Group insurance policies purchased by employers from insurance carriers (including HMOs) to provide “fully insured” medical benefits for their employees have long been regulated under state insurance laws. This type of state insurance law regulation has always been permitted under an exception to the broad preemption provisions of the Employee Retirement Income Security Act (ERISA). In a recent 5-4 decision, the U.S. Supreme Court considered the boundaries of this exception when it decided that ERISA does not preempt a provision of the Illinois Health Maintenance Organization Act requiring HMOs to submit certain disputed medical determinations for an independent medical review (Rush Prudential HMO, Inc. v. Moran, 536 U.S. ___ (No. 00-1021, June 20, 2002).

The Illinois statute grants participants the right to require regulated HMOs to submit coverage claims denied for lack of “medical necessity” for an independent external review when the primary care physician disputes the HMO’s determination. If an independent physician determines the procedure to be medically necessary the HMO is required to provide the coverage.

The Supreme Court was asked to reconcile the Illinois statute’s regulation of benefit claims administration with ERISA’s exclusive enforcement scheme and policy of providing a uniform body of law governing rights under employee benefit plans. ERISA provides for mandated internal claim and appeal procedures as well as the right to pursue denied benefit claims through the federal courts.

Concluding that the Illinois statute was a law “regulating insurance” and, therefore, was saved from ERISA preemption, the Court found the binding nature of the independent physician’s determination did not amount to a new enforcement scheme or create any remedies not available under ERISA. The only relief provided by the statute was payment of the medical claim, the same relief available under ERISA. The Court concluded that states may impose restrictions on an insurer’s ability to establish policy terms that minimize scrutiny of its benefit claim decisions so long as the state statute does not enlarge claims a participant may assert under ERISA. State regulation of insurance was protected in this case even though the ultimate effect was to render the independent reviewer’s decision determinative in any subsequent civil enforcement proceeding.

Importantly, the Court reiterated its long standing position that ERISA’s civil enforcement scheme remains the exclusive remedy available to enforce ERISA claims, superseding all state laws relating to employee benefit plans that provide other enforcement rights. A state law that ordinarily would be saved from preemption because it regulates insurance will nevertheless be preempted if it allows plan participants to obtain remedies not available under ERISA.

Impact of the Decision
The overall impact of this decision on employers may be minimal because the decision is limited to fully insured group medical plans. Employers maintaining fully insured medical plans rely on the insurer or HMO to adjudicate benefit claims and generally have no decision making authority in that administrative process. For those types of plans, insurers will lose the ability to establish their own uniform independent review procedures, which may increase costs for their employer customers. On the other hand employers maintaining “self-insured” medical plans can take comfort that the Court has confirmed that ERISA’s exclusive remedies and broad principles of state law preemption will continue to provide protection from individuals who attempt to pursue state law remedies.

The decision will also provide states the opportunity to legislate additional restrictions on procedures for managing fully insured group health plan claims and other aspects of insured managed care arrangements, which may further increase employer costs for these insured arrangements.
Effect of Recent DOL Regulations

Recent regulations issued by the United States Department of Labor (DOL) on benefit claim determinations also will minimize the impact of the Supreme Court's decision. These regulations substantially revise the minimum requirements for benefit claims procedures for all ERISA covered insured and self-insured group health plans. The final regulations are phased in for all plans by January 1, 2003.

The final DOL benefit claim regulations contain new participant notice and disclosure rules applicable when plans deny claims on the basis of medical necessity or as non-covered experimental treatment. The regulations include additional standards for the review of appealed group health claim denials, including a requirement for conducting reviews by a new decision-maker without giving deference to the initial decision-maker's determination. When denials are based on a medical judgment, the decision on appeal must be reached in consultation with an independent health care professional.

The Rush Prudential decision and the final DOL Benefit Claim Regulations represent the latest judicial and regulatory efforts to fill ERISA's "interpretive gaps", which remain a controversial issue in the current debate over health care legislative proposals. If you would like more information on these and other employee benefits issues, you may contact the Jackson Lewis Benefits Group, which identifies benefits issues, defends employers against benefit claims and related litigation, and provides counsel on all benefit issues occurring in the course of collective bargaining, corporate divestitures, acquisitions, business closures and reductions in force. The Jackson Lewis Benefits Practice Group also designs pension, profit-sharing, 401(k) and other types of retirement, deferred compensation and incentive compensation and welfare benefit plans.

©2002 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1938, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit https://www.jacksonlewis.com.