



Are Consumers Better Protected When States Regulate Health Insurance?

Study of laws protecting consumers from loss of health benefits

SUMMARY

During 1995 and 1996, researchers at [George Washington University](#) compared consumer protections under state-regulated health care plans with protections available under employer-paid self-insured plans, which federal law exempts from state regulations.

The research entailed analysis of state and federal laws and marketplace developments, reviews of court decisions, interviews of insurance and managed care regulators, and consultations with representatives of employers, insurers, the actuarial profession, managed care plans, health care providers and consumer groups.

Key Findings

- Employees in self-insured plans typically enjoy significantly fewer consumer protections than those in other insured plans.
- Many firms opting for self-insurance carry no stop-loss coverage, placing employee health benefits at risk.
- Little systematic information exists on the extent of self-insurance and the stipulations of self-insured plans, such as stop-loss coverage and covered services.
- The Employee Retirement Income Security Act of 1974 contains no financial standards for health plans and no requirement to inform employees about major benefit changes or managed care restrictions.
- Consumers do not understand the meaning and implications of being enrolled in a self-insured plan.
- The Department of Labor has neither the mandate nor the resources to investigate benefit disputes between self-insured plans and individuals.
- Members of employee health plans maintain access to fewer legal remedies than consumers of individual insurance products.

- Federal and state laws provide a patchwork of protections to help people leaving jobs maintain health benefits.

Funding

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THE PROJECT

The Employee Retirement Income Security Act of 1974 (ERISA) prevents states from applying consumer protections to employers' self-insured health plans, which in 1995 covered about 40 percent of people receiving health coverage from their employers.

While this relieves large employers of the regulatory burden of complying with multiple states' insurance laws, it prevents states from protecting many consumers and creates controversy and confusion about the differing levels of protection applying to different plans. This project produced a report, *Private-Sector Health Coverage: Variation in Consumer Protections Under ERISA and State Law*, on the variation in consumer protection under federal and state laws governing private-sector employee health coverage.

While other analyses have looked at this issue from the point of view of employers or government agencies, this study examined health benefits regulation from the perspective of the consumer. The researchers analyzed state and federal laws and marketplace developments, reviewed court decisions, and interviewed insurance and managed care regulators in six states and at the federal Department of Labor, which administers ERISA. They also consulted with representatives of employers, insurers, the actuarial profession, managed care plans, health care providers, and consumer groups.

The report addresses variations in employee health plan protections in six areas: standards for plan solvency; benefits mandates; information requirements; grievance procedures and legal remedies; managed care regulation; and post-employment access to health insurance coverage.

KEY FINDINGS

- **Employees in self-insured plans typically enjoy significantly fewer consumer protections than those in other insured plans.** For example, while ERISA requires plans to give complaints "a full and fair review," some state laws prescribe more specific standards, particularly for managed care plans. However, one cannot assume that state standards are necessarily appropriate for self-insured plans.

- **Many firms opting for self-insurance carry no stop-loss coverage, placing employee health benefits at risk.**
- **Little systematic information exists on the extent of self-insurance and the stipulations of self-insured plans, such as stop-loss coverage and covered services.**
- **ERISA contains no financial standards for health plans and no requirement to inform employees about major benefit changes or managed care restrictions.**
- **Consumers do not understand the meaning and implications of being enrolled in a self-insured plan.**
- **The Department of Labor has neither the mandate nor the resources to investigate benefit disputes between self-insured plans and individuals.** By contrast, state insurance regulators typically act as consumer advocates in investigating coverage complaints concerning insured plans.
- **Members of employee health plans maintain access to fewer legal remedies than consumers of individual insurance products.** A Supreme Court ruling prevents enrollees in both insured and self-insured plans from receiving punitive damages in lawsuits against ERISA plans or insurers contracting with them. ERISA also limits economic damages; plan members can collect only the cost of a denied benefit, and possibly attorney fees.
- **Federal and state laws provide a patchwork of protections to help people leaving jobs maintain health benefits.**

Communications

The National Health Policy Forum distributed the report to its mailing list of health policymakers and researchers, employers, and consumer advocacy groups.

AFTERWARD

The grantee planned a small focus-group discussion of interested researchers and policy analysts to provide feedback and discuss follow-up efforts.

Prepared by: Curtis R. Trimble

Reviewed by: Robert Narus and Molly McKaughan

Program Officer: Nancy L. Barrand

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(Current as of date of the report; as provided by the grantee organization; not verified by RWJF; items not available from RWJF.)

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