

# Publications

## Vorys Benefits Brief: Sixth Circuit Affirms Limits on Tennessee Pharmacy Law

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The U.S. Court of Appeals for the Sixth Circuit recently decided *McKee Foods Corp. v. BFP, Inc.* The Court held that the Employee Retirement Income Security Act (ERISA) preempts key parts of Tennessee's "any-willing-pharmacy" law and cost-sharing restrictions as applied to self-funded ERISA employer health plans. The Court affirmed a lower court ruling that Tennessee cannot force a self-funded ERISA health plan to include "any-willing-pharmacy" in its network nor can Tennessee prohibit a self-funded ERISA health plan from using lower copays or other incentives to encourage participants to use preferred pharmacies. The decision can be found [here](#).

### Background

McKee provides a self-funded health plan governed by ERISA to its employees. Tennessee enacted pharmacy benefit manager (PBM) laws that required pharmacy networks to admit any willing pharmacy and restricted the use of financial incentives that encourage participants to use certain pharmacies. Tennessee applied these rules to self-funded ERISA health plans. McKee challenged the laws, arguing that the state was interfering with plan design and administration in ways ERISA does not allow. In March 2025, the U.S. District Court for the Eastern District of Tennessee ruled that Tennessee's PBM laws were preempted by ERISA. The Sixth Circuit agreed.

### Key Takeaways

The Sixth Circuit's decision refines the U.S. Supreme Court's 2020 decision in *Rutledge v. PCMA*. The *Rutledge* decision had allowed states to regulate PBM drug reimbursement rates with network pharmacies without prompting ERISA preemption. *McKee*, on the other hand, gives self-funded ERISA plan sponsors in the Sixth Circuit (Ohio, Kentucky, Tennessee and Michigan) helpful guidance on where to draw the line between the permitted state PBM regulations described in *Rutledge* and ERISA-protected plan design. The Sixth Circuit made clear that a state may not require a self-funded ERISA health plan to open its pharmacy network to any willing pharmacy if

doing so takes away the employer's ability to decide which pharmacies will participate.

The Court also made clear that states cannot restrict a self-funded ERISA health plan's use of cost-sharing tools when those tools are part of the plan's pharmacy benefit design. In the Court's view, Tennessee's restrictions did more than affect cost; they effectively required uniform cost-sharing across pharmacies and limited the employer's ability to incentivize participants to use preferred or lower-cost pharmacy options.

More broadly, the Court emphasized that ERISA protects employers from state laws that force a particular plan structure, bind administrators to a particular choice in designing substantive benefits, control central plan administration, or make it harder to maintain a uniform plan across multiple states. For employers, the application of state PBM laws to self-funded ERISA health plans is more likely to be preempted by ERISA when the PBM law affects core plan design features.

## Next Steps for Employers with Self-Funded ERISA Plans

### 1. Monitor PBM-related court decisions.

- Employers should continue tracking ERISA preemption cases involving state PBM laws, especially cases impacting the specific design of pharmacy networks, cost-sharing rules, and participant incentives.

### 2. Watch for new state PBM legislation.

- Many states continue to enact laws affecting PBMs. Employers should pay close attention to whether those laws apply to self-funded ERISA plans directly or indirectly.

### 3. Review regulatory and enforcement activity.

- Employers should monitor guidance, bulletins, and enforcement positions issued by state insurance departments and other regulators, particularly where agencies state that PBM rules apply to self-funded ERISA plans.

### 4. Coordinate with PBMs and legal counsel on legal developments.

- Employers should stay in regular contact with their PBMs and legal counsel so they can quickly assess how new decisions or state requirements may affect plan operations.

### 5. Be prepared to reassess plan design as case law develops.

- As more courts address challenges to state PBM regulation as preempted by ERISA, employers may want to periodically revisit pharmacy benefit design, vendor arrangements, and participant communications to ensure they remain aligned with current law.
- When a PBM states that a change is required by state law, be prepared to consult with legal counsel to determine if the law may be preempted by ERISA.

## Contact Legal Counsel

For questions or additional information about this Vorys Benefits Brief and its application, consult with legal counsel.