

Ninth Circuit Holds that Federal HIPAA Preempts Montana's "Little HIPAA" Law

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The U.S. Ninth Circuit Court of Appeals recently held that Montana's "Little HIPAA" insurance law (Mont. Code Section 33-22-526) is preempted by ERISA. In applying the "conflict preemption" standard set by the U.S. Supreme Court in *Aetna Health Inc. v. Davila*, the court held that because the state law claim (i) could have been brought under Section 502(a) of ERISA because the state and federal law provisions were both identical and applied to group health plans, and (ii) is not independent of the federal law because it expressly applied to group health plans subject to ERISA, the state law is preempted by ERISA. Due to preemption of the state law, the state law claim was defeated on its merits. The court, however, noted that it was not expressing an opinion as to whether its holding would apply to a state HIPAA-type statute that provided additional protection beyond the federal HIPAA statute. *Fossen v. Blue Cross and Blue Shield of Montana, Inc.*, 660 F.3d 1102 (9th Cir. 2011).