

Good News from the Badlands

PCMA v Wehbi (North Dakota):

What it Means for Community Pharmacy

- The case:** *PCMA v Wehbi*, 8th Circuit Court of Appeals
- The issue:** North Dakota passed laws regulating the PBMs. The laws were challenged in federal court by PCMA, the lobbying organization for the PBMs. The 8th Circuit Court of Appeals originally sided with PCMA, deciding that the state was preempted by ERISA from regulating the PBMs. In a separate case, *Rutledge v PCMA*, the US Supreme ruled unanimously that except in limited circumstances, ERISA does not preempt states from regulating PBMs. So, in view of the Supreme Court's ruling, the North Dakota case was sent back to the 8th Circuit. The 8th Circuit reversed itself, allowing North Dakota to regulate many PBM practices.
- The result:** None of the challenged North Dakota laws were preempted by ERISA, which was the linchpin of PCMA's argument and only a few were preempted by Medicare Part D. States within the 8th Circuit's jurisdiction can now regulate many PBM practices. Those states are: **Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.**
- Bonus:** PBMs servicing plans within Medicare Part D can be regulated. Basically, the court said states may regulate subject matter not already regulated by Medicare Part D.
- Takeaway:** *Wehbi* adds clarification to the Supreme Court's decision.

North Dakota laws upheld:

NOTE: *None of the provisions below were preempted by ERISA, however, Medicare Part D preempted a few.*

The Part D Preempted

Provisions include:

- Prohibition on retroactive claim adjudication/fees.
- Provisions regulating pharmacy performance measures and fees.
- Allowing pharmacists to disclose reimbursement information to the plan sponsor or patient.
- Prohibiting all gag clauses that prevent pharmacists from sharing information with patients about acquiring prescription drugs.

The provisions of the North Dakota law that were not preempted by Medicare Part D include:

- Prohibits co-pay clawbacks from the pharmacy.
- Pharmacists are not prohibited from mailing prescriptions to patients.
- Pharmacists are not prohibited from charging a shipping or handling fee if the patient requests the prescription to be mailed or delivered.
- Upon request, a pharmacy benefits manager or third-party payer shall provide a pharmacy or pharmacist with the processor control number, bank identification number, and group number for each pharmacy network established or administered by a pharmacy benefits manager to enable the pharmacy to make an informed contracting decision.
- A pharmacy benefits manager or third-party payer may not require pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements for licensure as a pharmacy in this state.
- Prohibits a PBM or PBM affiliate from participating in a transaction that would benefit itself over another that it owes a fiduciary duty.
- A licensed pharmacy or pharmacist may dispense any and all drugs allowed under that license.

How states in the circuit can regulate PBMs

ERISA: Any PBM action, unless a State tries to dictate benefits (e.g., what drugs a plan covers) or who is eligible for coverage (e.g., that a plan must provide coverage to the adult children of beneficiaries).

Part D: PBM actions that are not otherwise expressly preempted by Part D or where there is an established standard.