Oklahoma PBM Law Preempted by ERISA

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The U.S. Court of Appeals for the Tenth Circuit has ruled that the Oklahoma statute regulating pharmacy benefits managers (***"PBMs"***), which are intermediaries between pharmacies and employer-sponsored group health plans, was preempted by ERISA. This state law was intended to support independent pharmacies. The court held that ERISA preempted the law's provisions (i) requiring specific retail pharmacy network access standards, (ii) prohibiting differentiation in cost-sharing between network pharmacies, including retail and mail-order, (iii) requiring PBMs to admit every pharmacy that is willing to accept the PBM's network terms into the network, and (iv) prohibiting a PBM from denying, limiting, or terminating a pharmacy's contract because one of its pharmacists is on probation with the Oklahoma State Board of Pharmacy. Employers and the PBMs servicing plan participants in Oklahoma may have already implemented plan design changes to comply with the Oklahoma statute. Employers should now determine how the PBMs for their group health plans intend to respond to this court decision.

The opinion in *Pharm. Care Mgmt. Ass'n v. Mulready*, 2023 WL 5218138 (10th Cir. 2023), is available here.

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