

ADA®

ERISA PLANS: ARE STATE LAWS IGNORED?

What is ERISA?

The Employee Retirement Income Security Act of 1974 — commonly called ERISA — is a federal law that regulates employee benefit plans, including those for dental care. In general, dental coverage can be separated into plans that are defined as either: “self-funded” or “fully insured.” This distinction determines how the plan is regulated.



ERISA/FEDERAL LAW
Self-Funded plans



STATE LAWS
Fully Insured plans

Self-funded plans are when an employer pays fees to an insurance carrier for certain administrative services, but the employer bears the cost of any employees’ health care claims. These plans are regulated by ERISA.

Fully insured plans are when an employer pays a premium to an insurance carrier, and the carrier pays the cost of health care claims for anyone in the plan (employees). These plans are regulated by state insurance laws.

Carriers Avoid State Laws Benefiting Patients & Dentists

Some carriers administering ERISA plans argue that since ERISA is a federal law, it supersedes, or “preempts” state insurance laws that protect patients. For example, if there is a specific dental insurance problem that a state legislature passes a law to fix, like assignment of benefits, the self-funded plans claim ERISA preemption to avoid compliance with that law.

Nationwide, approximately 46 percent of subscribers are covered by self-funded dental plans. Those plans fall under ERISA, and ERISA has historically proven to be very difficult to amend. A growing number of plans are now covered by ERISA and carriers use that as an excuse to ignore state laws.



46%

of subscribers are covered by self-funded (ERISA) dental plans and that number will only increase.

ERISA Impact on Dentists

Noncovered Services

Dental insurers in most states used to dictate the fee network contracting dentists could charge for services insurers never covered, like elective cosmetic procedures. Most of the states have passed laws that prohibit this. So, why are insurers still able to dictate the noncovered fees even if there's a law saying they cannot do that? If they are administering a self-funded plan, they may cite ERISA preemption.

Assignment of Benefit

Many states have laws that require insurers to pay non-network participating dentists directly, instead of the patient, for covered services if the patient/subscriber requests it. These are called Assignment of Benefit laws. But why are insurers ignoring the patients AND the law? Carriers administering self-funded plans may be refusing to comply and cite ERISA.

U.S. Supreme Court Limits Preemption

Recent U.S. Supreme Court findings in a pharmacy insurance case pierce the ERISA protection for insurers, suggesting insurers' preemption claims may have gone too far.

The U.S. Supreme Court found that pharmacy insurers' claim of state law exemption under ERISA was wrong; it is time to shine a light on all insurers who use ERISA this way.

What should I do about it?

We need your help to show state officials the magnitude of the problem and to keep the momentum established under the recent court case.

Talk to your colleagues about the specific laws insurers should be complying with. Creating public awareness of the problem is the first step to reforming this federal law. If you're experiencing issues firsthand, talk to your state dental association.

1



Find out what state laws carriers are ignoring.

2



Contact your state dental society or the ADA when carriers ignore the law; ERISA may be the reason.

3



Educate other dentists about ERISA and why dentists should be watching this issue.

Advocacy in Action: [ADA.org/dentalinsurance](https://ada.org/dentalinsurance)

If you find that carriers are refusing to comply with noncovered services, Assignment of Benefit law, or any other law you know has been enacted in your state, document it and communicate with your state dental association. The more evidence of insurers' ERISA over-reach, the better the chances they will be held accountable. The ADA and your state dental association are informing state lawmakers and enforcement agencies of this concern, highlighting recent U.S. Supreme Court findings that insurers have gone too far. They are also making sure state officials are aware that insurers may be taking an unfair advantage of ERISA and not complying with the laws state officials' pass and enforce.