

U.S. Supreme Court: State Law Regulating Pharmacy Benefit Managers is Not Preempted by ERISA

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An Arkansas law regulating pharmacy benefit managers' (PBMs) generic drug reimbursement rates, and affecting the cost of prescription drugs provided under ERISA-governed benefit plans and the administration of those plans, is not preempted by ERISA, the U.S. Supreme Court has held unanimously. *Rutledge v. Pharmaceutical Care Management Association*, No. 18-540, 2020 U.S. LEXIS 5988 (Dec. 10, 2020).

With Justice Sonia Sotomayor writing for the unanimous court, the Court held that Arkansas's law is simple rate regulation and "ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage." The Court explained that the law only sets a floor for pharmacy reimbursements by PBMs. It is not directed at ERISA plans, and the fact that PBMs may pass their increased costs on to ERISA plans is not ERISA's concern.

Additionally, with respect to a focal point at oral argument and in briefing on whether the proscribed appeal procedures improperly infringed on central matters of plan administration, the Court found that administrative burdens and operational inefficiencies do not meet that standard. The bottom line: nothing in Arkansas's law required ERISA plan administrators to structure their plans in a certain way, so the law survives.

Arkansas's law was at issue in *Rutledge*, but the reach of the Court's decision goes further. Many states' statutes that are similar to Arkansas's law are the subject of suits pending or recently decided in the lower courts, and the Supreme Court's seal of approval may prompt additional states to draft similar legislation or amend current laws.

Finally, while some had speculated that the Court may have used this opportunity to modify the preemption framework, that did not come to fruition in the majority opinion. Only Justice Clarence Thomas, in a concurring opinion, continued his calls for reformation of ERISA preemption standards because they create an amorphous test that is results-driven and veers too far from ERISA's statutory text.

Please contact a Jackson Lewis attorney with any questions about this case or ERISA.

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