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Insights

Sixth Circuit Rules ERISA Preempts Portions of Tennessee's PBM Laws

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On April 7, 2026, the Court of Appeals for the Sixth Circuit affirmed that portions of Tennessee's pharmacy benefit manager ("PBM") laws are preempted by the Employee Retirement Income Security Act ("ERISA") as applied to self-funded employer health plans. The decision in *McKee Foods Corporation v. BFP, Inc.*, No. 25-5416, is a significant win for self-funded ERISA plan sponsors and PBMs and adds to a growing body of case law limiting states' ability to regulate self-funded health plans through PBM legislation.

Background

McKee Foods Corporation sponsors a self-insured ERISA group health and prescription drug plan for its employees. BFP, Inc. (doing business as Thrifty Med Plus Pharmacy) was removed from McKee's pharmacy network following an audit by McKee's PBM that revealed misconduct. Thrifty Med responded by filing administrative complaints seeking reinstatement in the network, citing two Tennessee bills:

- Public Chapter 569 (2021) – Prohibited PBMs and covered entities from interfering with a participant's right to choose a contracted pharmacy and barred financial incentives or disincentives that would steer participants toward or away from particular pharmacies.
- Public Chapter 1070 (2022) – Expanded the definition of "covered entities" to expressly include self-funded health plans, effectively requiring those plans to admit any willing pharmacy into their networks.

McKee filed suit seeking a declaration that both chapters were preempted by ERISA and an injunction preventing Thrifty Med from using the state laws to demand reinstatement. The Eastern District of Tennessee ultimately granted summary judgment to McKee in March 2025. Tennessee appealed.

The Sixth Circuit's Ruling

On April 7, 2026, the Sixth Circuit affirmed the district court's decision, holding that Tennessee's "any-willing-provider" [1] and "incentive" [2] provisions are preempted by ERISA because they have "an impermissible connection with ERISA-governed plans." Specifically, the court found that Tennessee's:

- Any-willing-provider provisions "diminish, if not outright eliminate, a plan's ability to design its network in a way most accommodating and beneficial to its participants."
- Incentive provisions "impose across-the-board, universal copays and other fees at every pharmacy in a given network."

The court distinguished the case from the Supreme Court's decision in *Rutledge v. PCMA*, 592 U.S. 80 (2020), which held that an Arkansas law requiring PBMs to reimburse pharmacies at no less than acquisition cost was *not* preempted. The court noted that the Arkansas law merely regulated costs without dictating how a plan must be structured, while the Tennessee provisions directly governed the scope of the pharmacy network and cost-sharing design.

The Sixth Circuit relied heavily on the Tenth Circuit's decision in *PCMA v. Mulready*, 78 F.4th 1183 (10th Cir. 2023), which held that similar Oklahoma any-willing-provider PBM provisions were likewise preempted by ERISA.

What This Means for Employers and Plan Sponsors

This decision is good news for employers that sponsor self-funded ERISA health plans and PBMs, particularly those operating in Tennessee, Kentucky, Ohio, Michigan, or other states that have enacted similar PBM legislation. Key takeaways include:

- Self-funded ERISA plans in Tennessee are not required to admit any-willing-provider to their networks or to refrain from financial incentives that direct participants to preferred pharmacies.
- Plan sponsors retain the flexibility to design pharmacy benefit programs, including tiered networks, cost-sharing differentials, and preferred pharmacy arrangements, without interference from the invalidated Tennessee provisions.
- Employers in other states with any-willing-provider or similar PBM statutes should monitor developments, as this ruling, combined with the Tenth Circuit's decision in *Mulready*, signals continued judicial skepticism of such laws as applied to ERISA plans.

For specific assistance regarding ERISA preemption of state PBM laws, or the design of your health plan's pharmacy benefit program, please contact Stephanie T. Eckerle, Catherine M. Stowers, Griffin F. O'Gara, or any member of the Krieg DeVault Employee Benefits or Health Care teams.

[1]Which includes Tenn. Code Ann. §§ 56-7-2359, 3120(b)(1), and 31(a) and (b).
[2]Which includes Tenn. Code Ann. §§ 56-7-3120(a), (b)2, and 3121(c).

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