

Blog Post

New Supreme Court Ruling Affirms State Regulation of PBM Reimbursement Pricing

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The U.S. Supreme Court ruled against pharmacy benefit managers (“PBMs”) last month, in a decision that marks a major win for state regulators. (*See Rutledge v. Pharmaceutical Care Management Association*, 2020 WL 7250098 (U.S. 2020)). On December 10, 2020, the U.S. Supreme Court held that Arkansas’s Act 900, which “effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy’s wholesale cost,” is not preempted by the Employee Retirement Income Security Act of 1974 (ERISA).

The Arkansas legislature enacted Act 900 in response to concerns that PBMs were reimbursing pharmacies in amounts that were too low to cover the costs incurred by the pharmacies. PBMs reimburse pharmacies for the cost of drugs covered by prescription-drug plans. The amount that PBMs reimburse pharmacies is typically set by their contracts with pharmacies, according to a list specifying the maximum allowable cost for each drug. In turn, prescription-drug plans reimburse PBMs according to contracts between the particular plan and PBM. Proponents of PBM regulation laws argue that the amount the PBM is reimbursed by plans differs from and (often) exceeds the amount the PBM reimburses the pharmacy.

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The Pharmaceutical Care Management Association (“PCMA”), which represents the 11 largest PBMs in the country, filed suit against Leslie Rutledge, Arkansas’ Attorney General, alleging that ERISA preempted Act 900. As noted in the text of the statute, ERISA will preempt and “supersede any and all state laws insofar as they may...relate to any employee benefit plan.” PCMA contended that Act 900 has “an impermissible connection with an ERISA plan because its enforcement mechanisms both directly affect central matters of plan administration and interfere with nationally uniform plan administration.” The U.S. Supreme Court disagreed, holding, “In short, 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.” The Court held that Act 900 is merely a form of cost regulation, requiring PBMs to pay pharmacies at rates equal to or higher than the wholesale cost of the prescription drugs.

This case is significant because it could pave the way for other states to enact similar laws regulating PBM business activities, including pricing arrangements. Attorney General Rutledge issued the following [statement](#) regarding the Court’s decision: “This is an important unanimous win for not only locally owned pharmacies that have experienced financial hardships at the hands of pharmacy benefit managers, but more importantly, this is a win for all Arkansans and Americans to have access to affordable healthcare. I will always protect Arkansans and small businesses from unfair practices and fight to lower the costs of prescription drugs.” As noted in a prior [blog post](#), given that PBM arrangements have been subject to increased scrutiny, it is possible that this Supreme Court case will embolden states that have been trending towards implementing additional PBM-focused regulatory measures.

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