U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216

OPINION 80-60A

514(a)

OCT 9 1980

Mr. Richard D. Sommers
Schwartz, Steinsapir, Dohrmann & Krepack
Two Century Plaza
Suite 1900
2049 Century Park East
Los Angeles, California 90067

Identification Number: F-1523A

Dear Mr. Sommers:

This is in response to your request for an advisory opinion on behalf of the Retail Clerks Unions and Food Employers Benefit Fund, the General Sales Employer-Retail Clerks Unions Supplementary Trust Fund and the Southern California Drug Benefit Fund (the "Funds") each of which is a multi-employer trust fund established pursuant to section 302 of the Labor-Management Relations Act, 29 U.S.C. §186 and each of which is an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"). You ask whether the State of California's Confidentiality of Medical Information Act (the "California Act") is preempted under ERISA section 514.

Your letter sets forth the following facts. The Funds provide a variety of medical and dental services to their 80,000 participants and their families. Some benefits are provided through a pre-paid health plan. Other benefits are provided on an indemnity basis. Your request concerns the latter situation. The indemnity program is self-funded and administered. All claims and administrative expenses are paid from accumulated employer contributions. Claims are submitted to and paid by the Funds through its own administrative staff.

The California Act requires any entity that requests medical information regarding a patient to first obtain an authorization in a form that complies with the detailed specifications of the California Act. The California Act further restricts the release of medical information except as may be specifically authorized.

You represent that compliance with the California Act will result in significant costs and administrative burdens on the Funds in redesigning, reprinting and distributing claim forms containing the authorization. In addition, you indicate that beneficiaries may experience delays in the payment of their claims because the appropriate authorization will have to be verified before a claim can be processed and because many claims will be filed without the authorization.

ERISA section 514 provides in part:

(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under 4(b). This section shall take effect on January 1, 1975.

(c) For purposes of this section:

(1) The term "state law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State'" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

Section 514 (a) established a broad preemption of all state laws insofar as they may relate to any employee benefit plan covered by title I of ERISA. The reasons for broad preemption of state laws under ERISA were succinctly stated by Senator Javits, a major sponsor and floor manager of the bill, during its final consideration:

> Both the House and Senate bills provided for preemption of State law, but -- with one major exception appearing in the House Bill -- defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme.
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> Although the desirability of further regulation - at either the State of Federal level - undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required - but for certain exceptions - the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec. 29942 (Aug. 22, 1974).

Accordingly, it is the position of the Department of Labor that, to the extent the California Act requires compliance by employee benefit plans covered by title I of ERISA, it is preempted under section 514(a).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Alan D. Lebowitz
Assistant Administrator for Fiduciary Standards
Pension and Welfare Benefit Programs