

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Pharmaceutical Care Management Association v. Mylynn Tufte

No. 18-2926, United States Court of Appeals for the Eighth Circuit (August 7, 2020)

SUMMARY

The Eighth Circuit held that North Dakota's legislation regulating pharmacy benefits managers (PBMs) was preempted by ERISA because it impermissibly "referenced" ERISA plans through its definitions of "third-party payer" and "plan sponsor," making the existence of ERISA plans essential to the law's operation. Following prior circuit precedent (Gerhart and Rutledge), the court found that the statute implicitly regulated ERISA plans even though it also covered non-ERISA entities, and thus the entire legislation was preempted. The court did not reach Medicare Part D preemption issues and deemed the state's savings clause argument waived. The district court's partial denial of preemption was reversed, and the case was remanded for entry of judgment in favor of PCMA.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	GRUENDER; SMITH; BENTON
JURISDICTION	Federal
DECIDED	August 7, 2020
DOCKET	18-2926
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of North Dakota - Bismarck. The district court granted in part and denied in part cross-motions for summary judgment, finding only one provision preempted by Medicare Part D. PCMA appeals.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Pharmaceutical Care Management Association v. Mylynn Tufte, in her official capacity as the State Health Officer of North Dakota; Mark J. Hardy, in his official capacity as the Executive Director of the North Dakota Board of Pharmacy; Steven P. Irsfeld, in his official capacity as President of the North Dakota Board of Pharmacy; Wayne Stenehjem, in his official capacity as the Attorney General of North Dakota

TOPICS

erisa summary judgment statutory interpretation appellate procedure

PRACTICE AREAS

ERISA Health Law Preemption

QUESTIONS PRESENTED

1. Whether the North Dakota legislation is preempted by ERISA because it has an impermissible 'reference to' ERISA plans.

HOLDINGS

1. The North Dakota legislation is preempted by ERISA because it has an impermissible 'reference to' ERISA plans through its definitions of 'third-party payer' and 'plan sponsor,' which make the existence of ERISA plans essential to the law's operation.
2. North Dakota has waived this argument because it was raised only in a footnote and not properly argued.

KEY QUOTATIONS

“A state law has an impermissible 'reference to' ERISA plans where it (1) 'acts immediately and exclusively upon ERISA plans' or (2) 'where the existence of ERISA plans is essential to the law's operation.'” (3)

“the existence of ERISA plans is essential to the law's operation because 'it cannot be said that the . . . law functions irrespective of the existence of an ERISA plan.'” (5)

“the North Dakota legislation is preempted because it 'relates to' ERISA plans 'by regulating the conduct of PBMs administering or managing pharmacy benefits.'” (6)

FACTUAL BACKGROUND

In 2017, North Dakota passed N.D. Cent. Code sections 19-02.1-16.1 and 19.02.1-16.2, which regulate the relationship between pharmacies, pharmacy benefits managers (PBMs), and third-party payers. The legislation imposes various requirements on PBMs and third-party payers, including fee restrictions, copayment limits, quality metrics, ownership prohibitions, disclosure requirements, and anti-gag clauses. Violations are class B misdemeanors. PCMA is a national trade association that represents PBMs.

PROCEDURAL HISTORY

PCMA filed a complaint seeking a declaration of preemption and an injunction. The district court determined that none of the statutory provisions were preempted by ERISA and that only one provision was preempted by Medicare Part D. PCMA appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

with directions to enter judgment in favor of PCMA.

CASES CITED

- *Gobeille v. Liberty Mut. Ins.*, 577 U.S. ---, 136 S. Ct. 936 (2016)
- *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins.*, 514 U.S. 645 (1995)
- *Cal. Div. of Labor Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316 (1997)
- *Pharm. Care Mgmt. Ass'n v. Rutledge*, 891 F.3d 1109 (8th Cir. 2018)
- *Pharm. Care Mgmt. Ass'n v. Gerhart*, 852 F.3d 722 (8th Cir. 2017)
- *Metro. Life Ins. v Massachusetts*, 471 U.S. 724 (1985)
- *Express Scripts, Inc. v. Wenzel*, 262 F.3d 829 (8th Cir. 2001)
- *Mader v. United States*, 654 F.3d 794 (8th Cir. 2011) (en banc)
- *Mahler v. First Dakota Title Ltd. P'ship*, 931 F.3d 799 (8th Cir. 2019)
- *Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316 (11th Cir. 2012)
- *Duffner v. City of St. Peters*, 930 F.3d 973 (8th Cir. 2019)
- *Pharm. Care Mgmt. Ass'n v. District of Columbia*, 613 F.3d 179 (D.C. Cir. 2010)
- *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294 (1st Cir. 2005)
- *Pharm. Care Mgmt. Ass'n v. Rutledge*, 589 U.S. ---, 140 S. Ct. 812 (2020) (mem.)