***RUTLEDGE v. PHARMACEUTICAL CARE MANAGEMENT ASS’N,***

***141 S.Ct. 474 (2020)***

In *Rutledge v. PCMA*, the Court upheld an Arkansas law, Act 900, which required pharmacy benefits managers (“PBMs”)[[1]](#footnote-1) to reimburse pharmacies at a price equal to or higher than what the pharmacy paid to buy the drug. Act 900 required PBMs to provide administrative appeal procedures for pharmacies to challenge reimbursement prices that are below the pharmacies’ acquisition costs, and it also authorized pharmacies to decline to dispense drugs when a PBM would provide a below-cost reimbursement. Act 900 applied to all transactions between PBMs and pharmacies, including transactions where the PBM was acting on behalf of a self-insured ERISA plan. Thus, the saving clause was not at issue in this case.

In a suit brought by Pharmaceutical Care Management Association (“PCMA”), a national trade association representing 11 PBMs, the Eastern District of Arkansas had ruled that Act 900 was preempted by ERISA, and the Eighth Circuit affirmed.[[2]](#footnote-2) Both courts relied on a recent Eighth Circuit decision striking down a similar Iowa law because it “made ‘implicit reference’ to ERISA by regulating PBMs that administer benefits for ERISA plans”[[3]](#footnote-3) and “was impermissibly ‘connected with’ an ERISA plan because, by requiring an appeal process for pharmacies to challenge PBM reimbursement rates and restricting the sources from which PBMs could determine pricing, the law limited the plan administrator’s ability to control the calculation of drug benefits.”[[4]](#footnote-4)

The Supreme Court, however, held that because Act 900 “regulates PBMs whether or not the plans they service fall within ERISA’s coverage,” it is analogous to the law upheld by the Court in *Travelers,* “which did not refer to ERISA plans because it imposed surcharges ‘regardless of whether the commercial coverage [was] ultimately secured by an ERISA plan, private purchase, or otherwise.”[[5]](#footnote-5) The Court held that under *Travelers,* “State rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage are not preempted by ERISA.”[[6]](#footnote-6)

The Court rejected PCMA’s contention “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.”[[7]](#footnote-7) The Court acknowledged that Act 900 required ERISA plan administrators to “comply with a particular process” and standards,[[8]](#footnote-8) but explained that those enforcement mechanisms “do not require plan administrators to structure their benefit plans in any particular manner, nor do they lead to anything more than potential operational inefficiencies” for PBMs.[[9]](#footnote-9) The Court emphasized that State law governs disputes between plans and providers.[[10]](#footnote-10) The Court held further that ERISA did not preempt Act 900’s decline-to-dispense provision, even though it “effectively denies plan beneficiaries their benefits” because any denial of benefits would be the consequence of the lawful state regulation of reimbursement rates and the PBM’s refusal to comply.*[[11]](#footnote-11)*

Finally, the Court rejected PCMA’s claim that the law had an impermissible “reference to” ERISA. As the Court explained, Act 900 “applies to PBMs whether or not they manage an ERISA plan,” and Act 900 did not treat ERISA plans differently than non-ERISA plans.[[12]](#footnote-12)

However, *Rutledge* does not represent an open-ended approval of state pharmacy benefit regulation in general. The Court only considered the provisions of the Arkansas PBM law as they stood at the time PCMA filed its preemption challenge. While *Rutledge* was making its way through the appellate courts, Arkansas amended its PBM law to add new requirements and prohibitions, so it is important that *Rutledge* not be read as a finding that the Court analyzed Arkansas’ PBM law as it existed in 2020. Additionally, the Court did not address issues that have been raised by other State PBM-pharmacy laws, including laws regulating networks, prohibitions and limitations on corporate practice of medicine, and laws regulating what pharmacies may discuss with their patients. The *Rutledge* decision has opened the door to additional ERISA challenges, which, at the time of this writing are making their way through the courts.

1. As the term is spelled in Act 900. Supreme Court style refers to “pharmacy benefit managers.” [↑](#footnote-ref-1)
2. *PCMA v. Rutledge,* 891 F.3d 1109 (8th Cir. 2018). [↑](#footnote-ref-2)
3. 141 S.Ct. at 479, quoting *PCMA v. Gerhart,* 852 F.3d 722, 729 (8th Cir. 2017). [↑](#footnote-ref-3)
4. *Id.* at 479, quoting *Gerhart,* 852 F.3d at 726, 731. [↑](#footnote-ref-4)
5. *Id.* at 481, quoting *Travelers,* 514 U.S. at 656. [↑](#footnote-ref-5)
6. *Id.* at 480, citing *Travelers,* 514 U.S. at 668. [↑](#footnote-ref-6)
7. *Id.* at 481–482. [↑](#footnote-ref-7)
8. *Id.* at 482, quoting PCMA brief at 24. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* at 481. [↑](#footnote-ref-12)