

Legal Update

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Federal Court Rules ERISA Preempts Oklahoma State PBM Legislation

On Aug. 15, 2023, the 10th U.S. Circuit Court of Appeals ruled in [Pharmaceutical Care Management Association \(PCMA\) v. Glen Mulready](#) that ERISA preempts certain provisions of an Oklahoma law aimed at regulating pharmacy benefit managers (PBMs). The ruling contrasts with the U.S. Supreme Court's 2020 ruling in *PCMA v. Rutledge*, which held that ERISA did not preempt an Arkansas PBM regulation. The Oklahoma Insurance Commissioner has stated their intention to appeal, although the state has not yet filed a petition with the U.S. Supreme Court for review.

Background

PBMs are third parties that manage most health plans' prescription drug benefits. Among other things, PBMs negotiate rebates with drug manufacturers, design pharmacy networks and process prescription drug claims. According to the 10th Circuit, PBMs administer drug benefits for around 270 million people nationwide. Because the PBM industry is subject to minimal federal regulation, many states are enacting their own laws to regulate PBMs. The issue of whether ERISA preempts these state laws is ongoing and is working its way through the federal court system.

ERISA Preemption

In general, ERISA preempts all state laws that "relate to" ERISA employee benefit plans, meaning the state law has an "impermissible connection with" or a "reference to" an ERISA plan. In determining whether a state law has an impermissible connection with ERISA plans and is thus preempted, courts have examined whether it governs a central matter of plan administration or interferes with nationally uniform plan administration.

Circuit Court Ruling

The Oklahoma law imposed network restrictions and integrity and quality restrictions on PBMs, which the 10th Circuit Court found were preempted by ERISA. In distinguishing the *Rutledge* case, the Court ruled that Oklahoma's law does more than merely increase costs, because a pharmacy network's scope (which pharmacies are included) and differentiation (under what cost-sharing arrangements those pharmacies participate in the network), are key benefit designs for an ERISA plan and thus have an impermissible connection with ERISA plans.

Current Impact



ACTION STEPS

- In 2020, the U.S. Supreme Court ruled that ERISA **did not preempt** Arkansas' PBM law.
- After the Supreme Court's ruling, many states passed laws to regulate PBMs.
- The 10th Circuit Court ruled that ERISA **preempted** Oklahoma's PBM law because, unlike Arkansas' reimbursement-rate regulations, Oklahoma's restrictions did more than increase costs.
- On May 10, 2024, the Oklahoma Insurance Commissioner **petitioned the Supreme Court for review**.
- PCMA's response is due **July 15, 2024**.
- A number of amicus briefs have been filed in support of the Oklahoma Insurance Commissioner, including by 32 state attorneys general.

The status of state PBM regulations remains in flux, and their validity will ultimately depend on the scope of each law's specific provisions. The 10th Circuit Court's ruling is binding in states within its jurisdiction (Oklahoma, Kansas, New Mexico, Colorado, Wyoming, Utah, and portions of Montana and Idaho). As such, PBMs and insurers in those states should carefully examine their existing PBM laws in light of the ruling. Plan sponsors in all states should continue to monitor state regulation of PBMs as this area of law continues to evolve.

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