



# ERISA Express Preemption

**American Medical Association  
Advocacy Resource Center  
Private Practice Physicians Section  
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## Two kinds of ERISA preemption

- Express. Express preemption occurs when a federal statute states that it “preempts” or “supercedes” state laws. Few cases. ERISA is one example. Sometimes misnamed, e.g., “conflict” preemption. *Rutledge v. Pharmaceutical Care Management Assoc*, 141 S. Ct. 474 (2020) (express preemption only).
- Complete. Implied by ERISA remedial provisions. *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004).
- All 100-plus cases citing *Rutledge* have been reviewed as of June 1, 2026.

# Rationale

- Purpose of ERISA: Following some well-publicized pension defaults, Congress in 1974 enacted ERISA primarily to regulate retirement benefits. Applies to both pension and welfare benefit plans, hence, health care benefits. Federalized employee benefit: many employers operate in two or more states.
- "It should be stressed that, with the narrow exceptions specified in the bill, ERISA's substantive and enforcement provisions are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987).

# Structure of Express Preemption

- (1) General preemption: ERISA shall supersede any and all State laws insofar as they may now or hereafter “relate to” any employee benefit plan.
- (2) Savings clause exception: Even if a state law “relates to” an ERISA plan, it may be saved from preemption by the so-called insurance “savings clause.” This is determined by applying a two-part test. *Kentucky Assn. of Health Plans, Inc. v. Miller*, 538 U.S. 329 (2003).
- (3) Deemer clause: The savings clause does not apply to self-funded ERISA plans. So, if a state law “relates to” a self-insured ERISA plans, it is preempted.

General language creates vast gray areas and courts struggle with and there is great variation and conflicting cases across various jurisdictions. Everything must be taken on a case-by-case basis.

## When does a state law “relate to” an ERISA plan?

Two-part test. (1) Does the state law *refer to* an ERISA plan? (2) Does the state law have an *impermissible connection with* (ICW) an ERISA plan?

(1) A state law “*refers to*” an ERISA plan if it:

(a) acts *immediately and exclusively* upon ERISA plans; or

(b) if the *existence of ERISA plans is essential* to the law’s operation. See e.g., *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316 (1997).

It is not difficult to write a law that meets this test. All of the Advocacy Resource Center’s model legislation does so.

# When does a state law have an ICW an ERISA plan?

## Several tests:

- (1) Does the law bind administrators to specific rules for determining beneficiary status? *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).
- (2) Does the law require benefit plans to be structured in particular ways, such as by requiring payment of specific benefits. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983) (ERISA preempted a NY law requiring all HPs to pay for certain pregnancy-related services). *Metropolitan Life v. Massachusetts*, 471 U.S. 724 (1985).

## When does a state law have an ICW an ERISA plan?

- (3) Does the law force an ERISA plan to adopt a certain scheme of substantive coverage, e.g., network design?
- (4) Does the law have acute, albeit indirect, economic effect on an ERISA plan that it forces it to adopt a particular form of coverage? *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U. S. 645 (1995) and *Rutledge v. Pharmaceutical Care Management Association*, 141 S. Ct. 474 (2020).
- (5) Interferes with national uniform administration. *Egelhoff and Gobeille v. Liberty Mut. Ins. Co.*, 577 U. S. 312 (2016) compared with *Travelers* and *Rutledge*.

## When does a state law have an ICW an ERISA plan?

- (6) Governs a central matter of plan of administration. *Egelhoff* “Differing state regulations affecting an ERISA plan’s “system for processing claims and paying benefits” impose “precisely the burden that ERISA preemption was intended to avoid.” *Gobeille*. Also, extensive administrative requirements, PA, EOB, reporting requirements. One example, 29 CFR 2560.503-1. Claims Procedure.
- (7) Intrudes on a central matter of ERISA regulation. *Gobeille* (2016).

***Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80 (2020).**  
**ERISA challenge to Ark PBM law**

- PBMs had to pay pharmacies at a price at least equal to their drug acquisition costs;
- PBMs had to increase a pharmacy's reimbursement rates to compensate the pharmacy in cases where it could not buy the drug at a lower price;
- PBMs had to timely update their MAC lists when the price of wholesale drugs increased;

## Rutledge continued....

- PBMs had to have an appeal process that pharmacies could use to challenge reimbursement rates;
- PBMs had to allow pharmacies to decline dispensing a drug if the PBM reimbursement rate was below the acquisition cost; and
- PBMs had to allow pharmacies to “reverse and rebill” each reimbursement claim affected by the wholesaler at a price equal to or less than the maximum allowable cost.

Merely “cost regulations.” Or perhaps another way of saying that the state law is only about the amount of money that PBMs must pay pharmacies.

The *Rutledge* court did not overrule any prior decisions.

## **Rutledge: When does a state law not have an ICW an ERISA plan?**

- *Rutledge* was dictated by *Travelers* (1995). The NY law in *Travelers* required non-Blues insurers to pay a surcharge (ranging from 9% to 24%) for hospital services to incentivize purchasers, including ERISA plans, to choose Blues over non-Blue insurers. (Assuming pass-through). The SC found no ICW, because the cost difference in was not so high that it forced ERISA plans to buy coverage from the Blues.
- *Rutledge*: Although PBMs might have to pay more for drugs in Arkansas than in, say, Arizona, and so too would ERISA plans, the increased drug costs were not so high as to dictate what kind of coverage or benefits that ERISA plans had to buy.

## ***Rutledge continued...***

“Indeed, Act 900 is less intrusive than the law at issue in Travelers, which created a compelling incentive for plans to buy insurance from the Blues instead of other insurers.”

*Rutledge*, at 88.

## ***PCMA v. Whebi*, 18 4<sup>th</sup> 956 (8<sup>th</sup> Cir. 2021)**

Court did not preempt provisions of a ND PBM law, e.g.,

- A pharmacist had to be allowed to tell a plan sponsor, e.g., an ERISA plan, or a patient, how much was paid to the pharmacy;
- A pharmacist had to be free to tell a patient about the efficacy of a drug and more affordable alternatives;
- PBMs could not impose pharmacy accreditation standards that were more restrictive than state licensure requirements; and
- Upon request, a PBM/TPP had to provide a pharmacy with the processor control number, bank id number, and group number for each of the PBM's pharmacy networks to enable the pharmacy to make an informed contracting decision.

## ***PCMA v. Mulready*, 78 F.4<sup>th</sup> 1183 (10<sup>th</sup> Cir. 2023)**

Court preempted OK PBM law:

- how many retail pharmacies had to be in a network;
- prohibited using mail-order pharmacies to satisfy network requirements;
- prohibited using any discounts in cost-sharing or a reduction in copay to incentivize individuals to receive prescription drugs from an individual's choice of in-network pharmacy;
- any-willing provider; and
- minimum accreditation standards contra *Whebi*.

Supreme Court declined to review. U.S. Government Solicitor General argued against review.

## ***Gobeille v. Liberty Mut. Ins. Co., 577 U. S. 312 (2016)***

- This case involved a VT APDC law requiring HIs, HCPs, etc., to report info about HC costs, prices, quality, utilization, claims, and enrollment to VT. BCBSM, which administered L’s ERISA plan, sued. The SC found ERISA preempted the law because it intruded upon a “central matter of plan administration.” This was because ERISA itself imposed detailed reporting and record keeping requirements on ERISA plans, which the court found were “fundamental components of ERISA’s regulation of plan administration.”
- “The fact that reporting is a principal and essential feature of ERISA demonstrates that Congress intended to pre-empt state reporting laws like Vermont’s, including those that operate with the purpose of furthering public health.” What is the limit? Who knows.

## So, what is our analytical framework in terms of limits?

What do we know? ERISA will preempt a state law applicable to an ASO/PBM/**self-insured** GHP (not entirely clear) if the law:

- (1) tells an ERISA plan to whom it must pay a benefit;
- (2) governs a central plan of administration;
- (3) tells an ERISA plan what health insurance benefits it must cover;
- (4) intrudes on a “key component” of ERISA requirements;
- (5) has an acute, albeit indirect, economic effects on an ERISA plan that it forces a plan to adopt a particular form of coverage; (Does this ever itself suffice?)
- (6) interferes with national uniform administration. (Stand alone?)
- (7) price/cost regulations are not preempted.

