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# Summary of Morrison v. Health Plan of Nev., 130 Nev. Adv. Op. 55

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*Morrison v. Health Plan of Nev.*, 130 Nev. Adv. Op. 55 (July 10, 2014)[1]

PREEMPTION: STATE COMMON LAW CLAIMS AND THE MEDICARE ACT

## Summary

The Court determined whether a Medicare beneficiary's state common law negligence claim against his private health insurance company, through which he is receiving his Medicare benefits, is preempted by the federal Medicare Act.

## Disposition

The Appellant's state common law negligence claims regarding the retention and investigation of contracted Medicare providers are expressly preempted by the Medicare Act, and thus, such claims must be dismissed.

## Factual and Procedural History

Respondent Health Care Plan of Nevada, Inc. (HPN), among others,[2] is a health insurance business that offers medical services to Medicare beneficiaries through the administration of Medicare Advantage (MA) Plans. Appellant Louis Morrison received his Medicare benefits through HPN. Morrison became infected with hepatitis C as a result of his treatment from a medical care provider chosen by HPN pursuant to HPN's insurance contract. Morrison alleged that HPN breached its duty to "use reasonable care to select its health care providers" and "to inquire into the medical practices at the clinic." Morrison also alleged that HPN was negligent in directing him to seek treatment at the clinic, and that HPN knew or should have known that the clinic engaged in unsafe medical practices causing a high risk of transmission of blood-borne pathogens to patients since 2004. The district court dismissed Morrison's claims with prejudice, finding the claims were preempted by the federal Medicare Act. Morrison then filed his appeal.

## Discussion

The Medicare Act "creates a federally subsidized nationwide health insurance program for elderly and disabled individuals." Health care providers that provide Medicare benefits to patients under the Medicare Act are required to adhere to a federally regulated quality improvement program, which requires (1) making available to the Centers for Medicare and Medicaid Services (CMS) information on quality and outcomes measures that beneficiaries will use to compare health coverage options, (2) maintaining written policies and procedures for selecting and evaluating providers, and (3) ensuring that each physician is credentialed. CMS has additional requirements for relationships between such health care providers and other health care professionals with whom they contract to provide services.

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[1] By Sean Daly.

[2] Several "health insurance businesses" are Respondents here; however, the Court refers to them collectively as HPN.

*Morrison's common law negligence claim is expressly preempted by the Medicare Act*

The Medicare Act has an express preemption clause which states the following:

> [t]he standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.[3]

The Court found the scope of the preemption statute very broad, finding that state laws and regulations that regulate health plans are unenforceable unless they pertain to licensure and/or solvency. When Congress explicitly conveys its intent to preempt in a statute, express preemption exists, and the court's primary task becomes identifying the domain the statute expressly preempts. The plain language of the statute contains the best evidence of Congress' preemptive intent. The Court reviews the question of whether state law claims are preempted by federal law de novo.

The Court has previously considered the Medicare Act preemption clause in *Pacificare of Nevada, Inc. v. Rogers*.[4] In that case, the plaintiff claimed that Pacificare, her Medicare provider, was liable for her injuries because it neglected to employ a proper quality assurance program.[5] However, in that case the question was whether Nevada's common law unconscionability doctrine was preempted by the Medicare Act, and the Court found that the Medicare Act's preemption provision extended to generally applicable common law.[6] The Court concluded that "all [s]tate standards, *including those established through case law*, are preempted to the extent they specifically would regulate MA plans."[7]

*Federal standards exist regarding the conduct at issue in Morrison's common law negligence claim*

Morrison argued that his claims were not preempted because there was no published Medicare standard that would supersede his common law negligence claim. The Court disagreed, stating that a state law need not be inconsistent with the federal standard to be preempted, but rather, there need only be a federal standard regarding the conduct at issue.

The Court held that even if Morrison was correct in this argument, his claims were still preempted, because federal law does provide standards that MA organizations must adhere to, and thus Morrison's state law action against HPN could result in the imposition of additional state law requirements on the quality assurance regime regulated by CMS.[8]

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[3] 42 U.S.C. § 1395w-26(b)(3) (2012).
[4] 127 Nev. ___, 266 P.3d 596 (2011).
[5] *Rogers*, 127 Nev. at ___, 266 P.3d at 598.
[6] *Id.* at ___, 601.
[7] *Id.*
[8] For details on the specific regulations promulgated by CMS, see pages nine and ten of the opinion.

The dissent argued that the federal regulations cited by the Court do not immunize health care providers from liability and fail to address the generally applicable negligence claim brought by Morrison. The Court found that the dissenting opinion had mischaracterized the nature of Morrison's claim, portraying it as a "negligent selection claim" when it was in fact a based on HPN's failure to monitor its provider. The Court stated that a negligent quality assurance claim is specifically covered by the federal regulatory scheme. The Court found that the dissent failed to explain why the Medicare standards might preempt Nevada's statutory quality assurance standards (as the dissent concedes), but would not preempt a common law claim based on the same conduct.

*The Medicare Act's preemption clause applies to claims against MA organizations*

Morrison argued that the Medicare Act's preemption provision does not apply here because his claim is against his MA organization, not his MA plan, and the preemption clause states that it only applies "with respect to MA plans."[9]

The Court looked to the plain language of the provision as a whole, which states that "[t]he standards established under this part shall supersede any State law or regulation . . . *with respect to MA plans which are offered by MA organizations under this part*."[10] The court held that because MA plans can only be offered by MA organizations, a claim regarding one is necessarily a claim regarding both. The Court also pointed out that in *Rogers*, the Court did not make any distinction between a claim brought against an MA organization and a claim brought against the MA plan. The Court also found that Morrison's argument would lead to an absurd result, as any insured could simply name its MA organization, and not the MA plan, as the defendant to avoid preemption.

Morrison tried to analogize this case to *Munda v. Summerlin Life & Health Insurance Co.*,[11] where the Court determined that the Employee Retirement Income Security Act (ERISA) did not preempt the insured's claim that their insurer was negligent in failing to comply with quality assurance standards. The Court concluded that the case failed to support Morrison's position because in that case, the claim was not against the insurer acting in its capacity as an administrator of the ERISA plan, but rather, as its independent role as an insurer.[12] Therefore, the duty on which the claim was based existed outside of the insurer's relationship with the ERISA plan.[13] The Court also stated that the Medicare Act and ERISA are "fundamentally different programs [that] cannot be analyzed in the same way," and that the ERISA does not have analogous standards regulating insurers for quality assurance.

**Conclusion**

The Medicare preemption provision is very broad, as it covers "all state standards to the extent that they would regulate MA plans, other than laws and regulations related to licensing

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[9] 42 U.S.C. § 1395w-26(b)(3) (2012).
[10] *Id.*
[11] 127 Nev. ___, 267 P.3d 771 (2011).
[12] *Munda*, 127 Nev. at ___, 267 P.3d at 776.
[13] *Id.*

and plan solvency, including those established through case law." Because Morrison's state law negligence claim would seek to regulate how contracted providers for MA plans are monitored, federal law preempts it. Therefore, the district court's order dismissing Morrison's state common law negligence action was affirmed.