

STATE LAW REGULATING PBMS NOT PRE-EMPTED BY ERISA

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The Supreme Court recently held that the Employee Retirement Income Security Act (“ERISA”) does not preempt an Arkansas law regulating Pharmacy Benefit Managers (“PBMs”). PBMs generally act as intermediaries between health plans and pharmacies, providing services such as claims processing, negotiating rebates from drug manufacturers, and setting pharmacy reimbursement rates. Arkansas passed a law regulating the PBMs’ pharmacy reimbursement rates. Under this state law, a PBM could not set a reimbursement rate lower than the pharmacy’s acquisition cost. The intent of the legislation is to protect smaller, independent pharmacies that would often incur a loss when filling a prescription where their acquisition cost was higher than the reimbursement rate set by a PBM. The Pharmaceutical Care Management Association sued, claiming in part that the Arkansas state law regulated employee benefit plans and therefore should be preempted by ERISA. ERISA is a federal law that preempts any state law that interferes with nationally uniform employee benefit plan administration. The Court held, however, that the state law did not preempt ERISA because the law “merely increased costs or altered incentive plans.” The law was a form of cost regulation and did not force plans to “adopt any particular scheme of substantive coverage.” This ruling is significant because it highlights the limitations of ERISA preemption and will likely mean greater state regulation of PBMs. (*Rutledge v. Pharm. Care Mgmt. Ass’n*, (U.S. 2020).

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