

State Pharmacy Benefit Laws May Get Second Look from US Supreme Court

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Since 2019, state legislatures have introduced hundreds of bills that regulate how pharmacy benefit managers (PBMs) operate and interact with pharmacies and health plans. While these proposals are primarily aimed at PBMs, the regulations impact the underlying benefit plans that the PBMs administer on behalf of employers. These laws vary widely in applicability and enforcement. One such law is currently before the U.S. Supreme Court to consider whether it is preempted by the Employee Retirement Income Security Act (ERISA).

ERISA explained

ERISA is a 1974 federal law that regulates employer-sponsored benefit plans and provides express federal preemption of any state laws that relate to an employee benefit plan. Congress's stated purpose in enacting ERISA was to provide nationally uniform and consistent regulation of plans across state lines. ERISA allows employers to design their benefit plans without state interference and ensures plans with participants in multiple states do not have to adhere to conflicting state directives.

Preemption clarity needed

In 2019, Oklahoma passed the Patient's Right to Pharmacy Choice Act. The Act included an "any willing pharmacy" provision requiring the admission of pharmacies that meet standard network requirements and prohibited plans from mandating or incentivizing certain pharmacy networks through cost-sharing discounts or lower copays. The Pharmaceutical Care Management Association (PCMA), the industry trade group representing PBMs, challenged the Act arguing that it was preempted by ERISA. The case is PCMA v. Mulready.

In 2022, an Oklahoma district court found that the Act was not preempted by ERISA. This meant that the law was deemed applicable to private self-funded plan sponsors. This decision raised the alarm with benefits advisors and multi-state employers with participants in Oklahoma, forcing them to act quickly as they determined how to comply with state-specific requirements in national plan designs. Employers that directed participants to preferred pharmacy networks or offered lower copays for mail-order prescriptions had to make changes to adapt to the new requirements. The Oklahoma Insurance Department has since clarified that the law was not intended to ban preferred networks but was primarily concerned with equalizing retail and mail order cost-sharing and copays.

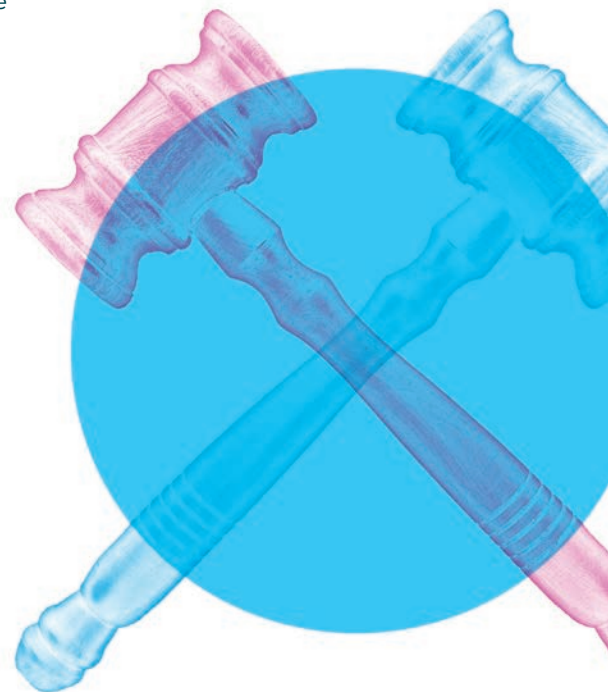
The PCMA immediately appealed the district court ruling to the U.S. Court of Appeals for the 10th Circuit, which ultimately reversed the lower holding and found that the law was preempted by ERISA. In response, the Oklahoma Insurance Commissioner's office has petitioned for review by the U.S. Supreme Court. In the fall of 2024, the Supreme Court asked the U.S. Solicitor General to file a brief with its input on the case. This request is a strong indication of the Court's interest in the case and the federal government's brief will likely carry significant influence.

The government's brief could be significantly delayed due to the presidential administration transition. Initially, the Court invited the Biden administration to file a brief offering its perspective on the case. While it remains uncertain how a new Trump administration may advise the court, the brief is expected to be filed by May, before the Court's summer recess begins.

What's at stake

With similar laws taking effect in many states, the Court's decision will have important legal and practical implications for ERISA plans and covered employees. This case could be the Court's first opportunity to consider the scope of ERISA preemption since its decision in *Rutledge v. PCMA*, where the Court articulated a narrower approach to ERISA preemption. *Rutledge* involved an Arkansas pharmacy reimbursement law that the Court ruled was not preempted by ERISA.

Since the 2020 *Rutledge* ruling, plan sponsors have been uncertain about how state laws apply to their benefit plans. States have broadly interpreted this ruling as allowing for complete state regulation of PBMs without regard to how the law impacts the underlying benefit plans. If the Court decides to reconsider the scope of ERISA preemption in the PBM space, it could provide much-needed clarification on the *Rutledge* decision's applicability and distinction between laws that mandate reimbursement levels and laws that dictate network composition, copay structure and other plan design features.



Other legal challenges to watch

The 10th Circuit's decision in *PCMA v. Mulready* is controlling precedent in the states that make up the 10th Circuit: Colorado, Kansas, New Mexico, Utah and Wyoming. Outside of the 10th Circuit, the case is not binding, but it may serve as persuasive authority. The chart below looks at some other prominent ERISA preemption cases that consider state pharmacy benefit regulations in other circuits. A difference of opinion on the same legal issue amongst circuits is a compelling reason for the Supreme Court to grant review.

Considerations for plan sponsors

As state legislative activity ramps up for the 2025 state sessions, employers should pay close attention to developments in the states where they have covered lives. Plan sponsors that have long benefited from ERISA's shield from state regulatory efforts must keep a watchful eye on existing and proposed regulations, given the mechanisms of application and recent legal challenges, and proceed with the knowledge that these efforts may only increase. Employers Health will continue to monitor developments as they arise and advocate for its plan sponsor clients.

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Case Name

Jurisdiction

Details

ERIC, NLA and Cigna v. Minnesota Department of Commerce

U.S. District Court for the District of Minnesota

- Challenges department's open-network requirement, which plaintiffs argue interferes with employer plan design choices
- Argues that applying the law to out-of-state plans regulates out-of-state commerce in violation of U.S. constitutional requirements

McKee Foods Corporation v. BFP Inc. dba Thrifty MedPlus Pharmacy

U.S. District Court for the Eastern District of Tennessee

- Challenges Tennessee's "any willing pharmacy" law as preempted by ERISA because it restricts plan sponsors' ability to design tailored pharmacy networks and limits plans' ability to implement cost-saving measures