A Review of Successes at Federal & State Level Since Rutledge v. PCMA

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Disclosure Statement

- Lucas Morgan has/have no relevant financial relationship(s) with ineligible companies to disclose.
  and
- None of the planners for this activity have relevant financial relationships with ineligible companies to disclose.

Learning Objectives

At the completion of this activity, the participant will be able to:

1. Describe the legal landscape as between independent pharmacies and PBMs before Rutledge v. PCMA and after Rutledge v. PCMA Objective;
2. Discuss the impact of Rutledge v. PCMA and what the case stood for legally and its impact on independent pharmacies; and
3. Summarize current view of legislation and other legal developments related to pharmacies and PBMs as of the date of the event.

SUPREME COURT OF THE UNITED STATES

No. 18–540

LESLIE RUTLEDGE, ATTORNEY GENERAL OF ARKANSAS, PETITIONER *v.* PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Pharmacy benefit managers (PBMs) are a little-known but important part of the process by which many Americans get their prescription drugs. Generally speaking, PBMs serve as intermediaries between prescription-drug plans and the pharmacies that beneficiaries use. When a beneficiary of a prescription-drug plan goes to a pharmacy to fill a prescription, the pharmacy checks with a PBM to determine that person's coverage and copayment information. After the beneficiary leaves with his or her prescription, the PBM reimburses the pharmacy for the prescription, less the amount of the beneficiary's copayment. The prescription-drug plan, in turn, reimburses the PBM.

The amount a PBM "reimburses" a pharmacy for a drug is not necessarily tied to how much the pharmacy paid to purchase that drug from a wholesaler. Instead, PBMs' contracts with pharmacies typically set reimbursement rates according to a list specifying the maximum allowable cost (MAC) for each drug. PBMs normally develop and administer their own unique MAC lists. Likewise, the amount that prescription-drug plans reimburse PBMs is a matter of contract between a given plan and a PBM. A PBM's reimbursement from a plan often differs from and exceeds a PBM's reimbursement to a pharmacy. That difference generates a profit for PBMs.

Rutledge v. PCMA: Case or Controversy

Pharmacy Benefit Manager ("PBMs") exist as intermediaries between pharmacies and prescription drug plans. To determine reimbursement for prescription medications, PBMs utilize self developed maximum allowable cost ("MAC") lists.

In 2015 Arkansas passed Act 900, effectively requiring PBMs to reimburse Arkansas pharmacies at a price equal to or higher than a pharmacy's wholesale cost.

Thus, PBMs would be required to timely update MAC lists as drug wholesale prices increase and provide a process that permits pharmacies to challenge MAC reimbursement rates.

Act 900 also provides that pharmacies may refuse to sell a drug if the reimbursement rate is lower than its acquisition cost

Rutledge v. PCMA: Case or Controversy

In response to Act 900, Pharmaceutical Care Management Association (“PCMA”) sued alleging that Act 900 is preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”).

PCMA asserted that Act 900 has an impermissible connection with an ERISA plan.

Rutledge v. PCMA

The Supreme Court held that Act 900 is not preempted by ERISA. The Court holds that "ERISA pre-empts state laws that relate to a covered employee benefit plan. A state law "relates to" a covered plan if it has "a connection with" or "reference to" such a plan. Act 900 has neither. *See Rutledge v. Pharm. Care Mgmt. Ass'n, 592 U.S. 80, 141 S. Ct. 474, 208 L. Ed. 2d 327 (2020).*

The Supreme Court's decision in Rutledge v. PCMA marked a pivotal moment in the movement to regulate Pharmacy Benefit Managers at the state level.

Rutledge v. PCMA

Understanding the impact of a federal court decision vs a state court decision.

Understanding the difference between federal and state law.

Ohio Legislative Update

Lawmakers are taking aim on adverse PBM practices in Ohio, House Bill 229 introduced comprehensive licensing and operational requirements for all PBMs soliciting or serving health plans and plan sponsors headquartered or domiciled in the state.

On October 8, 2025, House Bill 229 successfully passed the House of Representatives by a unanimous 96-0 vote and is now pending before the Ohio State Senate.

Ohio Legislative Update

The bill sets forth several critical requirements:

Licensing & Renewal: PBMs must apply for licensure through the Superintendent of Insurance.