## **Rutledge strategies while attempting not to trigger preemption under other cases: AMA ERISA Preemption Issue Brief**

- (1) Cost regulations can extend to PBMs/ASOs in addition to PBMs-extension to ASOs.
- (2) Price setting/payment rates, which is a different issue than payment methodologies.
- (3) Administrative fees? No claims related administrative fees (at least abandoned by PCMA in Mulready).
- (4) Overpayment/claw backs when it comes to disputes over the amounts paid (issue—how extensive).
- (5) Regulating the credentialing process, e.g., deadlines. Substance/content (accreditation) versus form?
- (6) State accreditation standards floor?
- (7) Interest on late payments under contract?

## Strategies/operationalizing *Rutledge* in state legislatures

- (8) Transparency of edits, fee schedules, payment rules, contract amendments, etc.
- (9) Gag clauses.

# Many AMA resources to take advantage of Rutledge and other cases

Model legislation covering a huge number of physician-health insurer areas of dispute, e.g., issues mentioned above and much more. These can be used to see how far we can take *Rutledge*.

Comprehensive 12-page AMA resource entitled “Issue brief: ERISA Preemption and challenges to health care plans.” Covers issues mentioned above and more. Continually revised to address new developments. <https://www.ama-assn.org/system/files/issue-brief-erisa.pdf>. First result on Google.

AMA National Managed Care Legal Database. Contains over 1,300 state and federal statutes AND regulations that cover almost all business relationships between physicians, health insurers, exchange plans, and Medicare Advantage plans. Can be used to develop any legislative strategy to attempt to operationalize *Rutledge* and subsequent cases. <https://www.managedcarelegaldatabase.org/>. First result on Google. Updated annually.

# Many AMA resources to take advantage of Rutledge and other cases

Participating in the National Association Insurance Commissioners ERISA Working Group in developing a guidance document concerning ERISA preemption of state laws based on *Rutledge*, *Wehbi*, and *Mulready*. Comments COB June 18, 2026.

## Ongoing litigation

*McKee Foods Corp. v. BFP Inc.*, No. 25-5416 (6th Cir. 2026)(holding that ERISA preempted Tennessee statute requiring AWP and prohibiting different co-pays and steering to pharmacies owned by PBMs). No appeal filed yet.

*Express Scripts, Inc., v. Rodney Richmond*, CASE NO. 4:25-CV-00520-BSM (July 2025) holding that ERISA did not preempt an Arkansas law stating that a PBM could not own or have a license in an Arkansas pharmacy. Struck down on other grounds. Appeal is ongoing.

On May 8, 2026, Optum Rx, Inc. (a PBM) sued to block California SB 41, a PBM reform law enacted in 2025, on the grounds of ERISA preemption.

## Ongoing litigation

*Iowa Association of Business and Industry v. Ommen*, No. 4:25-cv-00211-RGE-WPK  
Iowa District Court holds that ERISA preempts Iowa PBM law SF 383, signed to law in 2025 one day before it was to become effective. (June 30, 2025). Has been appealed.

*PCMA v. Bonda & Kirchmeyer*, No. 2:26-cv-00012 (E.D. Ca.) alleging that parts of California SB 41 (effective January 1, 2026) are preempted by ERISA.

*Central States, Southeast and Southwest Areas Health and Welfare Fund v. McClain*, 2025 U.S. Dist. LEXIS 170229 \*; 2025 LX 399287; 2025 WL 2522621 (N.D. Il.) (September 2, 2025). Court did not preempt an Arkansas rule requiring PBMs to pay pharmacies compensation that is “fair and reasonable.” Case is on appeal.

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## **McKee Foods Corp. v. BFP Inc., 173 F.4th 242 (6<sup>th</sup> Cir. 2026)**

- Federal circuit court preempts Tennessee PMB AWP and enrollee incentive/disincentive provisions. No notice of appeal yet.