

Arkansas Insurance Rule Regulating Pharmacy Reimbursements Not Preempted by ERISA

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Cent. States, Se. and Sw. Areas Health and Welfare Fund v. McClain, 2025 WL 2522621 (N.D. Ill. 2025)

A self-insured multiemployer health plan and its trustee and fiduciary challenged an Arkansas insurance rule regulating pharmacy reimbursements as preempted by ERISA. The rule, which applies to health benefit plans and health care payors (including, but not limited to, ERISA plans), requires plans and payors to report compensation for pharmacy services with the goal of maintaining adequate pharmacy benefit manager (PBM) networks in the state. If the state insurance commissioner determines that compensation is inadequate, payment of an additional cost (a “dispensing fee”) may be required. The plan argued that the rule was preempted because it imposed requirements directly on ERISA plans that interfered with plan design and restricted the plan’s ability to structure prescription drug benefits, impacting its nationally uniform plan administration.

The court explained that ERISA preempts state laws that either reference—e.g., apply exclusively or immediately to—or are impermissibly connected to an ERISA plan. A state law impermissibly connected to an ERISA plan is one that governs a central matter of plan administration or interferes with nationally uniform plan administration. Determining that the rule did not restrict its application to ERISA plans, the court shifted its focus to whether it was impermissibly connected to ERISA plans. It first concluded that the rule’s reporting requirement was merely incidental to its purpose of procuring the information necessary to ensure fair and reasonable reimbursement of pharmacy services. The court also rejected the argument that the dispensing fee dictates ERISA plan design, reasoning that the fee “may” apply—i.e., only if imposed by the insurance commissioner. The court also noted that plans were not prohibited from seeking to offset the fee by allocating its costs to Arkansas plan participants (within the scope of plan rules) across copay, coinsurance, or deductible requirements. Comparing the rule to a similar Arkansas law at issue in the Supreme Court’s *Rutledge* decision, the court noted that it is a cost regulation law that does not impermissibly interfere with uniform administration of ERISA plans. Rather, it relates to the cost regulation of *all* health benefit plans, not just ERISA plans, and is not preempted.

EBIA Comment: In yet another case in the continuing trend of ERISA preemption challenges to state laws regulating PBMs, this decision aligns very closely with *Rutledge*, but the outcome of these cases depends on specifics—state laws directly affecting ERISA plan design are more likely to be held preempted. For more information, see EBIA’s ERISA Compliance manual at Sections XXXIX.C (“State Laws That ‘Relate to’ ERISA Plans Are Generally Preempted”) and XXXIX.H.8.c (“Preemption Analysis Applied to Specific State Laws: Pharmacy Benefit Managers (PBMs)”). See also EBIA’s Self-Insured Health Plans manual at Section V.E (“ERISA Preemption and the Application of State Mandates”).

Contributing Editors: EBIA Staff.