

ERISA GROUP HEALTH PLANS AND POST-HIPAA APPLICATION OF STATE HEALTH PRIVACY LAWS

*John H. Eggertsen, Esq.
Eggertsen & Associates, P.C.
Ann Arbor, Michigan
(734) 794-7100*

Prepared for presentation to
the Health Care Law Section
of the State Bar of Michigan,
December 10, 2002

ERISA GROUP HEALTH PLAN

- Virtually all private (non-governmental, non-church) employer-sponsored employee welfare plans
- Usually, employee and/or retiree medical, dental and/or vision benefit plans
- Insured or self-funded
- Separate legal entities, distinguishable from the sponsoring employer or any insurer
- One ERISA plan may include more than one “health plan” (e.g., 2 HMOs, 1 PPO, 1 indemnity, *etc.*)

ERISA PLAN AS COVERED ENTITY

- Most ERISA group health plans are covered entities under HIPAA
- Exceptions:
 - Self-funded, self-administered group health plan with less than 50 participants
 - Any group health plan to the extent that it provides, or pays for the cost of, certain “excepted benefits” (PHSA 2791(c)(1)).
For example:
 - Worker’s compensation
 - Coverage for on-site medical clinics
 - Most flexible spending accounts

ERISA PRE-EMPTION

ERISA (Employee Retirement Income Security Act of 1974, as amended) preempts all state laws that “relate to” any employee benefit plan.

- Exception: State insurance laws are not preempted by ERISA (but ERISA plans are not deemed as insurers subject to state insurance law).
- Focus: Possible ERISA pre-emption of non-insurance law provisions that are “more stringent”

ERISA PRE-EMPTION

Relevance of ERISA pre-emption to:

- *Self-funded plans (notice of privacy practices, etc.)*
- *Sponsoring employers*
- *Service Providers*
 - *Health care providers*
 - *Third Party Administrators*
 - *Brokers, agents*
 - *PPOs*
 - *PBMs*

ERISA PRE-EMPTION

- *Recent trend against ERISA pre-emption*
- *HHS: HIPAA not intended to affect ERISA pre-emption analysis*
- *Involvement of an ERISA plan may allow credible argument that the “more stringent” state law does not apply.*