

January 2, 2024

Nikki Majewski
Chair, Health Information Technology
Maryland Health Care Commission
4160 Patterson Avenue,
Baltimore, MD 21215

Submitted Electronically

RE: ERIC Public Comments on COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses – ERISA Preemption and Employer Plan Concerns

Dear Chair Majewski:

The ERISA Industry Committee (“ERIC”) appreciates the opportunity to comment on the proposed regulations contained in “COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses” (“Proposed Rules”) issued by the Maryland Health Care Commission (“Commission”) to implement changes to All Payer Claims Database (“APCD”) reporting requirements made by House Bill 1022 and Senate Bill 748 in 2021. ERIC has deep concerns with the Proposed Rules and underlying law, which would overstep state authority to collect claims data from self-insured employer health care plans governed by the federal Employee Retirement Income Security Act of 1974 (“ERISA”). Instead of collecting this data directly from self-insured employer health benefit plans, which is prohibited by federal law and legal precedent, the Proposed Rules seek to collect otherwise protected claims data from the Electronic Health Networks (“EHNs”) that are contracted to provide technical support to these plans.

If finalized in their current form, the Proposed Rules would: 1) create an immediate conflict with federal law, and 2) ignore the legal precedent established in this space by the U.S. Supreme Court in *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312 (2016) and restated in *Rutledge v. PCMA*, 141 S.Ct. 474 (2020). Because state attempts to collect this data from ERISA self-insured plans have been held to be preempted by ERISA, ERIC would consider pursuing or supporting litigation challenging the Proposed Rules on behalf of our large employer member companies if advanced. **ERIC therefore strongly urges the Department to amend the Proposed Rule to explicitly exclude claims data reporting requirements related to ERISA self-insured health benefit plans.**

ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their

ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state and city.

Large employers have long been at the forefront of innovating health care benefit design and administration. By combining nationwide workforces into uniform benefit plans, employers are able to negotiate from a position of strength and secure valuable health care coverage at reduced rates, all to the benefit of plan participants. Use of these cost-saving advantages was the precise intention behind ERISA's creation by Congress, which provides a single set of standards for multistate employers to design and administer uniform health care and retirement benefits to their nationwide workforces, regardless of where they live or work. Since ERISA's enactment, multistate employers have done just that, securing truly effective and efficient health care coverage enjoyed today by millions of Americans.

Unfortunately, a series of state laws proposed and enacted in recent years threaten to erode ERISA preemption, aiming to place a growing number of compliance burdens on self-insured plans and endangering the valuable benefits that these plans have long provided. The Proposed Rules, as well as the underlying legislation that they seek to implement, fit squarely within this trend by attempting to directly require EHNs servicing ERISA self-insured health benefits plans to compile and submit claims data reports on a regular basis to the Commission.

Critically, the legal issue of whether states have the authority to apply this policy to ERISA self-insured health benefits plans has already been decided by the U.S. Supreme Court in the case of *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312 (2016). That case involved a similarly constructed Vermont law that required ERISA self-insured health benefits plans operating within the state to compile and provide regular claims data reports to the state's APCD system. The Court not only reinforced the core principle that ERISA expressly preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" but held that the Vermont APCD reporting law had an impermissible "connection with" ERISA plans by attempting to govern and interfere with the uniformity of plan administration.

At its core, the *Gobeille* ruling states in no uncertain terms that under ERISA's uniform design:

"The Secretary of Labor, not the States, is authorized to administer the reporting requirements of plans governed by ERISA. He may exempt plans from ERISA reporting requirements altogether ... And, he may be authorized to require ERISA plans to report data similar to that which Vermont seeks, though that question is not presented here. Either way, the uniform rule design of ERISA makes it clear that these decisions are for federal authorities, not for the separate States."

While the Proposed Rules do not seek to collect claims data directly from ERISA self-insured plans, as did the Vermont law at issue in *Gobeille*, they nevertheless attempt to extract that protected data from the EHNs servicing these plans. Importantly, EHNs do not own the

claims data of the health care plans that they provide services to, but merely hold and share that information according to the contractual terms of the business associate agreement formed with those client plans. As such, a state requirement that EHNs share confidential client claims data with the Commission would force EHNs to either break the terms of their contract with a group health plan or be out of compliance with state law.

The Proposed Rules stand to create direct conflict with ERISA preemption and the *Gobeille* decision, and will erode the ability of multistate employer health benefit plans to effectively operate uniform benefits at scale. **To avoid these conflicts and prevent litigation challenging the Proposed Rules and the underlying Maryland law on ERISA preemption grounds, ERIC respectfully urges the Department to amend the Proposed Rules to explicitly exclude claims data reporting requirements related to ERISA self-insured health benefit plans.**

If you have any questions concerning our comments or would like to discuss the impact the Proposed Rules' would have on health care benefits administration within the state and across the country, please contact us at (202) 789-1400 or dclair@eric.org.

Sincerely,



Dillon Clair
Director, State Advocacy