



Arkansas Pharmacy Law Not Preempted by ERISA

In *Pharmaceutical Care Management Association v. Rutledge*, the U.S. Supreme Court has held that ERISA does not preempt an Arkansas statute that imposes rules on pharmacy benefits managers (“PBMs”).

Facts

In 2015, Arkansas enacted legislation that prevents pharmacies from being forced to sell generic prescription drugs at a loss by requiring PBMs to reimburse the pharmacies at a price equal to the cost of acquiring the drugs from wholesalers. In particular, the law provides a “decline-to-dispense” option whereby pharmacies could refuse to dispense a drug if they would lose money on the transaction.

In response, Pharmaceutical Care Management Association, which includes the nation’s leading PBMs, filed a lawsuit asking the court to rule that ERISA preempted Arkansas’s PBM law.

In general, ERISA preempts “any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.”

The lower court ruled that the statute was preempted by ERISA because it had a prohibited “reference to” ERISA, and because, contrary to Congressional intent, it interfered with national uniform administration of employee benefit plans.

Supreme Court

In its ruling, which overrode the lower court, the Supreme Court noted that “not every state law that affects an ERISA plan or causes some disuniformity in plan administration has an impermissible connection with an ERISA plan. That is especially true if a law merely affects costs.” ERISA does not preempt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage.

To determine whether an impermissible connection exists between ERISA and a state law, a court must ask whether the state law “governs a central matter of plan administration or interferes with nationally uniform plan administration.” State rate regulations that merely increase costs or alter incentives for ERISA plans without forcing them to adopt any particular scheme of substantive coverage are not

preempted by ERISA. The Court then ruled that the Arkansas law affects plans only insofar as PBMs may, or may not, pass along higher pharmacy rates to plans with which they contract. The Court also noted that the law regulates PBMs whether or not the plans they service fall within ERISA's coverage. Therefore, ERISA plans are not essential to the law's operation.

The Court then ruled that the Arkansas law does not have an impermissible connection with ERISA plans and is not preempted by ERISA.

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