Position Statement on
ERISA
(Approved by the Board of Directors January 23, 1999; Revised April 28, 2018; August 3, 2024)

The Employee Retirement Income Security Act of 1974 was designed to protect pension benefits of retired employees. ERISA created uniformity among benefits, especially those provided by multi-state employers. In doing so, the benefits of over 136 million Americans protected under ERISA are exempt from state regulation and laws.

ERISA was created to provide federal regulation of employee benefit plans, including health benefit plans. To offset the potential conflicts of state laws and regulations for employee benefits, Congress included a preemption of state laws that could interfere with the uniform administration of ERISA plans. Although the Department of Labor (DOL) may issue its own preemption guidance, the Federal courts determine whether ERISA preemption applies.

Under ERISA, self-insured health benefit plans are shielded from state regulation. This preemption is not absolute and is modified through two ERISA clauses, the “savings” and “deemer” clauses. The ERISA savings clause allows states to regulate the substantive terms of insured ERISA health plans as it ‘saves’ from preemption state laws regulating the business of insurance, banking or securities. A state law that relates to an employee benefit plan may still be valid if a court concludes that the law falls within this category. Under the deemer clause, a state cannot deem a self-funded employee benefit plan as insurance for the purpose of imposing state regulation. The effect of these clauses is to restrict state regulation of ERISA covered health insurance plans and they have been interpreted by the courts as preempting state laws regarding state covered benefit requirements, malpractice, and negligence lawsuits against health plans that contract with employers under ERISA. This means that fully insured health plans offered in the state are subject to that state’s regulations, while ERISA plans are regulated primarily at the federal level with diminished regulation by the state.

ERISA established minimum requirements that retirement and healthcare plans are required to meet to protect workers and plan beneficiaries. This includes plan information including plan features and funding; fiduciary responsibilities for those who manage and control plan assets; requirement for plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty. There have been several amendments to ERISA over the years to enhance protections to health benefit plan participants and beneficiaries such as the Consolidated Omnibus Budget Reconciliation Act (COBRA); the Health Insurance Portability and Accountability Act; the No Surprises Act; and some elements of the Affordable Care Act (i.e., requiring employers with 50 or more employees must offer healthcare coverage; mandating equal coverage for all pre-existing conditions; and, allowing dependent children to stay on a parent’s healthcare plan until age 26 years).
Further, ERISA provides managed health care plans the ability to unilaterally perform “utilization review,” providing plans an opportunity to delay or deny a test, referral, or treatment to determine medical necessity. Protection of patients is provided through the remedy clause, but as a result of the court decision in Pilot Life Insurance Co. v. Dedeaux, the interpretation of this clause limits it to a breach of contract decision, and only the cost of the delayed or denied issue is recognized. Delayed or denied treatment because of utilization review is not considered malpractice and therefore no punitive or pain and suffering awards can be granted.

This interpretation of the remedy clause raises several issues. Patients do not have the right to sue the health care plan for negligence due to decisions made by the health care plan. At the same time, patients lack leverage against the health care plan regarding decisions made affecting their health. Physicians

continue to be sued for malpractice for the negligent medical decisions and policy restrictions of health care plans that result in injury to patients. The current system allows health care plans to avoid responsibility for the consequences of their medical policies and decisions. States often need latitude to develop revenue sources to meet the health care needs of their residents. ERISA regulations often exempt self-insured plans as sources of revenue to expand care to uninsured and underinsured residents. ERISA plans are exempted from state statutory rate setting authority and ability to set global budgets. ERISA protection prevents states from exercising their regulatory authority over insurance reform. State mandates, such as direct access to dermatologic care and anti-gag rules, are exempted by ERISA regulations. ERISA prohibits states from collecting data from self-insured plans on utilization, health care outcomes, access to specialists, and appeals procedures for patients and providers.

The AAD supports ERISA reform and recommends the following:

1. Reform of the ERISA law to remove the statutory preemption and permit patients to sue self-insured employee health benefit plans in state courts for malpractice, including negligent medical policies and utilization decisions. The Academy supports the removal of the ERISA preemption in conjunction with federally mandated medical malpractice reforms and a strong internal/external appeals mechanism for all health insurance plans, similar to the Medical Injury Compensation Reform Act (MICRA) statute that limits the non-economic damages portion of medical malpractice claims with the intent of reducing tort liability for healthcare providers.

2. Sharing of information with the US Department of Labor, which oversees the enforcement of ERISA.

3. On-going education of AAD members, patient advocacy groups, and the public with regard to ERISA.

4. Encourage ERISA reforms to allow states to regulate the administration of heath care plans to ensure access to care and fairness for all in the health care system.

5. Reforms that are consistent with Academy position statements or opinions on direct access to specialty care, network adequacy, any willing provider provisions, anti-gag rules, timely payment of clean claims, appropriate full payment for all accurately reported services, and due process for physicians.

6. Future ERISA reforms to allow direct contracting between physician and patient.

7. Legislation at the Congressional level to make changes in ERISA that would allow patients with more than one insurance coverage to choose the order of billing to their insurance companies.

This Position Statement is provided for educational and informational purposes only. It is intended to offer physicians guiding principles and policies regarding the practice of dermatology. This Position Statement is not intended to establish a legal or medical standard of care. Physicians should use their personal and professional judgment in interpreting these guidelines and applying them to the particular circumstances of their individual practice arrangements.