

Health Law: Quality & Liability

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ERISA Preemption
PROBLEMS



Does PTF have a non- preempted claim



Problem 1



Betty White denied
Medicare coverage for
procedure. Must she
seek remedy under
ERISA 502?



Problem 2



Law student bought
individual plan.
Denied coverage.
Must she proceed
under ERISA 502?



May she sue MCO for
 Malpractice ___
 Breach K ___
 Tort damages ___



Problem 3



Prof. Pope works for HU.
 HU bought plan from
 HealthPartners. HP
 denied coverage. Must
 Pope seek remedy
 under 502?



Any state law claims
 preempted by 502.

Probably **also** by 514
 (since such law relates to
 EBP and not insurance)



Problem 4



MCO denied approval of
 hospitalization for pregnant
 high-risk woman.

During hours when nurse was
 not present at her home, the
 fetus went into distress and died.
 Mother brought a *Wickline* claim.



Problem 5




Problem 6



Snafu at the MCO delayed a pregnant woman's ultrasound appointment for three days.

Before the appointment, she delivered a very large baby with shoulder dystocia.

MD would have done a c-section if ultrasound had been done. 

Problem 7



Man with paralysis in extremities is told he needs spinal surgery immediately.

Small hospital transfers him to University Hospital, but MCO won't approve surgery there.

Eventually, another hospital is found, but only after surgery is delayed.

He never recovers use of his limbs. 

Problem 8



Assume that a managed care organization covered by ERISA denied a healthcare service **because of** a subscriber's disability.



(A) Subscriber's **ADA claim** would be preempted by ERISA because subscriber is, in essence, complaining about denial of benefits.

(B) Subscriber could sue MCO under the ADA.

