

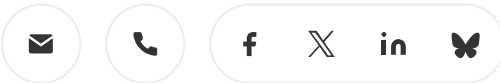


10 hours ago - Health

States' efforts to rein in PBMs hit a legal roadblock



Tina Reed



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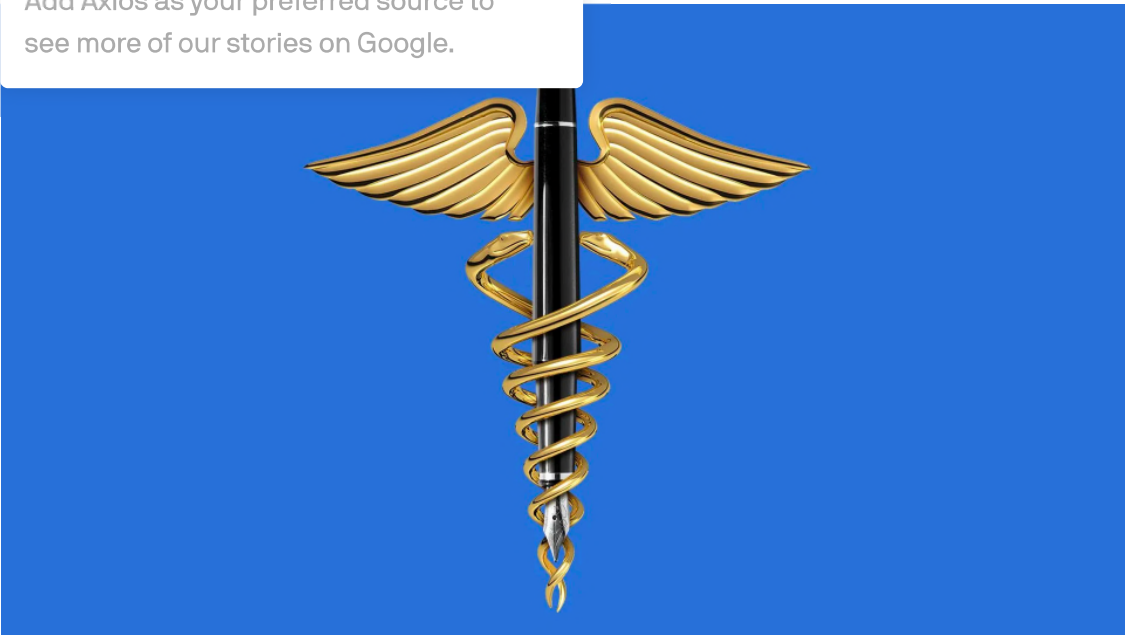


Illustration: Natalie Peeples/Axios

Why it matters: The states are trying to rein in the middlemen that negotiate drug prices and pay pharmacies, but they're running into a federal law that has the final say over employer health plans.

Driving the news: A federal appeals court last week [ruled against](#) Tennessee in a case over whether the state could require PBMs to partner with any pharmacy that's willing to accept their terms and conditions.

- That followed rulings against PBM laws in Iowa and Oklahoma that courts found [were preempted](#) by the federal ERISA law.
- "There is no clear path for states," said Marcia Wagner, founder of the Wagner Law Group, which specializes in employer benefit law.

Between the lines: The rulings mark a setback for states that rushed to pass PBM laws after the Supreme Court upheld an Arkansas effort in 2020 — and who blame the companies for rising drug prices and squeezing out independent pharmacies.

- Some legal experts say the [states overreached](#) by drafting laws that interfered with the design and operation of employer-sponsored group health plans.
- But with Congress until recently gridlocked on PBM regulation, states have defended the laws as necessary to keep in check companies they say wield outsize power.
- Alabama, Arizona, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, New Mexico, Oregon, Pennsylvania and Virginia have each [passed legislation](#) addressing PBM business practices.

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- She said some have gone beyond banning spread pricing, a practice in which a PBM charges a health plan more than it pays a pharmacy for a drug.
- These latest efforts require PBMs to pass on the rebates they receive to the employer or other plan sponsor.

The other side: The Pharmaceutical Care Management Association, a PBM trade group, called the Tennessee ruling "a win" for patients, adding it should discourage other state legislatures from pursuing similar laws.

- "In today's world of growing health care costs, employers and unions need flexibility to provide cost-efficient health benefits for their workers — a right that ERISA has protected against state encroachment for the past half century," PCMA general counsel Jack Linehan said in an emailed statement.

What's next: States like [North Dakota](#) have successfully defended laws targeting PBM practices like gag clauses, which prevent pharmacists from telling consumers they could save money by paying for their prescription rather than using their health insurance.

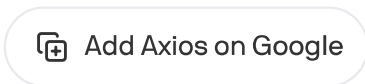
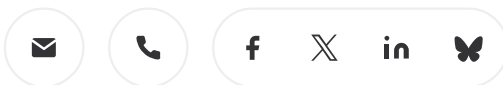
- Congress, meanwhile, approved a [series of changes](#) to PBM business practices in the January government funding deal that, among other things, will change the way the companies are compensated in Medicare — though the impact on drug costs could be limited.

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system payers.

- "For the first time, the PBMs are going to have to tell plans and employers ... every time someone in your plan filled a prescription, here's the difference between what we charge to you and what we paid the pharmacy," said James Gelfand, CEO of the ERISA Industry Committee.

Our thought bubble: Beyond pricing, states may [take aim](#) at PBMs ownership structures, by preventing one company from owning retail pharmacies and PBMs.



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