Court Holds Arkansas Rule 128 Is Not Preempted by ERISA

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A U.S. District Court has ruled that Arkansas Insurance Department Rule 128: "Fair and Reasonable Pharmacy Reimbursements" ("***Rule 128***") is not preempted by ERISA. Rule 128, issued December 2024, requires health benefit plans and healthcare payors that have Arkansas covered lives to submit pharmacy compensation information to the Arkansas Insurance Commissioner which will then determine if payments to Arkansas pharmacists and pharmacies are fair and reasonable. If the Commissioner determines they are not, the Commissioner can require the plan to pay an additional pharmacy dispensing cost to ensure that the plan offers an adequate network of pharmacy providers. The plaintiff, a self-funded multiemployer employee welfare benefit plan governed by ERISA, argued that Rule 128 was preempted by ERISA. The Court granted the defendants' motion to dismiss after finding that the plaintiff failed to state a claim that Rule 128 was preempted by ERISA.

We do not yet know if an appeal will be filed. The penalty for noncompliance with Rule 128 is a fine imposed on the pharmacy benefit manager ("***PBM***") and not the employer or its plan. Employers with self-funded group health plans that have Arkansas covered lives should address with their PBM whether the PBM will assist with these reporting requirements and also how the PBM intends to handle any penalty for noncompliance with Rule 128. In this context, it is important for the employer to also address whether any penalty assessment will be subject to the indemnification or other liability provisions in the service agreement between the employer and PBM.

The case is: *Central States, Southeast and Southwest Areas Health & Welfare Fund et al v. McClain et al*., case number 1:25-cv-03938 (N.D. Ill. Sept 2, 2025).

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