

Personal Advantage
May 31, 1993
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How to Protect Your Health Insurance Rights

In 1988, Jack McGann filed a claim for medical expenses related to his treatment for AIDS.

After reviewing the claim, his employer altered its health plan, capping payments for AIDS treatment at \$5,000. The company argued that this was necessary to avoid jeopardizing benefits paid to the rest of its employees.

Mr. McGann sued, claiming that the company had no right to reduce his benefits retroactively.

McGann lost in court. And he lost in the US Court of Appeals. So far, the US Supreme Court has declined to hear the case.

Significance of this case for other employees: No one who is insured through an employer-sponsored plan is protected from having those benefits capped or reduced.

That's because employer-sponsored insurance plans are governed by a federal law, the Employee Retirement Income Security Act (ERISA) of 1974. Although the law was enacted to protect the rights of employees, a 1987 Supreme Court ruling held that ERISA is legally allowed to supersede state laws.

Although most states have "bad faith" laws regulating insurance practices that would prevent an employer or insurer from changing the terms of an insurance contract after a policyholder files claim, ERISA preempts these laws.

The problem is that ERISA does not contain insurance consumer-protection clauses to make up for the laws eclipses. In fact, it grants insurance companies complete immunity from punitive damage suits.

Under ERISA, policyholders are allowed to sue insurers only for benefits they believe are due. They can't sue for the financial damages they suffer when they believe payment of medical bills is wrongfully withheld.

And ERISA allows employers enormous leeway in how they choose to provide coverage.

What this means:

If you have group health insurance through your employer and must file a costly medical claim, even though you have a contract with the insurer and have paid your premiums in full and on time, the insurer is legally permitted to reduce the benefits promised in the policy after you become ill.

Catch: The insurer must make the same change for everyone in the group. The larger the group, the less likely this will happen, since insurers don't want to risk losing customers.

The risk is greatest, however, for those who need coverage the most. Those are the victims of catastrophic illness or accidents, who are subsequently fired from their jobs and lose their benefits because the carrier takes the position that they're no longer part of the group.

Are your benefits safe?

Safest: Any insurance plan that is ERISA-exempt, including those sponsored by public schools, churches and government agencies. Also exempt is nonemployer-sponsored group plans and coverage taken out by individuals.

Relatively safe: Group plans with a large number of members. Union-negotiated plans. Companies that have an aggressive employee-benefits negotiator.

Risky: Small group plans. Self-insured companies.

Self-defense: If you fall into the "risky" category, look for group medical coverage through an organization or association other than your employer.

Hopeful: Several bills now before Congress address this problem. A recent bill drafted by Rep. William Hughes (D-NJ) would bar insurers from retroactively cutting policyholders' benefits. Another bill, H.R. 1602, amends ERISA to close the loophole that causes it to override state consumer-protection laws.