

## **Case Study in Nevada: The Allegedly Unsafe Medical Provider and ERISA Preemption**

### *Healthcare Law Newsletter*

April 2012 by [Betsy Baydala](#)

In *Cervantes v. Health Plan of Nevada*, 263 P.3d 261 (Nov. 2011), the plaintiff commenced an action against a managed care organization (MCO) alleging it violated Nevada's quality assurance laws and regulations when MCO allegedly referred her to a "blatantly unsafe medical provider" where she alleges she contracted hepatitis C. The plaintiff received health care benefits through her union's self-funded benefit plan governed by the Employee Retirement Income and Security Act of 1974, 29 U.S.C. §1001, et seq. (ERISA). The ERISA plan had retained the MCO to negotiate contracts for discounted fees with selected providers, who were then denominated as in-network providers.

The MCO moved for summary judgment, arguing that the plaintiff's claims were preempted by ERISA §514(a) because they have an impermissible connection with an ERISA plan; the district court granted the motion. The Supreme Court of Nevada affirmed, holding a claim predicated upon Nevada's quality assurance laws and regulations may be preempted if the MCO merely acts as an administrator or agent of the ERISA plan because Nevada's law would directly regulate the ERISA plan's benefit structure – i.e., ERISA plans would have a duty to monitor their service providers and, in turn, provide as a plan benefit a quality assurance program due to Nevada law. The court held that such a requirement clearly undermined Congress' objective of the uniform administration of ERISA benefits because administrative decisions would be subjected to individual state laws.

The court also held that because the ERISA plan selected its own providers, the MCO did not act independent of the ERISA plan when it referred the plaintiff to the allegedly unsafe medical provider. Accordingly, the court ruled that the selection and retention of the medical provider was an administrative decision made by the ERISA plan and the plaintiff's state law claims were preempted by ERISA §514(a).

Two months later, the Supreme Court of Nevada decided *Munda v. Summerlin Life & Health Ins. Co.*, 267 P.3d 771 (Nev. 2011), which involved similar facts and issues as *Cervantes*, except that the defendant, Summerlin Life & Health Insurance Company, held the dual role of both an ERISA plan administrator and MCO. The plaintiff, who alleged that Summerlin failed to comply with Nevada's quality assurance standards, appealed the district court's order granting Summerlin's motion to dismiss on the ground that the plaintiff's claims were preempted by ERISA. On appeal, the plaintiff argued that her claims were unrelated to the administration of the ERISA plan and that ERISA preemption was not triggered because Congress did not intend for ERISA to preempt health and safety matters, which are traditionally left to state regulation. Since the plaintiff's complaint alleged facts that Summerlin selected and retained medical providers in conjunction with its status as an MCO, and not as part of its role as the administrator of an ERISA plan, the court held ERISA §514(a) did not preempt the plaintiff's claims and reversed the district court's dismissal order.

These cases illustrate that ERISA §514(a) preemption of state law claims alleging violations of quality assurance laws and regulations requires a fact-intensive inquiry. Accordingly, an MCO considering a motion to dismiss based on ERISA preemption grounds should ensure the complaint's factual allegations are predicated on administrative decisions made in the course of administering an ERISA plan.

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