companies must also incur expenses managing such plans or contracting with a management service to oversee them.

Federal law does not prevent a state from taxing businesses and employees, as long as the taxes are broadly based and not intended to force actions by such employers. These taxes could include those aiming to improve health care for all state residents. Under NYHA,, all employers will be paying such a tax on behalf of their New York employees to help fund the NY Health program.

It would be expected, therefore, that most companies would no longer include their New York resident employees in their health plans, since these employees will automatically qualify for the new state health insurance program that will be both superior and less costly. However, NYHA would not require them to stop offering their own program if they so desired.

The federal ERISA law is vaguely worded, and conflicting legal rulings make it unclear what might be considered an action by the state that would “impact” an employer plan. Some might argue that the NY Health tax, while itself legal, would, in effect, be forcing an employer to

abandon its program in the state. Opponents of NY Health might well launch a law suit claiming that ERISA preempts the new law because of its “impact” on employers.

Following the advice of legal experts on ERISA, the language of the NY Health Act is explicitly framed to avoid ERISA challenges, including an offer of tax credits that would wholly reimburse employers, and their employees, for taxes paid on behalf of employees who live out of state but work in New York [see Section 4(2)(e)(ii)]. Should a challenge still occur, the bill’s sponsors are confident that, based upon a clear interpretation of legislative intent and past federal rulings, NY Health will prevail. Should any part of the bill be ruled in violation of ERISA, an accommodation that would exempt some employers, while inefficient and costly, would still leave NY Health as a viable program and in the best interest of the vast majority of New Yorkers.

Sources

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