

THE ATTORNEY GENERAL

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Opinions

Opinion No. KP-0480

The Honorable Charles Schwertner
Chair, Senate Committee on Business & Commerce
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether House Bill 1763 and House Bill 1919, enacted by the 87th Legislature and codified in chapter 1369 of the Insurance Code, are enforceable against a health benefit plan issuer and a pharmacy benefit manager administering the pharmacy benefits of the health benefit plan in certain circumstances (RQ-0539-KP).

S U M M A R Y

Enacted by House Bill 1763 and House Bill 1919, subchapter M and subchapter L of chapter 1369 of the Texas Insurance Code regulate certain contracts with pharmacists and pharmacies and certain referral and solicitation practices concerning affiliated providers. Under United States Supreme Court precedent, neither subchapter has an impermissible connection with ERISA plans as they do not dictate plan choices or add requirements to beneficiary status. The two subchapters also do not refer to ERISA plans as they neither exclusively apply to those plans nor are ERISA plans essential to the laws' operation. Therefore, a court would likely conclude that ERISA does not preempt either subchapter.

In addition, nothing in the language of either subchapter limits their applicability to plans domiciled in Texas. Thus, a court would likely conclude that both subchapters are enforceable against an issuer or PBM that satisfy the statutory definitions and administer a plan covering Texas residents or contracting with Texas pharmacy providers regardless of where the plan is domiciled.

Opinion No. KP-0481

Mr. Mike Morath
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Interpretation of the University Interscholastic League's legal rights and duties regarding illegal steroid use under the Education Code (RQ-0578-KP)

S U M M A R Y

A "valid medical purpose" under Education Code section 33.091 does not contemplate the provision of steroids to a minor for transitioning the minor's biological sex. Suspected use of steroids for this purpose is a basis to question the student-athlete's eligibility to participate in University Interscholastic League (UIL) activities and obligates UIL to investigate as well as require the student-athlete prove by a preponderance of the evidence that they are eligible. A student-athlete may not take part in UIL competitions until their eligibility is proven by a preponderance of the evidence.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202500481
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Filed: February 11, 2025

