

RUTLEDGE V PCMA (SCOTUS)

The U.S. Supreme Court issued a narrow decision on Dec. 10, 2020 in *Rutledge v. PCMA*, reversing the lower court's decision and holding that Arkansas's Act 900 (MAC law) is not preempted by federal law (ERISA). The Court said Act 900 is simply a "cost regulation," which is something states are typically allowed to do, even when it impacts an ERISA plan's costs. The Court relied on an earlier case, *Travelers*, in which New York imposed an up to 13% hospital bill rate increase, for patients not covered by Blue Cross Blue Shield New York. The Court concluded that this surcharge was merely a form of "cost regulation" that is not preempted by ERISA. The Court did not overturn the lower court's decision that Act 900 is invalid on Medicare plans.

More than 40 states have passed some form of PBM rate regulation (MAC law). Unlike most state laws that were unchallenged, PCMA sued in Arkansas because the law will drive up the costs for prescription drug benefits by requiring PBMs to reimburse pharmacies at a rate no lower than the pharmacy's invoice price, thus removing any incentive for wholesalers to sell drugs to pharmacies at a discounted rate, or for pharmacies to shop for better prices. Further, the law allows a pharmacy to turn a plan participant away at the pharmacy counter if the pharmacy does not believe dispensing that participant's prescription will result in a high enough profit.

The Court said....

- ✓ The Court said Arkansas's Act 900 (MAC law) is not preempted by federal law (ERISA).
- ✓ The Court said Act 900 is simply a "cost regulation," which is something states are typically allowed to do, even when it impacts an ERISA plan's costs.
- ✓ The Court said Act 900 could raise costs for ERISA plans.
- ✓ The Court said, "...ERISA plans may pay more for prescription-drug benefits in Arkansas than in, say, Arizona."
- ✓ The Court said that a law that allows a pharmacy to turn a patient away at the pharmacy counter if they do not make the minimum required profit is not preempted by ERISA, because it is part of "cost regulation".
- ✓ The Court implied that states are still not allowed to force employer plans to structure benefits in a specific way, and that a law that increases costs so much for employers that the employer must restructure its benefits may run into trouble with the federal law.

The Court did not say...

- ✗ The Court did not say that states have free ability to regulate PBMs with respect to every aspect of their ERISA business.
- ✗ The Court did not say that Act 900 was good public policy.
- ✗ The Court did not say implementation of laws like Act 900 would not impact costs; it in fact said that this law would raise costs for ERISA plans.
- ✗ The Court did not overturn the lower court's decision that Act 900 is invalid on Medicare plans.
- ✗ The Court did not say that every law directed at PBMs is valid or not preempted by ERISA.