Written Agreements: PBMs must enter into written contracts with plan sponsors.

Financial Integrity: PBMs are expressly prohibited from using plan sponsor funds for any purpose not explicitly authorized in writing and must disclose any ownership relationships with insurance carriers of 5% or more.

Transparency in Transactions: Written disclosures are required for how plan sponsor funds are collected and held.

Recordkeeping: All relevant books and records must be maintained, either electronically or physically, at the PBM's principal or branch office.

Ohio Legislative Update

The Superintendent of Insurance will have expanded authority to examine PBM records, including:

Rebate Transparency: Detailed reporting of aggregate rebates received, distributed to plan sponsors, and passed on to enrollees at the point of sale.

Payment Clarity: Itemized records of payments made by and to PBMs for pharmacist services, categorized by pharmacy, product and service type.

State Action

On July 17, 2024, Pennsylvania Governor Josh Shapiro signed the Pharmacy Benefit Reform Act (House Bill 1993) into law.

Key provisions of the Act include:

Enhanced Network Access

Ban on Patient Steering

Reimbursement Restrictions

Expanded Oversight & Enforcement

Record Access & Compliance

Penalties for Non-Compliance

FTC Settlement with Express Scripts Inc.

Recently, the Federal Trade Commission ("FTC") secured a landmark settlement with Express Scripts, Inc. ("ESI"). The Settlement resolves the FTC's lawsuit against ESI in which the FTC alleged that ESI artificially inflated the list price of insulin drugs.

The Settlement requires ESI to alter business practices to increase transparency, drive down out of pocket drug costs, and create millions of dollars in new revenue to community pharmacies each year.

FTC Settlement with Express Scripts Inc.

Under the Settlement, Express Scripts has agreed to the following standout items:

1. ESI will compensate each Retail Community Pharmacy based upon its actual cost of acquiring prescription drugs plus a dispensing fee.

2. ESI must cooperate with any future related legal proceedings.

3. ESI shall appoint, a Monitor to observe and report on ESI's compliance with its obligations under the Settlement.

FTC’s Settlement with ESI marks a need for major changes to insulin formulary management and sets a new compliance standard that pressures other PBMs like CVS Caremark and OptumRx.

FTC Settlement with Express Scripts Inc.

Additional noteworthy items:

Any Willing Provider:

The Settlement requires that ESI include the following terms in its “Standard Offering to Retail Community Pharmacies:”

Monitorship:

In addition to the actionable terms of the Settlement, the ESI will appoint a Monitor to observe and report on its compliance with its obligations under the Settlement for a period of three years.

Consolidated Appropriations Act, 2026, (CAA 2026)

The PBM reforms mandate that, beginning in 2029, Part D sponsors must allow any pharmacy that meets standard contract terms to participate in their network, a policy called any willing pharmacy.

The any willing pharmacy policy will work hand in hand to implement existing Any Willing Provider (“AWP”) statutes. AWP statutes are significant for PBMs because they help ensure pharmacy network inclusivity, promote competition, protect patient choice, and support smaller or independent pharmacies.

Consolidated Appropriations Act, 2026, (CAA 2026)

Additionally, the Secretary of the Department of Health and Human Services (HHS) is directed to establish standards for “reasonable and relevant” contract terms by April 2028.

An ongoing issue for pharmacies when contracting with PBMs is the lack negotiation power when it comes to unfair or deceptive contract terms.

Consolidated Appropriations Act, 2026, (CAA 2026)

Moreover, pharmacies will now have an established process to report contract violations with PBMs. PDP sponsors are now explicitly prohibited from retaliating against or coercing pharmacies that submit allegations against them while authorizing penalties for non-compliance.

Ohio Holds PBMs Accountable

In 2023, Ohio's Attorney General, Dave Yost, filed suit against ESI, Prime Therapeutics and five other alleging that the PBMs had used a Switzerland company to illegally drive-up insulin prices, shifting higher costs to vulnerable patients. Yost identified the following impacts on retail pharmacies:

1. Coercing retail pharmacies into low reimbursement rate contracts;
2. Charging high and taking advantage of administrative fees and unfavorable contract terms; and
3. Charging unknown "clawback" fees weeks or months after the drug was dispensed.

Need More Information?

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