

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 82-6A

Sec. 514(a), 514(b)

JAN 29 1982

Mr. Alan P. Cleveland  
Sheehan, Phinney, Bass & Green  
Hampshire Plaza  
1000 Elm Street  
Manchester, New Hampshire 03101

Dear Mr. Cleveland:

This is in reply to your letters of October 9, and October 19, 1981, requesting an advisory opinion regarding the preemption provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether State of New Hampshire Senate Bill 117 (SB-117) as enacted on June 23, 1981, by the Legislature of the State of New Hampshire is preempted by section 514 of title I of ERISA.

You represent that SB-117 amended section 415:18, VII of the New Hampshire state statutes (N.H. Rev. Stat. Ann. §415:18, VII) by adding subparagraph (g) effective 60 days after its passage. The amendment, which is titled an act "relative to extension of coverage under group health insurance policies," states in subsection (g)(1):

Whenever any individual who is a member of any group hospital, surgical, medical insurance or health maintenance organization, becomes ineligible for continued participation in such plan for any reason including death, the benefits of such plan shall be available at the same group rate to the individual, the surviving spouse and the dependents covered by the group plan, for an extension period of 39 weeks or until such member, surviving spouse or dependent becomes eligible for benefits under another group plan, whichever comes first.

Subsection (g)(2) of the amendment applies the provisions of subsection (g)(1) to group hospital and medical expense policies, and similar health and medical plans. In subsection (g)(3), the amendment states that its provisions are applicable to:

any employee benefit plan, fund or program which is communicated or its benefits described in writing to employees and which has been or is established ... for the purpose of providing ... medical, surgical or hospital benefits, in cash or in the form of care,

service and supplies or other benefits in the event of sickness, accident, disability or death  
 ....

An employee welfare benefit plan shall not include:

(i) that portion of such plan with respect to which benefits are insured by an insurance company or a nonprofit hospital, or medical service corporation, or both:

\* \* \* \*

The Insurance Department of the State of New Hampshire has issued an interpretation stating that N.H. Rev. Stat. Ann. §415:18, VII(g) is applicable to all group health policies and to all self-funded or self-insured employee health benefit plans.

You further represent that your client, First Bancorp of N.H., Inc., is the employer sponsor of a self-funded employee welfare benefit plan (the Group Life and Health Plan, hereafter the Plan). Your application indicates that the Plan was established to provide a variety of medical and hospital benefits to participants and their beneficiaries. You also indicate that the Plan has excess risk insurance, purchased by the sponsor, with a specific stop loss limit of \$25,000 per individual per contract year.

From the information you have submitted, it would appear that the Plan is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA and that, under section 4(a) of title I, it is subject to title I of ERISA. You have requested the Department of Labor's opinion as to the extent to which section 514 of ERISA preempts the application of N.H. Rev. Stat. Ann. §415:18, VII(g) to the Plan.

Section 514(a) of title I of ERISA, in pertinent part, provides:

Sec. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b).

Thus, section 514(a) generally preempts all state laws which relate to employee benefit plans subject to the coverage of title I of ERISA, whether such state laws conflict with specific provisions of ERISA or merely supplement the Federal scheme of regulating employee benefit plans. Since the Plan is an employee benefit plan described in section 4(a) of title I of ERISA, N.H. Rev. Stat. Ann. §415:18, VII(g), insofar as it relates to the Plan, is preempted under section 514(a) of title I of ERISA unless an exception to section 514(a) is applicable.

Section 514(b)(2) of title I of ERISA provides:

(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under 4(b) ... nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be

engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

Although section 514(b)(2)(A) of ERISA excepts state insurance laws from preemption, section 514(b)(2)(B) operates to prevent states from treating employee welfare benefit plans as insurance companies for the purpose of state insurance regulation.

An examination of the New Hampshire statute in light of section 514(b) of ERISA indicates that N.H. Rev. Stat. Ann. §415:18, VII(g)(1) and (2) is a state insurance law which regulates the content of insurance policies offered to all New Hampshire consumers. As a result, it appears that subsections (g)(1) and (2) qualify for the exception provided in section 514(b)(2)(A) of ERISA. Thus, section 514 does not preempt the application of N.H. Rev. Stat. Ann. §415:18, VII(g)(1) and (2) to require an insurance company to issue extended eligibility coverage to its policyholders, even though some such policyholders may be employee welfare benefit plans.

With regard to N.H. Rev. Stat. Ann. §415:18, VII(g)(3), however, it appears that subsection (g)(3) would treat the Plan as an insurance company or entity engaged in the business of insurance for the purposes of this portion of the New Hampshire state insurance laws. Therefore, N.H. Rev. Stat. Ann. §415:18, VII(g), to the extent it would require the Plan or other employee welfare benefit plans covered by title I of ERISA to provide the benefits specified therein, is preempted under section 514 of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Morton Klevan  
Deputy Administrator  
Pension and Welfare Benefit Programs