

Out-of-Network Provider's Claim for Underpaid "Gap Exceptions" Preempted by ERISA

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Peer Grp. for Plastic Surgery, PA v. United Healthcare Servs., Inc., 2024 WL 1328134 (D.N.J. 2024)

An out-of-network plastic surgery provider sued a health plan insurer after it underpaid the provider for specialized reconstructive surgery procedures that were the subject of "gap exception" agreements relating to several patients who were participants in ERISA plans. The provider alleged that under the agreements (which were negotiated with the insurer prior to the surgeries), payment for specific out-of-network procedures would be covered at a plan's in-network rate because there were no in-network providers in the area to provide the needed services. When the insurer paid significantly less than the amounts ultimately billed, the provider sued in state court for breach of contract, unjust enrichment (i.e., restitution for a benefit unfairly received), and promissory estoppel (i.e., enforcement of a promise). The insurer argued that ERISA preempts these state-law claims.

Citing the general rule that ERISA preempts state laws that have an impermissible "reference to" or "connection with" an ERISA plan, the court concluded that the provider's claims were preempted by ERISA. The court explained that because the insurer agreed to cover the services at the in-network level, the claims involved the administration of benefits and required examining the provisions of ERISA-covered plans. Rejecting the provider's reliance on a similar case involving gap agreements that concluded that a provider's state-law claims were not preempted, the court pointed out that the previous case involved oral agreements for payment of a "reasonable amount" that did not explicitly reference the plan, unlike these agreements, which provided for payment at the in-network level and specifically stated that they were payable subject to the terms of the plan and the insurer's reimbursement policies.

EBIA Comment: For plans and insurers relying on out-of-network providers squeezed by the surprise billing protections and seeking ad hoc arrangements regarding payment for services, this case rather clearly demonstrates that ERISA preemption prevails when the payment amount is determined by referencing the terms of a plan. For more information, see EBIA's ERISA Compliance manual at Section XXXIX.C ("State Laws That 'Relate to' ERISA Plans Are Generally Preempted"); see also EBIA's Self-Insured Health Plans manual at Section V ("Governing Law and ERISA Preemption").

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